

Inspectors' Matters, Issues and Questions – 3 August 2022

Matter 12: Design, Heritage and Development Management

Issue (i): Does the plan take a justified approach to design, heritage and amenity matters and is the plan effective and consistent with national policy in these regards?

Design

Q1. Is Policy D12.1 clear in terms of what is meant by 'existing and emerging good practice guidance'?

Council response:

12.1 On review, the language has been amended through a modification to replace the term 'existing and emerging good practice guidance' with 'policy guidance' as this encapsulates all guidance produced by statutory bodies that support the implementation of national and regional policy.

12.2 To provide further clarity on what is meant by 'policy guidance' additional supporting text has been added to this policy chapter.

Proposed modifications:

Policy 12.1.a

Be designed according to well established principles of good urban design as referred to in the National Planning Policy Framework (NPPF) and practice guidance, development plan policies and ~~have regard to existing and emerging- policy guidance. and good practice guidance.~~

Supporting text [after paragraph 12.1.1]

~~Similar to Merton's Supplementary Planning Documents, many statutory bodies, such as the Greater London Authority, Historic England and Sport England produce policy guidance, such as London Plan guidance and Good Practice Advice notes. These provide detailed guidance and advice on a wide range of issues that support the implementation of relevant legislation and national and regional planning policy. These guidance documents can help inform the design of development proposals.~~

Q2. Is Policy D12.2 clear in terms of what is meant by the ‘most appropriate policy guidance and best practice’ (in criteria (a) and (g))?

Council response:

12.3 As above in Q1, on review we have changed the wording for consistency and have removed the words ‘most appropriate’ and ‘best practice’.

Proposed modifications:

Policy 12.2.a

Be of the highest standard and have regard ~~adhere~~ to ~~the most appropriate~~ policy guidance ~~and best practice~~.

Q3. Is Policy D12.2 justified insofar as its criterion (h) relating to ‘future remedial intervention’ is concerned

Council response:

- 12.4 The council has reviewed the policy and propose a modification to make it more effective.
- 12.5 The principle of the policy is to encourage future developments to build to the best possible standard and to future proof for any foreseeable advancements or trends.
- 12.6 The council recognise that retrofitting buildings may require remediation and therefore the use of the phrase ‘without the need for future remedial intervention’ may be undeliverable and not justified.
- 12.7 On reflection, the council proposes to amend the wording of the phrase to ‘minimising the need for future remedial intervention’ to provide flexibility and make the policy more effective.

Proposed modifications:

Policy 12.2.h

Be economically and socially sustainable, by offering variety and choice, and by being able to adapt to changing climatic, social, technological and economic conditions ~~without~~ minimising the need for future remedial intervention.

Q4. Is Policy D12.2 (m) clear in terms of what is meant by ‘locally significant sites’?

Council response:

- 12.8 On review the term ‘locally significant sites’ was unclear.
- 12.9 The principle of this policy is to minimise the impact development may have on the vibrancy of town centres if premises are vacant.
- 12.10 The council has amended the policy wording to replace ‘locally significant sites’ with ‘sites within Town Centre boundaries’.
- 12.11 This is aligned with London Plan Policy SD7(C7), Policy D8(M) and HC5(A4) ([Document 0D32](#)).

Proposed modifications:

Policy 12.2.m

Consider on ~~larger sites or locally significant sites~~ sites within Town Centre boundaries, the benefits of temporary uses before and during construction stages.

Q5. Does Policy D12.3 place sufficient emphasis on the requirement for developments to be sympathetic to local character and history, including the surrounding built environment and landscape setting (per paragraph 130(f) of the Framework?

Council response:

12.12 Throughout the Local Plan reference to local character and history is made. In particular Strategic Policy D12.1.g refers to character and/or history as well as Policy D12.3.

12.13 Furthermore, Policy D12.5 'managing heritage assets' provides specific policies relating to being sympathetic to history and heritage and has been subject to further modifications in light of the Stage 2 hearings that make it more aligned with the NPPF ([Document 0D20](#)).

12.14 As local character and history has been referenced throughout the design policies, it is in the council's view that sufficient emphasis has been made throughout the plan to ensure developments are sympathetic to local character and history whilst not discouraging appropriate change or innovation as per para. 130 NPPF.

Q6. Is the use of the phrase ‘visual intrusion’ in Policy D12.3 sufficiently clear and is its use justified in these terms?

Council response:

12.15 On review, the term ‘visual intrusion’ has been replaced with ‘privacy’ to reflect the terminology found in the London Plan ([Document 0D32](#)) and to make it sufficiently clearer.

12.16 It is in the councils view that its use in these terms is justified. The council reviewed many delivered and undelivered planning applications when creating the Small Sites Toolkit SPD ([Document 12D2](#)). When analysing the applications and the related feedback from council officers and public comments it was evident that this was a design concern.

12.17 The Small Sites Toolkit SPD ([Document 12D2](#)) provides additional support to implement this policy.

Proposed modifications:

Policy D12.3(g)

~~Protect~~ Ensure Demonstrate how new and existing development minimises their impact on privacy ~~from visual intrusion~~, noise, vibrations or pollution so that the living conditions of existing and future occupiers are not unduly diminished.

Q7. Is the requirement for all planning applications to be accompanied by a Design and Access Statement justified?

Council response:

- 12.18 Yes, it is in the council's view that the requirement for all planning applications to be accompanied by a Design and Access Statement (DAS) is justified.
- 12.19 The purpose of this requirement is to ensure that applicants for any form of development explain how their proposal is a suitable response to the site and its setting, and demonstrate that it can be adequately accessed by prospective users. This will assist planning officers with information to make informed decisions.
- 12.20 The council recognise that DAS's are required for major developments and within conservation areas and not necessarily minor developments. However, the London Plan ([Document 0D32](#)) makes clear that development should be 'design-led' within the design policies that also apply to minor developments.
- 12.21 A DAS provides officers with information to better understand why design decisions were made and allow officers to evaluate whether the applicant has taken a design-led approach.
- 12.22 The council would expect a DAS to be proportionate to the complexity of the development.
- 12.23 Merton Small Sites Toolkit SPD ([Document 12D2](#)) contains a DAS template that poses a series of questions for prospective applicants and was developed to improve the quality of applications and ensure they development takes a design-led approach. A modification is proposed to provide additional clarity through supporting text to highlight the toolkit.

Proposed modifications:

Additional supporting text after paragraph 12.3.1

Design and Access Statements (DAS) are a short report that accompanies a planning application. They must explain the design principles and concepts that have informed the development and also demonstrate how the development's context has influenced the design. The level of detail in a DAS should be proportionate to the scale and type of the application. Merton's Small Sites Toolkit SPD contains a DAS template that applicants may use to assist applications on small sites.

