

15 August 2017

**By email**

Mr Matt Kolaszewski  
London Borough of Hillingdon  
Civic Centre  
High Street, Uxbridge  
Middlesex  
UB8 1UW

Dear Sirs,

**Former Nestle Factory, Nestles Avenue, Hayes: Heritage Harm (Application ref:  
1331/APP/2017/1883)**

We understand that officers are concerned that the application proposals for change at the above site may give rise to 'substantial harm' to the significance of the Botwell, Nestles Conservation Area. In national planning policy terms this perceived harm to heritage significance is at the highest end of the scale. We have been asked to respond accordingly.

As context and in contrast, Historic England (response to statutory consultation dated 19<sup>th</sup> June 2017) supportive of the principle of redevelopment, specifically recognise the opportunities taken by the application proposals to reveal and enhance the significance of the conservation area. Historic England discern that 'some harm' would result in relation to the Truscon Building (former factory building) but specific reference is made to the need to weigh this harm against public benefits and paragraph 134 of the National Planning Policy Framework – i.e. in terms "where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset".

Furthermore, Greater London Authority (Stage 1 Report, 19<sup>th</sup> July 2017) officers consider the application proposals would significantly enhance the character of the Botwell Nestle Conservation Area - whilst causing "some less than substantial harm to heritage assets". Notably, the GLA conclude that this harm would be outweighed by the refurbishment strategy for the Locally Listed factory buildings and the high quality of the new build elements.

**National policy and guidance – harm to heritage significance**

The national policy context for assessing the impact of development proposals on the significance of designated heritage assets is provided by the National Planning Policy Framework (the Framework). This

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sets out a number of related and specific policies with respect to development that may affect the significance of designated heritage assets.

Paragraph 132 requires that great weight should be given to the conservation of the significance of a designated heritage asset (where conservation is defined<sup>1</sup> as the process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance). The more important the asset, the greater the weight should be, noting that significance can be harmed or lost through alteration or destruction of the heritage asset. Substantial harm to or loss of designated heritage assets of the highest significance (including grade I listed buildings) should be wholly exceptional.

Two policies flow from paragraph 132 – paragraph 133 is to be applied in cases of ‘substantial harm to or loss of significance’ of a designated heritage asset; or, paragraph 134 in cases of ‘less than substantial harm’ to significance. It is harm at the less than substantial end of the scale and paragraph 134 that is identified by Historic England and the GLA.

To assist specific national planning guidance on assessing if there is substantial harm to heritage significance is provided by Planning Practice Guidance (the Guidance) making it clear that such judgement must have regard to; the circumstances of the case; and, the policy of the Framework. Notably and importantly, it is specifically advised that substantial harm is a high test and may not arise in many cases. Of specific relevance to the circumstances of this case and the nature of the application proposals, national guidance states:

*“It is the degree of harm to the asset’s significance rather than the scale of the development that is to be assessed”.*

This is a fundamentally important point in guiding the assessment of relative harm to designated heritage assets. The concept is further considered in the guidance in relation to proposals for demolition:

*“While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial or no harm at all...”*

Specific guidance is also provided in relation to potential harm and conservation areas:-

*“An unlisted building that makes a positive contribution to a conservation area is individually of lesser importance than a listed building. If the building is important or integral to the character or appearance of the conservation area then its demolition is more likely to amount to substantial harm to the conservation area, engaging the tests in paragraph 133 of the National Planning Policy Framework. However, the justification for its demolition will still be proportionate to the relative significance of the building and its contribution to the significance of the conservation area as a whole.”*

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<sup>1</sup> NPPF Annex 2 Glossary

Historic England has also published advice on Managing Significance in Decision Taking in the Historic Environment<sup>2</sup>. This further specifically notes that; substantial harm is a high test which may not arise in many cases; where harm or loss is substantial the LPA need to consider the relevant Framework tests; and, guidance on levels of harm is provided in Planning Practice Guidance (as noted above).

Taken together national policy and guidance provides the framework for assessing and calibrating the level of harm that may be caused to designated heritage assets.

## **Botwell Nestle Conservation Area**

The conservation area is a designated heritage asset and its significance derives from being an area of special architectural or historic interest.

Historic England's published advice<sup>3</sup> emphasises the need for assessment of significance as part of the application process – to understand the nature, extent and level of significance. Such assessment is undertaken in the Heritage Statement that supports the application proposals where Historic England<sup>4</sup> note that further to early pre-application advice the scheme has been evolved as *"informed by a more robust heritage assessment"*.

