

Environment and Sustainability Committee



5 September 2023

Title	Staines Conservation Area Appraisal
Purpose of the report	To consider the draft Staines Conservation Area Appraisal and the proposed revisions to the Staines Conservation Area boundary following consultation.
Report Author	Planning Development Manager Team Leader (Planning Development Management)
Ward(s) Affected	Staines Ward
Exempt	No
Exemption Reason	N/A
Corporate Priority	Community Environment Service delivery
Recommendations	Committee is asked to: <ol style="list-style-type: none"> 1. Agree the revisions to the boundary of the Staines Conservation Area (“SCA”); 2. Agree the Staines Conservation Area Appraisal as Supplementary Planning Guidance.
Reason for Recommendation	As set out more fully in this report <ul style="list-style-type: none"> - A fresh consideration of the proposed changes to the conservation area and other content of the draft SCA Appraisal (“the draft Appraisal”) is required following the outcome of the judicial review proceedings brought by Future High Street Living (Staines) Ltd (“FHSL”), the owner of the former Debenhams building (“Debenhams”). - Minor amendments to the draft Appraisal are appropriate to address matters arising during consultation. - The two extensions to the conservation area which were objected to, should be included within the SCA since they are considered to form part of the area of special architectural or historic interest which it is desirable to preserve and enhance. The essential rationale for their inclusion is set out in the draft Appraisal and the objection by FHSL is responded to in the body of the report.

1. Summary

- 1.1. The Council engaged an independent expert to appraise the SCA, whose Appraisal was approved subject to consultation at a meeting of the Environment and Sustainability Committee on 10 May 2022. The subsequent decision to approve the Appraisal insofar as the SCA was extended in two specific locations was quashed by an Order of the High Court dated 28 March 2023 following Judicial Review proceedings brought by FHSL.
- 1.2. That, quashed, decision must be reconsidered entirely afresh. Having done so, officers recommend that the Appraisal is approved with those two proposed areas of extension included within the SCA.

2. Background to this report

- 2.1. The SCA was designated in 1975 by the Council as an area of special architectural and historic interest and its boundary was last reviewed in 1991. **Appendix 1** contains a map of the SCA following the last review in 1991.
- 2.2. This review of the SCA and the SCA Appraisal ('the Appraisal') are part of a wider aim by the Council to preserve or enhance the special character and appearance of the SCA, as required by the Planning (Listed Buildings and Conservation Areas) Act 1990. It is the first of eight appraisals to be carried out, to review and appraise all the Borough's conservation areas and it will enable sustainable decisions to be taken about their future management.
- 2.3. Officers engaged Dr Carole Fry of Architectural History and Conservation Consultants ("AHC") to prepare the Appraisal in draft. It is that document, the draft Appraisal, which was agreed by this committee for consultation in May 2022 and is now recommended for approval with minor amendments.
- 2.4. Most conservation areas do not have a uniform character and appearance across the whole area. In many cases there are different 'character areas' or 'sub areas' that can be discerned, which have their own unique appearance and characteristics. Their varied character tells a story about the history of the conservation area and contributes to the special character and appearance of the whole.
- 2.5. Three distinct Character Areas were identified for the SCA by the draft Appraisal:
 - Character Area 1 – St Mary's Church – has the appearance and secluded, quiet atmosphere of a small village centred upon its Church: a building which dominates the character area.
 - Character Area 2 – The Two Rivers – stretches from the former Staines West Station and Hale Street in the north of the SCA, southwards to the rear of the buildings that face onto Clarence Street.
 - Character Area 3 – Market Square and Memorial Gardens – this is the civic core of the town and saw a rapid and extensive period of redevelopment in the early to mid C19.

- 2.6. The draft Appraisal also considers the extent of the SCA and made recommendations for four additional areas to be included, and two existing areas to be excluded:

Inclusions

- (A) The area around the four storey Debenhams at the junction of Thames Street and Clarence Street and the adjacent buildings of nos. 47-57 High Street.
- (B) The Memorial Gardens and the adjacent car park adjacent to the River Thames.
- (C) A section of riverside bank and the river to the west of Church Island.
- (D) A section of the River Colne at Two Rivers.

Exclusions

- (A) The area around the current Travel Loge
- (B) The northern periphery

- 2.7. At the meeting of the Environment and Sustainability Committee on 10 May 2022, a report on the updated draft Appraisal was considered. A copy of the report is at **Appendix 10**. The Committee agreed the draft Appraisal for consultation, and that it should be subject to 6 weeks' public consultation on the proposed amendments to the SCA. The Committee delegated authority to the Group Head Regeneration and Growth, in consultation with the Chair and Vice Chair of the Environment and Sustainability Committee, to approve the final document, taking account of comments, as required, arising from the consultation.
- 2.8. On 29 June 2022, in line with the recommendations in the delegated report of 27 June 2022 ("the June report"), the updated draft Appraisal was adopted with immediate effect subject to the minor amendments set out in that report.
- 2.9. Very unfortunately, five responses to consultation were not taken into account by those writing the June report, nor those authorising the decision. The reason for this has been identified and steps have been taken to ensure it does not happen again.
- 2.10. Of those five responses, four were supportive of the proposal. However, one was an objection articulated by Gail Stoten of the Pegasus Planning Consultancy ('Pegasus') on behalf of the owner of Debenhams, FHSL.
- 2.11. On 10 August 2022, FHSL brought an application for judicial review, seeking a quashing order in respect of the decision to extend the SCA over areas (A) and (B) above. The claim relied on three grounds, namely:
- 1. That the decision was taken for an unlawful purpose, namely, to prevent the demolition of Debenhams;
 - 2. That the decision was flawed for failing to take the FHSL objection into account; and
 - 3. That the decision was flawed for failing to take account of two pieces of evidence relating to the architectural and historic qualities of the building – the views of Historic England expressed when refusing to list the building; and the fact the building was not included in the Local List of non-designated heritage assets in 2004 or 2016.