Q8. Does the Plan set out an effective and justified strategy relating to the ongoing management and maintenance of any public realm schemes delivered as a result of development proposals?

Council response:

12.24 Yes, with the proposed modifications, the Plan sets out an effective and justified strategy relating to the ongoing maintenance and management of public realm schemes.

12.25 The council recognises the importance of this after reviewing completed developments within the borough. The proposed modification had been introduced to ensure that any public realm delivered considers its long-term maintenance and management.

12.26 The modification is required to ensure the Plan is effective and justified.

Proposed modifications:

New policy after Policy D12.2.v

Ensure that the maintenance and management of any proposed public realm is considered. Planning obligations may be used to deliver this.

New supporting text after paragraph 12.2.12

The long-term maintenance and management of public realm should be considered from the start of the design process and should be designed in consultation with the council.

Q9. Would the Plan ensure that developments create places with a high standard of amenity for existing and future users (per paragraph 130(f) of the Framework)?

Council response:

12.27 Yes, the Plan ensures that developments create places with a high standard of amenity for both existing and future users.

12.28 Para 130(f) of the Framework ([Document 0D20](#)) places emphasis on creating places that promote health and well-being. Policies in D12.1 and D12.3 both contain multiple policies that promote to health and well-being, and crime and disorder do not undermine the quality of life or community cohesion and resilience. The following policies in particular are aligned with para 130 of the Framework.

12.1.f: *Enhance social cohesion and mental and physical wellbeing and support the needs of all of Merton's communities through creating sustainable buildings, spaces and environments that are well-managed, accessible, inclusive, child friendly and intergenerational in line with the chapter on Health and Wellbeing.*

12.3.f: *Provide appropriate levels of sunlight and daylight, quality of living conditions, amenity space and privacy, to both proposed and adjoining buildings and gardens.*

12.3.g: *~~Protect~~ Ensure Demonstrate how new and existing development minimises their impact on privacy from visual intrusion, noise, vibrations or pollution so that the living conditions of existing and future occupiers are not unduly diminished.*

12.3.m *Provide layouts that are safe, secure and take account of crime prevention and are developed in accordance with Secured by Design principles.*

12.29 Furthermore, supporting text 12.1.6 directly references the NPPF and para. 130.

12.1.6: *The NPPF states that good design is a fundamental part of the purpose of the planning and development process; and that plans should set out clearly the council's design vision and expectations. More specifically, the NPPF (para 130) states that planning policies and decisions should ensure that developments...*

Q10. Is Policy D12.3 reasonable and effective in delivering sufficient external private amenity space in higher density developments such as flats? Where such space cannot be provided in full, is it reasonable and justified to expect that the remainder would be supplied in the form of communal amenity space?

Council response:

12.30 Yes, with the proposed modifications, Policy D12.3 is reasonable and effective in setting out private amenity space requirements.

12.31 There are two policies within D12.3 that refer to private amenity space. They are:
D12.3.n

Provide outdoor amenity space that meet, or exceed, the standards set out in the London Plan and whether public, private or communal which accords with appropriate minimum standards, is efficiently laid out and is compatible with the character of surrounding areas. (Modification as per question 12 of this Matter)

And D12.3.q

Where developments are houses and ground floor maisonettes/duplex units, require a garden with a minimum area of 50m² as a single useable regular shaped amenity space. Flexibility may be applied to constrained sites and higher density development where justified.

12.32 Policy D12.3.n has been modified as set out in question 12 of this Matter to provide more clarity on what was meant by ‘appropriate minimum standards’. To avoid duplication with the London Plan ([Document 0D32](#)), the modification refers directly to the London Plan where minimum private amenity space standards (Policy D6.9) as well as qualitative design aspects (table 3.2), are specified. Therefore, Policy D12.3(n) is reasonable and effective in delivering sufficient external amenity space for flatted developments.

12.33 Policy 12.3q refers only to developments where houses and/or ground floor maisonettes/duplex homes are proposed. Flexibility may be applied to the minimum area of 50sqm if the applicant can demonstrate that the site is constrained or higher density using these specific typologies only. On reflection, this is not clear in the current policy wording, and the below modifications have been proposed to improve the clarity and effectiveness of this policy.

12.34 It is in the councils view that it is reasonable and justified to expect that if private amenity space is not met, then the remainder would be supplied as communal amenity space only under exceptional circumstances, such as retrofitting a heritage asset where providing private amenity may cause significant harm.

Providing this flexibility still allows for exceptionally constrained sites to be delivered whilst still providing amenity space that benefits the developments residents. A further modification to 12.3.n has been proposed as shown below.

Proposed modifications:

Policy 12.3.n

Provide outdoor amenity space that meet, or exceed, the standards set out in the London Plan and whether public, private or communal which accords with appropriate minimum standards, is efficiently laid out and is compatible with the character of surrounding areas. In exceptional circumstances where it is not possible to meet the minimum private amenity standards, the remainder should be supplied in the form of communal amenity space.

Policy 12.3.q

Where developments ~~are propose~~ houses and/or ground floor maisonettes/duplex units, ~~require a garden with~~ a minimum area of 50m² as a single useable regular shaped private amenity space is required. Flexibility may be applied where applicants can demonstrate the site is constrained. ~~to constrained sites and higher density development where justified.~~

Q11. Is Policy D12.3 (i) clear and justified in terms of the quantity of dwellings contained in a scheme that would trigger a requirement for communal amenity space?

Council response:

12.35 Yes, with the proposed modifications set out below, Policy D12.3(i) is clear and justified in terms of the requirements for communal amenity space.

12.36 The modification to Policy D12.3(i) is required to provide a quantitative trigger for the requirements of communal amenity space. This is required for clarity and to ensure the policy is justified.

12.37 For further clarity, additional supporting text has been proposed. The supporting text provides a level of flexibility to ensure the policy is effective.

Proposed modifications:

Policy 12.3.i

In **major** residential developments, provide an area of communal amenity space in addition to requirements for private amenity space. Site layout, privacy, overlooking and daylight/sunlight requirements should be used to determine the appropriate amount, location, shape and design of such space.

Supporting text after 12.3.8

Communal amenity should be multifunctional; designed for playing, socialising and relaxing and if outdoors be green and biodiverse. They should provide sufficient space to meet the requirements of the number of residents. Flexibility may be applied if developments can demonstrate how the amount of amenity space provided is acceptable taking into account factors such as the developments location, access to open spaces and the access and quality of private amenity spaces. In these cases, the quality of any communal space will need to be high.

