
TANDRIDGE DISTRICT COUNCIL

**TOWN & COUNTRY PLANNING ACT 1990
TOWN AND COUNTRY PLANNING (INQUIRIES
PROCEDURE) (ENGLAND) RULES 2000**

SECTION 78 APPEAL

PROOF OF EVIDENCE

**BY CHRISTOPHER REYNOLDS, BA, MA, MSc, IHBC
11th July 2023**

Appeal by: Woolbro Group and Morris Investment

Appeal Site: Land at The Old Cottage, Station Road, Lingfield, RH7 6PG.

Appeal Against: Non-determination of planning permission for:

“Outline application with all matters reserved except for access and layout for a residential development of 99 dwellings (40% affordable) with associated access, formal open space, landscaping, car & cycle parking and refuse. (The application site is located within Lingfield Conservation Area and affects the setting of Listed Buildings and Structures).”

LPA REF: TA/2022/685

PINS REF: APP/M3645/W/23/3319149

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1 INTRODUCTION

- 1.1 My name is Christopher Reynolds. I am a Senior Historic Buildings Officer to Surrey County Council and professional advisor on the historic built environment to Tandridge District Council.
- 1.2 I hold an undergraduate Bachelor of Arts degree in History from the University of York, a postgraduate Master of Arts degree in Medieval History from the University of York and a Master of Science degree in Historic Building Conservation from Kingston University. I am a fully accredited member of the Institute of Historic Building Conservation.
- 1.3 I started my career in building conservation in 2014 when working for War Memorials Trust, a national charity which works for the protection and conservation of war memorials across the UK. My role at the Trust included providing technical advice on works to war memorials, commenting on planning applications, preparing guidance and assessing grant applications.
- 1.4 In 2018, I started work at Surrey County Council as a Historic Buildings Officer. My current duties include responding to planning consultations from three different planning authorities, providing advice to the Surrey County Council property team, informing the wider historic built environment planning strategy of the county and advising the Surrey Historic Buildings Trust.
- 1.5 In a voluntary capacity I sit on the committee for the South-East Branch of the Institute of Historic Building Conservation (IHBC) where I am responsible for organising conferences. I am a member and attend regular building recording visits of the Wealden Building Study Group which aims to widen understanding of architecture in the Weald through assessing the construction of vernacular houses. I also occasionally lecture on the Kingston University Historic Building Conservation course, including modules on the designation, assessment and management of conservation areas.
- 1.6 I have been asked to give evidence to the inquiry on matters relating to the historic built environment. I am familiar with the appeal site and surrounding area having visited Lingfield Conservation Area regularly since starting work for Surrey County Council in 2018. I made dedicated site visits to the appeal site in July and August 2022 and June and July 2023.

1.7 I am familiar with the relevant planning history of the site, the planning policies in the National Planning Policy Framework (NPPF), local development plan and the Heritage Impact Assessment submitted by the appellant. The evidence which I have prepared and provided for this appeal is true and has been prepared in accordance with the guidance of my professional organisation. I confirm that the opinions expressed are my true and professional opinions.

2 SCOPE OF EVIDENCE

2.1 My proof of evidence considers the impact of the proposed development on designated and undesignated heritage assets. My assessment has been carried out in line with national legislation, policy and guidance and also with regard to the local development plan.

2.2 As part of my evidence, I outline the legislation, policy and guidance that is relevant to the determination of the appeal. This is set out in section 3 of my proof of evidence.

2.3 Within section 4 of my proof of evidence, I identify the designated and undesignated heritage assets affected by this scheme, outline their significance and explain the contribution made by their setting. This includes the relevant conservation area, listed buildings and undesignated heritage assets. This assessment has been carried out in line with Managing Significance in Decision Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning Note 2 (Appendix 2) as well as The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) (Appendix 3).

2.4 In section 5 of my evidence, I outline the scheme and consider its impact on the designated and undesignated heritage assets identified within section 4. This assessment has been carried out in line with the aforementioned guidance. As part of this assessment, I give due consideration to how the impact on the setting of each heritage asset affects its significance.

2.5 In concluding my evidence, I consider the impact of the scheme on the significance of the relevant heritage assets and whether this amounts to harm. This is taken into account in the overall assessment of the scheme in the Proof of Evidence provided by Clifford Thurlow of Tandridge District Council.

3 RELEVANT LEGISLATION, GUIDANCE AND POLICIES

3.1 The following legislation, guidance and policies are relevant to the heritage issues raised in this appeal.

3.2 PLANNING (LISTED BUILDINGS AND CONSERVATION AREAS) ACT 1990 (AS AMENDED) – ‘THE LISTED BUILDING ACT’

The applicable statutory provisions are:

3.2.1 Section 66 General duty as respects listed buildings in exercise of planning functions.

Section 66(1) provides: ‘In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.’

3.2.2 Section 72 General duty as respects conservation areas in exercise of planning functions.

Section 72(1) provides: ‘In the exercise, with respect to any buildings or other land in a conservation area, of any functions under or by virtue of any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.’

3.2.3 Case law (Appendix 5) relating to proposals which may have an impact on the setting of listed buildings has established that under section 70(3) of the Town and Country Planning Act 1990, the general power to grant planning permission under section 70(1) is expressly subject to sections 66, 67, 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990.¹ Sections 67 and 73 refer to publicity requirements for applications for planning permission in cases where the local planning authority think that the development of land would affect the setting of a listed building or character or appearance of a conservation area respectively.

3.2.4 A commonly cited case relating to the setting of listed buildings is *East Northamptonshire v. Secretary of State for Communities and Local Government* (Appendix 6) (known as the ‘Barnwell Manor’ case).² Here the Court of Appeal held

¹ *Mordue v Secretary of State for Communities and Local Government and others* [2015] EWCA Civ 1243.

² *East Northamptonshire v. Secretary of State for Communities and Local Government* [2015] 1 W.L.R. 45

that section 70(1) of the Town and Country Planning Act 1990 was expressly subject to section 66 of the Listed Building Act and that decision-makers should give 'considerable importance and weight' to the desirability of preserving the setting of a listed building.

3.3 TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

3.3.1 As stated above, under section 70(3) of the Town and Country Planning Act 1990, the general power to grant planning permission under section 70(1) is expressly subject to sections 66, 67, 72 and 73 of the Planning (Listed Buildings and Conservation Areas) Act 1990.

3.4 NATIONAL PLANNING POLICY FRAMEWORK 2021 AND PLANNING PRACTICE GUIDANCE

3.4.1 Section 16 – 'Conserving and enhancing the historic environment', paragraphs 189, 197, 199, 200, 202, 203 and 206 are particularly relevant to this appeal.

3.4.2 Paragraph 189 states that 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.

3.4.3 Paragraph 197 states that in determining applications, local authorities should take account (amongst other things) of the desirability of sustaining and enhancing the significance of heritage assets and the desirability of new development making a positive contribution to local character and distinctiveness.

3.4.4 Paragraphs 199-203 relate to decision taking in relation to proposals that would cause harm to designated heritage assets. Paragraph 199 states that in considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Paragraph 200 states that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Where the harm caused would be less than substantial, the harm should be weighed against the public benefits associated with the proposal (Paragraph 202).

- 3.4.5 A relevant case for assessing the impact on a designated heritage asset is R (James Hall & Co Ltd) v Bradford MDC (Appendix 7).³ This sets out that there are only three categories of impact on a designated heritage asset set out under the NPPF. These are substantial harm, less than substantial harm or no harm.
- 3.4.6 Paragraph 203 of the NPPF states that in assessing the effect of an application on the significance of non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.
- 3.4.7 In considering the setting of heritage assets and development within conservation areas, paragraph 206 states that local planning authorities should look for opportunities for new development to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.
- 3.4.8 The NPPF glossary describes the setting of a heritage asset as “The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.
- 3.4.9 National Planning Practice Guidance advises on enhancing and conserving the historic environment. Paragraph 008 [ID 18a-008-20190723] provides guidance on proposals to avoid or minimise harm to the significance of a heritage asset. In particular, it advises understanding the significance of a heritage asset and its setting at an early stage in the design process.
- 3.4.10 Paragraph 013 [ID: 18a-013-20190723] provides guidance on the setting of heritage assets. It notes that the extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development. While these are important, the guidance notes other environmental factors should also be considered including noise, dust, smell, vibration and by our understanding of the historic relationship between places. The paragraph notes that the contribution that setting makes to the significance of the heritage asset does not depend on there being public rights of way or an ability to otherwise access or experience the setting.

³ R (James Hall & Co Ltd) v Bradford MDC [2019] EWHC 2899 (Admin).

3.4.11 Paragraph 018 [ID: 18a-018-20190723] states that where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial or substantial harm. Within each category of harm, the extent of harm may vary and should be clearly articulated. The paragraph sets out that substantial harm is a high test and it is the degree of harm to the asset's significance which should be assessed rather than the scale of the development.

3.4.12 Paragraph 019 [ID: 18a-019-20190723] discusses the assessment of harm to conservation areas. This identifies that if a building is important or integral to the character or appearance of the conservation area, then its demolition is more likely to result in substantial harm. The guidance notes that the same principle applies "in respect of other elements which make a positive contribution to the significance of the conservation area, such as open spaces."

3.4.13 Paragraph 020 [ID: 18a-020-20190723] describes public benefits as anything that delivers economic, social or environmental objectives as described by the NPPF. *Bramshill v SSHCLG* [2021] (Appendix 8) concluded there was no requirement to carry out a net or internal heritage balance prior to assessing the impact of the scheme against the proposed public benefits.⁴

3.5 TANDRIDGE DISTRICT COUNCIL LOCAL DEVELOPMENT FRAMEWORK

3.5.1 CORE STRATEGY (ADOPTED 2008)

CSP18 – Character and Design

The Council will require that new development, within town centres, built up areas, the villages and the countryside is of a high standard of design that must reflect and respect the character, setting and local context, including those features that contribute to local distinctiveness. Development must also have regard to the topography of the site, important trees or groups of trees and other important features that need to be retained.

Development must not significantly harm the amenities of the occupiers of neighbouring properties by reason of overlooking, overshadowing, visual intrusion, noise, traffic and any other adverse effect.

⁴ *Bramshill v SSHCLG* [2021] EWCA Civ 320.

The Council will have regard to “Surrey Design” and Village Design Statements in determining planning applications. The Council will apply the principle of “good enough to approve rather than bad enough to refuse”.

The Council will protect the wooded hillsides in the built-up areas by ensuring that new development does not adversely affect the character of these areas and that there is no overall loss of tree cover.

Within built up areas and villages existing green spaces that contribute to biodiversity, the quality of life, the character or amenities of the area or those that separate built up areas will be protected and where possible enhanced for the benefit of biodiversity and/or recreation.

3.5.2 LOCAL PLAN PART 2: DETAILED POLICIES 2014-2029 (ADOPTED 2014)

DP20: Heritage Assets

A. There will be a presumption in favour of development proposals which seek to protect, preserve and wherever possible enhance the historic interest, cultural value, architectural character, visual appearance and setting of the District’s heritage assets and historic environment. Accordingly:

1. Only where the public benefits of a proposal significantly outweigh the harm to, or loss of a designated heritage asset or its setting, will exceptional planning consent be granted. These benefits will be proportional to the significance of the asset and to the level of harm or loss proposed.
2. Where a proposal is likely to result in substantial harm to, or loss of, a designated heritage asset of the highest significance (i.e. scheduled monuments, grade I and grade II* listed buildings, and grade I and grade II* registered parks and gardens), granting of permission or consent will be wholly exceptional.

B. In all cases the applicant will be expected to demonstrate that:

1. All reasonable efforts have been made to either sustain the existing use, find viable alternative uses, or mitigate the extent of the harm to the asset; and
2. Where relevant the works are the minimum necessary to meet other legislative requirements.

C. With the granting of permission or consent the Council will require that:

1. The works are sympathetic to the heritage asset and/or its setting in terms of quality of design and layout (scale, form, bulk, height, character and features) and materials (colour and texture); and
2. In the case of a conservation area, the development conserves or enhances the character of the area and its setting, including protecting any existing views into or out of the area where appropriate.

3.6 MANAGING SIGNIFICANCE IN DECISION TAKING IN THE HISTORIC ENVIRONMENT 2015 - Historic Environment Good Practice Advice in Planning Note 2 (GPA2) - <https://historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/gpa2/> (Appendix 2)

This Historic England document provides a staged approach to decision-making where there may be an impact on the historic environment. This begins with ensuring an understanding of the significance of affected assets and how that understanding should be used to avoid or minimise impacts of the proposal. It then considers ways in which opportunities can be taken to enhance or better reveal significance and finally to justify or offset remaining harmful impacts. In considering design and local distinctiveness, it has emphasis on the following considerations:

- The significance of nearby assets and the contribution of their setting;
- The character and distinctiveness of the area in its widest sense, including the general character of local buildings, spaces, public realm and the landscape;
- The grain of the surroundings, which includes, for example the street pattern and plot size;
- How the size and density of the proposal relates to that of the existing and neighbouring uses;
- The diversity or uniformity in style, construction, materials, colour, detailing, decoration and period of existing buildings and spaces;
- The topography;
- Views into, through and from the site and its surroundings.

