



Dartmoor Local Plan (2018 - 2036) Examination

ED17 DNPA Hearing Statement 3 - The Environment

Issue 1 SP 2.1(2) Landscape

Q1. Would modifications to this policy or supporting text be required, for soundness, to ensure it is effective and clear as to how a decision maker should react to it?

1.1 DNPA does not believe a modification is necessary, the policy is broadly consistent with the existing and justification for this is provided in section 5.3 of Natural Environment Topic Paper [SD101]

Issue 2 SP 2.2(2) Biodiversity and geodiversity and SP 2.3(2) Biodiversity net gain

Q1. Would Strategic policy 2.2(2) and its supporting text provide adequate protection for ancient trees and accord with NPPF paragraph 175 (c), in this respect?

2.1 This issue was raised at the Regulation 19 stage consultation. The Authority response to this issue is set out in Representation 1 of Respondent Number 0213. Additional Modification AM10 [ED06] is proposed to resolve this matter, the Authority would consider this a Main Modification if the Inspector considers this issue material to the soundness of the Plan.

2.2 Paragraph 175 (c) of the NPPF guides Local Planning Authorities to not grant permission for development involving loss of irreplaceable habitats, including ancient and veteran trees. The Plan at Table 2.1 expressly identifies Parkland and aged and veteran trees' as priority habitat which are then afforded protection under Policy 2.2 (2) part 3 (d) and (e).

2.3 The confusion on this issue has come about the term used to define an ancient tree. Ancient trees can also be described as aged trees, and this is made clear by guidance documents from the Ancient Tree Forum and Woodland Trust. For the avoidance of doubt the above amendment will include both descriptors in Table 2.1.

Q2. Overall, are modifications to that policy and supporting text required, for soundness, to ensure it is effective, being clear as to how a decision maker should react to it, that it appropriately reflects the requirement to conserve and enhance biodiversity and geodiversity and the tests and mitigation hierarchy in relation to designated and

protected sites? Would it be consistent with national policy in these respects?

- 2.4 Following comments in the regulation 19 consultation Main Modifications are proposed to Policy 2.2 (2) as follows:
- A modification is proposed (MM08) to part 3 of policy 2.2 (2) to help clarify application of the mitigation hierarchy following some confusion at the Regulation 19 stage.
 - A modification (MM07) is proposed to part 1 of policy 2.2 (2) to address issues of soundness and make clear that all development will be expected to conserve and enhance biodiversity consistent with the ambitions of policy 2.3 (2) which seeks to deliver biodiversity net gain. Reference to 'no net loss' is removed.
 - A modification is proposed (MM07) to part 1 of policy 2.2 (2) following representations by Natural England (Respondent No: 0046) to clarify all biodiversity should be protected by policy 2.2 (2)
- 2.5 An additional modification (AM09) is also proposed to Policy 2.2 (2) following comment by Natural England (Respondent No: 0046) to clarify that international sites includes potential SACs/SPAs and listed and proposed RAMSAR sites.
- 2.6 Main Modifications are proposed to the supporting text of Policy 2.2 (2) as follows:
- MM05 clarifies application of the mitigation hierarchy
 - MM06 removes reference to net gain from the supporting text of Policy 2.2 (2) to ensure there is no confusion between the role of this policy and policy 2.3 (2)
- 2.7 The above amendments will ensure the Policy is sound and legally compliant.

Q3. Would SP 2.3(2), in not requiring all development to deliver net gain regardless of impact on biodiversity, be consistent with national policy? Should the scope of the policy be extended to undesignated habitats to ensure soundness?

- 2.8 DNPA have pursued a policy approach which seeks net gain is required from development with the potential to impact on biodiversity. This ensures that development with no potential for impact, such as changes of use or sites only involving sealed surfaces are not unreasonably burdened.
- 2.9 DNPA recognise that Schedule 7A of the emerging Environment Bill (2019-20) makes provision for 10% biodiversity net gains to be sought as a condition of permission from all developments granted planning permission. It should be recognised that this does not require biodiversity net gain from all development, as those sites with no biodiversity will not be required to deliver an uplift when assessed under the Biodiversity Metric 2.0, put simply 10% of zero biodiversity is zero biodiversity. Natural England's

biodiversity net gain metric 2.0 attributes no biodiversity to sites with sealed surfaces.