- 2.12. Grounds 1 and 3 were defended in full. However, for obvious reasons, the error relied upon in ground 2 was admitted. The Council nevertheless defended the claim and resisted the quashing order sought by FHSL because FHSL's objection had been considered subsequently, with the conclusion that the June decision would not have been different had the objection been taken into account at that time. That report was prepared in August 2022 and its conclusion agreed by the Deputy Chief Executive, in the absence of the then Group Head for Regeneration and Growth, (now Group Head Place, Protection and Prosperity), after consultation with the former Chairman and Vice Chairman of the Environment and Sustainability Committee on 31 August 2022 ("the August report").
- 2.13. FHSL amended its claim to add ground 4, an attack on the August report, arguing that it had the appearance of a predetermined outcome and that the Deputy Chief Executive did not have authority to make a decision on the issue bearing in mind the terms of the Committee's delegation in May. In due course, the claim was given permission to proceed and heard by Mr Justice Lane in the Planning Court on 21 February 2023. On 28 March 2023, the judicial review succeeded, and the decision pursuant to the June report to extend the SCA to include the areas of land where Debenhams is situated, and the Memorial Gardens and car park was quashed. The effect of the Judge's decision is that the draft Appraisal remains, in terms of its legal effect, unapproved by either the June 2022 decision or the August 2022 decision insofar as it addresses the two additional areas to which objection was made. A copy of the judgment is at **Appendix 8**.
- 2.14. In that context, the draft Appraisal (insofar as it includes additional areas (A) and (B) within the SCA) needs to be considered afresh and in the light of all responses to consultation including the FHSL objection.
- 2.15. The starting point for consideration is, strictly speaking, the May 2022 resolution, in which the approval and adoption of the draft Appraisal was delegated as set out above. However, officers considered it more appropriate to return the matter to Committee, given the background outlined above.
- 2.16. A minor drafting error made in the draft Appraisal approved in May 2022 has been corrected by officers, namely the correct name for the Memorial Park is "Memorial Gardens" (**see Appendix 2**).

3. Consultation

- 3.1. On 11 May 2022 the LPA notified 650 properties within and adjoining the SCA, including the revised boundary.
- 3.2. In addition, the draft appraisal was advertised in the local press and 6 site notices were displayed in and around SCA. Copies of the documents of the proposals were placed on the Council's website and hard copies were available for inspection at the Council Offices and Staines Library.
- 3.3. On 13 May 2022 approximately 3000 emails and 250 letters were sent to stakeholders who had expressed an interest in the Local Plan process.
- 3.4. Specific Consultation Bodies
 - Coal Authority

- Environment Agency
- English Heritage
- Natural England
- Network Rail
- Highways Agency,
- Neighbouring local authorities – Runnymede BC, Elmbridge BC, LB Richmond upon Thames, LB Hillingdon, LB Hounslow
- Primary Care Trust and Ashford & St Peter’s Hospitals
- Electricity suppliers and National Grid
- Gas Suppliers
- Thames Water
- Homes and Communities Agency

3.5. General Consultation Bodies

- Residents’ associations
- Voluntary and interest groups
- A2 Dominion
- Sports clubs including Ashford Sports Club
- Some local schools

3.6. In addition, a large number of local residents had expressed interest in planning issues and asked to be involved. By the close of the consultation period on 24 June 2022, 139 public consultation responses and 9 stakeholder representation had been received. The points raised by stakeholders are summarised as follows:

Stakeholder	Summary Comment(s)
Transport for London	No Comments
Network Rail	Glad to see Staines Station featured on the Heritage Asset list
Natural England	No Comments
Surrey County Council Historic Environment Planning Team	<p>This is a considered, well researched and succinct Conservation Area and Management Plan which shows great awareness of the requirements of national legislation, policy and guidance.</p> <p>The document provides a good assessment of what contributes positively and negatively to the character and appearance of the SCA and provides a firm basis for options to enhance the area going forward.</p> <p>The views and vistas are well considered and are given sufficient justification. The assessment of the character areas is also clearly well thought out, particularly considering the fragmented development of areas such as Two Rivers makes subdividing the SCA somewhat challenging.</p>

Further to the recent publication *Departing Stores* by SAVE Britain's Heritage, we agree with the decision to include Debenhams with the SCA.

Boundary Review

A strong argument is made for the inclusion of Debenhams within the SCA as this reflects the 'important civic and commercial buildings' highlighted as being as part of the 'key elements' of the town. Should this be an area of special interest for Staines, consideration should also be given to including some of the buildings on the High Street, which also reflect this.

It is unclear why the decision has been made to exclude the Travelodge aside from the fact it is modern development. While it may not be the most architecturally significant building, it uses appropriate materials and occupies an important site between the River Wraysbury and River Colne. Retaining the building as a whole within the SCA would allow for a more manageable boundary between these two rivers and importantly, also ensure that future development responds to the character and appearance of the area.

Origins and Historic Development

This is a very good section of the document and it has clearly been well researched. It would greatly benefit from some historic map regression showing the development of Staines over time.

Archaeological Potential

This section helpfully outlines the potential of the SCA to contain archaeology, but it may be worth adding that this "potential" is not hypothetical: there have been numerous excavations and discoveries within the area, particularly in recent years, which demonstrate the importance and necessity of archaeological work within Staines town centre when development is considered.

Built Form and Architecture, Views and Vistas and Character Areas

The mapping of these elements could be reconsidered to aid interpretation.

