

***The Planning Act 2008 - Chapter 2 Examination TR010025
A303 Amesbury to Berwick Down Improvements***

Written Submission by the Council for British Archaeology

May 2019

Appendix D – Detailed Comments on Policy Framework

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- D 1. In the following paragraphs some of the key policy tests in respect of these frameworks and their interaction are examined where they warrant particular comment in respect of the judgements that have to be made in relation to the heritage issues raised by the proposed scheme. Passages of quoted policies relating to particular comment are underlined.

National Policy Statement for National Networks 2014

- D 2. The NPSNN represents national policy for major infrastructure in England, and as such is the main national policy framework governing this scheme though the NPPF is also relevant – though for heritage issues they are extremely similar. The following comments quote from specific paragraphs of the NPSNN.

- D 3. *5.124 Non-designated heritage assets of archaeological interest⁹⁸ that are demonstrably of equivalent significance to Scheduled Monuments, should be considered subject to the policies for designated heritage assets. The absence of designation for such heritage assets does not indicate lower significance.*

[FN 98 There will be archaeological interest in a heritage asset if it holds, or potentially may hold, evidence of past human activity worthy of expert investigation at some point.

Heritage assets with archaeological interest are the primary source of evidence about the substance and evolution of places, and of the people and cultures that made them.]

Comment: Within the Stonehenge WHS very large numbers of archaeological remains, especially those below ground, are not scheduled, but as recent excavations have shown make a major contribution to understanding 'the substance and evolution of places, and of the people and cultures that made them'. This has been demonstrated time and again, and it is not just major individual monuments such as the great previously unknown timber palisade close to Stonehenge that was discovered at the time of the last public inquiry into the A303, but also the cumulative knowledge, and even the variation between highly symbolic ritualistic deposits and everyday domestic ones, that reflects their value as evidence. This realisation, that the mundane and even negative evidence is a vital part of understanding the special and unusual, has been greatly reinforced by research projects across the WHS in the last two decades. Experience also shows that the full value of such remains is frequently not apparent until put within the context of other discoveries that

may not yet have been made. As discussed below, the contribution of such remains to OUV of the WHS is even more significant.

- D 4. **5.129** *In considering the impact of a proposed development on any heritage assets, the Secretary of State should take into account the particular nature of the significance of the heritage asset and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal.*

Comment: Within the Stonehenge WHS, this guidance, concerning ‘any heritage assets’ ‘the value .. for this and future generations’ and need to ‘avoid’ conflict between conservation and any aspect of the proposal (added emphases) presents an especially high challenge. All the more so in the context of the OUVs of the WHS. Within the professional career of any single generation of living archaeologists the approach to different kinds of archaeological deposits and remains and artefacts and the techniques of scientific research that can be applied, and above all the theories, hypotheses and interpretations that have been applied to them – and hence how they are valued – has always changed dramatically and will continue to do so. It is a trend that has accelerated with the expansion of archaeology as a field of study, the increasingly rapid and varied development of new and refined scientific techniques and the proliferation of hypotheses, ideas and questions worthy of research. Their results are passed on to the public through publication, interpretation and media, with the public paying ever greater interest in the how things are discovered as well as what. This interest increases in respect of the everyday lives of ancient people not just their grand ceremonial and ritualistic monuments – as is very apparent at the Stonehenge visitor centre which draws on such results.

The ideas and interpretations conveyed now are far richer, more complex and insightful than was the case only *half* a generation ago. To suppose that present day archaeologists, scientists or others know how their ideas will stand up to future scrutiny, or what future generations will put most value in, is pure hubris. In the context of Stonehenge this policy provision requires the utmost caution and humility, a fully precautionary approach should be adopted so that so that the limitations of present day values and ideas – advanced as they may seem now – should NOT be allowed to result in the loss of physical remains that with new techniques, ideas and values may be far more important in future than they seem at present.

- D 5. **5.130** *The Secretary of State should take into account the desirability of sustaining and, where appropriate, enhancing the significance of heritage assets, the contribution of their settings*

Comment: Once again, this is not limited to designated assets, and a fundamental issues arise where proposals BOTH cause significant harm AND enhance the asset. There is a generally accepted principle, not just in heritage but also landscape designations that physical conservation of the heritage and landscape that is valued and contributes now or in the future to people's benefit should take precedence over enhancing access and enjoyment, especially where such enhancement may cause physical harm to other parts of the overall asset or landscape. Where and how such enhancement will be appropriate therefore depends on whether, without causing such irreversible loss, there are other ways in which it can be delivered (or even further improved), or may only be partly achievable or not at all.

