



Growth and Development Scrutiny Group

Wednesday, 27 July 2022

Conservation Areas - Part 2

Report of the Director – Development and Economic Growth

1. Summary

1.1. A previous report on Conservation in Rushcliffe was presented to Scrutiny in April 2021. At the conclusion of that session, a number of refined items for further scrutiny were presented and these include:

- how to undertake the review of Conservation Area Appraisals and encourage enhancements to Conservation Areas
- consider developing a list of non-designated heritage assets
- training for Planning Committee members regarding the potential for cumulative impact of development in a Conservation Area.

1.2. In addition, two further topic areas have been raised concerning the withholding of permitted development rights within conservation areas and the possible creation of Conservation Area Advisory Committees or a Conservation/Heritage Planning Sub-Committee.

1.3. This report is focused on addressing the above items/questions where further scrutiny has been requested.

2. Recommendation

It is RECOMMENDED that the Growth and Development Scrutiny Group:

- a) promote to Councillors that they support this review process by helping to identify local groups within their communities with conservation areas who might be interested in assisting with a community lead in the review process, or confirm that no such group exists and that review will likely need to be 'top-down' in their respective area
- b) provide comment on a 'crowd sourced' approach to contribute to the development of a local list of non-designated heritage assets including putting forward suggestions of local groups/organisations to engage with
- c) support the proposed mechanism for addition of assets to a local list as detailed within the report
- d) Support officer recommendation not to create either conservation area advisory committees or a heritage planning sub-committee at this time for the reasons detailed within the report.

3. Reasons for Recommendation

- 3.1. To facilitate the review of conservation areas in a way which maximises community involvement and ownership in the process and its outcomes.
- 3.2. To lead to the delivery of an initial set of entries onto a 'local list' of non-designated heritage assets and to progress the adoption of a mechanism by which that list can be added-to and maintained via a practical mechanism, given that the need to add to the list (at least initially) may be fairly frequent.
- 3.3. To provide Councillors' training on matters relating to assessing impact, as well as cumulative impact, upon heritage assets including conservation areas.

4. Supporting Evidence

How will Rushcliffe undertake the review of Conservation Area Appraisals and encourage enhancements to Conservation Areas

- 4.1. The last time conservation areas were reviewed in Rushcliffe (c. 2008-2011) this work took place over a period of approximately three years and at a time when the conservation team at the Council had two full time conservation officers as well as overlapping with a third officer on reduced hours leading towards retirement. It is considered, and has been experienced to be the case over the past nine years, that the capacity does not exist with a single conservation officer to undertake a comprehensive review over any reasonable timescale. Since October 2021, and the last scrutiny of 'conservation areas', the Director for Development and Economic Growth has secured funding for the creation of a time limited post, for three years, to undertake a project to review conservation areas in Rushcliffe. Recruitment has already been completed and a successful candidate already taken up post on 4 July.
- 4.2. Latest best practise guidance advocates maximising community engagement up to and including facilitating community led reviews. Greater support than with the development of neighbourhood plans is important and possible. It is important to ensure that community groups understand the purpose of appraisals, what they can and cannot do and that appraisals define character and management plans set objectives but neither type of document can create or amend policy.
- 4.3. It is anticipated that most larger communities will have community groups interested in taking a community led approach, with sufficient members to create the time necessary for this approach to work. It is also recognised that some of the smaller conservation areas, including many that do not have representative groups like parish councils, may lack established groups with enough interested persons to take this approach.
- 4.4. Extensive community involvement, to the extent of the community undertaking much of the groundwork is identified as a potential approach in section 28 of the latest best practise guidance (Historic England Advice Note 1 [Second Edition]), with the guidance identifying benefits of this approach in terms of the community feeling 'ownership' of the results.

- 4.5. The Council will, however, offer a more top-down approach in smaller communities where residents are not able to take on parts of the task of review themselves.
- 4.6. It will not be possible to undertake a review of all conservation areas simultaneously, even if most were community led as the capacity to provide the needed support and guidance will not exist. As such Councillors may be in a position to pre-empt review of their areas by laying the groundwork and identifying local groups or volunteers, or otherwise being able to confirm that no such group exists, and that a top-down approach will be needed in their areas.