- 2.10 The Environment Bill does not resolve how a proportionate approach to net gain can be achieved on small sites. The Biodiversity Metric 2.0 states that a methodology will be proposed in the next version. As it stands there is not a robust approach for resolving achieving net gains on small sites that is pragmatic or proportionate. Applying the current metric to small scale development would result in significant burdens on applicants and bottlenecks in the development management process. The approach proposed is considered appropriate, proportionate and consistent with national policy until the matter is resolved by the Environment Bill and Biodiversity Metric 2.0.
- 2.11 Given the above DNPA believe that the approach set out in Policy 2.3 (2) is sound, robust and consistent with the NPPF's ambition to pursue measurable net gains for biodiversity (paragraph 174).
- 2.12 The scope of the policy includes habitats not currently protected as priority habitats, consistent with the Biodiversity Metric. A Main Modification (MM09) clarifies that the approach should also be used to deliver net gain for loss of protected habitat where this loss meets the relevant test in Policy 2.2 (2) and is accepted.

Q4. Overall would these policies, together, provide adequate protection for biodiversity and geodiversity, be effective and consistent with national policy? Would they, together, provide adequate protection for the South Hams SAC?

- 2.13 Evidence supporting these policies is provided within the Natural Environment Topic Paper [SD101], including an assessment of the level of protection these policies offer for biodiversity and geodiversity. The protection given to the South Hams SAC and all Dartmoor's SACs is consistent with legislation. The South Hams SAC benefits from planning guidance which provides additional guidance to applicants to ensure the tests for SACs set out in Policy 2.2 (2) are met.

Issue 3 SP 2.4(2) Moorland, heathland and woodland

Q1. Does the policy adequately reflect the role that these habitats play in flood management and protection of water quality? Given the reasons for designation under the Wildlife and Countryside Act 1985, should it refer specifically to those matters?

- 3.1 Evidence supporting this Policy is provided in section 3.7 of the Natural Environment Topic Paper (SD101). The background to this policy is somewhat complex.
- 3.2 Firstly, it's important to understand that the Moorland, Heathland and Woodland of Conservation Importance protected by policy 2.4 (2) is not synonymous with the Moorland, Heathland and Woodland the Authority was

required to map by Section 3 of the Wildlife and Countryside Act. It's also important to understand that the Section 3 land required to be identified by the Wildlife and Countryside Act does not represent a land designation. The 1985 Act requires that this land be identified, nothing further.

- 3.3 As stated in the Topic Paper: 'A review of Section 3 mapping was conducted as part of the last local plan preparations. Areas of protected woodland and moorland were expanded to include overlooked areas and were adopted as a new local designation named woodland and moorland of conservation importance.' Therefore, the designation relates to 'moorland, heathland and woodland of conservation importance', not the moorland, heathland and woodland land identified by the Authority pursuant to Section 3 of the 1985 Act. The decision to designate this land is a decision of the Authority acting in accordance with its purposes, it is not a direct instruction from statute.
- 3.4 Notwithstanding the above technicalities, the reasons for identifying the land remains the same as instructed by the 1985 act, the Moorland, Heathland and Woodland of Conservation Importance represent areas 'whose natural beauty it is, in the opinion of the Authority particularly important to protect'. This is referenced in the policy and considered sound and reasonable.
- 3.5 To aid understanding the policy then describes how the Authority has determined what comprises 'natural beauty... it is important to protect'. The supporting wording states it is for its 'landscape, archaeological, ecological and recreational importance'.
- 3.6 There are multiple benefits these areas contribute to the National Park, DNPA would be wary of referencing those benefits which only relate to flood management and water quality. Landscape character, visual amenity, biodiversity benefit, historic significance are some of many equally valuable benefits which contribute to the reason for the designation. If the Inspector believes referencing these would help understanding DNPA can draft a modification along these lines.

Issue 4 SP 2.5(2) Tranquillity and dark night skies

Q1. Would the Plan provide an effective framework to protect Dartmoor's landscape and historic character, visual amenity and biodiversity from the impacts of light pollution and to maintain Dartmoor's dark skies?

- 4.1 The evidence to support this policy is presented at section 6 of the Natural Environment Topic Paper [SD101].
- 4.2 DNPA believe that Policy 2.5 (2) provides the National Park with sufficient protection from the harmful effects of light pollution as far as it is possible within the planning system. Not all development which creates or exacerbates light pollution requires planning permission and it is not possible for the National Park to provide policies within the Local Plan that protect against these impacts. It is also not possible for the Authority to

control the impacts of light pollution outside its borders, however it does work with nearby Authority's to reduce imported light pollution through the Duty to Cooperate process.

- 4.3 It's important to be realistic about what the Local Plan can achieve and given the above discussion it would be wrong to suggest Policy 2.5 (2) or the Local Plan as a whole could provide sufficient protection on their own to maintain Dartmoor's dark night skies. However, we can say that this policy, together with the Authority's work through the Duty to Cooperate process, provides as effective a framework as the planning system allows.

Issue 5 SP 2.6(2), 2.7(2) and policy 2.8(2) heritage assets

Q1. Should the title of SP 2.6(2) and text at para 2.6.10 reflect the statutory duty in relation to designated heritage assets?