- D 6. **5.131** *When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Given that heritage assets are irreplaceable, harm or loss affecting any designated heritage asset should require clear and convincing justification.*

Comment: It is worth noting (cf **Q G.1.6**) that in the latest version of NPPF (2018) para 193, a gloss has been added to the equivalent guidance, that great weight must be applied '*irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.*' World Heritage Sites represent the highest level of designation, being of more than national importance often embracing many designated assets of the highest national importance and also many others that are of great importance because of the contribution that individually or cumulatively they make to the Site's OUV. The further point that harm or loss should require '*clear and convincing justification*' is of particular relevance where the justification involves issues of whether or not the harm can be avoided by meeting the scheme's economic, traffic and community objectives in other ways. While this represents the policy standard outside the WHS and its

setting, there is no such nuanced balancing in the WHS Management Plan, and it is far less compromising in its objectives of seeking to promote conservation and enhancement and avoid and prevent any harm (see below).

- D 7. **5.133** *Where the proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm or loss of significance is necessary in order to deliver substantial public benefits that outweigh that loss or harm*

Comment: This is at the heart of the decision to be made on this scheme outside the WHS, but it is highly questionable whether this test applies within it or its setting where as noted above the Management plan makes no reference to 'substantial' or 'less than substantial' harm sets a more rigorous test for avoiding or preventing harm and promoting protection, conservation and enhancement of OUVs. The WHS distinction is not between designated or undesignated assets or levels of harm, but whether or not the affected asset or other remains contribute to OUV. In these terms any loss of or harm to archaeological remains that contribute to the OUV of the WHS, triggers a presumption of refusal.

But even beyond the WHS to justify any loss or substantial harm to the settings of designated monuments and equivalents not physically lost, it is NECESSARY to achieve the '*substantial*' public benefits. Noting that this requires '*clear and convincing*' justification, this is not a simple matter of which way the balance tips: it must be decisively necessary – in effect unavoidably required – to be justified. Once again, this sets a high bar in terms of whether it would be justifiable NOT to adopt alternatives that might not be as beneficial, but would be a lot less harmful. And in relation to any alternative that would enable substantial benefits to be achieved BOTH in terms of the strategically important public benefit objectives of the scheme AND even greater international heritage benefits - AND at lower cost – the justification for adopting the proposed scheme would be far from '*clear and convincing*'.

- D 8. **5.135** *Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. The Secretary of State should treat the loss of a building (or other element) that makes a positive contribution to the site's significance either as substantial harm or less than substantial harm, as appropriate, taking into account the relative significance of the elements*

affected and their contribution to the significance of the Conservation Area or World Heritage Site as a whole....

Comment: It is important to note that this highly nuanced policy differs from those in the WHS Management Plan for Stonehenge (see below) which does NOT contain any equivalent policy. For the Stonehenge WHS, it is crucially important that this guidance (as in NPPF) is seen within the context of ALL UK World Heritage Sites NOT just Stonehenge and Avebury. Excluding Overseas Territories, of the UK's 23 cultural (rather than natural or mixed) World Heritage Sites, most are built heritage or a mixture of built heritage and industrial or designed landscapes or townscape. Only three are essentially pre-medieval, and only two prehistoric for which below ground archaeological evidence as well as structural remains have an especially heightened importance. Of these two, only Stonehenge and Avebury and Associated Sites is designated as archaeological landscapes, the Heart of Neolithic Orkney being designated as a group of key individual monuments.

As recent research at Stonehenge has shown, the cumulative evidence to be gleaned from quite small and individually not very significant elements can be crucial to obtaining a clear overall understanding of the Stones within the landscape and relationships to other monuments and evidence of activity in the surrounding landscape. At Stonehenge, Avebury and Orkney major discoveries of previously unknown monuments that are not individually designated continue to be made.

Understanding the relative importance of the sacred and mundane is fundamental to this, and as indicated above, an extremely precautionary approach is essential if this is to be properly applied. In very crude terms, the archaeological aspects of the WHS that contribute most to its OUV are all remains dating from the Neolithic and Bronze Age, any Mesolithic material and the evidence that explains the demise of the cultural norms that resulted in the development of the Neolithic and Bronze Age complex. Much else is very valuable in terms of understanding the later evolution of the complex (and its state of survival) and why changing attitudes and values attached to these sites in subsequent eras, but is less fundamental to understanding "*the substance and evolution of places, and of the people and cultures that made them.*"

- D 9. **5.137** *Applicants should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably.*

Comment: This policy applies to both Conservation Areas and World Heritage Sites, and should therefore be interpreted in relation to the specific CA Appraisals or Management Plans that apply (see below). The proposals to be treated positively under this policy do not include those that harm the setting of CAs, WHSs or any heritage assets. For the WHS the Management Plan is paramount.