Q12. . What are the ‘appropriate minimum standards’ for amenity space referred to in Policy D12.3?

Council response:

12.38 Policy D12.3.n relates to outdoor amenity space. The minimum standards it refers to are the standards set out in the London Plan including:

Policy D6(9) Private outdoor space.

Table 3.2 - Qualitative design aspects to be addressed in housing developments.

12.39 On review, the use of the term ‘appropriate minimum standards’ is unclear, therefore the council proposes to make a modification to improve the policies clarity by making a direct reference to the London Plan.

Proposed modifications:

Policy 12.3.n

Provide outdoor amenity space that meet, or exceed, the standards set out in the London Plan and ~~whether public, private or communal which accords with appropriate minimum standards~~, is efficiently laid out and is compatible with the character of surrounding areas...

Q13. Is it sufficiently clear and unambiguous what is meant by the term ‘albedo materials’ in Policy D12.3 (y)?

Council response:

12.40 Yes, the term ‘albedo’ is used to ensure consistency of terminology found in the London Plan. To improve clarity, we have added ‘albedo’ into the glossary.

Proposed modifications:

Chapter 17 Appendices, Glossary

Albedo

The surface reflectivity of the sun’s radiation.

Q14. Could Policy D12.4 be clarified and simplified to provide a clearer, less repetitive set of criteria on which alterations and extensions to existing buildings are assessed, and in this way achieve consistency with paragraph 16 of the Framework?

Council response:

12.41 NPPF paragraph 16 states:

Plans should:

- a) be prepared with the objective of contributing to the achievement of sustainable development¹¹;*
- b) be prepared positively, in a way that is aspirational but deliverable;*
- c) be shaped by early, proportionate and effective engagement between planmakers and communities, local organisations, businesses, infrastructure providers and operators and statutory consultees;*
- d) contain policies that are clearly written and unambiguous, so it is evident how a decision maker should react to development proposals;*
- e) be accessible through the use of digital tools to assist public involvement and policy presentation; and*
- f) serve a clear purpose, avoiding unnecessary duplication of policies that apply to a particular area (including policies in this Framework, where relevant).*

12.42 Due to the characteristics of Merton as a long-established urban / suburban borough, most planning applications received by Merton as a local planning authority are householder applications (i.e. alterations and extensions).

12.43 According to government's planning statistics, in the 10 years from April 2012 to March 2022, of the 13,978 planning decisions taken in Merton (excluding prior approvals which have no recourse to planning policy), by far the majority of decisions (9,170 or 66%) were on householder planning applications, many of which would relate to alterations and extensions. (see [DHUHC planning statistics website](#)).

12.44 It is the council's view that policy D12.4 *alterations and extensions* is in line with NPPF paragraph 16(f) by avoiding unnecessary (our emphasis) duplication and serving a clear purpose in making the council's policies for alterations and extensions as accessible as possible to homeowners seeking to alter their properties. It provides a single focus for homeowners to visit and understand what the council expects from alterations and extensions.

- 12.45 In our co-operation with other local planning authorities it is clear that LPAs with similar characteristics to Merton also have provided policies focussed on alterations and extensions in their local plans (e.g. [Wandsworth Local Plan review Regulation 19, policy LP5 alterations and extensions](#); [Lambeth Local Plan adopted 2021 policy Q11 Building alterations and extensions](#))
- 12.46 Therefore, the council does not consider it necessary to simplify Policy D12.4, as it provides sufficient and effective guidance for those making planning applications, in its current form.

Q15. Are the Council's proposed modifications to Policies D12.1, D12.2 and D12.3 necessary to make the plan sound, if so, would they be effective in helping to ensure that development in the borough is of good design?

Council response:

- 12.47 Previous modifications as well as those proposed in response to the Inspectors Stage 2 MIQ's are necessary to make the plan sound and consistent with National Policy.
- 12.48 As highlighted in the policies introduction, the policies objective is to ensure that all future development is well designed, functional and contribute positively to the borough. The need to deliver 10,000 homes in Merton by 2036/37 does not outweigh the need for developments to be design-led.
- 12.49 The policies are underpinned and justified by robust evidence such as the Borough Character Study SPD ([Document 12D1](#)), the Small Sites Toolkit SPD ([Document 12D2](#)) and the Shopfront Guidance SPD ([Document 12D4](#)) and were produced to encourage design-led growth and good design generally in the borough and to improve the design quality of applications after reviewing historic planning submissions. Furthermore, these design focussed Supplementary Planning Documents will be used to give further advice and guidance for applicants to help implement policy to ensure good design.
- 12.50 The proposed modifications ensure policies are more deliverable by adding flexibility whilst still ensuring a level of good design. Further clarity has been added to design policies also, making policies unambiguous and clear to a decision maker and applicant what standards they are being assessed against.

Heritage

Q16. Policy D12.5 managing Heritage Assets. Is the policy consistent with the approach in the London Plan and national planning policy?

Council response:

- 12.51 Yes, with the proposed modifications, Policy D12.5 is consistent with national policy and the London Plan.
- 12.52 Modifications across the policy have been proposed and Policy D12.5 was reviewed by the council's design and conservation officers and Historic England.
- 12.53 Proposed modifications have been made to provide a greater focus on 'significance' and this is referred to throughout the policy to better align with the Framework.
- 12.54 The council recognise that there are inconsistencies with terminologies such as 'conserve', 'protect', 'sustain' and 'preserve' across the Framework and relevant legislation. It is in the council's view that the term 'conserve' is most aligned with the NPPF as this term is generally used in Chapter 16 of the Framework and the Planning Practice Guidance. After consulting with Historic England, it is also advised that the term 'conserve' is the most appropriate at providing parity across all asset types and therefore the historic environment in the round, and in accordance with the NPPF, please see appended 'Note of Terminology' from Historic England.
- 12.55 Wording has also been amended to improve the effectiveness and clarity of the policies.

Proposed modifications:

Policy 12.5.c

In accordance with the NPPF, any alteration or destruction of a heritage asset, or development that has an impact on the significance and/or setting of a heritage asset will require clear and convincing justification. Substantial harm to or loss of:

Policy 12.5.f

Proposals affecting the layout, design, character, use and function of both designated and non-designated a heritage assets or its setting should conserve and enhance the significance of the asset as well as its setting surroundings and have regard to the following:

- i. The conservation, or reinstatement if or lost, of features that contribute to the asset or its setting. This may include original chimneys, windows and doors, boundary treatments and garden layouts, roof coverings or shop fronts. In listed buildings, internal features such as fireplaces, panelling, ceilings, doors and architraves as well

as surface treatments, the proportion of individual rooms and historic layout may also be of significance.