- 5.1 This issue was raised in the Inspector's Initial Questions [ED03]. DNPA's answer as shown in our response to the Initial Questions [ED04] is provided below for ease of reference:
- 5.2 'This presents two issues to be addressed, firstly the use of "conserve" rather than "preserve" and secondly the use of "and" and "and/or" rather than "or". These issues will be discussed in turn.
- 5.3 The use of "conserve" is considered sound. It is consistent with NPPF paragraph 184 which states "[heritage] assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance...". It also reflects the language of National Park purposes, which are a clear and consistent foundation of the Plan.
- 5.4 On page 11 of the Local Plan we explain how 'and', 'or' and 'and/or' are used in the Plan to help ensure readers' correct understanding. In the case of Policy 2.6(2) the title of the policy states 'conserve and enhance', whereas the policy wording states 'conserve and/or enhance'. The title of the policy is considered sound as the wording summarises the policy's ambition to both conserve and enhance Dartmoor's heritage assets taken as a whole. Whereas some projects may just conserve others will enhance, taken as a whole across Dartmoor the policy seeks to achieve conservation and enhancement of Dartmoor's heritage assets. If 'and' were replaced by 'or', this policy ambition would be lost. If this intent is not clear, we would welcome the opportunity to reconsider the title, for example to 'Conserving and enhancing Dartmoor's heritage assets'.
- 5.5 With regards paragraph 2.6.10 it is noted that the reasoned justification wrongly refers to development conserving 'and' enhancing Conservation Areas and this is not consistent with the policy wording or Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. This could be amended to conserving 'and/or' enhancing, in order to be consistent. The use of "and/or" in this instance allows for conservation and enhancement to be taken together or as alternatives, as set out on

page 11 of the Plan, and is considered consistent with national policy and statute.'

Following a late representation, DNPA is currently in discussion with Historic England in response to its advice on detailed wording in section 2.6. This may lead to an additional Statement of Common Ground, which may identify potential Modifications. This will be published as soon as it is complete.

Q2 Does para 2.6.17 reflect the heritage balance in relation to designated heritage assets set out in NPPF paragraphs 195-196?

- 5.6 This issue was raised by the Inspector in her Initial Question (ED03). DNPA's answer as shown in our response to the Initial Questions (ED04) is provided below for ease of reference:
- 5.7 'The intent behind this wording is to ensure that all proposals of a high, medium or low impact achieve conservation of heritage assets. It ensures applicants are clear that just because a high impact proposal is acceptable this does not mean they do not need to comply with the need to conserve, as expressed in Policy 2.6(2). We would recognise that the wording in paragraph 2.6.17 is not consistent with the heritage balance in the NPPF, or indeed Policy 2.6(2).
- 5.8 We would welcome the opportunity to reconsider the wording of Paragraph 2.6.17, for example amending it to 'Any proposals of a low, medium or high impact will be refused where they do not conserve the heritage asset, and all proposals will be encouraged to achieve enhancement.'

Following a late representation, DNPA is currently in discussion with Historic England in response to its advice on detailed wording in section 2.6. This may lead to an additional Statement of Common Ground, which may identify potential Modifications. This will be published as soon as it is complete.

Q3 SP 2.7(2)5 refers to removing permitted development (PD) rights. In light of NPPF paragraph 53 and the PPG¹, would this approach accord with national policy?

- 5.9 This issue was raised by the Inspector in her Initial Question (ED03). DNPA's answer as shown in our response to the Initial Questions (ED04) is provided below for ease of reference. DNPA do not wish to add anything further.
- 5.10 'DNPA has carefully considered where the removal of permitted development rights is justified throughout the Local Plan Review process

¹ PPG ID 21a-017-20190723

and this matter has been the subject of representations in the public consultations.

- 5.11 With regards Policy 2.7(2) we consider the removal of permitted development (PD) rights justified because there are many PD rights which if used could directly undermine the intent of the policy. For example, in residential use the extension of a converted agricultural building could have a detrimental impact on that building's historic character and appearance. Dartmoor's farm buildings, a typical building subject to this policy, are modest structures, typically long, gable-ended, one room deep and with a setting which is open, as such a 4m rear single-story extension or 3m rear two-story extension the full width of the building, or subdividing structures in its setting could harm the special character and setting of these vernacular buildings.
- 5.12 DNPA considers that it is a right and proper function of the planning system to ensure that changes to these buildings undergo scrutiny to ensure proposals' scale, design and detailing achieve conservation of the heritage asset. Where a change of use is permitted that brings with it PD rights that could be used to undermine national and local policy ambition to conserve our heritage assets (and indeed National Park purposes), DNPA considers the removal of PD rights to be justified.
- 5.13 Throughout the plan-making process DNPA has considered whether it is appropriate to remove all PD rights or just those necessary to achieve the policy ambition. In this instance it is considered appropriate to remove all PD rights because there are too many which could lead to harm.
- 5.14 The below is a selection of PD rights which could lead to harm of heritage assets:
- Schedule 2, Part 1, Class A, C, D, E, F, and G
 - Schedule 2, Part 2, Class A, B, and C'

Q4 Would policy 2.8(2)1a be consistent with NPPF paragraph 202, in referring to 'departing from the development plan' rather than planning policies? Would it be clear and unambiguous?