The section on Character Area 1 would benefit from highlighting that the reason the modern buildings of the business park do not dominate the SCA is because of their height and scale. This is considered elsewhere in the document and this

	<p>section provides an opportunity to emphasise that again.</p> <p>There are numerous references throughout this section to the contribution of trees to the townscape, although it is not mentioned whether there are sufficient Tree Preservation Orders in place to protect these. A programme of TPO assessment, and if necessary, designation could be included within the Management Plan.</p>
Coal Authority	No Comments
National Highways	No Comments
SBC Asset Team	<p>Do not consider this southernmost proposed extension of the conservation area, which seeks to cover surface car parking as well as the Memorial Gardens, fully justified in the consultation document.</p> <p>If the Council do not agree that further justification is required for the Park area, then this part of the proposed extension must at least be removed, and a defensible line drawn to exclude the car park from the Memorial Park in the SCA extension.</p> <p>It would be appropriate, as part of this review, to remove the Bridge Street Car Park and the adjacent Hanover House as part of this conservation area review as neither site offers meaningful contribution to the conservation area, nor the setting of the River Thames.</p> <p>Commercial realities need to be considered as part of successful town planning. The Bridge Street Car Park is an important strategic site that offers important wider strategic benefits that will bring inward investment into the borough and act as a catalyst for “pump priming” future development and enhancements that will positively contribute to the long-term vitality and economic sustainability of the town centre.</p>
abrdn (previously known as Aberdeen Standard Investors)	<p>Support the boundary changes around Two Rivers and are aware of the proximity of the revised boundary and those heritage assets within it.</p> <p>Have no comment in respect of the other boundary changes affecting the wider part of Staines town centre.</p>
Pegasus (representing Future High Street Living (Staines) Ltd)	<p>Pegasus object to two extensions to the SCA: (1) to the area including Debenhams; and (2) to the Memorial Gardens and car park.</p> <p><u>(1) The area including Debenhams</u></p>

The following main points are made:

- Contrary to the claims in the Appraisal Debenhams is not of special architectural or historic interest.
- The buildings to the north-east of Debenhams have no intrinsic special architectural or historic interest.
- Debenhams and buildings to the north-east are entirely out on a limb from the main part of the character area and as such, can only be part of a 'street scene' with one another.
- Debenhams is not comparable with any of the 'characteristic features' referred to in the Appraisal.
- The modest heritage interest of Debenhams is sufficiently protected in planning terms without the awkward and contrived inclusion in an extended conservation area.
- The references in the Appraisal to 'high architectural quality' and 'good architectural quality' are contradicted by the Historic England Designation Assessment, which found it of a very common level of architectural interest.
- The area does have the characteristics of any of the examples given in paragraph 72 of the Historic England guidance. (Historic England Advice Note 1 (Second Edition) 2019: Conservation Area Appraisal, Designation and Management)
- The proposed boundary extension runs through the middle of the street, contrary to Historic England guidance on designation.

(2) Memorial Gardens

The following main points are made:

- The Memorial Gardens do have a low level of historic interest due to their origins within the town, but in the light of their modern character and absence of the memorial, are not considered to hold the requisite special interest that would justify inclusion in the conservation area.
- The inclusion of the car park and road junction is considered to be entirely unreasonable – reference is made to the NPPF and the point that including areas of insufficient quality can devalue an area.

	<ul style="list-style-type: none"> • The justification for the inclusion of the car park given in terms of the views to the Former Debenhams is unreasonable. <p>Note: the Pegasus representation is attached in full at Appendix 6.</p>
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3.7. The LPA received 139 public consultation responses (including the additional 4 comments in para 1.9 above) relating to the following:

- Staines Bridge cannot cope with increased traffic.
- Too many people in the town centre.
- SCA is pitifully small and should be extended to cover the whole of south street right up to and including the Elmsleigh Centre, and the whole of the High Street and Two rivers.
- This is a fair and well-informed description.
- Agree with all the recommendations and hope they will be implemented.
- Very much in favour of the proposed changes to include Debenhams within the local conservation area.
- Concern regarding the omission of the Mercure Hotel site and being adjacent to the boundary, will not provide this protection.
- Could the management plan be more specific about powers available to the LPA to deal with poor maintenance of buildings.
- Very important to emphasise the importance of maintaining views across the SCA, especially from Staines Bridge across to St Mary's Church and The Brewery Tower.
- Recommend the extension is continued to include the riverbank up to the railway line – finishing where it is proposed to finish does seem arbitrary.
- The SCA should be expanded to cover Debenhams and all other proposed areas.
- The redevelopment of the Travelodge must be more sympathetic.
- It's a shame to remove Hale Street as the buildings are very interesting.
- The area to be deleted at the entrance to the bridge should surely stay as it is as a small patch of green on the way out of town.
- The Memorial Gardens provide an important vista and access point to the river and the Council has for many years been committed to maximising the value of the river for the borough.
- This an amazing trip through the history of and the historical significance of buildings, properties and areas of Staines.
- The SCA must be up to the railway bridge in Laleham Road, which includes Thameside House and the Thames Lodge Hotel.
- Note that the Appraisal does not mention the former Oast House (once the Knowle Green Brewery)
- Concern at the state of 25/27 Clarence Street, within the SCA.
- Concern regarding the usability of the map.

4. Key Issues arising from the consultation

- 4.1. The consultation process undertaken by the Council was open, thorough and has not been criticised in the legal proceedings.
- 4.2. Amongst the responses considered in June, the Council's Asset Team expressed concern that the Memorial Gardens and car park were not fully justified and should be removed, as well as other car parks in the conservation area. This extension was also criticised by Pegasus in its objection.
- 4.3. The following matters were and are considered well founded, and this report recommends that the Appraisal be revised accordingly:
 - The comments from the County's Historic Environment Planning Team regarding the archaeological potential of the area.
 - The mapping should be improved to aid interpretation (although some of the usability issues related to the platform on which it was presented for consultation purposes).
- 4.4. The level of support for the Appraisal was particularly notable. Some of the criticisms are addressed briefly below:
 - In response to the suggestion that consideration should also be given to including some of the buildings on the High Street: The High Street was reviewed, but its inclusion was not considered appropriate at this time. Individual buildings that might be considered important civic and commercial buildings could be reviewed through the Local List procedure as resources permit.
 - In response to the deletion of the area around the Travelodge: This was not considered to contribute to the overall character and appearance of the SCA and was considered to have an unclear boundary. However, any redevelopment on the edge of the SCA would be expected to respond positively to the character and appearance of the area.
 - In response to the historic map regression: This has not been incorporated because this section is intended to provide an overview. More detailed information is available from the Surrey Historic Environment Record.
 - In response to consideration of trees within the SCA: These have a level of protection from being within the SCA. A review of Tree Preservation Orders is a separate process.
 - In response to the capacity of Staines Bridge and the number of people in the town centre: this is considered not have a direct relevance to the review of the SCA or changes to the boundary.
 - In response to the suggestion that consideration be given to the inclusion of more of the High Street within the SCA: this involves a judgment as to the best place for the boundary at a point in time. While the Council should not rule out including more of the High Street in the future, the Appraisal involved a comprehensive and independent review, and the extent of the designation as proposed is considered appropriate at this time.
 - In response to the omission of the Mercure Hotel site: The Mercure Hotel site was assessed, but its inclusion was not deemed appropriate at this time. The building is locally listed and its location adjacent to the SCA (as

proposed) would be a material consideration were an application for redevelopment received.