Policy 12.5.g

Proposals to existing heritage assets s buildings should seek to improve the proposals energy efficiency effectively and sensitively and without detrimental visual impact on the heritage asset, or the wider significance and setting of the heritage asset.

Supporting text 12.5.5

The identification of a heritage asset could be through a range of means. This could include formal designation such as conservation area or listed, or locally listed building status. Buildings in a conservation area identified as having a positive contribution to its character will be considered as non-designated heritage assets in their own right, if they meet Merton's local listing selection criteria. Heritage assets may also be identified in the borough character study, during the update on the local list, or during the development control process itself.

Supporting text 12.5.7

Heritage statements will be required to set out how proposals conserve, enhance or restore the significance of heritage assets and where appropriate, conservation management plans should be prepared for the future maintenance and management of the asset. Special attention should be paid to the conservation or reinstatement of individual details of the asset that contribute towards it's particular character, for example; chimneys, windows, doors, roof covering, boundary treatments and the individual elements of shop fronts. The loss or alteration of individual features can cause substantial harm to the significance of heritage assets.

Supporting text 12.5.8

The level of detail provided in the heritage statement should be proportionate to the asset's importance in terms of the significance of the asset affected and the impact of the proposal. Where the proposal has the potential to cause substantial harm to a substantial impact on the significance of a heritage asset, it should be carried out by a specialist historic environment consultant.

Q17. Subject to the Council's proposed modifications, would Policy D12.5 provide an unambiguous approach so that it is evident how a decision maker should react to a development proposal that affects the historic environment when read alongside relevant parts of the Framework, PPG and the statutory tests?

Council response:

- 12.56 Yes, with the proposed modifications, Policy D12.5 provides an unambiguous approach. Policies have been amended to reference relevant assessment criteria to ensure a decision maker will know how to react to a development proposal and wording has been adjusted to ensure the Policy is more effective.
- 12.57 Policy 12.5.a has been amended to the following: *Development proposals affecting a heritage asset or its setting will be assessed against the required to be in accordance with the following criteria: principles set out in the National Planning Framework ~~2019 and 2021 draft~~ and the detailed guidance set out in the accompanying Historic Environment Planning Practice Guide, and the London Plan, ~~and Historic England guidance;~~*
- 12.58 These modifications more accurately reflect the process of determining an application against the Framework, national guidance and London Plan.
- 12.59 Policy 12.5.b has been amended to the following: *All development proposals associated with the potential to impact the significance or setting of the borough's heritage assets ~~or their setting~~ will be expected to demonstrate, within a Heritage Statement, how the proposal conserves, and where appropriate possible enhances the significance of the asset in terms of its ~~individual~~ architectural or historic interest and its setting.*
- 12.60 This aligns with para 194 of the Framework that states 'In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.'
- 12.61 12.5.e has been amended to the following: *The loss of a building that makes a positive contribution to a conservation area or ~~heritage site~~ setting and/or significance of a heritage asset should be avoided and will not be supported unless the applicant can demonstrate there is substantial public benefit that outweighs the harm. In the event of substantial harm, the proposal will need to satisfy the criteria set out in National Policy and guidance. also be treated as substantial harm to a heritage asset.*

12.62 These modifications better reflects the NPPF and it's wording ensures the policy is more effective and recognises that every case needs to be considered on its own merits.

12.63 It is in the council's view that the proposed modifications provide an unambiguous approach and that it is evident that a decision maker to a development proposal when read alongside relevant parts of the Framework, PPG and the statutory tests. The modifications more accurately reflect the process determining an application against national guidance and local policy.

Proposed modifications:

Policy 12.5.a

Development proposals affecting a heritage asset or its setting will be assessed against the required to be in accordance with the following criteria: principles set out in the National Planning Framework ~~2019 and 2021 draft~~ and the detailed guidance set out in the accompanying Historic Environment Planning Practice Guide, and the London Plan., ~~and Historic England guidance;~~

Policy 12.5.b

All development proposals ~~associated~~ with the potential to impact the significance or setting of the borough's heritage assets ~~or their setting~~ will be expected to demonstrate, within a Heritage Statement, how the proposal conserves, and where ~~appropriate~~ possible enhances the significance of the asset in terms of its ~~individual~~ architectural or historic interest and its setting.

Policy 12.5.e

The loss of a building that makes a positive contribution to a conservation area or ~~heritage site~~ setting and/or significance of a heritage asset should be avoided and will not be supported unless the applicant can demonstrate there is substantial public benefit that outweighs the harm. In the event of substantial harm, the proposal will need to satisfy the criteria set out in National Policy and guidance. also be treated as substantial harm to a heritage asset

Q18. Is the use of the phrase ‘conserve and enhance’ (e.g in Policy D12.1 and D12.5) consistent with the Framework and the relevant statutory duties? Is any deviation from policy and statutory duties justified?

Council response:

- 12.64 As highlighted in Q16, there are inconsistencies with the ‘conserve’ terminology across the Framework and relevant legislation, see appended Note on Terminology from Historic England.
- 12.65 Within the glossary definition of ‘conservation’ in the NPPF it states *‘The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.’* The definition specifically refers to enhancement of its significance where appropriate.
- 12.66 However, para. 206 of the Framework states that *‘Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance.’* Therefore, there is an expectation for Local authorities to enhance wherever possible.
- 12.67 It is in the councils view that referring to ‘conserve and enhance’ sets a positive strategy for the historic environment and consistent with the definition of ‘conservation’ in the NPPF.

Q19. What is the justification for identifying substantial harm in terms of the activities described in D12.5(e); is it clear what is meant by a ‘heritage site’ in that criterion?

Council response:

12.68 The council has reviewed Policy 12.5.e and propose modifications to better align with NPPF and its reference to substantial harm and amend the wording to ensure it is more effective and less ambiguous as highlighted in Q17.

12.69 The term ‘heritage site’ has been removed as it was unclear.

Proposed modification:

Policy 12.5.e

The loss of a building that makes a positive contribution to a conservation area or ~~heritage site~~ setting and/or significance of a heritage asset should be avoided and will not be supported unless the applicant can demonstrate there is substantial public benefit that outweighs the harm. In the event of substantial harm, the proposal will need to satisfy the criteria set out in National Policy and guidance. also be treated as substantial harm to a heritage asset

Q20. Is paragraph 12.5.14 consistent with the Framework (paragraphs 199 to 203) in terms of the balancing exercises relevant to the consideration of proposals?