Consider developing a list of non-designated heritage assets

- 4.7. The adopted Rushcliffe Local Plan Part 2 includes a policy which was included to enable the production of a 'local list' of non-designated heritage assets ([Policy 28 and supporting text paragraphs 9.13 – 9.15](#)).
- 4.8. Whilst the policy basis for such a list was secured through the Local Plan a mechanism by which such a list could be produced within existing resources has not been developed to date.
- 4.9. Research by the Institute of Historic Building Conservation suggests that only "around half" of local authorities have 'Local Lists', however that research did not consider the extent or quality of such lists.
- 4.10. The most effective way of producing a rapid baseline list would be to crowd source the work and to set up a mechanism to allow residents to nominate buildings or structures for inclusion, again this is in line with national best practise and would also promote community ownership and engagement in the process.
- 4.11. Whilst this would be an effective way of quickly growing a list, at least initially, it would risk patchy coverage as residents of some parts of the Borough might be more active in this regard than others.
- 4.12. Whilst some potential list candidates could be identified by the Project Officer as part of conservation area review it should be noted that identification of non-designated heritage assets is a more meaningful activity where directed at buildings and structures which are located outside of conservation areas.
- 4.13. Positive buildings within conservation areas form part of the designated heritage asset of the conservation area and there are specific policies within the NPPF designed to give weight to their retention (paragraph 207). As such positive buildings within conservation areas make use of NPPF policies for designated heritage assets and already benefit from consideration at a higher level than inclusion on a list of non-designated assets can achieve.
- 4.14. This does not imply that it is pointless to identify non-designated heritage assets within conservation areas, simply that the greatest benefit of creating a list will come from identifying unlisted buildings and structures outside of the

boundaries of conservation areas which would otherwise have no protection under heritage policies unless identified reactively as part of an application process.

- 4.15. Whilst some such buildings might be at the fringes of conservation areas many more will be in remote locations. This is part of what makes survey highly time consuming, but it also means that some not immediately obvious groups, such as walking or ramblers groups, might be in a position to make important contributions to a crowd sourced survey.
- 4.16. Members and parishes may be well placed to identify local groups which might be well placed to contribute to such a project with some training from council officers.
- 4.17. Review of proposed buildings/structures will still require officer involvement and it should be noted that the Local Plan Policy sets out criteria which buildings / structures must meet for consideration, meeting the necessary criteria does not automatically qualify a building for inclusion and a degree of sorting and assessment will be required.
- 4.18. Final shortlists could be adopted in a relatively straightforward way via meetings with the relevant ward Councillors and the planning portfolio holder on a ward-by ward basis.
- 4.19. Such a project is, by its nature, never complete and once embarked upon there will be a requirement for ongoing updates as new candidate buildings are identified as well as potentially targeting field work on under-represented parishes and wards.
- 4.20. The ongoing work can be partly handled in the same way, seeking suggestions from the community, perhaps occasionally re-advertising the mechanisms via Rushcliffe Reports. If there are areas of the Borough which feel under-represented, then there may be a need for some additional survey work by the Council. This may be a task that a potential sandwich year planning student placement could assist with and would be more manageable if it is targeted on specific areas rather than district wide.
- 4.21. A point has been made in connection to consideration of local listing that the Historic Environment Record (HER) maintained by NCC is 'out of date' on the basis that it does not include all buildings identified as 'positive buildings' within conservation area appraisals. It should be noted that the HER and the identification of positive buildings within conservation areas do not serve the same function or follow the same criteria, the lack of overlap between these two sets of data would not imply that the HER is incorrect or out-of-date.

Training for Planning Committee members regarding the potential for cumulative impact of development in a Conservation Area

- 4.22. Initial training is provided to members on planning committee as part of their initial adoption onto committee. However, the range and nuance of the planning system is such that this training does not cover all of the planning system in terms of either depth or breadth. Whilst subsequent training

sessions have been arranged, including a recent one on design, the assessment of impact on the settings of heritage assets is not a topic that has been covered previously.