- D 10. **5.139** *A documentary record of our past is not as valuable as retaining the heritage asset and therefore the ability to record evidence of the asset should not be a factor in deciding whether consent should be given.*

Comment: This is not just a theoretical principle but a vital part of taking proper account the issues of how values change and limitations of current knowledge compared with future, as referred to above. It is an issue that is embedded in several factors that inevitably make such records far less valuable than physical preservation for the future. Research is at the heart of the WHS OUV, but that is in the context of long term need for carefully planned research framed by the requirement to understand the WHS and its OUV NOT determined by the need to mitigate loss of OUV to major infrastructure, thereby arbitrarily precluding the possibility of returning to investigate with different questions and techniques.

World Heritage Site Management Plan 2015

- D 11. The WHS Management Plan post-dates NPSNN, and reflects the specific characteristics and requirements of this particular WHS, not a generalised policy of variable relevance to the very mixed characteristics of the whole suite of UK WHSs. It has been endorsed by Government and all relevant statutory bodies and represents how the UK will implement its international treaty obligations under the 1972 World Heritage Convention. As such it carries considerable weight, especially as it provides a focus on how other policies need to reflect its provisions, and in the case of NPSNN, how its provisions for WHSs should be interpreted in the case at hand.

D 12. In this respect the **Statement of Outstanding Universal Value** (pp 25-9) and its associated summary and commentary for the current Plan is of particular relevance. It summarises the key OUV attributes as follows:

- *Stonehenge itself as a globally famous and iconic monument*
- *The physical remains of the Neolithic and Bronze Age ceremonial and funerary monuments and associated sites*
- *The siting of Neolithic and Bronze Age funerary and ceremonial sites and monuments in relation to the landscape*
- *The design of Neolithic and Bronze Age funerary and ceremonial sites and monuments in relation to the skies and astronomy*
- *The siting of Neolithic and Bronze Age funerary and ceremonial sites and monuments in relation to each other*
- *The disposition, physical remains and settings of the Neolithic and Bronze Age funerary, ceremonial and other monuments and sites of the period, which together form a landscape without parallel*
- *The influence of the remains of Neolithic and Bronze Age funerary and ceremonial monuments and their landscape settings on architects, artists, historians, archaeologists and others.*

D 13. Each of these is explained with reference to the key criteria for which the WHS was inscribed; how they relate to the integrity and authenticity of the WHS; and requirements for protection and management. At paragraph 2.3.10 it is stated:

'It should be noted that the components of each attribute listed below are only examples and by no means represents an exhaustive list. In addition, the very high potential for future discoveries in the WHS means that any list of components could not be considered final. Further components will emerge as our understanding advances and deepens through research and the development of management tools such as the WHS Setting Study and Landscape Strategy.'

D 14. This reflects a statement within the Statement of OUV itself under the explanation of *Authenticity* (p28) that:

This survival [of Stonehenge itself] and the huge potential of buried archaeology make the property an extremely important resource for archaeological research, which continues to uncover new evidence and

expand our understanding of prehistory. Present day research has enormously improved our understanding of the property.

- D 15. Thus the value of buried archaeology is highly dynamic and is NOT restricted to what it contributes to understanding Stonehenge and its surroundings but also as a fundamental contribution to understanding prehistory in general – which in the context of ‘Outstanding Universal Value’ means GLOBAL understanding of prehistory. This is undoubtedly the case – not just for academic research but how this information and understanding is conveyed to millions of UK and international visitors every year.
- D 16. These attributes of OUV and their detailed explanations in the Management Plan inform the requirements of protection and management of those Values in relation to the roles of different organisations and the practical management issues at stake, which are encapsulated in a series of policies, of which the following are of special relevance and warrant some comment on their implications.
- D 17. **Policy 1a** – *Government departments, agencies and other statutory bodies responsible for making and implementing national policies and for undertaking activities that may impact on the WHS and its environs should recognise the importance of the WHS and its need for special treatment and a unified approach to sustain its OUV.*

Comment: This policy is analogous to statutory provisions by which all statutory bodies (including PINS) have a duty to have regard to promoting conservation and enhancement of landscape and wildlife¹ – or in this instance for the WHS ‘*special treatment and a unified approach to sustain its OUV*’ in respect of all activities that ‘*may impact on the WHS and its environs.*’ In the present case the proposed scheme for a 3.3km tunnel is far outside normal value-for-money criteria for new Highways and is certainly ‘*special treatment*’; but it equally does NOT represent a ‘*unified approach*’ to sustaining the WHS OUV. Rather, it is an amalgam of removing a source of intrusion on (but not physical damage to) aspects of OUV at the heart of the WHS on the one hand; and significant physical damage, loss and intrusive harm to aspects of OUV at the eastern and western edges of the WHS and into its environs.