3.7 THE SETTING OF HERITAGE ASSETS - Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) (GPA 3) - <https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/heag180-gpa3-setting-heritage-assets/> (Appendix 3)

This Historic England document sets out guidance on managing change within the settings of heritage assets, including historic buildings, sites, areas, and landscapes. It has particular emphasis on:

- Defining and understanding the setting of a heritage asset including, but not limited to, the role of views;
- The contribution that setting plays in the significance of a heritage asset, including:
 - o The fact that an appreciation of a setting does not depend on public rights or the ability to access the heritage asset itself;
 - o The importance of designed views, and the contribution that natural landscape features beyond the formal 'core' elements can play;
 - o A step-by-step methodology for assessing the impact of development on the setting of a heritage asset.

3.8 CONSERVATION PRINCIPLES, POLICIES AND GUIDANCE (2008, ENGLISH HERITAGE) (now Historic England) - <https://historicengland.org.uk/images-books/publications/conservation-principles-sustainable-management-historic-environment/conservationprinciplespoliciesandguidanceapril08web/> (Appendix 4)

The 'values-based' approach for identifying and describing significance is outlined within this national guidance and has been used in this evidence to illustrate the significance of heritage assets.

4 SIGNIFICANCE OF AFFECTED HERITAGE ASSETS

4.1 Significance is defined by Historic England in their Conservation Principles Policies and Guidance (2008) (Appendix 4) as a collective term for the sum of all the heritage values attached to a place:

- Evidential value is the potential of a place to yield evidence about past human activity and is dependent upon the inherited fabric of the place.
- Historical value refers to the ways in which past people, events and aspects of life can be connected through a place to the present. These values tend to be illustrative or associative.
- Aesthetic value relates to the ways in which people draw sensory and intellectual stimulation from a place.
- Communal value describes the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory.

4.2 LINGFIELD CONSERVATION AREA

4.2.1 Lingfield Conservation Area covers three separate historic settlements which were gradually linked together through residential and commercial development following the arrival of the railway in 1884. These areas consist of Gun Pond, a small development of largely 16th to 17th century farmhouses and cottages set around the crossroads; Church Town, a 15th century settlement based around Lingfield Church and College; and New Place, the site of a Jacobean country house rebuilt in 1617. Despite significant development taking place in Lingfield in the late 19th century, these separate areas have retained their character which is evident from the different building types, materials, plot pattern and surroundings which reveal the significance of each area. The application site sits between the Church Town and New Place areas.

4.2.2 Church Town formed as a result of the founding of a college for secular chaplains by Reginald de Cobham in 1431. Prior to its founding there is no indication of any major settlement in Lingfield with the exception of a church. Over the next century there was a period of significant prosperity for Lingfield which led to the construction of the buildings around the church and along Church Road. This growth was stunted by the Reformation at which time the site of Lingfield College was granted to Thomas Cawarden. While some of the buildings were reconstructed in the early 18th century, there was almost no growth of Church Town between the 1607 Billeshurst manorial

map (Figure 1) and the 1845 tithe map (Figure 2). At this time Church Town remained a small, isolated settlement in the middle of the High Weald. Following the arrival of the railway in 1884, development occurred to the north and west of Church Town (outside the conservation area). However, the area to the south and east has been left open and is the last vestige of Lingfield's rural setting as an isolated village in the High Weald. This can be seen in particular from views from the rear of The Star Inn (Figure 14), glimpsed views along Church Road to the east (Figure 3) as well as views toward Lingfield Conservation Area along Station Road and Town Hill (Figures 5 and 12).

4.2.3 The historic and architectural interest (significance) of Church Town arises in a large part from the following heritage values:

- Its status as a medieval settlement founded as a college for training chaplains which subsequently declined after the Reformation (Historic and Evidential values);
- Its high quality mix of vernacular style buildings, materials and forms resulting from the growth of the village over a relatively short period of time in response to the founding of Lingfield College (Evidential, Historic and Aesthetic values);
- Its high quality townscape and morphology which illustrate the town's brief expansion in response to its changing commercial fortunes linked to Lingfield College (Evidential and Historic values);
- Its picturesque semi-rural setting and open character which informs its status as historic isolated settlement within the High Weald (Historic and Aesthetic values);
- The survival of a high proportion of historic buildings, most of which are listed (Evidential, Historic and Aesthetic Values);

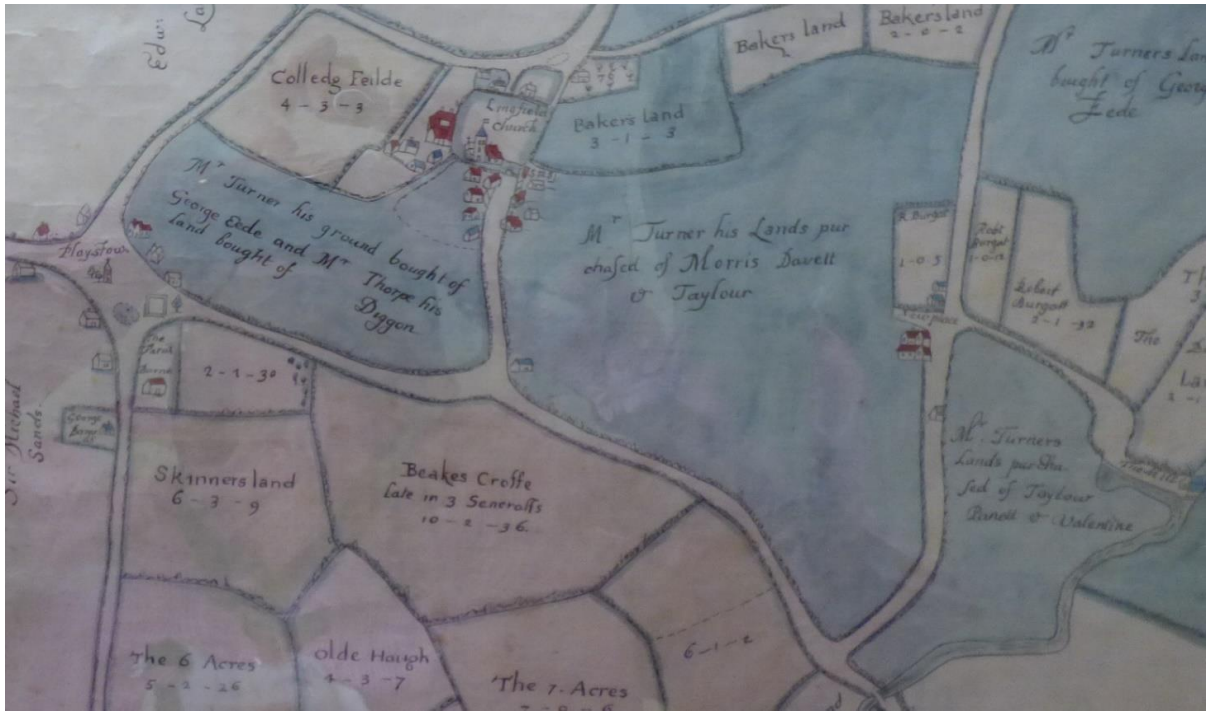


Figure 1: Excerpt from the 1607 Billeshurst Manorial Map held at the Hayward Local History Centre showing Gun Pond (left) Church Town (centre) and New Place (right).



Figure 2: Excerpt from the 1845 Lingfield Tithe Map showing Gun Pond (left), Church Town (centre) and New Place (right).



Figure 3: Photograph toward the application site from Church Road.

4.2.4 In contrast to Church Town, the New Place area developed around a small country house (known as New Place) constructed in 1617 by George Turner, a local ironmaster. The building is one of the earliest stone houses in the area and would have been highly impressive within its surroundings. To the north is The Old Cottage which an early brick built house in the parish. To the south is New Place Farm which was redeveloped as a Victorian farmstead in the late 19th century. The special architectural and historic interest of the New Place area derives from the following values:

- Its status as a prestigious small country house dating from the early 17th century with a modest mid-18th century house and late 19th century farm (Historic and Evidential values);
- Its high status buildings, forms materials and boundaries resulting from prosperity from the iron industry and greater plot size than a typical town centre development (Evidential, Historic and Aesthetic values);
- Its picturesque semi-rural setting and open character which informs its status as historic small country house and farmstead separate from the village (Historic and Aesthetic values);

4.3 LISTED BUILDINGS

4.3.1 The listed buildings which have the potential to be affected by this scheme are listed in Appendix 1. These are split up into the different areas within the conservation area identified in section 4.2. I have only discussed here those listed buildings which I am of the opinion will be impacted through the proposed development.

4.3.2 The Church of St Peter and St Paul (Grade I)

The Church of St Peter and St Paul is described in the *Buildings of England* as being “Surrey’s only Perpendicular church of any size or pretension and overall therefore one of the stateliest in the county.”⁵ Much of the church was rebuilt in 1431 as part of the founding of Lingfield College by Sir Reginald de Cobham which led to a period of prosperity within Lingfield.⁶ The church is constructed of Wealden stone with dressings of Reigate stone and a Horsham slab roof. The 14th century church tower has large buttresses and a shingled broached spire. The nave was constructed with aisles and contains a number of highly important medieval fittings and monuments. The scale of the medieval building is disproportionate to its surroundings and is a clear demonstration of wealth of the de Cobham family. The scale, materials, architecture, historic fabric, fittings and use as a place of worship all contribute to the aesthetic, evidential, historic and communal value of the building.

Historically, the setting of the church would have been entirely rural with the spire being visible from much of the surrounding low lying marshland (Figure 4). During the 20th century, housing development has led to the loss of these views with the prominence of the church tower becoming much reduced. The only clear remaining views of the church amongst its historic rural setting can be found along Station Road (Figure 5). These views are across the application site. This semi-rural setting and prominence of the church reveals its historic and aesthetic value as part of an isolated medieval settlement established as a display of wealth by the de Cobham family.

⁵ Charles O’Brien, Ian Nairn and Bridget Cherry, *The Buildings of England: Surrey*, (3rd ed), (London: Yale University Press, 2022), p. 496.

⁶ It is commonly accepted that the church tower is 14th century, but O’Brien considers the chancel to be from the 1360s when the second Reginald de Cobham died of plague.



Figure 4: Watercolour of Lingfield Church by Henry Prosser from 1836 showing its dominance of its surroundings in its historic rural setting.



Figure 5: Distant view of St Peter and St Paul Church taken from the footpath on Station Road showing how it remains prominent in views. Victorian housing in closer proximity shows how housing will reduce the prominence of the spire.

4.3.3 Pollard Cottage and Pollard House (Grade I)

Pollard Cottage and Pollard House (referred to as Pollard House henceforth) is one of the 2.5% of listed buildings designated at Grade I in England, making it one of the most important vernacular buildings in the country. The building is located on the west side of Church Road and comprises of two highly important elements, the first being a 'Wealden Hall House' which forms the original building. A Wealden Hall House is a particularly important elevational design of medieval open hall houses consisting of two jettied bays at either end and recessed open hall bay(s) in the centre. Almost all Wealden Hall Houses date to the 1400s. The building either dates from shortly after the founding of the College in 1431, or more likely to the 1470s based on similar features in Oat Barns, another open hall house in the parish which has been dendrodated to 1476/7.⁷

The second important element is the jettied crosswing which projects forward from the service wing of the original medieval hall house. The wing is particularly important as it has astonishingly rare medieval shopfronts surviving on the north elevation. These are so notable that they were used by the Weald and Downland Museum as the basis for the recreation of a medieval shop front from a building in Crawley. The wing dates to c1500 based on the crown post roof, bracing and close studding.

The appearance, form, historic fabric, construction techniques, use of materials, timber framing and rare shopfronts all contribute to the historic, evidential and aesthetic value of the building.

In terms of its setting, Pollard House was always located toward the very edge of the settlement (based on the maps shown in Figures 1 and 2). Its physical and visual relationship with the small medieval street reveals not only its development as a result of the College, but also the decline of the village following the Reformation which prevented any further growth of Church Town. The semi-rural surroundings make a contribution to this significance through approaches and views to and from the building. The visibility of the application site from Pollard House is demonstrated in Figure 6. This setting contributes to the historic and aesthetic values of the building.

⁷ The exact date is not relevant here to understanding how the scheme will impact the significance of the building. The important fact is that it dates from the 15th century and would have been constructed as a result of Lingfield College.