- 4.23. Whilst conservation areas are assets in their own rights the established best practise guidance for assessing the setting of heritage assets is highly useful in considering the impacts of proposed development within conservation areas as each component of a conservation area could be considered to have a setting of its own, the context of a street and the setting of positive unlisted building could be examples.
- 4.24. Training on addressing impact of proposals on heritage assets does not form a substantial part of the training package provided to planning committee members and any consideration of cumulative impacts must be built upon an understanding of how individual impacts are considered in the first instance.
- 4.25. To address this shortcoming an evening training session has been arranged for after the summer holiday season from 6 to 8pm on the evening of Wednesday 28 September 2022. Whilst the session is primarily intended for members of planning committee, the Planning Committee Chairman is happy for any Councillor with an interest to attend.

Withholding of Permitted Development Rights When Approving New Development in Conservation Areas

- 4.26. It is reasonably common practice to withhold permitted development rights on new developments, or at the point of change of use when a site would gain a different class of permitted development rights, where the use of those rights may result in detrimental change to the approved scheme.
- 4.27. This is particularly the case in areas which could be described as 'design sensitive' including conservation areas and barn conversions.
- 4.28. A point has recently been made that sometimes after having chosen to withhold permitted development rights the Council has subsequently granted planning permission for something which would otherwise have been permitted development. The point being raised was that it seemed counter-intuitive to withhold a right only to allow change which would have fallen under that right anyway.
- 4.29. Permitted development rights are drafted in a technical fashion and set limits in terms of scale, volume, height, closeness to boundary, position in relation to highways. Importantly they set no less tangible criteria and there is no requirement that permitted development be well designed or tasteful.
- 4.30. When a new dwelling is created, either built or through change of use, it gains residential permitted development rights unless they are specifically withheld. Each class of permitted development can be withheld individually, however it is not practical to use a condition to grant but amend a permitted development right. The right is either granted, or not, in full.

- 4.31. When considering whether to withhold a permitted development right some thought must be given to what the consequences could be if it were not withheld.
- 4.32. Perhaps the easiest example is the Part 1 Class B PD right which allows additions to a roof up to 50 cubic metres in volume on non-front elevations provided 'materials of similar appearance' are used, provided the addition is set in 200mm from eaves and no part is higher than the highest part of the existing roof.
- 4.33. At its worst this could allow large flat roofed box-dormers on three out of four elevations of a house, fundamentally changing its architectural appearance. Clearly, in a design sensitive area the ability, to do such work without the need to obtain permission is undesirable and as such this right might reasonably be withheld.
- 4.34. The same permitted development right would also allow a number of small, traditional style dormer windows along just a rear-facing elevation. There may well be no issue with such work, indeed it may be entirely compatible with the character of the building; however, the permitted development right is either granted or withheld in full. You cannot allow one type of roof extension as PD without also allowing the other. Therefore, if withheld even the 'acceptable' traditional dormers would need to apply for planning permission.
- 4.35. Given this explanation, it can be seen why there are circumstances where PD rights are withheld only for work which would otherwise have been permitted under that class to be granted planning permission.

Conservation Area Advisory Committees or Heritage Planning Sub-Committee

- 4.36. The idea of conservation area advisory committees has been raised, as has the idea of a standing planning sub-committee to consider heritage implications on applications.
- 4.37. Planning Committee has recently been restructured and its membership reduced to 10 members inclusive of the chairman and vice-chairman. As such any sub-committee would, necessarily, either consist of a minimum of three members, or be attended by half of the members of the committee.
- 4.38. Sub-committees of this type or not typically utilised as standing functions to routinely pre-vet proposals destined for planning committee. Sub-committees are commonly formed to consider time-limited projects or investigate new or innovative ways of working. For example, a sub-committee might be formed to consider the potential impacts of a new type of development beginning to appear within the Borough, or the implications of new legislation so as to report back to the parent committee.
- 4.39. The creation of a sub-committee of this type would also necessitate more time between publication of agendas and planning committee meetings to allow time for the sub-committee to also meet and report back.