Council response:

12.70 Yes, with the proposed modifications, supporting text in paragraph 12.5.14 is consistent with national policy.

12.71 The council recognises that there is a balance between preserving significance of a heritage asset whilst promoting a positive strategy for climate change and this requires being pro-active without undermining heritage policies within the Framework.

12.72 The modified wording is more positive and effective. It clearly describes how proposals will be assessed against National Policy and Guidance if proposals would cause harm to the significance of a heritage asset or its setting.

Proposed modifications:

Supporting text 12.5.14

~~In the past there has been tension between the requirements to improve the energy performance and reduce carbon from buildings that are or that are located within heritage assets and the need to conserve these historic assets.~~ The council is supportive of efforts to tackle the climate emergency and will positively consider proposals for retrofitting heritage assets, including structures within Conservation Areas, where the proposals will not cause harm to the significance of the heritage asset. Where proposals would cause harm to the significance of a heritage asset or its setting applications will be assessed against National Policy and Guidance., ~~buildings that are themselves or within heritage assets, where these proposals do not cause substantial harm to the heritage assets.~~

Q21. Is the requirement to locate telecommunications equipment ‘in underground chambers’ (per Policy D12.8) where heritage assets may be affected justified; might other appropriate design-led solutions be sought?

Council response:

12.73 On review we have provided further flexibility within the policy wording to allow for appropriate design-led solutions. Refer to the proposed modification below.

Proposed modifications:

Policy D12.8.c.vi

In particularly sensitive areas, notably where heritage assets are affected, locate equipment in underground chambers, or demonstrate a design-led solution that does not harm the setting or significance of the heritage asset.

Q22. Are the considerations set out in respect of basements (at paragraphs 12.10.16 to 12.10.19) relating to heritage assets justified, and consistent with the Framework, and would it be clear to a decision-taker how to react to relevant development proposals?

Council response:

12.74 The council has reviewed supporting text 12.10.16 to 12.10.19 and propose the below modifications to be positively worded and better aligned with the NPPF as well as improving clarity on how developments will be assessed, therefore making it clear to a decision maker how to react to relevant proposals.

Proposed modifications:

Supporting text 12.10.16

~~The impact of basement and subterranean development proposals on heritage assets must be assessed on their merits to avoid any harm to their significance or historic integrity. Listed buildings are recognised for their exceptional heritage value and once a listed building is severely damaged or demolished, that historical connection is lost forever. Basements beneath the garden of a listed building are not permitted except on larger sites where the harm to the building's structure or setting and the basement is substantially separate from the listed building, and~~ Any application for a basement to a designated or non-designated heritage asset should be accompanied by a detailed method statement which demonstrates how the development can be achieved without causing harm to the significance and structural integrity of the asset. Where a level of harm is identified the acceptability of such schemes will be assessed on a case by case basis and in line with National Policy and Guidance.

Supporting text 12.10.17

The link between the listed building and the basement should be discreet and of an appropriate design and location that does not adversely impact on the significance of the listed building. ~~In the exceptional circumstances w~~Where these are allowed, there should be no extensive modification to the foundations of the listed building or any destabilisation of the listed structure and account will be taken to the individual features of the building and its special interest.

Supporting text 12.10.19

In conservation areas, basements will be supported where they should conserve or enhance the character, ~~and~~ appearance and overall significance of the conservation area. This is particularly relevant in relation to external visible features e.g. light wells and railings which may impact on the character of conservation areas. Further guidance and advice can be found in Merton's Basement and Subterranean, Design and Sustainable Drainage SPDs. Proposals which impact statutory listed and locally

listed buildings will be assessed according to National Policy and Policies 12.5
'Managing Heritage Assets'.

Issue (ii): Do other development management aspects of the Plan provide a justified and effective basis for decision-making?

Q1. Is Policy D12.7 consistent with relevant legislative arrangements and paragraph 136 of the Framework?

Council response:

12.75 NPPF para 136 refers to “*The quality and character of places*” that “*can suffer when advertisements are poorly sited and designed*” and states that “*Advertisements should be subject to control only in the interests of amenity and public safety, taking account of cumulative impacts.*”

12.76 More specifically, the Town and Country Planning (Control of Advertisements) (England) Regulations 2007 (as amended) (The Regulations) stipulates the following in part 3, copied below:

(1) A local planning authority shall exercise its powers under these Regulations in the interests of amenity and public safety, taking into account —

- (a) the provisions of the development plan, so far as they are material; and*
- (b) any other relevant factors.*

(2) Without prejudice to the generality of paragraph (1)(b)—

- (a) factors relevant to amenity include the general characteristics of the locality, including the presence of any feature of historic, architectural, cultural or similar interest;*
- (b) factors relevant to public safety include—*

...

12.77 With the proposed modifications to Policy D12.7, as indicated below, which removes the requirement to “*not harm the character of an area*” in part a. and in part b. iv. and v., clarifies the relevant amenity matters that should be protected, the policy will be consistent with relevant legislative arrangements and paragraph 136 of the Framework.

Proposed modifications:

- a.** Express consent will only be granted for advertisements where they do not harm ~~the character of an area~~, amenity or public safety. When assessing proposals for new advertisements, cumulative impacts will be taken into account.

b. The council will ensure that:

i. ...

iv. Advertisements~~They~~ do not adversely impact on trees that have a significant amenity value on or in close proximity to the proposed site, especially those protected by Tree Protection Orders (TPOs) or within conservation areas.

v. Local amenity is not harmed by the restriction of v~~V~~visual permeability and natural surveillance between the street and inside non-residential buildings is not compromised by internally applied artwork, blinds or advertising.

Q2. In Policy D12.7 (b)(v), Policy D12.2 (j) and Policy D12.9 (d) what is the justification for the Council seeking to manage internally applied advertising, artwork, blinds, shelves or screening

Council response:

12.78 The council has prepared a Shop Front Guidance SPD ([Document 12D4](#)) that was adopted in March 2017.

12.79 Merton's Shop Front Guidance SPD provides supporting guidance to implement these policies. As part of this SPD, a review of what makes a successful shop front was completed, and this review has directly informed policy. As part of this research, specific design guidance relating to managing internally applied advertising, artwork, blinds, shelves or screening was included in the SPD to improve the look and feel of the streetscene.

12.80 The policy wording of 12.9d and 12.2.j has a level of flexibility, i.e. 12.9.d states that 'Proposals for shop-fronts should...' and 12.2.j states that '...street frontages should...'.

12.81 Policy 12.7.v relates more to security and states that 'Visual permeability and natural surveillance between the street and inside non-residential buildings is not compromised by internally applied artwork, blinds or advertising.'

Q3. Is the requirement in Policy D12.11 (j) justified and is it sufficiently clear and unambiguous so it is evident how a decision maker should react to development proposals in respect of the requirement to ‘install suitable positively pumped devices’?