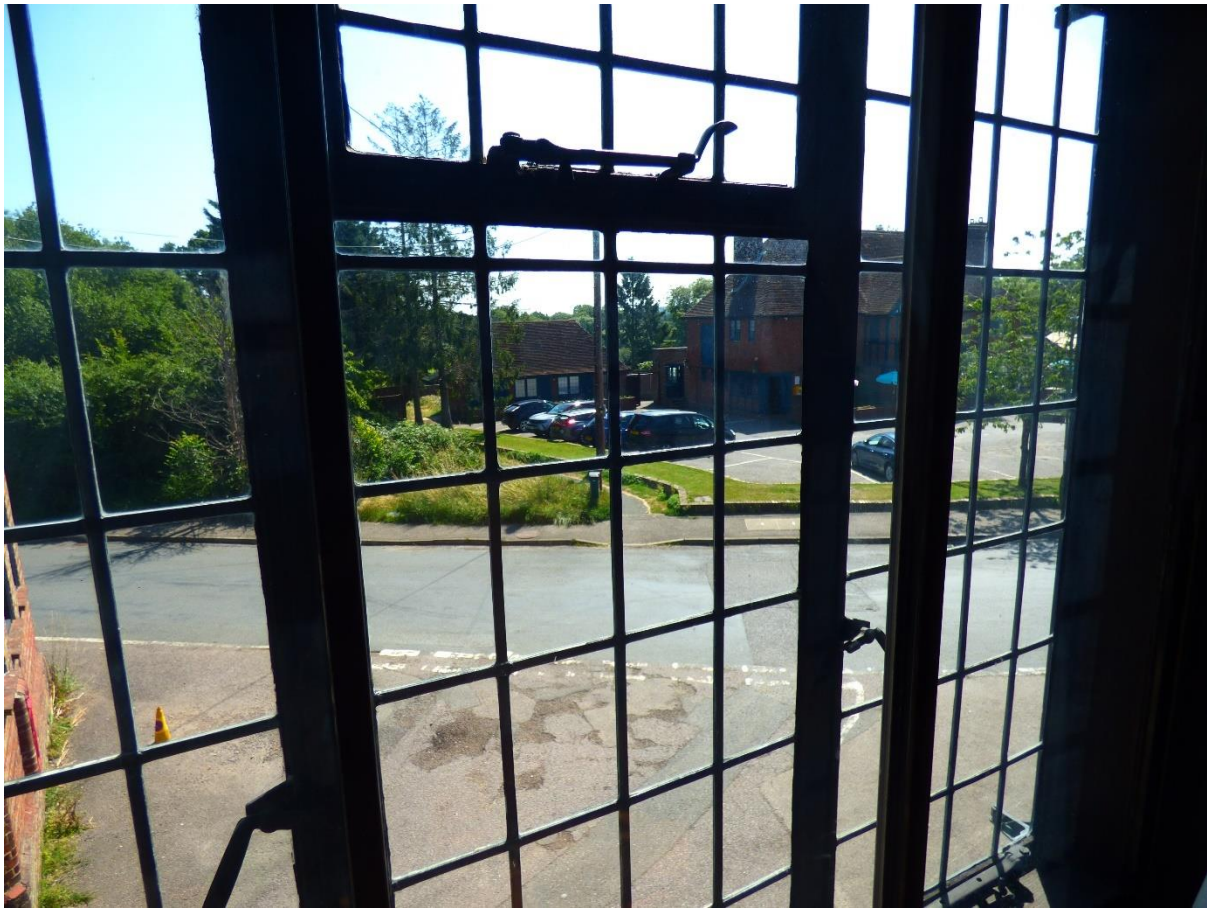


Figure 6: Photograph taken from Pollard House showing views toward the application site. The proposed development will be seen behind the single storey building.

4.3.4 Church House Star Inn Cottages (Grade II*)

Church House and Star Inn Cottages are a Grade II* listed building on the west side of Church Road. The building is two and a half storeys high with deep modillion eaves cornice and hipped dormers lighting the attic storey. The front elevation consists of high quality brickwork with mullion and transom windows and framing for now removed shopfronts. To the rear, the building is timber framed and would not have been visible to passers-by when built as Church Road did not bypass the village until after the 1845 tithe map (see Figure 1).⁸

There is some debate over the age of the building. The list entry states the building is 16th century to the rear with an 18th century front. My predecessor at Surrey County Council and notable building historian Peter Gray both considered the whole building to be early 18th century. My predecessor concluded that Star Cottages were a set of

⁸ Church Road does go past Church House and Star Inn Cottages on the 1869 OS map.

early 'renters', terraced cottages rarely found in the countryside with similar ground floor plans. Church House by contrast was built around an impressive staircase for travellers and functioned as an Inn. Peter Gray identified a date of 1719 on a rafter which he considered could possibly be genuine. The single storey section on the southern end relates to an extension for when the building functioned as an inn. It is not present in the 1822 Hassell drawing (Figure 7) but can be seen as an outline on the 1869 Ordnance Survey map and is evident in a photograph from 1906 (Figure 8).

Church House and Star Cottages are significant as a rare set of purpose built Georgian terraced cottages dating from the early 18th century with an associated inn. Key features which reveal its historic, aesthetic and evidential value include the form of the building, early use of brickwork, scale, evidence of historic shopfronts, architectural features, variance in elevational treatment, fenestration and craftsmanship.

As with Pollard House, Church House formed the historic edge of Church Town and would have historically been surrounded by open fields as part of an isolated rural settlement. Despite development to the north and west of the building, its historic rural character can still be observed along Church Road as well as in views from the windows on the south elevation of the building (Figure 9). The semi-rural surroundings contribute to the historic and aesthetic values of the building as an intact 18th century inn set at the edge of Church Town which was designed to meet the limited needs of Lingfield as a small, isolated settlement.



Figure 7: Drawing of Church Road, Lingfield, by John Hassell dating from 1822. Pollard House can be seen on the left, Church House (without its single storey extension) can be seen on the right. The church tower forms a prominent landmark behind Old Town House.



Figure 8: A 1906 photograph showing Church House prior to its conversion into a private residence. The church tower is again prominent.



Figure 9: Photograph from the application site showing views from the windows on the south elevation of Church House.

4.3.5 New Place (Grade II*)

New Place is a Grade II* listed small country house built in 1617 for George Turner with profits from the prosperity of the iron industry in the Weald in the 16th and 17th centuries. It appears to be a rebuilding of an earlier house on the site.⁹ The building is an L shaped Weald stone Jacobean house with a Horsham slab roof and mullioned windows with hoodmoulds. It was extended with a third gable and a single storey drawing room in the early 1900s and restored in the 1920s. The site includes a Grade II listed stone boundary wall which further demonstrates the high status of the building. The building would have been considered, and still is, a highly impressive country house of great status. Its aesthetic, historic and evidential value are demonstrated in its Jacobean architecture, scale, use of materials, landscaping and craftsmanship.

⁹ A building appears on the site of New Place on the 1607 Billeshurst Manorial map, which is slightly surprising. A note saying '1617' appears on the version held in the Hayward Local History Centre, but the hand does not appear to be the same as others, so while the date is a later addition to the map, the building is not.

Unlike Pollard House and Church House, New Place was not built as part of the medieval settlement of Church Town. Its development is totally separate, linked to the success of the iron industry rather than investment by the de Cobham family. This can be observed from the clear separation through fields between the house and Church Town. Not only is this separation evident in approaches to the house, but also through the intervisibility between the application site and New Place (Figure 10). This semi-rural setting makes a contribution to the historic and aesthetic value of the house by demonstrating its separation from Church Town and its evolution as a small country house.



Figure 10: Photograph taken from the application site showing views from the windows on the west elevation of New Place.

4.4 BUILDINGS OF CHARACTER

4.4.1 Only one Building of Character is identified as being affected by this scheme. Buildings of Character is the name for the Tandridge District Council local list of buildings as recognised under paragraph 20.4 of Tandridge Local Plan Part 2: Detailed Policies.

4.4.2 New Place Farm (Building of Character)

New Place Farm comprises of four properties named West Side, West Wing, Oast House and East Wing. These are listed on the Buildings of Character list and should be considered non-designated heritage assets within the conservation area.

There has been evidence of a farmstead at New Place going back to at least the 1762 Rocque Map. New Place Farm has a strong historical connection to the application site. On the Billeshurst Manorial map (Figure 1) all of the land is owned by Mr Turner, which is likely the same George Turner mentioned above who built New Place. On the tithe map shown in Figure 2, the application site is located in plots 443, 444, 445, 447, 448 and 449 (446 is New Place itself). These are referred to as New Place Ware Farm and were all owned by Caroline Phillips and occupied by 'Bowrah', likely Jesse Bowrah who features in newspaper articles at the time.¹⁰ At this time (1845), the fields were a mix of arable and orchard usage with the exception of plot 448 (on the site of The Star Inn) which is referred to as Town Field and Hop Garden.

The current buildings are a Victorian reconstruction dating from between the 1869 and 1897 OS maps and belong to the period of planned farmsteads, often designed as a set piece by an architect. The site consists of one to one and a half storey buildings with an oast house which was built at a time when hops were commonly grown in the east of Surrey. The site is significant as a planned Victorian farmstead in Lingfield and draws its historic, aesthetic and evidential value from its plan form, scale, appearance, use of materials and oast house.

New Place Farm shares a boundary with the application site with only its driveway separating it from the development. The setting of the farm consists of views out toward the application site which reveals its historic agricultural usage and connection to the land. In essence, the fields form the *raison d'etre* for the building. There is clear intervisibility between the application site and the building as shown in Figures 11 and 12. This setting makes a strong contribution to its historic and aesthetic values.

¹⁰ 'Eastgrinstead [sic] and Lingfield Cottage Garden Society', *The Sussex Advertiser*, (4th August 1866), p.3. Jesse Bowrah won awards for apples, pears, plant in pot and nosegay. Jesse could be a descendant of an earlier Bowrah relative but is just as likely the same person.



Figure 11: Photograph of New Place Farm from its driveway. Immediately to the left of the existing hedges will be parking spaces. The proposed block of flats will be directly opposite the range to the left of the photograph.



Figure 12: Photograph taken from the application site (Town Hill) toward New Place Farm showing clear views of the Building of Character within Lingfield Conservation Area. The land in the foreground was arable land for the farm.

5. IMPACT OF THE PROPOSAL ON THE SIGNIFICANCE OF HERITAGE ASSETS

5.1 EXISTING SITE

- 5.1.1 The application site consists of a cluster of open fields with no existing buildings. It is partly located within the Conservation Area. A footpath crosses the site to the north between The Star Inn and New Place. The contours of the fields between The Star Inn and New Place are largely flat between making them visible from the highway and also from the buildings noted in section 4. Historically, it formed part of New Place Ware Farm with the westernmost field being called 'Town Field'.
- 5.1.2 As outlined above, the application site makes a contribution to the setting of designated and undesignated heritage assets in Lingfield. The fields are the last vestige of the rural surroundings that typified Church Town until the early 20th century. This semi-rural setting is a vital part of understanding Lingfield Conservation Area as a historic small settlement on raised ground within the High Weald. The lack of development demonstrates the fact the village failed to grow as a result of the Reformation. This setting also informs the significance of Pollard Cottage and Church House as listed buildings.
- 5.1.3 The application site contributes to the setting of St Peter and St Paul Church through its open character which reveals the prominence of the building in its surroundings. The visibility of the building is an important part of understanding the church and wider settlement as a display of wealth by the de Cobham family. This visibility is as a result of views across the application site.
- 5.1.4 The application site separates the small country house of New Place and the historic settlement of Church Town. The clear division between the two allows a visitor to experience the historic significance of both as two separate developments and informs the relationship between these two historic sites. It informs the significance of New Place as a small country house, not part of a wider village development.
- 5.1.5 The application site also forms a vital part of the setting of New Place Farm, a non-designated heritage asset within the Conservation Area. The association of the building with its historic rural landscape is vital for understanding its significance as well as the character of this part of the Conservation Area.

5.2 IMPACT ON CONSERVATION AREA (CHURCH TOWN)

- 5.2.1 The proposed development is for outline permission for a development of 99 dwellings with all matters reserved except for access and layout. A number of open spaces are proposed, but these are mostly pushed to the side of the site. No formal details have been put forward of the proposed storey heights but the Design and Access Statement makes clear the buildings will be at least two to two and a half storeys high. The sections provided by the appellant also show that this will be the case. No materials have been put forward for the scheme at this stage.
- 5.2.2 In the first place, the scheme will see the loss of the open fields which are important for understanding the significance of Lingfield as a small medieval settlement established in an isolated rural location. This will be evident in the loss of views of the Conservation Area which are framed by the open fields. These views are from the application site itself, Town Hill and Station Road. As these open spaces contribute to the character and setting of the Conservation Area by revealing its semi-rural setting, I consider this to result in harm.
- 5.2.3 Views from Church Road within the Conservation Area will also be affected by the scheme. There is a clear point between The Star Inn and Llewellyn Palmer Hall where the roofs and gable ends of the proposed buildings will be seen over the existing single storey marquee. I have set out in Figure 13 the potential extent of this view based on the limitations of existing trees and The Star Inn. I have also circled in blue those buildings which I consider would be visible as a minimum based on section AA and BB in drawing 2661-A-1010-PR Rev B.¹¹ I cannot see how a two storey building would not impact on views from Church Road in these locations owing to the site's topography and layout of the proposed scheme. On the basis that at least some of the dwellings will be visible, I consider there be harm to the character and appearance of the Conservation Area through the urbanisation of its surroundings and the loss of the open semi-rural setting which reveals its significance.
- 5.2.4 An even larger part of the development site will be visible from the garden to the rear of The Star Inn (Figure 13). This pub garden is within the Conservation Area and is a communal facility used by patrons of The Star Inn. Again, the proposed

¹¹ This is on the basis that the building on the right of the development in AA is the single storey storage building to the north of The Star Inn and that the eaves of the building are shown correctly. Owing to the incorrect appearance of the building behind, which should be significantly taller, this may in fact be incorrect and a greater number of the houses will be visible.

housing will detract from the semi-rural character of this part of the Conservation Area. While the applicant may suggest tree screening at a later stage in the process, this would nonetheless harm the character of the Conservation Area because it would detract from the open semi-rural character of the site which has views out toward open fields, not woodland.