- 4.40. It is not considered that the sub-committee approach would be practical.
- 4.41. Conservation Area Advisory Committees are intended to serve individual conservation areas and to be made up of local residents “who are able to bring expertise or understanding of the area's history and amenity”. Such committees are, however, council committees and what legislation exists to allow their creation allows them to be created by local planning authorities.
- 4.42. As such any meeting would need to be attended by at least one Council officer, and likely one Councillor, most likely one of the local ward Councillors. If the intention is for these committees to scrutinise and advise upon individual applications then they would necessarily have to meet at least every 6 weeks, or 9 times per year. Given we currently have 30 adopted conservation areas this could potentially result in 270 meetings a year, or more than one for every working day of the year.
- 4.43. The potential pressure on time and resource created as a result of establishing such committees would be impossible to accommodate within existing resource. It would be problematic to create such groups from some conservation areas and deny others the same opportunity.
- 4.44. As such it is not recommended that either the creation of conservation area advisory committees or a heritage planning sub-committee would be realistically achievable at this time.

5. Risks and Uncertainties

- 5.1. Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty on Local Planning Authorities when exercising any of its functions in a conservation area to pay special attention to the desirability of preserving or enhancing the character or appearance of that area. Failure to apply the duty when considering planning applications can result in an unsound decision and the risk of a successful legal challenge.

6. Implications

6.1. Financial Implications

6.1.1. Provision has been made in the budget of £39k per annum for an additional temporary three-year post of Project Officer: Conservation Area Review.

6.1.2. Mechanisms for crowd sourcing nominations to a local list should be possible using existing IT facilities or via free to use software such as editable and sharable google maps.

6.2. Legal Implications

6.2.1. There are no legal implications associated with the consideration of this report and the recommendation.

6.3. Equalities Implications

6.3.1. The Council is committed to delivering all planning activities in accordance with its Equality and Diversity Policy and will embed the principles of that policy in its approach to regulatory functions. The planning process, including consideration of impacts on heritage assets, relates to land and property and personal circumstances will rarely be a material planning consideration. Therefore, the Council will treat all people equally and fairly, irrespective of their nationality, political views, race, gender, disability, age, religion, or sexual orientation.

6.3.2. Adoption of non-designated heritage assets onto a local list would be on the basis of the merits of that asset rather than any personal characteristics of the individual(s) or organisations who currently own or are responsible for that asset, as such there should be no equalities implications arising from the formulation of a local list.

6.4. Section 17 of the Crime and Disorder Act 1998 Implications

6.4.1. There are no crime and disorder implications associated with the consideration of this report and the recommendation.

7. Link to Corporate Priorities

Quality of Life	Heritage assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.
Efficient Services	The delivery of an efficient and effective planning service is consistent with the Council's corporate priority to transform the Council to enable the delivery of efficient high-quality services.
Sustainable Growth	The purpose of the planning system is to contribute to the achievement of sustainable growth. One of the three overarching objectives to sustainable development is the environmental objective. Development should contribute to protecting and enhancing our natural, built and historic environment. There is a need to consider carefully the impacts of development on the special architectural and historic significance of conservation areas to ensure that development preserves or enhances the significance of these areas and that any harm is justified by wider public benefits.
The Environment	The preservation or enhancement of the conservation areas within the Borough is an important aspect of the planning process and protecting our historic environment.

8. Recommendations

It is RECOMMENDED that members of the Scrutiny Group note the content of the report and presentation to the Group, specifically:

- a) promote to Councillors that they support this review process by helping to identify local groups within their communities with conservation areas who might be interested in assisting with a community lead in the review process, or confirm that no such group exists and that review will likely need to be 'top-down' in their respective area
- b) provide comment on a 'crowd sourced' approach to contribute to the development of a local list of non-designated heritage assets including putting forward suggestions of local groups/organisations to engage with
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- d) Support officer recommendation not to create either conservation area advisory committees or a heritage planning sub-committee at this time for the reasons detailed within the report.

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Background papers Available for Inspection:	None
List of appendices (if any):	None