Council response:

12.82 Yes, with the proposed modifications, Policy D12.11(j) is justified and clear for decision makers.

12.83 The modification as proposed below is in respect of the requirement to ‘install suitable positively pumped devices’ on basements and subterranean developments that connect or discharge to the sewer network. This also links with the supporting text of Policy F15.8.

12.84 The changes to the text require applicants to show the location of the pump device on the supporting planning application drawings. This will allow the decision maker to undertake the appropriate review of details and to react accordingly.

Proposed modifications:

Policy D12.11(j)

Basements or subterranean development must be designed to minimise the risk of internal flooding and must not increase the risk of flooding elsewhere. Proposals must include sustainable urban drainage scheme to reduce runoff rates and implement proposals to conserve and re-use water through rainwater harvesting. Where basements discharge to the sewer network, they must install suitable positively pumped devices.

Supporting text paragraph 15.8.16

Basement and subterranean applications must ensure they are safe from flooding and do not increase risk to and from the site. We will only allow basements and other underground/subterranean development where:

- It ~~it~~ can be proven it will not cause harm to the built and natural environment and local amenity including the local water environment, ground conditions and biodiversity.
- The basement does not result in an increased risk of flooding (from all sources including surface water flooding)
- ~~The basement itself will be, protected from flooding.~~
- Positively pumped devices are, installed to protect basements from the risk of sewer flooding. Applicants are required to show the location of the pump device on the planning application drawings.

Q4. Is the requirement for developers of basements or subterranean developments to sign up to a considerate constructors' scheme relevant to the development and use of land, and thus justified, particularly as construction method statements are to be required alongside applications for this type of use?

Council response:

- 12.85 Yes, the council believes that it is proportionate and justified to require the developers of basements or subterranean developments to sign up to a considerate constructors' scheme as set out in Policy D12 (k).
- 12.86 As stated in paragraph 12.10.13 *The impact of basement and subterranean construction, including issues relating to noise, dust, disturbance and structural stability of surrounding properties as well as the management of traffic, plant and equipment, is a growing concern in the borough, particularly in residential streets. It can affect the quality of life, amenity and living conditions as well as traffic and parking of nearby residents and local communities. In some instances, multiple excavations in a residential street can lead to detrimental impacts during the excavation and construction processes. While planning has limited powers to control the construction processes, it does have an important role in protecting amenity and living conditions.*
- 12.87 The majority of planning applications involving basement and subterranean developments in Merton relate to single dwellings, either as home extensions or the demolition and rebuilding of one house, with a basement added. By their nature, these developments are within established residential areas.
- 12.88 The council has received significant feedback from residents repeatedly expressing concern about basement developments (see also [0D6 Schedule of Regulation 19 representations including comments on basement developments](#)). Particularly at the planning application stage and during construction on basement sites, neighbours' feedback has included significant commentary about the quality of contractors used to deliver schemes where planning permission and building control has already been approved.
- 12.89 Neighbours' concerns about the actual process and quality control of contractors building basements is not unique to Merton. In recognition of this, many basement contractors operating in Merton and in London already sign up to considerate constructors' schemes. Most major contractors of any type of development are also usually already signed up to such schemes.

- 12.90 It is the council's view that this approach of requiring contractors delivering basement developments to sign up to considerate constructors schemes helps to increase public confidence in the planning system in a positive way as per the aim of NPPF chapter 4 on decision-making.
- 12.91 While construction method statements are useful, those outlined at the planning application stage (i.e. when public consultation is being carried out) are often developed before the specific basement contractor has been appointed. Following the grant of planning permission, the newly appointed basement contractor will then submit a detailed construction method statement, usually as part of discharging planning conditions.

Q5. In several instances the plan uses the phrase “planning permission will not be granted” (or similar formulation). Given the necessity to come to a balanced judgement on planning applications pursuant to s38(6) of the 2004 Act, is this phrasing justified?

Council response:

12.92 The council has reviewed both the Local Plan and the NPPF. The NPPF uses similar phrases. For example:

12.92.1 Paragraph 91 in chapter 7 *Ensuring the vitality of town centres* states “Where an application fails to satisfy the sequential test [for retail] or is likely to have significant adverse impact on one or more of the considerations in paragraph 90, it should be refused”

12.92.2 Paragraph 125 on *achieving appropriate densities* states “local planning authorities should refuse applications which they consider fail to make efficient use of land, taking into account the policies in this Framework”.

12.92.3 Paragraph 134 in chapter 12 *achieving well designed places* states “Development that is not well designed should be refused, especially where it fails to reflect local design policies and government guidance on design.”

12.92.4 Paragraph 180 under *habitats and biodiversity* states “When determining planning applications, local planning authorities should apply the following principles: a) if significant harm to biodiversity resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;”

12.93 It is the council’s view that in certain circumstances, including most of the circumstances in the Local Plan, the wording provides clarity to its users. The 2004 Act says that says that planning decisions should be made in accordance with the adopted plan unless material considerations indicate otherwise. There is sufficient flexibility in this approach, which provides the necessary planning balance.

12.94 For example, the council considers that these examples below are acceptable and provide clarity and planning balance:

Policy D12.5 managing heritage assets

d. Proposals that will lead to substantial harm to the significance of, or the total loss of heritage assets will only be granted in exceptional circumstances where substantial public benefits outweigh the harm or loss in accordance with the NPPF or that all of the following apply:

- i. the nature of the heritage asset prevents all reasonable uses of the site;
 - ii. no viable use of the heritage asset itself can be found that will enable its conservation; and,
 - iii. conservation by grant funding or some form of charitable or public ownership is not possible; and,
 - iv. the harm or loss is substantially outweighed by the benefit of bringing the site back into use.
- e. The loss of a building that makes a positive contribution to a conservation area or heritage site setting and/or significance of a heritage asset should be avoided and will not be supported unless the applicant can demonstrate there is substantial public benefit that outweighs the harm. In the event of substantial harm, the proposal will need to satisfy the criteria set out in National Policy and guidance. ~~also be treated as substantial harm to a heritage asset.~~

Policy D12.10 Dwelling Conversions

This policy will ensure that dwelling conversions are of high quality standard for future occupiers and support housing choice.

- a. ...
- b. ...
- c. In accordance with policies on managing local flood risk dwelling conversions in Flood Zone 3b must ensure no increase in building footprint and no increase in the number of units or bedrooms. Proposals for the change of use or conversion to a use with a higher vulnerability will not be allowed. In Flood Zone 3a, self-contained residential basements and bedrooms at basement level are not permitted.