5.2.5 The above demonstrates that the loss of views to and from the open fields causes harm to the character and appearance of Lingfield Conservation Area and to its setting. This has a severe impact on the ability to understand Lingfield as an isolated medieval settlement in the High Weald. Owing to the importance of the application site for understanding the historic development of Lingfield, and the number of views of, from and within the Conservation Area which will be affected, I consider this to represent a high degree of less than substantial harm. In line with paragraph 199 of the NPPF this harm should be given great weight.



Figure 13: Excerpt from Illustrative Layout (2661-C-1005-PL Rev B) with lines in yellow showing the potential viewpoint of the development from Church Road. Buildings circled in blue are those which as a minimum would be visible from this location.



Figure 14: View from the pub garden at The Star Inn showing the clear visibility of the application site. The gable of New Place can be seen in the far distance.

5.3 IMPACT ON SETTING OF LISTED BUILDINGS

5.3.1 As noted previously, the application site is visible from the Grade I listed Pollard Cottage and Grade II* Church House. In both cases the site makes a contribution to understanding the buildings as integral parts of the rural isolated settlement of Church Town. The views of the application site reveal this interest and will be lost through the proposed development. I fully acknowledge that such views are limited to a small number of first floor and attic windows. As such, I consider harm to be a low level of less than substantial harm. In line with paragraph 199 of the NPPF this harm should be given great weight.

5.3.2 The proposed scheme will also see the loss of the semi-rural surrounding which informs the separate development of New Place as a small country house. While this forms an important part of the historic significance of the building, it is again acknowledged that this will only be from limited views and approaches to and from the building. As such, it is considered that the scheme will only result in a low level of less than substantial harm. In line with paragraph 199 of the NPPF this harm should be given great weight.

5.3.3 The scheme will almost entirely block views of St Peter and St Paul's Church from Station Road. The sole exception to this is the central avenue of the scheme. The

applicant has previously argued that it would not block views and provided a section to demonstrate this in sections C and D. I contend that this does not take account of perspective and that a pedestrian will be unable to see the church until they arrive at the central avenue through the scheme. As outlined above, the views of the church are important to understanding its significance as a grand perpendicular church amongst a much smaller medieval settlement. It is also important again to understanding its isolated rural origins in the High Weald.

- 5.3.4 In my original comments on this scheme, I considered the harm to be a moderate degree of less than substantial harm owing to the presence of two faux-oast houses created as part of the development which would further reduce its prominence. Since my original comments these have now been removed. As such, the harm to the setting of the Grade I listed St Peter and St Paul's Church should now only be considered a low level of less than substantial harm. Please note, this is a change in my original comments because the scheme changed and I was not consulted formally again. In line with paragraph 199 of the NPPF this harm should be given great weight.

5.4 IMPACT ON CONSERVATION AREA (NEW PLACE) AND BUILDINGS OF CHARACTER

- 5.4.1 The proposed scheme will also see all of the land around New Place Farm redeveloped including a set of flats located very close to its boundary. I have serious concerns about this element of the proposed scheme. In the first place it will see the total loss of the semi-rural setting which is vital to understanding the very existence of the buildings as a planned farmstead. Both the fields and the farmstead have a very clear historic relationship as set out above. This element of the scheme will cause a high level of harm to the setting of this non-designated heritage asset and the character and appearance of this part of the Conservation Area. The harm is not only from the loss of views of the fields and the associative relationship between the farm buildings and fields, but also by having such a large building in close proximity as shown in Figure 15. This will have a strong urbanising impact on the farmstead.
- 5.4.2 Views toward New Place Farm, and the Conservation Area, will also be lost from Town Hill as part of development. As shown in Figure 12, the oast house is prominent along Town Hill but will disappear altogether in views as part of this development. Again, I consider this to be harmful.

5.4.3 As noted previously, the application site also forms an important separation between Church Town and New Place. The scheme will see this land infilled and the separation through open space between Church Town and New Place lost. This will affect the historic relationship between the two important sites and cause harm to the character and appearance of the conservation area.

5.4.4 I consider this harm to contribute to the high level of less than substantial harm of the conservation area. Again, this should be given great weight in line with paragraph 199 of the NPPF. There will also be harm to the setting of New Place Farm as a non-designated heritage asset in line with paragraph 203 of the NPPF.



Figure 15: Excerpt from Illustrative Layout (2661-C-1005-PL Rev B) showing the proximity of the left range of New Place Farm and the block of flats proposed as part of the development, separated only by a hedge and driveway.

5.5 OVERALL HISTORIC BUILT ENVIRONMENT IMPACT

5.5.1 For the reasons I have outlined above I consider the scheme to result in harm to designated and non-designated heritage assets. The areas which cause the greatest harm are that to the north-west of the site, where the housing will be visible from Church Road and The Star Inn, and immediately adjacent to New Place Farm, which will see its semi-rural setting entirely removed and replaced by a large block of flats. While the layout of the scheme is illustrative, the appellant has not

demonstrated that the illustrative layout could be revised at the reserved matters stage so as to remove or reduce this harm.

- 5.5.2 I have set out above that I consider there to be a high degree of less than substantial harm to the character and appearance of the conservation area and a low degree of less than substantial harm to the Grade I St Peter and St Paul Church, Grade I Pollard House, Grade II* Church House and Grade II* New Place under paragraph 202 of the NPPF. In line with paragraph 199 of the NPPF great weight should be given to this harm, with the most weight applied to those buildings which are more important.
- 5.5.3 The applicant has previously argued that the provision of open space within the conservation area and better views toward the church spire and historic core should be considered heritage specific public benefits. Owing to the fact that many of these public spaces are small and there is no clear evidence put forward that there would actually be improved views of the church spire, I consider this heritage related public benefit to be very small. Weighing this against the harm identified above under paragraph 202 of the NPPF, I still consider the net harm to the conservation area to be a high degree of less than substantial harm and the harm to the other heritage assets to be a low level of less than substantial harm. This will need to be weighed against the other public benefits of the scheme, including the provision of housing.
- 5.5.4 The scheme will also cause a high degree of harm to the setting of a non-designated heritage asset in line with paragraph 203 of the NPPF. This will need to be taken into account as part of balanced judgement having regard to the scale of any harm or loss to the significance of the heritage asset. I include it here to ensure that all of the site is taken into account, not just those areas which are visible from the highway.

6. CONCLUSION

6.1 I have assessed this scheme in line with the NPPF. I have identified that it will result in a high degree of less than substantial harm to the character and appearance of Lingfield Conservation Area. This harm is from the loss of the open fields which contribute to the semi-rural character of the conservation area. These fields reveal the development of the Church Town area of Lingfield as a small rural settlement which declined after the Reformation. The harm will specifically be from the loss of views toward and within the conservation area and resulting urbanisation. There is also harm from the loss of the open space which reveals the historic relationship between New Place as a small country house and Church Town as two distinct developments.

6.2 The scheme will result in harm to the character and appearance of the conservation area through the loss of intervisibility between the open fields of the application site and New Place Farm, a set of buildings which derives their significance from their status as a Victorian farmstead. The loss of the open fields and close proximity of buildings within the proposed development will have a strong urbanising impact on the setting of non-designated heritage assets. I consider this contributes to the high degree of less than substantial harm to the conservation area.

6.3 The scheme will result in a low level of less than substantial harm to the setting of the Grade I listed St Peter and St Paul Church through the loss of views of the building along Station Road. This will reduce the prominence of the building which reveals its status as an impressive Gothic perpendicular church located in an isolated rural settlement.

6.4 The scheme will also result in a low level of less than substantial harm to the Grade I listed Pollard House, Grade II* Church House and Grade II* New Place Farm. This will be from the urbanisation of the setting of these buildings and loss of their semi-rural surroundings evident in approaches and views to and from these buildings.

6.5 Great weight should be applied to this harm under paragraph 199 of the NPPF. The greatest weight should be applied to the harm to the listed buildings as their higher listed status means they are considered more important under the NPPF.

6.6 I have considered the harm to these heritage assets under paragraph 202 of the NPPF. There are heritage benefits from this scheme from possible improved views of the church spire and small open spaces within the conservation area. I have only

given these a small weighting because such views of the spire will be incredibly limited and the open spaces are relatively small. Carrying out an internal heritage balance I still consider the harm to aforementioned heritage assets to still be in the same categories.

6.7 In line with paragraph 202 of the NPPF this harm will need to be weighed against the wider public benefits of the scheme.

6.8 I have also identified a high degree of harm to the setting of New Place Farm as an undesignated heritage asset noted on the Tandridge District Council Buildings of Character list. Consideration will need to be given to this harm under paragraph 203 of the NPPF.

APPENDIX 1

LIST OF LISTED BUILDINGS AND BUILDINGS OF CHARACTER

CHURCH TOWN GROUP

- The Church of St Peter and St Paul (Grade I), 1029906
- Pollard Cottage Pollard House (Grade I), 1029911.
- Church House and Star Inn Cottages (Grade II*) 1205173.
- Old Town House and Old Town Cottage (Grade II*) 1029910.
- Church Gate Cottage (Grade II), 1029909.
- The Barn (Grade II), 1029912.
- Barn 15 Yards South-West of Old Town House (Grade II), 1205263.
- The College (Grade II*), 1205289.
- Garden Wall to The East of The College (Grade II), 1029913.
- The Guest House (Grade II*), 1205909.
- Three Tombs in The Grounds of Lingfield Church (All Grade II), 1205909, 1029907, 1029908.

NEW PLACE GROUP

- New Place (Grade II*), 1280486.
- Garden Wall to New Place (Grade II), 1377571.
- The Old Cottage (Grade II), 1029900.

BUILDINGS OF CHARACTER

- New Place Farm (Building of Character)
- Cyder Barn (Building of Character)

Details of listed buildings can be found at <https://historicengland.org.uk/listing/the-list/>

The Tandridge District Council Buildings of Character list can be found at <https://www.tandridge.gov.uk/Planning-and-building/Conservation-and-trees/Conservation-areas>

APPENDIX 2

MANAGING SIGNIFICANCE IN DECISION TAKING IN THE HISTORIC ENVIRONMENT - HISTORIC ENVIRONMENT GOOD PRACTICE ADVICE IN PLANNING NOTE 2 (2015)

<https://historicengland.org.uk/images-books/publications/gpa2-managing-significance-in-decision-taking/gpa2/>



Historic England

Managing Significance in Decision-Taking in the Historic Environment

Historic Environment Good Practice Advice in Planning: 2



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It is one of three related Good Practice Advice (GPA) Notes, along with GPA1 *The Historic Environment in Local Plans* and GPA3 *The Setting of Heritage Assets*.

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Introduction

1 The purpose of this Historic England Good Practice Advice note is to provide information to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the **National Planning Policy Framework (NPPF)** and the related guidance given in the **Planning Practice Guidance (PPG)**. These include; assessing the significance of heritage assets, using appropriate expertise, historic environment records, recording and furthering understanding, neglect and unauthorised works, marketing and design and distinctiveness.

2 This good practice advice acknowledges the primacy of relevant legislation and the NPPF and PPG, and is intended to support the implementation of national policy. It does not however constitute a statement of Government policy, nor does it seek to prescribe a single methodology or particular data sources. In order to gain a full understanding of the relevant issues, this document should be read in conjunction with the relevant legislation, national planning policy and guidance (the NPPF and PPG), as well as Good Practice Advice Note 1 (*The Historic Environment in Local Plans*) and Good Practice Advice Note 3 (*The Setting of Heritage Assets*) and other Historic England Advice Notes. Alternative approaches may be equally acceptable, provided they are demonstrably compliant with legislation, national policies and objectives.

3 The advice in this document, in accordance with the NPPF, emphasises that the information required in support of applications for planning permission and listed building consent should be no more than is necessary to reach an informed decision, and that activities to conserve or investigate the asset needs to be proportionate to the significance of the heritage assets affected and the impact on that significance.

General advice on decision-taking

4 Development proposals that affect the historic environment are much more likely to gain the necessary permissions and create successful places if they are designed with the knowledge and understanding of the significance of the heritage assets they may affect. The first step for all applicants is to understand the significance of any affected heritage asset and, if relevant, the contribution of its setting to its significance. The significance of a heritage asset is the sum of its archaeological, architectural, historic, and artistic interest. A variety of terms are used in designation criteria (for example, outstanding universal value for World Heritage Sites, national importance for scheduled monuments and special interest for listed buildings and conservation areas), but all of these refer to a heritage asset's significance.

5 Heritage assets include designated heritage assets and non-designated assets identified by the local planning authority as having a significance justifying consideration in a planning decision (NPPF glossary, page 52). The National Heritage List for England is the official database of all nationally designated heritage assets – see www.HistoricEngland.org.uk/listing/the-list. Non-designated heritage assets include those that have been identified in a Historic Environment Record, in a local plan, through local listing or during the process of considering the application. Archaeological potential should not be overlooked simply because it is not readily apparent.