- In response to the suggestion that the powers available to the LPA to deal with poor maintenance of buildings should be included: these have not been included because they are considered adequately covered in the Listed Building and Conservation Areas Act 1990.
- In response to the point made about the removal of Hale Street: Hale Street has not been deleted from the SCA, only area of the former Frankie and Benny's/ Travelodge.
- In response to the deletion of the area adjacent to the bridge: The only part of the SCA being deleted at the Staines Bridge is that located within the adjoining Borough.
- In response to the Appraisal not mentioning the former Oast House: This site is outside of the SCA and therefore is not referred to in this document.
- In response to the concern at the state of 25/27 Clarence Street: This site is the subject of planning approval for the restoration and extension of these buildings, that is considered to enhance the SCA
- In response to the usability of the map: These were provided as pdf documents for the purpose of the consultation.

4.5. The following issues are considered in more detail below:

- Additional area A: Including Debenhams and neighbouring buildings (ref, Pegasus);
- Additional area B: Including the Memorial Gardens and car park into the conservation area (ref. SBC Asset Team and Pegasus).

The Pegasus objection on behalf of FHSL is provided in full at **Appendix 6**.

Additional area A: Debenhams

4.6. The draft Appraisal recommends this area for inclusion within the broader conservation area as part of the area of special architectural or historic interest which designation seeks to preserve.

4.7. References to it are found within the following paragraphs of the draft Appraisal:

4.8. Section 1.3: Key Elements (pg4)

“Important civic and commercial buildings including the Town Hall, Fire Engine Shed Staines West Station, War Memorial and Debenhams building etc. reflecting civic pride in the 19th and 20th centuries”.

4.9. Section 3.3; Character Area 3 – Market Square and Memorial Garden (pg29)

“Views along Clarence Street from west to east are terminated by the former Debenhams building. This building shares many of the features characteristic of the historic buildings in this Character Area in terms of scale, string rhythm, architectural language and detail and reinforces those characteristics. For these reasons, and due to the fact that it forms a landmark termination to those views, it contributes positively to the street scene and the character and appearance of the Conservation Area”.

4.10. Section 3.3; Character Area 3 – Market Square and Memorial Garden (Pg34)

“The former Debenhams building is clearly visible from Thames Street and the from the car park on Thames Street, adjacent to Memorial Gardens. The view from Thames Street shows the long and undulating side elevation of the Debenhams building which is not visible from Clarence Street. It shows another aspect of the visual architectural interest of this large building that influences so much of the Conservation Area”.

4.11. Section 4: Inclusions (pg35):

“The four storey, former Debenhams building was built in 1956 by George Coles, the renowned Art Deco architect. This landmark building is an important building of high visual quality which terminates the long views along Clarence St and from Thames Street. It is of good architectural quality and it reinforces the historic built character of character area 3”.

4.12. Pegasus’s objection is based on the analysis by Gail Stoten of Pegasus, which is summarised in the table in paragraph 2.6 above and provided in full at **Appendix 6**.

4.13. AHC has subsequently been instructed to consider the objections raised by Pegasus on behalf of FSHL and the response is attached at **Appendix 7**.

4.14. The key issues raised by the Pegasus objection are:

- 1) Whether, contrary to the claims in the draft Appraisal, Debenhams is not of special architectural or historic interest.
- 2) Whether the buildings to the north-east of Debenhams have any intrinsic special architectural or historic interest and if so whether they should be excluded from the conservation area.
- 3) Whether the shape of the conservation area means Debenhams and buildings to the north-east can only be part of a ‘street scene’ with one another.
- 4) The area does not have the characteristics of any of the examples given in paragraph 72 of the Historic England guidance. (Historic England Advice Note 1 (Second Edition) 2019: Conservation Area Appraisal, Designation and Management)
- 5) The proposed boundary extension runs through the middle of the street, contrary to Historic England guidance on designation.

The qualities of the building

4.15. The objection refers to the decision of Historic England on 15 December 2021, in response to requests to list the building, not to recommend that it be included on the statutory list and the reasons given for that decision.

4.16. It gave two reasons, copied below:

Degree of Architectural interest:

“The building is a late example of neo-Georgian retail architecture and despite the interest of its architect, is comparable in quality to a very large number of high street buildings of the inter- and post- war period across the

country; it does not possess the quality of design, decoration or craftsmanship to mark it of special architectural interest”.

Degree of Historic interest:

“Department stores are an important part of the country’s retail heritage, and they are increasingly under threat; however, only those with the greatest claims to interest will merit addition to the statutory list”.