12.95 However, there are two policies where the council proposes main modifications to address this matter, as stated below.

Proposed modifications:

Page 394 paragraph 12.3.21 supporting text

However, inappropriate and unnecessary lighting or lighting which is insensitively used can adversely affect amenity in terms of light pollution to neighbouring occupiers and to the night sky. When considering light proposals the council will

seek ensure that unacceptable levels of illumination are controlled by conditions ~~or that unacceptable proposals are refused planning permission~~

Page 417 D12.9 Shop fronts

- a. Proposals for shop-fronts should strike the right balance between security and a positive interface and relationship with the street. They must ensure there is visual permeability and natural surveillance between the street and inside the building, whatever their use. To this end:
 - i. Proposals for security shutters will only be allowed if a legitimate security need for them is identified;
 - ii. Where security shutters are considered necessary, they must be installed on the inside of the shopfront and allow clear views into the shop – solid or near solid shutters and shutters on the outside of a shop front are not usually acceptable ~~will not be permitted and no type of security shutters will be permitted on the outside of a shop front;~~ ;

...

Q6. Does the Plan ensure that sites are suitable for proposed uses taking account of ground conditions and any risks arising from land stability or contamination (per paragraph 183 of the Framework); and has the advice contained in the PPG¹ been followed?

Council response:

12.96 NPPF paragraphs 183 and 184 state:

183. Planning policies and decisions should ensure that:

- a) a site is suitable for its proposed use taking account of ground conditions and any risks arising from land instability and contamination. This includes risks arising from natural hazards or former activities such as mining, and any proposals for mitigation including land remediation (as well as potential impacts on the natural environment arising from that remediation);*
- b) after remediation, as a minimum, land should not be capable of being determined as contaminated land under Part IIA of the Environmental Protection Act 1990; and*
- c) adequate site investigation information, prepared by a competent person, is available to inform these assessments.*

184. Where a site is affected by contamination or land stability issues, responsibility for securing a safe development rests with the developer and/or landowner.

12.97 [PPG Paragraph: 003 Reference ID: 45-003-20190722](#) *What is the role of plans in planning for land instability in their areas?*

- Consideration of land stability in the development plan will vary between areas and the types of issues that the plan covers, but planning authorities may need to consider:*
- identifying specific areas where particular consideration of landslides, mining hazards or subsidence will be needed;*
- including policies that ensure unstable land is appropriately remediated, prohibit development in specific areas, or only allow specific types of development in those areas;*

¹ 'Land Stability' – particularly Paragraph: 003 Reference ID: 45-003-20190722
Revision date: 22 07 2019; and 'Land affected by contamination' - particularly Paragraph: 006 Reference ID: 33-006-20190722 Revision date: 22 07 2019

- *circumstances where additional procedures or information, such as a land stability or slope stability risk assessment report, would be required to ensure that adequate and environmentally acceptable mitigation measures are in place; and*
- *removing permitted development rights in specific circumstances.*

12.98 As part of the evidence base for Merton's Local Plan, Merton's Strategic Flood Risk Assessment (15D2 to 15D6) has considered information on the underlying bedrock and geology in Merton using data from the British Geological Survey. The SFRA and [Merton Strategic Flood Risk Assessment online map \(15D7\)](#) contains a digitised map of the same. Merton does not have extensive natural hazards or human activities such as former mines that have a significant effect on land instability. However, as with other parts of London, there are areas at risk of higher levels of groundwater (covered in policies F15.5 *flood risk management and sustainable drainage* and F15.8 *managing local flooding*).

12.99 The characteristics of Merton, and of London (see London Plan [0D32](#) policy D10 *Basement Development*) are that ground instability issues are particularly relevant to basement developments. Therefore, Policy D12.11 *Basement and subterranean design* states "*The Council will only permit basement and subterranean developments that do not cause harm to the built and natural environment, local amenity and does not result in increasing flooding (from all sources including surface water flooding) or ground instability issues.*" The policy also requires a Construction Method Statement and a Basement Impact Statement and refers to the council's guidance ([Submitted Document 12D3 Merton's Basement and Subterranean Development SPD](#)) which sets out what competent people (in line with NPPG paragraph 183c) should provide information on land stability.

12.100 However, as it may not only be basements that require land stability considerations during the lifetime of this local plan, the following modification is proposed to ensure the Plan is consistent with national policy.

Proposed Modification:

Policy P15.10 Improving Air Quality and Minimising Pollution

b) Several policies in the local plan contribute to reducing and/or mitigating the impacts of air pollution such as transport, green infrastructure, design and climate change policies. Developers must ~~have regard to~~ follow (MM2.2) any guidance provided by Merton Council on local environmental impacts and pollution as well as on noise generating and noise sensitive development. Where necessary, we will set planning conditions to reduce and mitigate pollutant impacts. Appropriate site investigations and reports on pollution, contamination, and land stability, prepared by a competent and accredited professional, must be made available and submitted to the Local Planning Authority to inform the assessments set out in this policy.

....

Ground conditions, Land contamination and instability

t. Where development is proposed on or near a site known to be, or there is good reason to believe may be, contaminated, or have unstable ground, or where a sensitive use is proposed, the applicant must carry out a site assessment and submit a report of the findings to establish the nature and extent of the contamination and/or land instability. Development will not be, permitted unless practicable and effective measures are ~~to be~~ (AM15.21) taken to treat, contain or control any contamination or land stability issues.

u. Developments must incorporate proper remediation measures for development on or near a site, which is potentially contaminated or has land instability issues.

v. Development will not be allowed unless practical and effective measures are taken to treat, contain or control any contamination or land instability issues, so as not to:

- i. Expose the occupiers of the development and neighbouring land uses including, in the case of housing, the users of open spaces and gardens to unacceptable risk.
- ii. Threaten the structural integrity of the building being built, the site or to be built ~~on~~ (AM15.22) or adjoining the site.
- iii. Lead to the contamination of any watercourse, water body or aquifer.
- iv. Cause the contamination of adjoining land or allow such contamination to continue.
- v. Cause or increase land instability issues on adjoining land or buildings.

w. We will not approve any application that the Health and Safety Executive (HSE) has recommended that permission should not be granted.

Q7. Is Policy P15.10 and its supporting text insofar as requirements for managing pollution from construction and demolition are concerned justified, consistent with national policy, and are all aspects of the policy related to the development and use of land?