6 Both the NPPF (paragraph 188) and the PPG (section ID20) highlight early engagement and pre-application discussion. Where the proposal is likely to affect the significance of heritage assets, applicants are encouraged to consider that significance at an early stage and to take their own expert advice, and then to engage in pre-application discussion with the local planning authority and their heritage advisers to ensure that any issues can be identified and appropriately addressed. As part of this process, these discussions and subsequent applications usually benefit from a structured approach to the

assembly and analysis of relevant information. The stages below indicate the order in which this process can be approached – it is good practice to check individual stages of this list but they may not be appropriate in all cases and the level of detail applied should be proportionate:

For example, where significance and/or impact are relatively low, as will be the case in many applications, only a few paragraphs of information might be needed, but if significance and impact are high then much more information may be necessary.

- Understand the significance of the affected assets
- Understand the impact of the proposal on that significance
- Avoid, minimise and mitigate impact in a way that meets the objectives of the NPPF
- Look for opportunities to better reveal or enhance significance
- Justify any harmful impacts in terms of the sustainable development objective of conserving significance and the need for change
- Offset negative impacts on aspects of significance by enhancing others through recording, disseminating and archiving archaeological and historical interest of the important elements of the heritage assets affected

The assessment of significance as part of the application process

7 Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset and the contribution of its setting early in the process is very important to an applicant in order to conceive of and design a successful development and to the local planning authority in order to make decisions in line with legal requirements and the objectives of the development plan and the policy requirements of the NPPF.

8 Understanding the **nature of the significance** is important to understanding the need for and best means of conservation. For example, a modern building of high architectural interest will have quite different sensitivities from an archaeological site where the interest arises from the possibility of gaining new understanding of the past.

9 Understanding the **extent of that significance** is also important because this can, among other things, lead to a better understanding of how adaptable the asset may be and therefore improve viability and the prospects for long term conservation.

10 Understanding the **level of significance** is important as it provides the essential guide to how the policies should be applied. This is intrinsic to decision-taking where there is unavoidable conflict with other planning objectives.

11 To accord with the NPPF, an applicant will need to undertake an assessment of significance to inform the application process to an extent necessary to understand the potential impact (positive or negative) of the proposal and to a level of thoroughness proportionate to the relative importance of the asset whose fabric or setting is affected.

12 Although there are many sources of information and methods for assessing significance and impact upon it, the most common steps an applicant might take are as follows. The first three steps are almost always necessary:

- 12.1 Examine the asset and its setting (see GPA 3).
- 12.2 Check:
 - a the Local Development Plan, evidence base and policies
 - b main local, county and national records including the relevant Historic Environment Record (see [paragraph 21](#)),
 - c statutory (these can be accessed via the [National Heritage List for England](#)) and local lists
 - d the [Heritage Gateway](#)
 - e the [Historic England Archive](#), and
 - f other relevant sources of information that would provide an understanding of the history of the place and the value the asset holds for society, for example historic maps, conservation area appraisals, townscapes studies or the urban archaeology database
- 12.3 Consider whether the nature of the significance of the affected assets requires an expert assessment to gain the necessary level of understanding; where there is archaeological interest (including buildings, areas and wreck sites), consider whether it requires a desk-based assessment to understand the significance. It is good practice to use professionally accredited experts and to comply with relevant standards and guidance. To find a list of expert groups, see [paragraph 19](#).

A **desk-based assessment** will determine, as far as is reasonably possible from existing records, the nature, extent and significance of the historic environment within a specified area, and the impact of the proposed development on the significance of the historic environment, or will identify the need for further evaluation to do so. See the relevant [standards and guidance](#) provided by the Chartered Institute for Archaeologists (CIfA).

CIfA Standard and Guidance: Historic Environment Desk Based Assessment 2014

- 12.4 In order to ensure that the scope of the assessment or evaluation meets the requirements of the local planning authority (LPA) and avoids the risk of damage to heritage assets, it is good practice to discuss the scope of the work with the LPA in advance and to agree a written scheme of investigation (WSI), if necessary, before commencement, thus precluding abortive work.
- 12.5 Carry out additional investigations if initial research has established an archaeological, architectural, artistic, and/or historic interest but where the extent, nature or importance needs to be established more clearly before decisions can be made about change to the site. This may include documentary research.

For example, see *Understanding Place: An Introduction*, *Understanding Place: Historic Area Assessments in a Planning and Development Context*, *Understanding Place: Historic Area Assessment – Principles and Practice* (all 2010: English Heritage).

- 12.6 Where an archaeological desk-based assessment is insufficient to assess the archaeological interest of a heritage asset fully, consider whether an on-site field evaluation would provide the necessary information.

An **archaeological field evaluation** will determine, as far as is reasonably possible, the nature of the archaeological resource within a specified area using appropriate methods and practises, including: geophysical survey, physical appraisal of visible structures and/or trial trenching for buried remains.

CIfA Standard and Guidance: Evaluation.

See also *Mineral Extraction and Archaeology: A Practice Guide*, English Heritage on behalf of the Minerals Historic Environment Forum, 2008.

- 12.7 Consider, in the case of buildings, whether physical intervention such as the selected removal of non-historic plaster, may be helpful to reveal important details hidden behind later additions and alterations bearing in mind that such investigations should be proportionate to the significance. Most evaluation of significance in buildings is likely to be based on a mixture of documentary research and non-intrusive examination of fabric but where the significance lies below-ground or more deeply concealed in a building's fabric, a greater level of intrusive investigation may be required.

For further information on the investigation of historic buildings, see *Understanding Historic Buildings: A Guide to Good Recording Practice* (2006), *Understanding Historic Buildings: Policy and Guidance for Local Planning Authorities* (2008 - both English Heritage) and CIfA Standard and Guidance: *Archaeological Investigation and Recording of Standing Buildings or Structures*.

- 12.8 Establish whether any investigative work may itself require listed building consent, scheduled monument consent or other permissions.

Conservation Principles and assessment

13 The reason why society places a value on heritage assets beyond their mere utility has been explored at a more philosophical level by English Heritage in *Conservation Principles* (2008). *Conservation Principles* identifies four types of heritage value that an asset may hold: aesthetic, communal, historic and evidential value. This is simply another way of analysing its significance. Heritage values can help in deciding the most efficient and effective way of managing the heritage asset so as to sustain its overall value to society.

14 Assessment of significance, on a UK wide basis, is also covered in Part 4 of British Standard 7913:2013 *Guide to the Conservation of Historic Buildings*.

Curtilage structures

15 Some buildings and structures are deemed designated as listed buildings by being fixed to the principal building or by being ancillary within its curtilage and pre-dating 1 July 1948. Whether alteration, extension or demolition of such buildings amounts to harm or substantial harm to the designated heritage asset (ie the listed building together with its curtilage and attached buildings) needs careful consideration. Some curtilage structures are of high significance, which should be taken fully into account in decisions, but some are of little or none. Thus, like other forms of heritage asset, curtilage structures should be considered in proportion to their significance. **Listed buildings** designated very recently (after 25 June 2013) are likely to define curtilage definitively; where this is (or is not) the case will be noted in the list description.

Archaeological and historic interest

16 Archaeological interest, as defined in the NPPF, differs from historic interest because it is the prospects for a future expert archaeological investigation to reveal more about our past that need protecting. Caring for an asset that has a well-understood historic interest, but no substantial archaeological interest, will be relatively straightforward as our existing knowledge of the asset will guide how it can be managed in order to sustain its significance. However, if for example there is good reason to suspect that a bare field which has never been investigated contains important remains, or that an apparently ordinary building contains a hidden medieval timber-frame, the task of managing it would be different.

Historic interest is an interest in what is already known about past lives and events that may be illustrated by or associated with the asset.

17 Where a heritage asset is thought to have archaeological interest, the potential knowledge which may be unlocked by investigation may occasionally be harmed by even minor disturbance, thus damaging the significance of the asset. This can make some assets, or parts of them, very sensitive to change. Expert advice will be needed to identify these sensitivities and assess whether and how they can be worked around (see [paragraphs 20 - 23](#)), however, a proportionate approach should be maintained. It has been estimated that disturbance would have an adverse impact in less than 3% of all planning applications currently (Information from forthcoming ALGAO casework survey (to be published summer 2015)).

The archaeological interest of an asset can remain even after apparently thorough investigation. As techniques and the understanding of our past improve, a previously investigated asset may be revisited to see what further can be learned.

Using appropriate expertise

18 Expert advice on where the significance lies and its sensitivity to change can unlock viable uses for the asset and secure its long-term future. It can also be very valuable in minimising and mitigating impact, therefore avoiding conflicts between the owner's reasonable aspirations for the site and its conservation, particularly if it is sought early. Where the proposal is likely to affect the significance of heritage assets, early engagement with appropriate expert advice and the relevant local authority heritage advisers will be helpful both in developing an understanding of significance and in identifying the level of information needed to support the application and can be helpful throughout the process. National amenity societies and local groups, such as civic and historical societies, museums and local records/archives can also be particularly valuable sources of advice and information. Where a heritage asset may have a cultural or faith interest to a particular community, it is important to consult them as their views and information may add to the understanding of the asset's significance.

19 There are several established registers that can be used to identify appropriately qualified specialists or organisations, depending on the nature of the project. Though not exhaustive, the alphabetical list below may be helpful:

Architects Accredited in Building Conservation Ltd operates a register of specialist architectural heritage expertise.

The **Chartered Institute for Archaeologists (CIfA)** has a register of accredited organisations for historic environment practice. CIfA requires its members to meet defined levels of competence. www.archaeologists.net/ro

The **Institution of Civil Engineers and the Institution of Structural Engineers** operate a joint register of engineers (Conservation Accreditation Register for Engineers - CARE) who have demonstrated to their peers that they meet a required standard in conservation.

The **Institute for Conservation (ICON)** operates a register of accredited conservator-restorers.

The **Institute of Historic Building Conservation (IHBC)** has a register of accredited organisations for historic environment practice. The IHBC requires its members to meet defined levels of competency. www.ihbc.org.uk/hespr/

The **Royal Institute of British Architects** also operates a register of architects accredited in building conservation, for works on listed buildings, scheduled monuments and pre-1900 buildings.

The **Royal Institution of Chartered Surveyors** maintains a register of accredited building conservation surveyors.

20 Some projects may need more than one type of specialist and, indeed, others, for instance planners and architectural historians.

Finding appropriate information: Historic Environment Records (HERs)

21 To ensure sustainable development, local planning authorities need to have access to HERs that are publicly-accessible and dynamic sources of information about the local historic environment, its archaeological remains, architecture and town- and landscape of all periods. They need to provide an up-to-date catalogue of heritage assets and interventions within a defined geographical area. They will assist in informing good planning decisions by providing information about the historic environment, complementary to that provided by museums, archives and libraries, to communities, owners and developers. As an information service managed by dedicated specialist staff, they consist of databases, indexes and reference collections linked to a Geographical Information System (GIS) and thus provide core information for plan-making, designation and development management decisions in the planning system as set out in the NPPF, as well as decisions relating to environmental stewardship schemes (details can be found at: www.heritagegateway.org.uk/Gateway/CHR).

22 An effective HER is likely to contain information on the following:

- 22.1 Designated heritage assets.
- 22.2 Locally designated heritage assets.
- 22.3 Heritage assets with archaeological interest that are neither nationally nor locally designated (including assets that are known to have been demolished or destroyed or known only from antiquarian sources, assets which do not meet the criteria for national or local designation, and those which have yet to be formally assessed as such).

- 22.4 Other heritage assets with historic, architectural and artistic interest that are of local significance (including undesignated historic buildings, parks and gardens and historic places commemorating events and people).
- 22.5 Findspots.
- 22.6 Archaeological objects and their findspots under the Portable Antiquities Scheme.
- 22.7 Investigations of the archaeological, architectural, historic or artistic interest of a place or landscape, including desk-based assessments, field evaluations, excavation reports, archaeological watching briefs, environmental assessments, conservation management plans and assessments, reports on significance from Design and Access Statements, record reports on buildings, conference notes and proceedings, etc.
- 22.8 Historic area assessments and characterisation studies, urban archaeological databases, conservation area appraisals and management plans.
- 22.9 Output from the National Mapping Programme (NMP).
- 22.10 Scientific data relevant to the understanding of heritage assets such as borehole logs, absolute dating and palaeoenvironmental data.
- 22.11 Documentation, such as Listed Building Heritage Partnership Agreements, Local Listed Building Consent Orders and (National) Listed Building Consent Orders, which derive from changes to the Planning (Listed Building and Conservation Areas) Act 1990 under the Enterprise and Regulatory Reform Act 2013.

23 HERs will usually be defined by the administrative boundaries (whether terrestrial, inter-tidal or marine) of the local authority(-ies) that an HER covers. To ensure useful coverage in all types of planning casework, HERs are encouraged to consult user groups regularly and take account of their information requirements in sourcing material.