The Historic England assessment is included at **Appendix 9**

- 4.17. Pegasus agrees with the assessment of significance above (§ 5.1) and goes on to say not every building by a celebrated architect will be of special interest. It acknowledges the building has ‘some landmark quality’ [§5.8] and that it is part of the setting of the current conservation area, but considers the qualities identified in the draft Appraisal as to its architectural quality are contradicted by the Historic England assessment [§5.9].
- 4.18. While to some extent these points reflect a legitimate, albeit different, judgment, there are some aspects of the Pegasus analysis which officers consider incorrect.
- 4.19. First, the draft Appraisal’s judgment as to architectural quality need not be inconsistent with that of Historic England and Officers do not believe it is. The building has sufficient quality to be a locally listed building and is so designated. Historic England’s assessment was given before the draft Appraisal and for a different purpose. Historic England was not consulted on the draft Appraisal, but its general comment on retail heritage (copied above) appears consistent with the view that a building which forms an important part of the retail heritage of Staines town centre belongs within the SCA.
- 4.20. The assertion by Pegasus that it is clear that ‘the building came nowhere close to being of listable quality’ is neither stated by Historic England, nor justified by Pegasus. The building simply did not meet Historic England’s criteria for a building of this period for inclusion within the Statutory List.
- 4.21. Whilst Debenhams is not of ‘special interest’ sufficient for inclusion on the national list as a result of its association with George Coles and has neither the striking overall design or exquisite detailing of his best work, the draft Appraisal considers it is important as a piece of Staines’ townscape, and as part of views both within and outside of the SCA.
- 4.22. The Council’s independent heritage advisor for the SCA review notes in response to the Pegasus objection that the SCA, as with almost all others nationwide, contains unlisted buildings that contribute to special character and appearance. Buildings are not required to be listed in order to be included within a conservation area and therefore using Historic England’s reasons for including the building within the statutory list is inappropriate when considering its inclusion within the SCA.
- 4.23. In addition, Debenhams has been assessed by AHC in the draft Appraisal as sharing many of the features characteristic of the historic buildings in Character Area 3 in terms of scale, string rhythm, architectural language and detail and reinforces those characteristics.
- 4.24. Debenhams’ contribution to the SCA was assessed by AHC, using Historic England’s impartial assessment tool, included Advice Note 1, which

considers not only elevations, but their integrity as historic structures and their impact in three dimensions.

- 4.25. For the avoidance of doubt, the Council have given careful thought to the implications of the proposed extension of the SCA and are content that the area of extension, including Debenhams, warrants inclusion in the SCA. Consideration has been given to HE's findings about the intrinsic merits of the building in their response to the national listing application.
- 4.26. Whilst it was not statutorily listed by Historic England, Debenhams was included in the Local List of Buildings and Structures of Architectural or Historic Interest ("the Local List"), at the Planning Committee of 30 March 2022. The building's owner, FHSL, was consulted on the proposal and objected, noting that the building was found not to be worthy of inclusion in the Local List of 2004 and 2016. Like the views of HE, this was a matter raised before Mr Justice Lane at the Judicial Review and he ruled that it should have been taken into account when the draft Appraisal was approved. Accordingly, the Committee should take that failure to include the building on the Local List in 2004 and 2016 into account. Officers give this particular point very little weight since the building was lawfully included on the Local List as of March 2022.

The influence of the building on the SCA

- 4.27. The Pegasus objection considers the influence of Debenhams on "so much of the conservation area" to be simply incorrect [§5.10].
- 4.28. This is purely a question of judgment which Members should consider from their own knowledge of the SCA, and whether they agree with the Pegasus objection. It is not necessary for a building to have a particularly extensive influence on the conservation area in order to be included within it. Officers agree with AHC that the phrase does adequately describe the influence of the building on the SCA, but there is room for a difference of view here.

The qualities of the buildings to the NE of Debenhams

- 4.29. Historic England state that conservation areas exist to manage and protect the special architectural and historic interest of a place. These buildings need not themselves display 'intrinsic special architectural or historic interest' to be included.
- 4.30. This issue is a boundary issue, in that it is about precisely where the Council should draw the boundary to the SCA. It is open to the Council to choose what is a sensible boundary to the SCA bearing in mind the advice in Guidance Note 1 at §75 which states:

'Before finalising the boundary it is worth considering whether the immediate setting also requires the additional controls that result from designation, or whether the setting is itself sufficiently protected by national policy or the policies in the Local Plan'.

- 4.31. The draft Appraisal does not suggest these buildings have particular qualities themselves, but they contribute to the views into the Conservation Area from the High Street illustrating the tight urban grain that the High Street elevation of Debenhams has sought to reflect in creating a landmark building at this junction.

- 4.32. Officers consider that these buildings, together with Debenhams are properly included as part of the area of architectural and historic significance it is desirable to preserve and enhance. A different boundary could be chosen, but officers consider that AHC's choice is appropriate bearing in mind the advice in Advice Note 1 and the relationship of those buildings to Debenhams referred to above.

The shape of the Conservation Area

- 4.33. The shape of the proposed extension to the SCA to include Debenhams reflects the elements that are considered to contribute to its character and appearance and excludes those elements that are unlikely to contribute positively in the short/ medium term.
- 4.34. Officers are satisfied that the draft Appraisal is right to draw the boundary where it does, and that it makes a positive contribution to views within the conservation area and to its character and appearance.

The examples in paragraph 72 of Advice Note 1

- 4.35. Paragraph 72 of the Historic England's Guidance (Historic England Advice Note 1 (Second Edition) 2019: Conservation Area Appraisal, Designation and Management) does not represent criteria that the Council must follow. In referring to the suitability for designation it states: 'The different types of special architectural and historic interest which have led to designation include;', and then provides examples. This is not provided by Historic England as a prescriptive list. However, the Local Planning Authority ("LPA") considers that the extensions proposed represent a valuable component of the wider historic area.

The boundary down the middle of the High Street

- 4.36. The Historic England Guidance (Historic England Advice Note 1 (Second Edition) 2019: Conservation Area Appraisal, Designation and Management) states at paragraph 68:

'... in almost all situations the conservation area boundary runs around rather than through a space or plot. It will generally be defined by physical features and avoid for example running along the middle of a street, though including the boundary wall of a property which is otherwise not included can in itself cause problems when applying conservation area policies in development management decision'.

- 4.37. It is clear that these are pragmatic considerations designed to avoid difficulties when applying the designation in practice: considering the use of powers and making other decisions affecting the SCA.
- 4.38. Revising the SCA boundary along the middle of the High Street is not itself contrary to HE guidance, although the Advice Note does highlight that potential problems may result. The LPA is satisfied that this small section of the boundary is appropriately located and that it won't cause insurmountable difficulties when exercising powers and applying policies.

Additional Area B: the Memorial Gardens and car park

- 4.39. The draft Appraisal recommends this area for inclusion within the broader Conservation Area as part of the area of special architectural or historic interest which designation seeks to preserve.