Council response

- 12.101 Yes, policy P15.10 and its supporting text, incorporating proposed modifications, is justified and consistent with national policy where it relates to requirements for managing pollution from construction and demolition.
- 12.102 The NPPF paragraphs 8c and chapter 15 *Conserving and enhancing the natural environment* require local planning authorities to develop plans which minimise pollution. Merton's Air Quality Action Plan ([0D24](#)) identifies that Merton is working with the GLA and leading several south London boroughs in tackling the pollutants arise from demolition and construction and Policy P15.10 is part of the council's strategy that seeks to minimise these.
- 12.103 In addition, the NPPF requires plans to be informed by early engagement (paragraph 8c). Feedback from residents and others at both the plan-making stage and on planning applications raises concerns about the negative impacts of construction on local amenity and the environment. Policy P15.10 seeks to address these concerns, which also helps to give confidence in the planning system. This is particularly relevant to Merton as an established urban area where most demolition and construction is therefore in close proximity to sensitive uses such as homes.
- 12.104 Policy P15.10 is in general conformity with London Plan (0D32) policy SI1 *improving air quality*, particularly D which requires development proposals to reduce emissions from the demolition and construction of buildings. The Mayor of London has also adopted a 2014 SPG *Control of Dust and Emissions*, which is also referenced in Merton's Air Quality Action Plan and relevant to this policy approach.
- 12.105 To improve the clarity and effectiveness of the plan, the council proposes a modification to move two paragraphs from under the "Construction and demolition" heading to the overarching part of the policy.

Proposed Modification:

[Move the paragraphs below from Policy P15.10 under the “*Construction and Demolition*” subheading to the same policy under (b), so that it is clear that it also covers the use of the land and not just construction and demolition activities.]

cc. The design and layout of new development must endeavour to minimise conflict between different land uses, taking account of users and occupiers of new and existing developments. Any noise and polluting activities or feature such a plant equipment should be located away from sensitive areas, where possible to ensure that there are no detrimental impacts on living conditions, health and wellbeing or local amenity.

dd. Where there are, already significant adverse effects on the environment or amenity due to pollution, sensitive uses should be steered away from such areas. However, given the limited availability of land for development in the borough, this will not always be possible. Therefore, new developments, including changes of use, should mitigate and reduce any adverse impacts resulting from air and light pollution, noise, vibration and dust to acceptable levels.

Q8. The Framework indicates that requirements for planning obligations should be included in ‘up to date policies’ (per paragraphs 34 and 58) – in some instances (including paragraphs 17.3.7, 17.4.3) potential development contributions are contained in supporting text. Is this approach justified and consistent with the Framework?

Council response:

12.106 Paragraphs 34 and 54 of the Framework refer to the requirement to: “...set out the contributions expected from development...” but in both examples referred to, and elsewhere in the supporting text, references to potential planning obligations are referred to as examples of potentially suitable mechanisms to mitigate against a potential impact. This is indicated with the use of the word ‘may’ in both examples.

12.107 Where the council is aware of *expected contributions*, they have been referred to in the relevant site allocation text but the council is of the option that the references to potential suitable mechanisms are suitable within the supporting test.

Appendix

Note on Terminology
Historic England
13/09/2022

Wording

The wording of statutory obligations differs in connection with different assets. The NPPF and statutory legislation are also slightly different.

There are several key points to bear in mind:

- a. The NPPF is very clear on the importance of setting of all assets – further advice about settings is given in our advice note and also in the PPG
- b. The NPPF uses the words “**protect and enhance**” (paragraph 8 regarding the definition of sustainable development); “**conserve and enhance**” (Chapter 16 generally) and “**sustain and enhance**” (paragraph 190 and 197) – the terms “conserve” and “sustain” are linked in the Glossary of the NPPF contains which a definition of “conservation” as: *The process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance.*
- c. PPG explains in more detail what is mean by conservation and enhancement of the historic environment. Here the wording is ‘**conserved and where appropriate enhanced**’
- d. The NPPF is newer than the legislation, and although it is only policy and a material consideration, it does provide a degree of consistency across all heritage assets types.

Main legislative framework for the historic environment

In addition to the planning framework which is primarily set out in the [Town and Country Planning Act 1990](#):

- the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) provides specific protection for buildings and areas of special architectural or historic interest
- the [Ancient Monuments and Archaeological Areas Act 1979](#) provides specific protection for monuments of national interest
- the [Protection of Wrecks Act 1973](#) provides specific protection for wreck sites of archaeological, historic or artistic interest
- the [Historic Buildings and Ancient Monuments Act 1953](#) makes provision for the compilation of a register of gardens and other land (parks and gardens, and battlefields).

In legislation and designation criteria, the terms ‘special architectural or historic interest’ of a listed building and the ‘national importance’ of a scheduled monument are used to describe all or part of what, in planning terms, is referred to as the identified heritage asset’s significance.

To complicate matters many of these statutory obligations relate to individual consent processes which involve different consent regimes e.g. Scheduled Monument Consent, rather than planning permission (Listed Buildings and Conservation benefit from tests in relation to planning permission in legislation – see s66 and s72).

When it comes to heritage policies that deal with **a combination of asset types**, i.e. simply “heritage assets” the following wording is recommended:

‘Development should conserve and where appropriate enhance heritage assets and their settings.’

Some Boroughs choose to provide a standalone policy for each asset type, in which case the wording (based on each corresponding piece of legislation) would be:

- **listed building** *‘Development should preserve the listed building and its setting’.*

This is based on the wording in Part 1, Chapter 1, paragraph 1 (3) (b) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

- **conservation area** *'Development should preserve or where opportunities arise enhance the character or appearance of the Conservation Area and its setting.'*

This is based on the wording in Part 2, paragraph 69 (a) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and para 137 of the NPPF.

Note that if you refer to character ... appearance use the word '**or**' not '**and**'

- **registered park and garden** - *'Development should protect the registered park and garden and its setting.'*
- **scheduled monument** *'Development should protect the scheduled monument and its setting.'*
- **Non-designated heritage assets** *"protect conserve the significance of non-designated heritage assets, including buildings, structures, features, gardens of local interest, protected lanes and archaeological sites."*

The Levelling Up and Regeneration Bill includes clauses intended to employ parity in wording across all asset types (see clause 92). This is of only a Bill at this stage, so it is then advisable to look to the NPPF for parity as it deals simply with "heritage assets". We therefore advise the term "conserve" to be the most appropriate at providing parity across all asset types and therefore the historic environment in the round, and in accordance with the NPPF.

Emphasis on "Enhance"

The NPPF requires "enhancement" to be considered and pursued where appropriate as part of its meaning of sustainable development. It is our view then that it is the prerogative of the Council to choose whether they wish to place an emphasis on enhancement where they have identified opportunities to do so and where this reflects their aspirations, this is part of setting a positive strategy for the historic environment.