

From: Maggie [REDACTED]
Sent: 09 May 2019 15:51
To: LDP
Subject: ALDP MIR consultation response
Attachments: MIR response - CPD Ltd natural heritage policies.pdf

Hi there,

Please find attached a response to the MIR consultation on behalf of our client Cults Property Development Ltd in relation to proposed changes to the natural heritage policies.

I would be grateful if you could please acknowledge receipt.

Thanks.

Maggie

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Aberdeen Local Development Plan Review

Main Issues Report Consultation Response

Question 17 – Natural Environment

Do you agree that the proposed list of policies for ‘Natural Environment’ gives a clearer and more coherent structure than at present?

As part of the review of policies relating to the natural environment, our client has concerns regarding the application of the zone of influence as set out in the existing Supplementary Guidance: Trees and Woodland, and submits that this should not be continued into the new Local Development Plan for the reasons set out below.

Introduction

Our client, Cults Property Development Company Ltd, recognises the importance of the natural environment in terms of its contribution to both sustainable development and to health and wellbeing. As such, it is important that policies aimed at protecting and enhancing the natural environment are not so restrictive that they undermine the principle of sustainable development which they seek to support.

The Main Issues Report (MIR) proposes to retain and consolidate existing policies on the natural environment, amongst which extant **Policy NE5: Trees and Woodland** and **Policy NE8: Natural Heritage** are to be combined into a new **Policy NE3: Protecting Our Natural Assets**. Whilst Appendix 1 of the MIR includes a number of draft Local Development Plan policies, there is no draft wording for the proposed new Policy NE5. As such, it is difficult to comment on whether this will give a clearer and more coherent structure than at present.

Also importantly, the MIR highlights that proposed changes to the Scottish planning system will abolish Supplementary Guidance (SG) and states that, as a result, SG is being reviewed with a view to bringing some of the policy aspects of this into the next LDP. It is anticipated that the remaining policy and guidance will be adopted by the Council either as Local Planning Policy (LPP) or as Technical Advice Notes (TANs). The MIR does not, however, give any indication of which elements of the existing SG will be incorporated into policy, nor of what status will be given to any LPP or TANs. This is particularly important in the context of



commenting on the proposed approach to natural heritage policies given that, currently, these policies are supported by substantial amounts of SG.

Supplementary Guidance: Trees and Woodland

Our client is particularly concerned about the policy position on the protection of trees as set out in **Policy NE5: Trees and Woodland** and **Supplementary Guidance: Trees and Woodland**, with there being no indication in the MIR of what is proposed in terms of these.

Currently, Policy NE5 presumes against development that will result in loss of, or damage to, trees and woodland that contribute to nature conservation, landscape character, local amenity or climate change adaptation and mitigation. As this wording makes clear, Policy NE5 does not impose a blanket ban on development that would affect trees, as not all trees will make such a contribution. Instead, the Policy takes a reasoned merits-based approach to the level of protection that is afforded.

The Policy also sets out a number of measures that should be used where applicable or appropriate for the protection of trees, for example the preparation of a long term management plan, new planting, the submission of a tree protection and mitigation plan, identification of root protection areas and erection of protective barriers. Again though, the Policy makes it clear that these are not necessarily required in all circumstances, while at the same time making it clear that the need to protect trees does not preclude development taking place.

In contrast, aspects of the existing SG go beyond the requirements of the Policy and take a far more restrictive approach. Of particular concern in this regard is paragraph 8.4.2, in which it is stated that buildings and associated infrastructure (including garden ground) should generally be located outwith the “zone of influence” of existing or proposed trees. A tree’s zone of influence is defined as the distance equal to its mature height, measured from the base of the tree. In applying a blanket restriction on development within the zone of influence of all trees, regardless of the value of those trees, the SG is at odds with the approach advocated in Policy NE5 as outlined above, imposing additional restrictions over and above those set out in the Policy itself. At the same time, this is also contrary to other existing guidance on tree protection measures referenced in the SG. These issues are discussed in more detail below.



Development planning regulations and SG

In considering the content of SG it is important to note that Regulation 27(2) of the Town and Country Planning (Development Planning) (Scotland) Regulations 2008 requires Supplementary Guidance to:

- cover topics specifically identified in the SDP or LDP as being topics for Supplementary Guidance; and
- be limited to the provision of further information or detail in respect of policies or proposals set out in the SDP or LDP.

As stated above, the current SG goes beyond providing further detail on the provisions of Policy NE5, but rather imposes additional restrictions which are neither advocated by the Policy itself nor consistent with the general approach taken within this.

Zone of influence and consistency with other tree protection guidance

Again as stated above, the current SG makes reference to relevant British Standards and other national guidance, but the provisions on the zone of influence are not consistent with any of the standards or guides referred to. The following paragraphs consider the application of each of these.