- 4.40. References to it are found within the following paragraphs of the draft Appraisal:
- 4.41. Section 2.2 Origins and Historical development (pg6)
“All the bridges prior to the construction of the present structure in 1832 were located between what is now the Memorial Gardens and The Hythe on the opposite riverbank and were accessed via the High Street which stretched across the site of the present Town Hall”.
- 4.42. Section 2.2 Origins and Historical development (Pg8)
“Between 1871 and 1880 the Town Hall was constructed. This involved the demolition of the existing market house and a number of buildings to the east of the current Town Hall which created the Market Square and made space for the Memorial Gardens which were laid out in 1897”.
- 4.43. Section 2.5 Trees and Open Space (pg14)
“There are five significant open areas within the Conservation Area; the churchyard at St Mary’s; the Thameside Walk along Island Close, the area at the junction of the rivers Colne and Wraysbury to the east of the lower part of Church Street; Market Square and the Memorial Garden”.
- 4.44. Section 2.5 Trees and Open Space (pg14)
“This key civic space [the Market Square] creates an intended public arena and place to gather in front of the Town Hall. It also provides a transition to the Memorial gardens by virtue of the fact that the spaces to either side of the south of the Town Hall are not enclosed by buildings beyond them but instead provide glimpses out to open space beyond”.
- 4.45. Section 2.5 Trees and Open Space (pg14)
“The Memorial Gardens was the original home of the War Memorial. This is an attractive, open, riverside park which allows for an appreciation of the river and a different perspective of the town that is not obtainable from the urban core. Formally planting provides structural shape to the park whilst informal tree areas along the bank of the Thames adds greenery to this urban area”.
- 4.46. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg27)
“The Thames is not readily legible from the town centre but is fully appreciable, once within the Memorial Gardens”.
- 4.47. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg30)
“The river and Memorial Gardens are not readily appreciable from Clarence Street and are largely concealed from view by buildings”.
- 4.48. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg31)
“As in Clarence Street, the river itself is again not clearly appreciable from within Market Square, although the entrance to the Memorial Gardens successfully creates legibility and permeability, directing the eye, and pedestrians, into the gardens and towards the river. Memorial Gardens is very important to the setting of the Town Hall and Fire Engine Shed”.
- 4.49. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg31)

- “The War Memorial was moved to its present location from the Memorial Gardens in 2002 and is almost tucked away behind Cygnet House but its status and presence is fully appreciable once within the Square”.*
- 4.50. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg32)
“The Memorial Gardens have been deliberately laid out so that it is the focus of, and terminates views into, Market Square on the approach into the town from the Gardens”.
- 4.51. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg32)
“The river is most appreciable from within the Memorial Gardens where there are attractive views across it to The Hythe. Development on the southern bank impacts directly on the character of the SCA due to its visibility from the northern bank”.
- 4.52. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg32)
“The Memorial Gardens is an attractive open space and one of the few spaces within the Conservation Area where the river is clearly evident. The width, power and importance of the river are celebrated, within the Gardens. The Gardens have significance for that reason alone but also for its social and evidential value as it was created as a memorial to the men of the town who gave their lives in the first World War”.
- 4.53. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg33)
“The car park to the east of the Memorial Gardens is an integral part of the landscaping and open space that allows wide, uninterrupted views of the river to be obtained and appreciated”.
- 4.54. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg33)
“The Memorial Gardens make a fitting setting for the public art which it contains”.
- 4.55. Section 3.3 Character Area 3 Market Square and Memorial Gardens (pg34)
“The former Debenhams building is clearly visible from Thames Street and the from the car park on Thames Street, adjacent to Memorial Gardens”.
- 4.56. Section 4 Inclusions (pg35)
“The Memorial Gardens and adjacent car park have been included in its entirety because of the importance that this high quality open space has within the character area and also as one of the few public, open spaces from where a full appreciation of the river Thames and its relationship to Staines town can be obtained”.
- 4.57. Pegasus’s objection is based on the analysis by Gail Stoten of Pegasus summarised in in the table attached to paragraph 2.6 above.
- 4.58. The key issues raised by the Pegasus objection are:
- 1) Whether the Memorial Gardens hold the requisite special interest that would justify inclusion in the SCA.
 - 2) Whether it is unreasonable to include the car park and road junction and whether doing so might devalue the area.
- 4.59. The key issues raised by the Council’s Asset Team are similar and do not require separate consideration.

The Memorial Gardens' intrinsic interest

- 4.60. The Memorial Gardens is a relatively new, or modern, introduction and it is agreed that it has limited historic interest in its own right. However, this is not the sole basis upon which areas are designated. The Memorial Gardens is the place where the war memorial used to be located and has a particular relationship with the River Thames and the town centre, all of which is significant in the history of Staines-upon-Thames and part of its special interest, which it is desirable to preserve and enhance. Officers agree with the draft Appraisal and recommend that the SCA is extended to include it.

The car park

- 4.61. The inclusion of car parks and road junctions is not uncommon within conservation areas, and these are considered to be relevant to the wider conservation area. The area is considered to be properly identified as a component part of the wider SCA.
- 4.62. The view of Debenhams from the car park area, and Thames Street, is a factual statement and is not intended itself to 'justify' their inclusion.
- 4.63. In response to the Pegasus objection, AHC considers that it has not taken account of the spatial relationships and views that contribute to the way in which the significance of the space is experienced or appreciated.
- 4.64. The Memorial Gardens incorporates part of the Thames Path, alongside the River Thames, which lies adjacent to the Riverside car park. The boundary to the car park is not defined from the wider open space adjacent to the River Thames, beyond the landscape buffer.
- 4.65. Whilst it is hardstanding, it represents part of the open space adjacent to the River Thames and the town centre laid out for social relevance to Staines.
- 4.66. Although it would be possible to define a boundary that would separate the car park from the area, officers are satisfied that it contributes to the overall character and appearance of the SCA and is properly included as part of the area the Council wishes to preserve and enhance.