- 5.15 The evidence supporting this policy is provided at section 3.7 of the Historic Environment Topic Paper (SD102).
- 5.16 Paragraph 202 of the NPPF states: 'Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies...'
- 5.17 Policy 2.8 (2) states: 'enabling development... will be permitted where: a) the public benefits clearly outweigh the harm of departing from the development plan...'

- 5.18 The NPPF defines Development Plan as follows: 'Development plan: Is defined in section 38 of the Planning and Compulsory Purchase Act 2004, and includes adopted local plans, neighbourhood plans that have been made and published spatial development strategies, together with any regional strategy policies that remain in force. Neighbourhood plans that have been approved at referendum are also part of the development plan, unless the local planning authority decides that the neighbourhood plan should not be made.
- 5.19 Reference to 'the development plan' in Policy 2.8 (2) is intended to mean the Local Plan. However, NPPF's paragraph 202 reference to planning policies suggests it is not just the policies of this Local Plan (i.e. 'the development plan') which would need to be assessed. This Policy would also need to assess the harm of departing from other planning policies in other development plans, which fall under the NPPF definition.
- 5.20 If the Inspector is minded to agree with the above DNPA would appreciate the opportunity to amend the plan as follows to ensure consistency with the NPPF:

Ref	Section/policy	Para/Part	Main Modification
MM47	Policy 2.8 (2)	Part 1 (a)	'the public benefits clearly outweigh the harm of departing from the adopted development plan <u>planning policies.</u> '

Issue 6 Policy 2.9(2) Water environment and flood risk

Q1. Would the policy be consistent with national policy in respect of the sequential and exception tests for new development in flood risk areas? Would any modifications be necessary, in the interests of soundness, to ensure that the policy and supporting text are effective and consistent with national policy?

6.1 In response to representations and to ensure consistency with national policy, the following modifications are proposed.

MM17	Section 2.7	Paragraph 2.7.1	'Dartmoor's upland peat is a significant carbon store, <u>restoration of eroded peat</u> and careful management of its water environment <u>can</u> plays an important role in minimising <u>offsetting</u> our impact on climate change. <u>Functioning peatlands can also assist us adapt to climate change, including by reducing wild fire risk and helping water security for us and the environment.</u>
MM18	Section 2.7	Paragraph 2.7.3	'The Local Plan will ensure that flood risk is taken into account in all new development, managing risk by directing land uses to the most appropriate locations. <u>All sources of flooding will be taken into account, including water courses, surface and ground water flooding.</u> Development should not take place where it would have an unacceptable level of flood risk, or where it would increase flood risk elsewhere by, for example, reducing flood storage, impeding the flow of flood water or increasing run-off. <u>Devon County Council is the Lead Local Flood Authority responsible for managing local flood risk on Dartmoor and a</u>

			<u>statutory consultee for major development. The Environment Agency's Flood Zone map and Devon County Council's Surface Water Flooding map are used to identify the potential for flood risk.'</u>
MM19	Section 2.7	Paragraph 2.7.4	'The purpose of the FRA is to demonstrate the flood risks to and from a proposed development, it will also help inform the flood risk provide a basis for applying the sequential test to flood risk, which steers new development to areas with the lowest probability of flooding. <u>It should also be noted that not all developments have equal flood vulnerability, for example caravans, mobile homes, emergency services, and hazardous installations are considered more vulnerable than dwellings²¹.</u> [Footnote] See National Planning Practice Guidance for further guidance: https://www.gov.uk/guidance/flood-risk-and-coastal-change .'
MM20	Section 2.7	Policy 2.9 (2)	3. In exceptional circumstances, <u>where development which does not satisfy the sequential test demonstrates there are no suitable locations of lower flood risk, development will be permitted in flood risk areas when:</u> a) there are no suitable locations of lower flood risk; ab) the development is demonstrated to provide wider benefits which outweigh flood risk; be) there will be appropriate flood protection for the lifetime of the development, taking account of the vulnerability of its users; and cd) the development will not increase flood risk elsewhere, and where possible, will reduce flood risk overall.