¹ s.85 of the CROW Act 2000 and s.41 of the NERC Act 2006

- D 18. **Policy 1b** – Set within the framework provided by the Management Plan, relevant stakeholders should implement existing policy and guidance and where necessary develop policies and written guidance at a national and local level for the improved management and conservation of the WHS. These policies should ensure the maintenance of its OUV by protecting the physical fabric, character, appearance, setting and views into and out of the WHS.

Comment: This policy in effect sets out the relationship between the Management Plan and NPSNN, making it clear that where the scheme affects the WHS its provisions must be implemented 'within the framework provided by the Management Plan.' The relationship is explained in sections 1.1 and 1.2 of the Plan, noting the statements at 1.1.7 that *It is essential that all change is carefully planned and that competing uses are reconciled without compromising the overriding commitment to protect the Site and maintain its OUV*' and the concluding statement at 1.2.2, that *'The Government has confirmed that the Management Plan will remain the primary strategic document for the WHS.'* This is important because as compared with the nuanced balancing provisions that apply to heritage outside the WHS, the 'overriding commitment to protect the Site and maintain its OUV' is far less nuanced: in effect, the distinction to be made is between two choices:

- Does the scheme fully maintain the OUV by protecting the physical fabric, character, appearance, setting and views into and out of the WHS?
- Or does it also cause loss of or harm to these and other aspects of OUV?

The WHS Management Plan provides no policies that make the assumptions about 'substantial' or 'less than substantial' harm that apply outside the WHS and its setting: in effect it sets a different standard by which any preservation and enhancement of OUV is to be promoted and any loss or harm is to be avoided. The distinction is whether or not the heritage concerned contributes to OUV

- D 19. **Policy 3c** – Maintain and enhance the setting of monuments and sites in the landscape and their interrelationships and astronomical alignments with particular attention given to achieving an appropriate landscape setting for the monuments and the WHS itself.

Comment: The references to monuments and sites (not groups of monuments) in the landscape, their interrelationships and astronomy picks up on three distinct OUV attributes and is important in suggesting the need to assess the distinct effects of the scheme on each of these OUVs for monuments and sites. If any grouping is to be considered it should be on the basis of how they share these attributes (which in some cases will be contemporary clusters, or diachronic groupings that developed because of pre-existing monuments, but in other cases may be individual monuments that share a key inter-relationship right across the WHS and even beyond (an example being the alignment of all long barrows in and around the WHS being aligned on one or other end of the Great Cursus²).

- D 20. **Policy 3e** – *Conserve and/or make more visible buried, degraded or obscured archaeological features within the WHS without detracting from their intrinsic form and character*

Comment: The reference to making buried archaeological more visible has been a practice with a long and mostly successful history at both Avebury and Stonehenge, the classic examples being the Sanctuary and Woodhenge respectively. The potential for doing this more and in ways that fit 21st century non-intrusive approaches is clear – especially for example in respect of the avenue where simply mowing its course would enable people to follow its line and experience the unfolding landscape and visual approach to Stonehenge.

- D 21. **Policy 6a** – *Identify and implement measures to reduce the negative impacts of roads, traffic and parking on the WHS and to improve road safety and the ease and confidence with which residents and visitors can explore the WHS*

Comment: It is important to appreciate that the WHS Management Plan does not require removal of the A303 from the WHS or its partial burial, but to reduce negative impacts – by implication also avoiding new ones in the process. This is a more cautious ambition than endorsing any grand infrastructure project, perhaps cognisant that all new developments add additional 'monuments' to the WHS that are themselves of their time and where irreversible will become the archaeological record of the society that created them. This is further reflected in the Action points.

² Observation by Dr G T Meaden.

- D 22. **Policy 6a Action 133:** *Seek a solution to the negative impact of the A303 on the WHS, its attributes of OUV and its setting in order to sustain its OUV and enhance the Site's integrity. Work with partners to identify such a solution that also addresses current and predicted traffic problems and assists in delivery of social and economic growth.*

Comment: In this policy the WHS Management Plan does NOT endorse the proposed scheme – or any other. It sets two key objectives as the primary OUV considerations with a proviso of ALSO seeking to achieve traffic and socio-economic objectives. As stated, the latter clearly do NOT override OUV. This policy also makes clear that the negative impact of the A303 on the WHS *and its setting* must be addressed, not just the setting of Stonehenge and other monuments in the heart of the WHS at the expense of some at its periphery.

- D 23. **Policy 6a Action 134:** *Review the current access to and within the WHS and associated A303 crossing points for non-motorised users with the aim of improving accessibility*

Comment: This is relevant not only to what tunnel solutions and green bridges can deliver, but also to any situation where implementation of a scheme to remove the A303 from the surface of the WHS is delayed significantly or fails to be implemented, but also where access is affected by the surface sections of the proposals.