24 Information generated in putting together the local plan, during the process of applying for consent and in the discharging of conditions placed on consents will often provide new evidence of the state and significance of the historic environment. It can be invaluable in plan-making and decision-making in the future and is of significant public benefit in furthering the understanding of our surroundings and our past. This information should be made publicly accessible, usually through the Historic Environment Record.

Assessing the proposals

25 In deciding applications for planning permission and listed building consent, local planning authorities will need to assess the particular significance of the heritage asset(s) which may be affected by the proposal and the impact of the proposal on that significance reflecting the approach as described in paragraphs 3-5 above. In most cases, to assess significance LPAs will need to take expert advice, whether in-house, from shared services or from consultants. It is good practice to use professionally accredited experts and to comply with relevant standards and guidance (For example, the ClfA Standard and Guidance: *Archaeological Advice*). To find a list of expert groups, see [paragraph 19](#).

26 Successful sustainable development achieves economic, social and environmental gains jointly and simultaneously through planning decisions (NPPF, Paragraph 8). If there is any apparent conflict between the proposed development and the conservation of a heritage asset then the decision-maker might need to

consider whether alternative means of delivering the development benefits could achieve a more sustainable result, before proceeding to weigh benefits against any harm. For example, raft foundations can span archaeological deposits, so minimising both the physical impact and the costs associated with excavation.

27 Substantial harm is a high test which may not arise in many cases. In those cases where harm or loss is considered likely to be substantial (NPPF, Paragraph 132 & PPG 01-7), then the LPA will need to consider the relevant NPPF tests. Further detail on the tests on levels of harm can be found at paragraphs 133-135 and 139 of the NPPF. Further guidance on heritage conservation as a public benefit in itself, optimum viable use, levels of harm and mitigating harm are given in the PPG section ID 18a, paragraphs 15 to 20.

Cumulative impact

28 The cumulative impact of incremental small-scale changes may have as great an effect on the significance of a heritage asset as a larger scale change. Where the significance of a heritage asset has been compromised in the past by unsympathetic development to the asset itself or its setting, consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset in order to accord with NPPF policies. Negative change could include severing the last link to part of the history of an asset or between the asset and its original setting. Conversely, positive change could include the restoration of a building's plan form or an original designed landscape.

Listed building consent regime

29 Change to heritage assets is inevitable but it is only harmful when significance is damaged. The nature and importance of the significance that is affected will dictate the proportionate response to assessing that change, its justification, mitigation and any recording which may be needed if it is to go ahead. In the case of listed buildings, the need for owners to receive listed building consent in advance of works which affect special interest is a simple mechanism but it is not always clear which kinds of works would require consent. In certain circumstances there are alternative means of granting listed building consent under the Enterprise & Regulatory Reform Act 2013.

Further advice is given in Historic England Advice Note *Making Changes to Heritage Assets* (forthcoming).

For the Enterprise and Regulatory Reform Act 2013 see: www.legislation.gov.uk/ukpga/2013/24/contents/enacted

Decision-taking for assets with archaeological interest

30 Many heritage assets have a significance that is a combination of historic, architectural, artistic and archaeological interest. However, some will currently hold only an archaeological interest, in that nothing substantial may be known about the site and yet there is a credible expectation that investigation may yield something of strong enough interest to justify some level of protection.

31 For sites with archaeological interest, whether designated or not, the benefits of conserving them are a material consideration when considering planning applications for development.

Recording and furthering understanding

32 If a decision in principle is made to allow a proposal that would cause the loss of an asset (either wholly or in part), developers are required to record and advance our understanding of the significance of the asset or the relevant part in a manner proportionate to its importance and the potential impact (NPPF, Paragraph 141). Nevertheless, records cannot deliver the sensory experience and understanding of context provided by the original heritage asset, so the ability to investigate and record a heritage asset is not a factor in deciding whether consent for its destruction should be given.

33 Developers are more likely to achieve the NPPF objective if the recording is undertaken by a professionally accredited organisation or individual with appropriate expertise and that it complies with professional standards and guidance and takes account of relevant research frameworks.

Accredited members:

The ClfA maintains a Register of accredited organisations and holds a directory of members:

www.archaeologists.net/ro

Guidance:

ClfA Standard and Guidance: *Evaluation; Watching Briefs; Archaeological Excavation and Archaeological Investigation and Recording of Standing Buildings or Structures.*

Mineral Extraction and Archaeology: A Practice Guide, English Heritage on behalf of the Minerals Historic Environment Forum, 2008.

Understanding Historic Buildings: a guide to good recording practice. English Heritage 2006.

Understanding Historic Buildings: Policy and Guidance for Local Planning Authorities English Heritage 2008.

Local authority archaeological advisers may have additional, locally specific guidance.

Research Frameworks:

See: www.HistoricEngland.org.uk/research/support-and-collaboration/research-resources/research-frameworks/

Written Schemes of Investigation (WSI)

34 In those cases where development will lead to loss of a substantive part of the significance of a heritage asset, the steps to be taken by the developer to achieve the NPPF requirements are best controlled through a WSI, although given the number of planning applications likely to have an adverse impact such an investigation may not be required in many cases. A WSI is usually commissioned by the applicant and approved by the LPA. The planning authority will need to satisfy itself that any WSI is set out to a level of detail proportionate to the asset's likely significance and in accordance with appropriate standards and is flexible enough to be able to take account of reasonable and unavoidable changes or unexpected discoveries. WSIs are used to set out proposals for assessment and evaluation, as well as post-permission investigation and recording.

35 The LPA (and their heritage advisers) can advise as to what the WSI should cover; additional guidance is also available, for example through ClfA standards and guidance. Schemes normally include:

- Background information and context relating to existing understanding and the purpose of the investigation
- Proposals for the site investigation, including statements on research objectives, methodology and community engagements
- Proposals for the assessment, analysis, publication, dissemination, archiving and curation of the results of the investigation. Assessment and analysis may need to be a two stage process with detailed proposals for investigation and analysis being agreed following completion of the assessment stage

- Operational matters including timetable, resourcing, expertise of those undertaking the work, compliance with professional standards and legislative or regulatory requirements

Archaeological conditions and obligations for WSIs

36 A requirement to record the significance of a heritage asset with archaeological interest that will be harmed may be made enforceable through conditions, a planning obligation or a combination of the two (see Paragraphs 203-206 of the NPPF). The use of conditions or obligations can be applied where the legal and policy tests in the NPPF have been met, and it has been established that sustainable development can only be achieved through harm to a heritage asset. An approach for using conditions to identify and secure the appropriate level of work is set out below. Depending on the nature of the proposals and the heritage assets affected, the timing of submission of details relating to works (ie in this case the WSI), their approval and implementation may need to be tied to the phases of development or occupation. Information requirements should also be tailored to the development.

37 The following is suggested as an example condition which can be helpful to identify and to secure the appropriate level of work that is necessary before commencement of the development, and also what may be required after commencement and in some cases after the development has been completed. The staged approach to discharge can therefore help to avoid problems for developers with the delay of fully discharging pre-commencement conditions such as where lengthy programmes of archaeological work are secured by a single clause pre-commencement condition. Care will be needed to ensure the conditions are enforceable and otherwise comply with the NPPF. A planning obligation may be needed in certain circumstances:

- No demolition/development shall take place/commence until a written scheme of investigation (WSI) has been [submitted to and] approved by the local planning authority in writing. For land that is included within the WSI, no demolition/development shall take place other than in accordance with the agreed WSI, which shall include the statement of significance and research objectives, **and**
- The programme and methodology of site investigation and recording and the nomination of a competent person(s) or organisation to undertake the agreed works
- The programme for post-investigation assessment and subsequent analysis, publication & dissemination and deposition of resulting material. This part of the condition shall not be discharged until these elements have been fulfilled in accordance with the programme set out in the WSI

Reporting, publication and archiving

38 Where the local planning authority has indicated that a report detailing the findings of the investigation shall be published, it is helpful to consider the following points:

- The best means of publication to reach target audiences, dependent upon the nature of the findings
- For important sites, the publication of detailed findings to an appropriate and proportionate level through books, archaeological, architectural or historical journals or via the internet
- The general structure, length and format of the report including summaries

39 Local planning authorities are advised to ensure that the compilation, deposition and appropriate conservation of the material, digital and documentary archive in a museum, or other publicly accessible repository willing and capable of preserving it, forms an integral part of any recording project. Securing the archive of an investigation according to the terms of deposition or guidelines issued by the receiving body will facilitate future research. Proposals for these stages of work will have been included in the WSI but may need to be updated following completion of the on-site investigation.

40 The ClfA publishes standards and guidance for the creation, compilation, transfer and deposition of archaeological archives (ClfA Standard and Guidance: *Archives*), while advice is also available from the Museums Association and individual museums and archives. Deposition of copies of reports and site summaries with the HER is vital in providing an evidence base that can be called on by applicants for future development and by planners when drawing up plans and making decisions, as well as being important to local communities. Advice on the content of site summaries may be available from the HER.

Human remains

41 There are important, additional legal requirements that apply where development or on-site evaluation may affect human remains and it is advisable to follow established professional guidelines. Further guidance on compliance with burials legislation is available from the Ministry of Justice and [Historic England](#).

Mineral extraction

42 Archaeological interest is often of particular importance in proposals for minerals extraction. The Minerals and Historic Environment Forum has published *Mineral Extraction and Archaeology: a Practice Guide* (2008) to provide guidance on minerals planning and archaeology. This is currently being updated given the subsequent publication of the NPPF.

Public engagement

43 Where appropriate, local planning authorities and the developer are advised to consider the benefits of making the investigative works open to and interpreted for the public and to include that as part of the WSI. The results can contribute to a deeper sense of place, ownership and community identity. Promoting understanding will increase active protection for the historic environment. Opportunities for public engagement, proportionate to the significance of the investigation, could, for example, include enabling participation in investigation, providing viewing platforms and interpretation panels, jointly designed open days in partnership with the local community, public talks and online forums as well as coverage in local media. Once analysed, the results and the knowledge gained may be communicated, in addition to formal publication and deposition of the archive, through displays, exhibitions and popular publications and might inform site design and public art.

Unexpected discoveries during work

44 Where a new heritage asset is discovered or an existing known asset proves to be more significant than foreseen at the time of application, the local planning authority is advised to work with the developer to seek a proportionate solution that protects the significance of the new discovery, so far as is practical, within the existing scheme. Developers are advised to incorporate the potential for unexpected discoveries into their risk-management strategies.

Scheduled monument consent

45 [Guidance on scheduling and scheduled monument consent](#) is published by DCMS. Scheduled monument consent is a separate approval process from the planning system.

Neglect

45 While most disrepair is not deliberate neglect, and while LPAs need to be wary of delaying sympathetic proposals which would give the heritage asset a future, where an owner appears to have permitted a heritage asset to deteriorate deliberately in the hope of making consent or permission easier to gain, the local planning authority will need to disregard the deteriorated state of the asset. In all other cases the condition of the property and its impact on viability can be a material consideration.

46 Working with the owner is the route to solving heritage at risk issues and informal approaches to the owner are the normal starting point. LPAs may need to consider exercising their repair and compulsory purchase powers to remedy neglect, deliberate or otherwise (NPPF, Paragraphs 126 and 207). The potential to exercise these powers as an alternative means of conserving a heritage asset could be a material consideration in determining applications (see: [Stopping the Rot: A Guide to Enforcement Action to Save Historic Buildings](#)).

Unauthorised works, enforcement notices and prosecution

47 The objective of conserving heritage assets for generations to come will not be met if there is no deterrent to those contemplating not applying for a consent and no remedy applied when consents are not sought when they should have been. Wrongdoing should obviously not be rewarded and those who obey the law should not be disadvantaged. Local planning authorities may, where it is expedient and in the public interest, consider the following steps, as appropriate: to remind people of the need for consents; to investigate and prosecute breaches of the law; and, to remedy the effects of any wrongdoing using their enforcement powers. The strategy for enforcement in the historic environment would form part of the 'local enforcement plan' (NPPF, Paragraph 207).

48 Carrying out works that affect the special interest of a listed building and the demolition of a building in a conservation area without consent are both criminal offences. Expert heritage advice should be sought if there is any doubt as to whether consent should be obtained and, if in doubt owners are encouraged to talk to their LPA before works are undertaken. Although scheduled monument consent is a separate regime, unauthorised works are a criminal offence under the Ancient Monuments and Archaeological Areas Act 1979.

Marketing to demonstrate redundancy

49 Excepting those which, by their nature, have limited or no economic end use, total loss or substantial harm to a designated heritage asset may be justified where certain conditions apply (NPPF, Paragraph 133). Marketing is required to demonstrate redundancy as expert evidence of possible purchasers and their intended uses for the site can never be conclusive and the seriousness of the proposed harm justifies the time taken in the marketing exercise (See section 4.7 of *Enabling Development and the Conservation of Significant Places* – English Heritage, 2008).