In this case, the conservation area is drawn around a large complex of factory buildings where, as found today, the great majority of buildings, structures and spaces are of utilitarian, functional appearance – i.e. not contributing to special architectural or historic interest. Character – in use/activity terms, has regrettably already been very significantly harmed with the cessation of the factory use for which the buildings and structures were constructed and by subsequent vacancy of the site – such to trigger inclusion of the conservation area by your authority on the Heritage at Risk Register. Significance, as found today, is therefore limited in nature and extent to specific elements within a much wider site (and conservation area boundary). Even where significance is found it is compromised by layers of alteration and addition reflecting the organic growth and changing manufacturing processes of the formerly working factory complex. This is the baseline situation in terms of the nature, extent and level of heritage significance against which proposals for change should be assessed.

In this context, those elements of the conservation area which continue to play some role in its significance by contributing primarily to its appearance – the principal external elevations of the main factory building; the canteen building; and, the remnant of green open space in the form of the 'gardens' on axis with the entrance - are specifically conserved by the application proposals. This is specifically noted and welcomed by Historic England who only discern some harm being caused to the Truscon Building. Other elements, which comprise a much greater part of the site and conservation area as a whole, which do not contribute in these terms are proposed for removal. The former lodge building – at odds with the industrial appearance of the conservation area is also proposed to be removed.

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<sup>2</sup> Historic Environment Good Practice Advice in Planning: 2, March 2015

<sup>3</sup> Historic Environment Good Practice Advice in Planning: 2, March 2015

<sup>4</sup> Historic England letter dated 19<sup>th</sup> June 2017

Opportunities are then taken to enhance significance through a range of design initiatives – welcomed and acknowledged by both Historic England and the GLA.

In essence therefore, elements integral to the appearance and character of the conservation area, such that it is today following functional obsolescence and vacancy, are retained and enhanced - whilst those elements that are not, are proposed to be redeveloped taking opportunities to enhance significance.

In these terms, harm – if discerned (and without prejudice to our position that on consideration and balance of impact on significance as a whole and as found today that no overall harm arises), would fall at the lower end of the scale. Indeed, after due assessment this is the conclusion drawn by both Historic England and the GLA.

It is also useful to note that in practice, the meaning of substantial harm has been considered in the case of *Bedford BC v Secretary of State* [2014] EWHC 2847 (admin). Here, it was noted that significance may be harmed through alteration of the asset or may be lost through destruction of the asset. It was concluded that for harm to be substantial, the impact on significance was required to be serious, such that *“very much, if not all, of the significance was drained away”*. It was concluded that one was looking for an effect which would have such a serious impact on significance of the asset that its significance was either *“vitiating altogether or very much reduced”*.

This further strengthens the case that the application proposals, on objective assessment of the relative nature, extent and level of significance as found today – as opposed to the physical scale of proposed change, would clearly not ‘vitate altogether’ the relative significance of the conservation area. Historic England specifically note that much demolition and particularly the removal of the unsightly modern accretions to the Truscon Building will *“help better reveal significance rather than cause harm”*. With respect to the Truscon Building itself, Historic England further state *“we do not consider that the internal demolition of the would substantially harm the character of the Conservation Area, particularly as the external envelope would be retained on sides”*.

On the basis of these considerations we urge that should officers on balance of relevant considerations conclude that harm is discerned to significance, that it can at worst, be no more than a ‘less than substantial’ level. This would trigger the policy requirements of paragraph 134 of the Framework – i.e. that such harm should be weighed against the public benefits of the proposal. Officers can draw support for such conclusions from the assessments made by Historic England and the GLA in this respect. Historic England specifically recommend that *“it will be for your Authority to weigh this harm against the public benefits of the scheme in accordance with Paragraph 134 of the NPPF”*.

Where harm needs to be considered against benefits that accrue the Guidance advises<sup>5</sup> that public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the Framework.

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<sup>5</sup> ID 18a-020-20140306

In this case, the range of public benefits is set out in the Planning Statement (Barton Willmore) and other information that accompanied the planning application. It is also useful to note that with respect to the narrower consideration of purely 'heritage benefits' that Historic England welcome the many opportunities offered by the proposals to enhance the character of the conservation area. The application proposals are concluded to *"create a dynamic mix of uses which should sustain its long-term future...particularly important given the Heritage at Risk status of the Conservation Area"*. Similarly, the GLA find that the *"heritage-led masterplan is an exemplar of suburban intensification and would achieve a successful consolidation of employment land in order to support the integration of large-scale commercial operations and high quality, high density housing"*.

We urge that officers consider these points and the wider context of the conclusions reached regarding relative heritage impact and benefits of the application proposals by both Historic England and the GLA.

Yours faithfully

A handwritten signature in black ink, appearing to read 'G. Jones'.

**Turley**