

## Project Blue

### Briefing Note: 1

27<sup>th</sup> June 2017

## ES Scoping Review

### EIA Scoping Report (15<sup>th</sup> May 2017)

#### Description of Development (page 2.13)

The description of development includes “*potential partial demolition of listed structures*”. It may be helpful to qualify the anticipated amount of demolition and whether this would be considered as ‘demolition’ or an ‘alteration’. If the partial demolition related to later extensions to listed buildings there may be benefit in commissioning a list review to assess whether the later additions lack significance and should be excluded from the listing through the Enterprise and Regulatory Reform Act 2013, in that scenario LBC may not be required for the demolition work.

#### Relevant Planning Policy and Guidance (paragraph 3.2)

It may be helpful to refer to further heritage based policy and guidance, including the following (which could also be referred to in Chapter 8 Works Cited):

- The World Heritage Convention (1972)
- UNESCO Operational Guidelines (2013)
- ICOMOS Guidance on heritage Impact Assessments (2011)
- The Statement of OUV
- The World Heritage Site Management Plan. (2004)
- The World Heritage Site SPD Evidential Report (2009)
- Historic England Best Practice Advice 3: The Setting of Heritage Assets (2015)
- Historic England Best Practice Advice 2: Decision-taking in the Historic Environment (2015)

Paragraph 3.2 refers to relevant policy and guidance and refers to ‘statutory’ heritage receptors. It is essential that the ‘statutory duties’ (Sections 16, 66 and 72) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are discharged through the assessment process to ensure that a robust and sustainable decision is reached. It would therefore be helpful if the relevant legislation, as well as policy and guidance, was referred to.

### **Consideration of Alternatives (paragraph 3.9)**

Section 2.1 refers to BMD itself being approximately 4 ha in area. The consideration of alternatives refers to a 8ha site requirement and it may therefore be helpful to confirm that the site meetings this requirement. If, during the course of the application, the proposals are assessed to cause 'substantial harm' the applicant will need to decide whether to provide a clear and convincing justification on the basis of the first part of NPPF 133, which requires the harm to be necessary to achieve substantial public benefits, or the second part of NPPF 133 that sets out four tests that must all be complied with.

### **Scoped-in Topics – Archaeology**

MEAS are to advise on the appropriateness of a desk-based assessment in relation to the significance and sensitivities of the relevant archaeological assets. It may be helpful for the archaeological assessment to be informed by the proposed ground conditions survey, which may have potential to provide further information on the historic structure of the BMD dock retaining wall.

It will be important that the methodology for either the Archaeological or Built Heritage topics to cover the myriad of non-designated features, including historic surfaces, sluice systems, energy systems, lock gates, capstans and features such as the WWII defensive structures. The grade II listed dock boundary wall also retains a number of 'archaeological' features, such as the retained stanchions of the dockers railway and the evidence of related structures such as the steps to the higher-level stations.

### **Scoped-in Topics – Heritage**

The Context section refers only to adverse effects and it may be helpful to refer to the broad range of potential positive, neutral and adverse impacts.

The Baseline Conditions refer to both designated and non-designated heritage assets. Several specific listed buildings are referred to, due to their proximity to the site, and the locations of designated heritage assets are identified in Appendix A Figure 3 'Key Environmental Constraint's.

However, it would be helpful if the ES Scoping Report provided a table that identified the designated and non-designated heritage assets (receptors) that will be scoped into the EIA. The methodology for identifying the relevant heritage assets could be informed, for example, by the NPPF definition of setting and the related Historic England guidance.

The extent of the WHS assessment, referred to in the Key Issues section, should also be set out and should consider the component parts of OUV. For example, including the 'attributes' of OUV, authenticity and integrity, the six character areas, the inscription criteria and consider the issue of intangible as well as tangible heritage assets. These factors are summarised together in the Statement of OUV. The methodology for undertaking the WHS assessment should comply with the ICOMOS Guidance on Heritage Impact Assessments.

It would be helpful if the ES Scoping Report also set out the methodology for identifying non-designated heritage assets relevant to the proposed development. Historic England guidance in Best Practice Advice:2 Decision-taking in the Historic Environment explains that non-designated assets may be those included on a local list, identified in a HER search or could be those identified by the LPA while determining the application. The NPPF (Paragraph 128) effectively establishes a HER search as a minimum standard, it would therefore be helpful if a proposed schedule of non-

designated assets could be agreed following a HER search. The assets identified through the HER search should comprise existing standing structures rather than the former sites of structures that have subsequently been removed.