50 No-one is obliged to sell their property. The aim of a marketing exercise is to reach all potential buyers who may be willing to find a use for the site that still provides for its conservation to some degree. If such a genuine purchaser comes forward who would be willing to maintain the asset, there is no obligation to sell to them, of course, but redundancy will not have been demonstrated. To ensure that those marketing efforts have been genuine and given the best chance of succeeding, local planning authorities may consider the following aspects of the campaign in order to judge its merits:

- a **The timing of the marketing.**
Paragraph 133 of the NPPF requires that there is clear evidence that no viable use can be found in the 'medium term'. Under poor market conditions the applicant may wish to consider whether 'mothballing' the asset might be appropriate until conditions have improved to the point when a negative response can be reasonably ascribed to a genuine lack of interest in the asset itself rather than to general market conditions.
- b **The period and means of marketing.**
These will be set to give the best chance of reaching all categories of potential purchaser.

- c **The asking price.**
A price that does not fairly reflect the market value of the heritage asset will deter enquiries.
- d **Condition of the site and deliberate neglect.** To test the market adequately the price would need to reflect the cost of any works needed to repair the asset. Deterioration from deliberate neglect of the asset in the hope of obtaining consent should be ignored. This means that if the cost of making good the deterioration from deliberate neglect is greater than any value the site may have had without the neglect, the applicant is unlikely to be able to demonstrate that the asset would have been unviable in the assumed condition that the policy requires.
- e **The extent of the land included and nature of the interest being marketed.**
The land being offered needs to be sufficient to provide necessary infrastructure; if a lease rather than freehold is offered and it is too short or has otherwise onerous terms genuine interest may be deterred.

Public or charitable interest and support for assets under threat

51 Where there are no expressions of interest in the general market for maintaining the asset, reasonable endeavours will need to be made to see if there is a public or charitable organisation willing to take on the asset and to find grant-funding that may pay for its continued conservation. This might include approaching the local authority, Historic England, the Heritage Lottery Fund, the Architectural Heritage Fund (who maintain a list of possible alternative sources of funding), charitable foundations, national and local amenity societies and preservation trusts.

Opportunities to enhance assets, their settings and local distinctiveness

52 Sustainable development can involve seeking positive improvements in the quality of the historic environment. There will not always be opportunities to enhance the significance or improve a heritage asset but the larger the asset the more likely there will be. Most conservation areas, for example, will have sites within them that could add to the character and value of the area through development, while listed buildings may often have extensions or other alterations that have a negative impact on the significance. Similarly, the setting of all heritage assets will frequently have elements that detract from the significance of the asset or hamper its appreciation.

Design and local distinctiveness

53 Both the NPPF (section 7) and PPG (section ID26) contain detail on why good design is important and how it can be achieved. In terms of the historic environment, some or all of the following factors may influence what will make the scale, height, massing, alignment, materials and proposed use of new development successful in its context:

- The history of the place
- The relationship of the proposal to its specific site
- The significance of nearby assets and the contribution of their setting, recognising that this is a dynamic concept
- The general character and distinctiveness of the area in its widest sense, including the general character of local buildings, spaces, public realm and the landscape, the grain of the surroundings, which includes, for example the street pattern and plot size

- The size and density of the proposal related to that of the existing and neighbouring uses
- Landmarks and other built or landscape features which are key to a sense of place
- The diversity or uniformity in style, construction, materials, colour, detailing, decoration and period of existing buildings and spaces
- The topography
- Views into, through and from the site and its surroundings
- Landscape design
- The current and historic uses in the area and the urban grain
- The quality of the materials

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APPENDIX 3

THE SETTING OF HERITAGE ASSETS - HISTORIC ENVIRONMENT GOOD PRACTICE ADVICE IN PLANNING NOTE 3 (SECOND EDITION) (2017)

<https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/heaq180-gpa3-setting-heritage-assets/>



Historic England

The Setting of Heritage Assets

Historic Environment Good Practice Advice in
Planning Note 3 (Second Edition)



Summary

This document sets out guidance, against the background of the National Planning Policy Framework (NPPF) and the related guidance given in the Planning Practice Guide (PPG), on managing change within the settings of heritage assets, including archaeological remains and historic buildings, sites, areas, and landscapes.

It gives general advice on understanding setting, and how it may contribute to the significance of heritage assets and allow that significance to be appreciated, as well as advice on how views contribute to setting. The suggested staged approach to taking decisions on setting can also be used to assess the contribution of views to the significance of heritage assets. The guidance has been written for local planning authorities and those proposing change to heritage assets.

It replaces *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 – 1st edition, 2015* and *Seeing the History in the View: A Method for assessing Heritage Significance within Views* (English Heritage, 2011).

It is one of three related Good Practice Advice (GPA) Notes, along with [*GPA1 The Historic Environment in Local Plans*](#) and [*GPA2 Managing Significance in Decision-Taking in the Historic Environment*](#).

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[HistoricEngland.org.uk/advice/planning/planning-system/](https://historicengland.org.uk/advice/planning/planning-system/)

Front cover: York Water Gate, Victoria Embankment Gardens, City Of Westminster, Greater London.
Built for the Duke of Buckingham in 1626 to provide access to the Thames. View from south east.

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Association of Local Government Archaeological Officers

British Property Federation

Council for British Archaeology

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Country Land and Business Association

Civic Voice

Heritage Alliance

Historic Houses Association

Historic Towns Forum

Institute of Historic Building Conservation

National Trust

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Introduction

1 The purpose of this Historic England Good Practice Advice note is to provide information on good practice to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the [National Planning Policy Framework \(NPPF\)](#) and the related guidance in the national [Planning Practice Guide \(PPG\)](#). It should be read in conjunction with Good Practice Advice notes 1 ([The Historic Environment in Local Plans](#)) and 2 ([Managing Significance in Decision-Taking in the Historic Environment](#)). This good practice advice acknowledges the primacy of the NPPF and PPG, supporting the implementation of national policy, but does not constitute a statement of Government policy itself, nor does it seek to prescribe a single methodology or particular data sources. Alternative approaches may be equally acceptable, provided they are demonstrably compliant with legislation, national policies and objectives. This guidance, *Good Practice Advice 3 – The Setting of Heritage Assets* (2nd edition, 2017) supersedes *Good Practice Advice 3 – The Setting of Heritage Assets* (1st edition, 2015) and *Seeing the History in the View: A Method for assessing Heritage Significance within Views* (English Heritage, 2011).

2 The advice in this document, in accordance with the NPPF, emphasises that the information required in support of applications for planning permission and listed building consent should be no more than is necessary to reach an informed decision, and that activities to conserve or invest need to be proportionate to the significance of the heritage assets affected and the impact on the significance of those heritage assets. At the same time those taking decisions need enough information to understand the issues.

3 This note gives assistance concerning the assessment of the setting of heritage assets, given:

- the statutory obligation on decision-makers to have special regard to the desirability of preserving listed buildings and their settings, and
- the policy objectives in the NPPF and the PPG establishing the twin roles of setting (see boxes below): it can contribute to the significance of a heritage asset, and it can allow that significance to be appreciated. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the heritage asset's conservation, including sustaining significance ([NPPF, paragraph 132](#)).

4 This note therefore starts by giving general advice on understanding setting and how it may contribute to the significance of heritage assets, before adding advice on how views play a part in setting; it ends by suggesting a staged approach to taking decisions on the level of the contribution which setting and related views make to the significance of heritage assets (Part 2, paragraphs 17–42).

5 Consideration of the contribution of setting to the significance of heritage assets, and how it can enable that significance to be appreciated, will almost always include the consideration of views. The staged approach to taking decisions on setting given here can also be used to assess the contribution of a view, or views, to the significance of heritage assets and the ability to appreciate that significance.

6 Views, however, can of course be valued for reasons other than their contribution to heritage significance. They may, for example, be related to the appreciation of the wider landscape, where there may be little or no association with heritage assets. Landscape character and visual amenity are also related planning considerations. The assessment and management of views in

the planning process may therefore be partly or wholly separate from any consideration of the significance of heritage assets. This advice therefore directs readers elsewhere for approaches to landscape and visual impact assessment and amenity valuation (paragraphs 15 and 16).

Part 1: Settings and Views

NPPF Glossary: Setting of a heritage asset

The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral ([NPPF, Annex 2: Glossary](#)).

PPG: What is the setting of a heritage asset and how should it be taken into account?

The “setting of a heritage asset” is defined in the Glossary of the National Planning Policy Framework.

A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.

Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not.

The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in

which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.

When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset’s significance may also damage its economic viability now, or in the future, thereby threatening its on-going conservation ([PPG, paragraph: 013, reference ID: 18a-013-20140306](#)).

Difference between setting and curtilage, character, context and landscape

7 Setting is separate from the concepts of curtilage, character and context:

- Curtilage is a legal term describing an area around a building and, for listed structures, the extent of curtilage is defined by consideration of ownership, both past and present, functional association and layout. The setting of a heritage asset will include, but generally be more extensive than, its curtilage (if it has one) (see [Identification and Designation of Heritage Assets: Listed Buildings](#) in the Historic England *Heritage Protection Guide*).
- The historic character of a place is the group of qualities derived from its past uses that make it distinctive. This may include: its associations with people, now and through time; its visual aspects; and the features, materials, and spaces associated with its history, including its original configuration and subsequent losses and changes. Character is a broad concept, often used in relation to entire historic areas and landscapes, to which heritage assets and their settings may contribute.
- The context of a heritage asset is a non-statutory term used to describe any relationship between it and other heritage assets, which is relevant to its significance, including cultural, intellectual, spatial or functional. Contextual relationships apply irrespective of distance, sometimes extending well beyond what might be considered an asset's setting, and can include the relationship of one heritage asset to another of the same period or function, or with the same designer or architect. A range of additional meanings is available for the term 'context', for example in relation to archaeological context and to the context of new developments, as well as customary usages. Setting may include associative relationships that are sometimes referred to as 'contextual'.

- To avoid uncertainty in discussion of setting, a landscape is 'an area, as perceived by people, the character of which is the result of the action and interaction of natural and/or human factors' (Glossary, *Guidelines for Landscape and Visual Impact Assessment*, 3rd edition, published by the Landscape Institute and the Institute of Environmental Management and Assessment, p 157, based on the definition in the European Landscape Convention, European Treaty Series – No. 176, Florence, 20.x.2000, p 2).

The extent of setting

8 The NPPF makes it clear that the extent of the setting of a heritage asset 'is not fixed and may change as the asset and its surroundings evolve' ([NPPF, Annex 2: Glossary](#)). All of the following matters may affect considerations of the extent of setting:

- While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset. This is because the surroundings of a heritage asset will change over time, and because new information on heritage assets may alter what might previously have been understood to comprise their setting and the values placed on that setting and therefore the significance of the heritage asset.
- Extensive heritage assets, such as historic parks and gardens, landscapes and townscapes, can include many heritage assets, historic associations between them and their nested and overlapping settings, as well as having a setting of their own. A conservation area is likely to include the settings of listed buildings and have its own setting, as will the hamlet, village or urban area in which it is situated (explicitly recognised in green belt designations).

The Courts have held that it is legitimate in appropriate circumstances to include within a conservation area the setting of buildings that form the heart of that area (R v Canterbury City Council ex parte David Halford, February 1992; CO/2794/1991). And NPPF paragraph 80, for example, makes it clear that historic towns are regarded as having a setting.

- Consideration of setting in urban areas, given the potential numbers and proximity of heritage assets, often overlaps with considerations both of townscape/urban design and of the character and appearance of conservation areas. Conflict between impacts on setting and other aspects of a proposal can be avoided or mitigated by working collaboratively and openly with interested parties at an early stage.

Setting and the significance of heritage assets

9 Setting is not itself a heritage asset, nor a heritage designation, although land comprising a setting may itself be designated (see below Designed settings). Its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. The following paragraphs examine some more general considerations relating to setting and significance.

The setting of World Heritage Sites may be protected as ‘buffer zones’ – see [PPG, paragraph: 033 Reference ID: 2a-033-20140306](#).

- **Change over time**
Settings of heritage assets change over time. Understanding this history of change will help to determine how further

development within the asset’s setting is likely to affect the contribution made by setting to the significance of the heritage asset. Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of change over the long term. Settings may also have suffered negative impact from inappropriate past developments and may be enhanced by the removal of the inappropriate structure(s).

- **Cumulative change**

Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset. Negative change could include severing the last link between an asset and its original setting; positive change could include the restoration of a building’s original designed landscape or the removal of structures impairing key views of it (see also paragraph 40 for screening of intrusive developments).

- **Access and setting**

Because the contribution of setting to significance does not depend on public rights or ability to access it, significance is not dependent on numbers of people visiting it; this would downplay such qualitative issues as the importance of quiet and tranquillity as an attribute of setting, constraints on access such as remoteness or challenging terrain, and the importance of the setting to a local community who may be few in number. The potential for

appreciation of the asset's significance may increase once it is interpreted or mediated in some way, or if access to currently inaccessible land becomes possible.

■ **Buried assets and setting**

Heritage assets that comprise only buried remains may not be readily appreciated by a casual observer. They nonetheless retain a presence in the landscape and, like other heritage assets, may have a setting. These points apply equally, in some rare cases, to designated heritage assets such as scheduled monuments or Protected Wreck Sites that are periodically, partly or wholly submerged, eg in the intertidal zone on the foreshore.