5. Legal Implications

- 5.1. On 28 March 2023, Mr Justice Lane handed down judgment in the case brought by the owners of Debenhams: *Future High Street Living (Staines) Ltd v Spelthorne Borough Council [2023] EWHC 688 (Admin)* (**see Appendix 8**). FHSL's case was that the June 2022 decision taken under delegated powers to approve and adopt the SCA Appraisal as amended ("the Appraisal") with immediate effect was unlawful.
- 5.2. FHSL succeeded and the June decision was quashed insofar as the Appraisal proposed extensions to the SCA to include Debenhams and the Memorial Gardens. The principal reason for the quashing order was the Council's failure to consider FHSL's objection and the Judge also quashed the retrospective consideration of FHSL's objection in August 2022.
- 5.3. The judgment and Order do not direct the Council how to give effect to the quashing of these decisions. The status of the draft Appraisal now – insofar as it affects those two areas of proposed extension – is as it was when published for consultation in May 2022.

- 5.4. The task for Members and the subject of this report is to assess the merit of the FHSL objection with an open mind, entirely unaffected by the analysis in the June report, and the August report which should be ignored. It will be noted that neither the June nor the August reports are attached in the Appendix.
- 5.5. A conservation area is an *“area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance”*. [section 69(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.]
- 5.6. The Council, as LPA, is subject to the statutory duty: *“from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as Conservation Areas”* [section 69(2)].
- 5.7. The Judge held that Ground 1 failed, in which FHSL claimed the Council extended the SCA for the unlawful purpose of preventing the demolition of the building. In addition, the consultation process was not criticised. Therefore, the judicial review leaves things where they were at midnight on June 24 as far as the now-quashed decisions are concerned: a six-week consultation (not criticised) had ended and the Council needs to consider whether the Appraisal should be adopted in the form in which it was published for consultation, or amended in the light of those responses to consultation.
- 5.8. In that context, the judicial review leaves entirely intact:
- (1) The decision of the Planning committee to agree the report dated 30 March 2022 and include Debenhams in the Local List. Indeed, the Judgment barely mentions this (although it records the fact at §15).
 - (2) The decision of the E&S committee on 10 May 2022 to agree the updated Draft Appraisal for consultation, to undertake the 6-week consultation, and to delegate authority to approve the final document taking account of comments as required arising from the consultation.
 - (3) The approval of the Appraisal in June 2022 insofar as it addresses matters other than the two decisions over the extent of the SCA.
- 5.9. **The key question when including additional land in the SCA is whether that land is properly judged to be part of the area of architectural or historic significance it is desired to preserve and enhance.** Pragmatic decisions about conservation area extent are often made on the boundary, and all sources of guidance and planning policy recognise that not all areas of a conservation area are of a quality sufficient in and of themselves to justify designation. However, as the NPPF warns at paragraph 191:
- ‘When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest’.*
- 5.10. In conclusion, when considering the Appraisal’s additional areas for inclusion in the SCA and whether to adopt it as is or amend it in some way, it is worth looking closely at each of the areas of objection and considering afresh

whether or not the boundary has been put in the correct place – a place which reflects the key judgment outlined above. These areas are:

- (1) Debenhams;
 - (2) The High Street and whether the boundary should be along one side or the other – or down the middle as proposed;
 - (3) The buildings to the NE of Debenhams and whether their contribution to setting justifies including them in the SCA. If not, does something else?
 - (4) The Memorial Gardens;
 - (5) The car park adjacent to the Memorial Gardens.
- 5.11. The Council needs to approach the task with an open mind whether or not the conservation area should be extended in the manner proposed in the draft Appraisal.
- 5.12. FHSL submitted its own Counsel's opinion dated 12 April 2023 to officers, in respect of the proposed extension to the SCA. The key issues FHSL's counsel raised related to the ability of the Council to address the questions before it with an open mind, the adequacy of the Freedom of Information (FOI) disclosure (relating to a request for information made in 2022) and the difference between Historic England's decision not to designate Debenhams as a Listed Building and the Council's decision to include it within the SCA.
- 5.13. The Local Planning Authority (LPA) has taken Counsel's advice and is satisfied that the Council can and should consider this report and reach a decision on the merits of the SCA extensions with an open mind. It is officers' view that the FOI issues are resolved and the decision, and reasoning, of Historic England when deciding not to include Debenhams on the statutory list has been adequately addressed in the report.
- 5.14. As for the FOI issues, the complaint by FHSL to the Information Commissioner's Office (ICO) in respect of the disclosure of information relating to the addition of Debenhams to the Local List and the decision to review the Conservation Area has been resolved. The ICO confirmed in May 2023 it was satisfied that on the balance of probabilities, the Council had disclosed all the recorded information it held at the time of the request and that this was done appropriately. The ICO did, however, identify that the Council breached regulation 5(2) by failing to disclose information within 20 working days but did not recommend any action was required by the Council in this regard as it had since disclosed additional information to ensure compliance with the legislation.
- 5.15. In accordance with the wider aims of the Council to preserve or enhance the special character and appearance of the SCA as required by the Planning (Listed Buildings and Conservation Areas) Act 1990, the Council sought to present the proposal to the Environment and Sustainability Committee scheduled for Thursday, 15 June 2023.
- 5.16. On 8 June 2023 the Council received two questions for the Environment and Sustainability Committee from FHSL's planning representative, together with the 12 April 23 legal opinion from Jonathan Easton KC, in respect of the reconsideration of the Staines Conservation Area Appraisal (SCAA). This opinion is attached at **Appendix 11**.