With reference to the above baseline conditions the ES Scoping Report should recommend a study area with respect to built heritage considerations and it would be helpful if a plan could be provided to agree the extent of that study area. A methodology for identifying the study area, including consideration of issues such as topography, grain and structure of the street pattern, location of key landmarks and the scale and extent of intervening structures, would also be helpful to justify the extent of the study area and ensure that it is bespoke to the characteristics of the site and adjoining area.

It would be helpful if the assessment methodology included a summary of the view analysis assessment, providing a schedule of recommended viewpoints and summarising the approach to photography. The TVIA chapter provides a detailed list of viewpoint locations and explains the approach to shortlisting from an initial long list. The Built Heritage chapter could move forward on a similar basis and identify the baseline heritage conditions in each selected view. The City Council would be pleased to advise on a draft schedule of viewpoint locations.

The assessment methodology should also describe the approach to assessing the contribution of setting to significance (for example, using the 5 stage process recommended by Historic England in Best Practice Advice: 3 The Setting of Heritage assets, 2015, or similar approach); the methodology for assessing the character and appearance of the relevant conservation areas and the approach to assessing the special architectural or historic interest of the listed buildings, for example the DCMS Principles for Selection and the Historic England Thematic Listing Guides, may also be helpful.

## **Historic England Consultation Response (Ref: PL00100485) 15 June 2017**

The consultation response (page 3) explains that it is necessary to comply with the ICOMOS guidance set out in Appendix 4 of their Guidance on Heritage Impact Assessments (ICOMOS, 2011). This has become a standard requirement for large scale developments in the WHS and BZ. It is not, however, a statutory requirement of the national planning system. It will therefore be critical to ensure that the assessment and information submitted with the application enables the LPA to comply with the 'statutory duties' of Sections 16, 66 and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, to ensure that a robust and sustainable decision is reached. The assessment must therefore consider the 'special architectural or historic interest' of the relevant listed buildings and the 'character and appearance' of the conservation area in addition to the ICOMOS requirements to consider the OUV of the WHS.

Reference is made (page 3) to NPPF paragraph 127 in respect to setting, however this is presumed to be an error and should be either paragraphs 128, 129, 132 and / or 137.

Historic England state that reference "should be made" to Good Practice Advice Note 3: The Setting of Heritage Assets. Clearly, this is advice rather than an actual requirement. During 2016 Historic England issued a consultation draft of replacement guidance, "The Setting and Views of Heritage Assets", which placed slightly more emphasis on the importance of views. However, a very recent legal case (Steer v's Sec of State, June 2017) has just quashed an appeal decision that placed an over reliance (i.e. total reliance) on the visual aspects of setting and failed to consider other issues, such as historic relationships. It is unclear when the replacement guidance will be published. However,

importantly, both the existing and draft guidance state that setting is not a heritage asset in its own right and that its importance lies in what it contributes to the significance of the heritage asset. Change within a setting should therefore be related back to impact, positive, negative or neutral, on significance.

The Historic England response highlights the ES Scoping Report reference to partial demolition of listed buildings and advises that *“as a result paragraph 133 of the NPPF could be a relevant consideration”* (i.e. ‘substantial harm’). It then refers to the first paragraph of NPPF 133 and advises that proposals that would cause substantial harm should be justified as being ‘necessary’. However, NPPF 133 sets out a process in which substantial harm is either demonstrably necessary, or, a series of other factors apply. The Historic England position also assumes that partial demolition could lead to substantial harm, but clearly this may not be the case and will depend on the impact on the significance of the heritage asset.

Because Historic England focus solely on the first paragraph of NPPF 133 they then state that the consideration of alternatives to BMD is a fundamental part of the justification and should be scoped into the ES. However, this does not necessarily follow. For instance, a ‘clear and convincing’ justification could be presented on the basis of the four ‘tests’ provided in the second part of NPPF 133. Further, if any harm caused is ‘less than substantial’ (NPPF 134) the harm is simply weighed against the public benefits.