Trees in the Townscape: A Guide for Decision Makers (2012) sets out 12 principles of best practice that will assist in the long-term retention of trees within the urban landscape, within which it is expressly stated that:

“The inclusion or retention of trees is best approached as a means to an end, rather than as an end in itself.”

In light of the above, one of the 12 principles set out in the Guide is the production and implementation of a comprehensive tree strategy for protecting, developing and managing trees in a way that aligns with local needs and aspirations. In turn, such a strategy should provide a basis for shaping robust planning policy in relation to trees, ensuring that decisions are evidence-based and consensus driven.

Whilst the wording of Policy NE5 is generally consistent with this approach, the current SG does not reflect this principle, adopting instead a rigid approach that is neither based on a comprehensive tree strategy nor consensus driven.



Trees in Hard Landscapes: A Guide for Delivery is the companion document to *Trees in the Townscape: A Guide for Decision Makers* and explores the practical challenges and solutions for integrating trees into the built environment, highlighting the benefits that doing this properly can bring. Drawing on the comparable example of service providers in the past having stipulated that no trees can be within canopy distance of a surface water or sewer pipe, the Guide makes it clear that this is not a preferred approach, and that infrastructure should be designed to co-exist with trees rather than the two being consigned to separate realms. The same principle must equally apply to any other development, and both the proposed new Policy NE3 and any associated SG should be worded to reflect this. That would mean that a requirement to avoid any development within the zone of influence of a tree would not be appropriate.

British Standard 5837: 2012 Trees in Relation to Design, Demolition and Construction provides information on the recommended methods to achieve the retention of trees on development sites, with **British Standard 3998: 2010 Recommendations for Tree Work** providing general recommendations for tree work and guidance on management options for established trees. Neither of these makes any reference to the zone of influence.

Rather, section 5.3 of BS 5837: 2012 “Proximity of Structures to Trees” states in paragraph 5.31 that:

“The default position should be that structures (see 3.10) are located outside the RPAs [Root Protection Areas] of trees to be retained.”

It also discusses shading, privacy and screening and direct damage, with reference to “*due consideration for a tree’s ultimate growth*”, future pressure for removal, and seasonal nuisance.

In paragraph 5.3.4 (d) BS 5837: 2012 states that:

“Buildings and other structures should be sited allowing adequate space for a tree’s natural development, with due consideration given to its predicted height and canopy spread. However, this does not mean that trees should not be retained within any particular distance of a structure.”

The British Standard uses a number of different parameters to discuss how trees can relate to buildings and does not merely use the height of a tree (zone of influence) to determine tree impacts on proposed development. In exclusively and rigidly applying the zone of influence parameter, the SG is inconsistent with the standard in this regard.



Sustainable land use

The MIR reiterates the aims of the Proposed Strategic Development Plan, which include promoting the need to use resources more efficiently and effectively whilst protecting our assets. That is consistent with the requirement of Scottish Planning Policy (SPP) for planning to take a positive approach to enabling high-quality development and making efficient use of land. However, the application of the zone of influence effectively and unnecessarily (according to British Standards and other guidance) sterilises significant areas of land, undermining this fundamental principle of SPP. In preventing any development within the zone of influence, including even the garden ground, the capacity of development sites is reduced, meaning that larger areas of land will require to be allocated to meet future housing and employment land needs.

Alternatively, development proposals on sites with existing trees on or near them can positively contribute to the more efficient and sustainable use of land and create high quality living and working environments as a result. That can be achieved by incorporating important trees into the design and layout of new sites as well as facilitating sustainable tree management and providing new supplementary tree planting to both mitigate any tree loss and enhance that which is existing.

Unintended consequences

In addition to the above, it is important to note that the application of the zone of influence has in fact had adverse unintended consequences in that trees which might impact on development, and which are not within a conservation area or not covered by a Tree Preservation Order, are often being felled prior to a planning application being submitted. This means that the shelter, screening and aesthetics of these trees are lost, as is the opportunity to design and enhance development around mature landscaping, whilst the retention of such trees is acceptable under BS 5837:2012.

Conclusion

Given the above, it is clear that the Council's reliance on the zone of influence as set out in the existing Supplementary Guidance: Trees and Woodland is not consistent with the:

- requirements of the Development Planning Regulations in respect of SG;
- terms of LDP, Policy NE5: Trees and Woodland;
- content of other recognised national guidance and British Standards; and
- principle of sustainable use of land.



The strict application of the zone of influence then risks undermining the achievement of sustainable development, as well as potentially making some development unviable, and hence should not be continued into the new LDP.