- 5.17. On 9 June the Council received a Pre-Action Protocol letter from Eversheds Sutherland (International) LLP (“Eversheds”) on behalf of FHSL. It challenged the decisions of the Council to return consideration of the SCAA to the E&S Committee and any resolution it might make to extend the Staines Conservation Area, threatening an injunction to prevent the former and judicial review to attempt to quash the latter.
- 5.18. The LPA sought advice from its own Counsel and responded to Eversheds stating that it did not consider that it had acted with undue haste, or with any ulterior motive, or unfairly. The two grounds put forward by Eversheds, namely procedural unfairness and a misleading committee report, were considered to be without substance.
- 5.19. Nevertheless, on 12 June 2023 Eversheds Sutherland (International) LLP served the Council with an application for Judicial Review and an injunction.
- 5.20. However, this was premature, as the Council had not intended to revisit the SCA decision before the decision of the planning appeal by Future High Street Living (Staines) Ltd in connection with the proposed redevelopment of Debenhams was known, which had been scheduled for release by the Planning Inspectorate on 2 June. Rather than leave it any later, the Environment and Sustainability Committee scheduled for Thursday, 15 June 2023, was cancelled following consultation with the Chair and the Chief Executive.
- 5.21. On 13 June 2023, Eversheds had requested that the Council refrain from making any further decisions in relation to the Staines Conservation Area boundary until such time as the Council had:
- a) Provided full and proper disclosure pursuant to our client’s request made under the Freedom of Information Act (“FoIA”) and Environmental Impact regulations (“EIR”) on 9 June 2023, and all previous requests for disclosure made by our client in relation to this matter, whether or not under the FoIA and/or EIR;
 - b) Allow our client an express period of time to make further representations on the proposal to extend the Staines Conservation Area boundary, such period being no less than 21 days from the date of notification of the Council’s intention to make further decision;
 - c) Provide all documentation disclosed to our client referred to at paragraph at a) above, and otherwise, to Members for their consideration; and
 - d) Provide all further representations referred to at paragraph b) above to Members for their consideration.
- 5.22. Eversheds were subsequently advised on 14 June 2023 that:
- a) The Council did not consider that the information requested through FoIA or EIR was relevant to the Council’s decision to undertake its statutory duty to review its Conservation Area boundaries and would not be prepared to delay for this reason.
 - b) The consultation period had closed and the report of Gail Stoten of Pegasus would be included in the Agenda papers of the Environmental and Sustainability Committee when it met to consider the matter.

- c) Members would have all the information required to make the SCA boundary decision and considered the provision of the FoIA/EIR information to be unnecessary.
- 5.23. Eversheds later confirmed that they had consequently withdrawn both applications.
- 5.24. For completeness, we record that on 13 July 2023 the planning appeal pursued by FHSL was dismissed. Therefore, as things stand, the planning issues relating to Debenhams have been dealt with decisively despite the fact that, at the time of the decision, it was not within the SCA.
- 5.25. We have just learned (email 17 August 2023) that FHSL intends to challenge the Inspector's decision in the courts and has issued a claim under s288 of the Town and Country Planning Act 1990. In that context we have considered whether this decision to approve (or not) the SCA Appraisal should be deferred.
- 5.26. However, the decision we recommend the Committee make concerns the qualities of the SCA and the suitability of the two extensions proposed as set out and considered in this report – not the merits of the development proposal, and not the reasoning of the Inspector.
- 5.27. Also, there is a public interest in achieving certainty over the question of the extent of the conservation area. Meanwhile, the fact FHSL wishes to develop the site of Debenhams, and any views held as to the merits of its proposals, are irrelevant to this decision which depends only on whether, in the Committee's judgment, the area of one or both proposed extensions should be included within the SCA (see in particular paragraphs 5.5-5.6 and 5.9-5.11 above). We acknowledge that the Inspector made certain findings about Debenhams, the SCA and its setting, within the appeal decision. It is important Members give no weight to those findings or indeed any aspect of the decision of the Inspector since the decision is now subject to legal challenge and because it is not of direct relevance, given the Inspector's decision was taken on the basis that the SCA had not been extended and did not include Debenhams.

6. Financial Implications

- 6.1. These are provided for contextual information but are not relevant to the decision to adopt the Appraisal and extend the SCA.
- 6.2. The extension of a conservation area boundary is likely to result in additional resource pressures for planning officers and the likely need to obtain, on occasion as, additional independent expert heritage advice due to the additional controls. There is no additional planning fee income received by the LPA as a result of the additional controls. This will matter be monitored to establish whether this additional work can be paid for from within existing budgets.

7. Other implications

- 7.1. These are provided for contextual information but are not relevant to the decision to adopt the Appraisal and extend the SCA.

- 7.2. Planning decisions concerning land within a conservation area engage section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
- 7.3. The Appraisal will become a material consideration in decision making.
- 7.4. The SCA designation introduces some additional controls over the way owners can alter or develop their properties. These include:
- control over the demolition of unlisted buildings.
 - control over works to trees.
 - limitations on the types of advertisements which can be displayed with deemed consent.
 - restriction on the types of development which can be carried out without the need for planning permission (permitted development rights).
 - support for the use of article 4 directions to remove permitted development rights where avoidable damage is occurring.
 - clarification of archaeological interest, thereby assisting its protection.

8. Equality and Diversity

- 8.1. This decision does not have any direct equality and diversity impacts.

9. Sustainability/Climate Change Implications

- 9.1. The protection and enhancement of existing heritage buildings and open areas has a neutral impact on sustainability/climate change issues.

10. Recommendation

- 10.1. It is recommended that:
1. The revisions to the boundary of the SCA be agreed; and
 2. The Appraisal document be agreed.

Contact

For further details please contact:

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Appendices:

- Appendix 1 – Staines Conservation Area (Map)
- Appendix 2 – Staines Conservation Area Appraisal 2022 (as amended)
- Appendix 3 – Staines Conservation Area Character Areas (Map)
- Appendix 4 – Staines Conservation Area boundary changes (Map)
- Appendix 5 – Staines Conservation Area Asset Sheets
- Appendix 6 – Pegasus representation on behalf of FHSL
- Appendix 7 – Response to the Pegasus representation by AHC
- Appendix 8 – Judgment and Order dated 28 March 202 of Mr Justice Lane in *FHSL (Staines) Ltd v Spelthorne Borough Council* [2023] 688 (Admin)

Appendix 9 – Historic England’s assessment of Debenhams’ suitability for listing, 15
December 2021

Appendix 10 – E&S Committee report of 10 May 2022

Appendix 11 – Opinion of Jonathan Easton KC (April 2023)