- The location and setting of historic battles, otherwise with no visible traces, may include important strategic views, routes by which opposing forces approached each other and a topography and landscape features that played a part in the outcome.
- Buried archaeological remains may also be appreciated in historic street or boundary patterns, in relation to their surrounding topography or other heritage assets or through the long-term continuity in the use of the land that surrounds them. While the form of survival of an asset may influence the degree to which its setting contributes to significance and the weight placed on it, it does not necessarily follow that the contribution is nullified if the asset is obscured or not readily visible.

■ **Designed settings**

Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create experiences of drama or surprise. In these special circumstances, these designed settings may be regarded as heritage assets in their own right, for instance the designed landscape around a country house. Furthermore they may, themselves, have a wider setting: a

park may form the immediate surroundings of a great house, while having its own setting that includes lines-of-sight to more distant heritage assets or natural features beyond the park boundary. Given that the designated area is often restricted to the 'core' elements, such as a formal park, it is important that the extended and remote elements of the design are included in the evaluation of the setting of a designed landscape. Reference is sometimes made to the 'immediate', 'wider' and 'extended' setting of heritage assets, but the terms should not be regarded as having any particular formal meaning. While many day-to-day cases will be concerned with development in the vicinity of an asset, development further afield may also affect significance, particularly where it is large-scale, prominent or intrusive. The setting of a historic park or garden, for instance, may include land beyond its boundary which adds to its significance but which need not be confined to land visible from the site, nor necessarily the same as the site's visual boundary. It can include:

- land which is not part of the park or garden but which is associated with it by being adjacent and visible from it
- land which is not part of the site but which is adjacent and associated with it because it makes an important contribution to the historic character of the site in some other way than by being visible from it, and
- land which is a detached part of the site and makes an important contribution to its historic character either by being visible from it or in some other way, perhaps by historical association

■ **Setting and urban design**

As mentioned above (paragraph 8, The extent of setting), the numbers and proximity of heritage assets in urban areas mean that the protection and enhancement of setting is intimately linked to townscape and urban

design considerations. These include the degree of conscious design or fortuitous beauty and the consequent visual harmony or congruity of development, and often relates to townscape attributes such as enclosure, definition of streets and spaces and spatial qualities as well as lighting, trees, and verges, or the treatments of boundaries or street surfaces.

See *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning 2* (2015) and *Conservation Area Designation, Appraisal and Management: Historic England Advice Note 1* (2016).

- **Setting and economic viability**
Sustainable development under the NPPF can have important positive impacts on heritage assets and their settings, for example by bringing an abandoned building back into use or giving a heritage asset further life. However, the economic viability of a heritage asset can be reduced if the contribution made by its setting is diminished by badly designed or insensitively located development. For instance, a new road scheme affecting the setting of a heritage asset, while in some cases increasing the public's ability or inclination to visit and/or use it, thereby boosting its economic viability and enhancing the options for the marketing or adaptive re-use of a building, may in other cases have the opposite effect.

Views and setting

10 The contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, long, short or of lateral spread, and include a variety of views of, from, across, or including that asset.

11 Views which contribute more to understanding the significance of a heritage asset include:

- those where the composition within the view was a fundamental aspect of the design or function of the heritage asset
- those where town- or village-scape reveals views with unplanned or unintended beauty
- those with historical associations, including viewing points and the topography of battlefields
- those with cultural associations, including landscapes known historically for their picturesque and landscape beauty, those which became subjects for paintings of the English landscape tradition, and those views which have otherwise become historically cherished and protected
- those where relationships between the asset and other heritage assets or natural features or phenomena such as solar or lunar events are particularly relevant

12 Assets, whether contemporaneous or otherwise, which were intended to be seen from one another for aesthetic, functional, ceremonial or religious reasons include:

- military and defensive sites
- telegraphs or beacons
- prehistoric funerary and ceremonial sites
- historic parks and gardens with deliberate links to other designed landscapes and remote 'eye-catching' features or 'borrowed' landmarks beyond the park boundary

13 Views may be identified and protected by local planning policies and guidance for the part they play in shaping our appreciation and understanding of England's historic environment, whether in rural or urban areas and whether designed to be seen as a unity or

as the cumulative result of a long process of development. This does not mean that additional views or other elements or attributes of setting do not merit consideration. Such views include:

- views identified as part of the plan-making process, such as those identified in the *London View Management Framework* (LVMF, Mayor of London 2010) and *Oxford City Council's View Cones* (2005) and *Assessment of the Oxford View Cones* (2015 Report)
- views identified in character area appraisals or in management plans, for example of World Heritage Sites
- important designed views from, to and within historic parks and gardens that have been identified as part of the evidence base for development plans, and
- views that are identified by local planning authorities when assessing development proposals

Where complex issues involving views come into play in the assessment of such views – whether for the purposes of providing a baseline for plan-making or for development management – a formal views analysis may be merited.

Landscape Assessment and Amenity

14 Analysis of setting is different from landscape assessment. While landscapes include everything within them, the entirety of very extensive settings may not contribute equally to the significance of a heritage asset, if at all. Careful analysis is therefore required to assess whether one heritage asset at a considerable distance from another, though intervisible with it – a church spire, for instance – is a major component of the setting, rather than just an incidental element within the wider landscape.

15 Assessment and management of both setting and views are related to consideration of the wider landscape, which is outside the scope of this advice note. Additional advice on views is available in *Guidelines for Landscape and*

Being tall structures, church towers and spires are often widely visible across land- and townscapes but, where development does not impact on the significance of heritage assets visible in a wider setting or where not allowing significance to be appreciated, they are unlikely to be affected by small-scale development, unless that development competes with them, as tower blocks and wind turbines may. Even then, such an impact is more likely to be on the landscape values of the tower or spire rather than the heritage values, unless the development impacts on its significance, for instance by impacting on a designed or associative view.

Visual Impact Assessment, 3rd edition, published by the Landscape Institute and the Institute of Environmental Management and Assessment (in partnership with Historic England).

16 Similarly, setting is different from general amenity. Views out from heritage assets that neither contribute to significance nor allow appreciation of significance are a matter of amenity rather than of setting.

Part 2: Setting and Views – A Staged Approach to Proportionate Decision-Taking

17 All heritage assets have significance, some of which have particular significance and are designated. The contribution made by their setting to their significance also varies. Although many settings may be enhanced by development, not all settings have the same capacity to accommodate change without harm to the significance of the heritage asset or the ability to appreciate it. This capacity may vary between designated assets of the same grade or of the same type or according to the nature of the change. It can also depend on the location of the asset: an elevated or overlooked location; a riverbank, coastal or island location; or a location within an extensive tract of flat land may increase the sensitivity of the setting (ie the capacity of

the setting to accommodate change without harm to the heritage asset's significance) or of views of the asset. This requires the implications of development affecting the setting of heritage assets to be considered on a case-by-case basis.

18 Conserving or enhancing heritage assets by taking their settings into account need not prevent change; indeed change may be positive, for instance where the setting has been compromised by poor development. Many places coincide with the setting of a heritage asset and are subject to some degree of change over time. NPPF policies, together with the guidance on their implementation in the Planning Policy Guidance (PPG), provide the framework for the consideration of change affecting the setting of undesignated and designated heritage assets as part of the decision-taking process (NPPF, paragraphs 131-135 and 137).

19 Amongst the Government's planning policies for the historic environment is that conservation decisions are based on a proportionate assessment of the particular significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset. Historic England recommends the following broad approach to assessment, undertaken as a series of

steps that apply proportionately to the complexity of the case, from straightforward to complex:

Step 1: Identify which heritage assets and their settings are affected

Step 2: Assess the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated

Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it

Step 4: Explore ways to maximise enhancement and avoid or minimise harm

Step 5: Make and document the decision and monitor outcomes

Each of these steps is considered in more detail below.

For further information on Strategic Environmental Assessment and Environmental Impact Assessment, see *Sustainability Appraisal and Strategic Environmental Assessment: Historic England Advice Note 8* (2016).

Development proposals involving the setting of single and less significant assets and straightforward effects on setting may best be handled through a simple check-list approach and can usefully take the form of a short narrative statement for each assessment stage, supported by adequate plans and drawings, etc.

Cases involving more significant assets, multiple assets, or changes considered likely to have a major effect on significance will require a more detailed approach to analysis, often taking place within the framework of Environmental Impact Assessment procedures. Each of the stages may involve detailed assessment techniques and complex forms of

analysis such as viewshed analyses, sensitivity matrices and scoring systems. Whilst these may assist analysis to some degree, as setting and views are matters of qualitative and expert judgement, they cannot provide a systematic answer. Historic England recommends that, when submitted as part of a Design and Access Statement, Environmental Statement or evidence to a public Inquiry, technical analyses of this type should be seen primarily as material supporting a clearly expressed and non-technical narrative argument that sets out 'what matters and why' in terms of the heritage significance and setting of the assets affected, together with the effects of the development upon them.

Step 1: Identify which heritage assets and their settings are affected

20 The setting of a heritage asset is ‘the surroundings in which a heritage asset is experienced’ (NPPF, Annex 2: Glossary). Where that experience is capable of being affected by a proposed development (in any way) then the proposed development can be said to affect the setting of that asset. The starting point of the analysis is to identify those heritage assets likely to be affected by the development proposal.

21 It is important that, at the pre-application or scoping stage, the local authority, having due regard to the need for proportionality:

- indicates whether it considers a proposed development has the potential to affect the setting of (a) particular heritage asset(s), or
- specifies an ‘area of search’ around the proposed development within which it is reasonable to consider setting effects, or
- advises the applicant to consider approaches such as a ‘Zone of Visual Influence’ or ‘Zone of Theoretical Visibility’ in relation to the proposed development in order to better identify heritage assets and settings that may be affected

A ‘Zone of Visual Influence’ defines the areas from which a development may potentially be totally or partially visible by reference to surrounding topography. However, such analysis does not take into account any landscape artefacts such as trees, woodland, or buildings, and for this reason a ‘Zone of Theoretical Visibility’ which includes these factors is to be preferred.

22 For developments that are not likely to be prominent or intrusive, the assessment of effects on setting may often be limited to the immediate surroundings, while taking account

of the possibility that setting may change as a result of the removal of impermanent landscape or townscape features, such as hoardings or planting.

23 The area of assessment for a large or prominent development, such as a tall building in an urban environment or a wind turbine in the countryside or offshore, can often extend for a distance of several kilometres. In these circumstances, while a proposed development may affect the setting of numerous heritage assets, it may not impact on them all equally, as some will be more sensitive to change affecting their setting than others. Local planning authorities are encouraged to work with applicants in order to minimise the need for detailed analysis of very large numbers of heritage assets. They may give advice at the pre-application stage (or the scoping stage of an Environmental Statement) on those heritage assets, or categories of heritage asset, that they consider most sensitive as well as on the level of analysis they consider proportionate for different assets or types of asset.

24 Where spatially extensive assessments relating to large numbers of heritage assets are required, Historic England recommends that local planning authorities give consideration to the practicalities and reasonableness of requiring assessors to access privately owned land. In these circumstances, they should also address the extent to which assessors can reasonably be expected to gather and represent community interests and opinions on changes affecting settings.

25 Where the development proposal affects views which may be particularly helpful in allowing the significance of an asset to be appreciated and which are therefore part of the setting, it is often necessary to identify viewing points for assessment. An explanation why a particular viewing point has been selected will be needed. Sometimes a heritage asset is best appreciated while moving (for example, in a designed landscape, where its three-dimensional

formal qualities are an essential part of its significance). These, such as the changing views of the Tyne bridges viewed from the banks of the River Tyne or of the Tower of London from the south bank of the River Thames in London, are often termed 'kinetic' views.

Step 2: Assess the degree to which these settings and views make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated

26 The second stage of any analysis is to assess whether the setting of an affected heritage asset makes a contribution to its significance and the extent and/or nature of that contribution; both setting, and views which form part of the way a setting is experienced, may be assessed additionally for the degree to which they allow significance to be appreciated. We recommend that this assessment should first address the key attributes of the heritage asset itself and then consider:

- the physical surroundings of the asset, including its relationship with other heritage assets
- the asset's intangible associations with its surroundings, and patterns of use
- the contribution made by noises, smells, etc to significance, and
- the way views allow the significance of the asset to be appreciated

27 The box below provides a (non-exhaustive) **checklist** of the potential attributes of a setting that it may be appropriate to consider in order to define its contribution to the asset's heritage values and significance. Only a limited selection of the attributes listed will be of particular relevance to an asset. A sound assessment process will identify these at an early stage, focus on them, and be as clear as possible what emphasis attaches to them. In doing so, it will generally be useful to consider, insofar as is possible, the way these attributes have contributed to the

A handy way of visualising the contribution of setting to the significance of heritage assets may be diagrammatically to map past and present relationships between a heritage asset and its surroundings, weighting the mapped connections to demonstrate the relative contribution of the relationship to the significance of the asset or the ability to appreciate the significance. By setting out the relationships and considering the level of their contribution to significance, it is possible to gauge impact more transparently and more consistently.

Change can also have the effect of strengthening relationships, for example by removing visual impediments such that significance is better revealed; mapping thereby provides one mechanism for identifying opportunities for enhancement.

significance of the asset in the past (particularly when it was first built, constructed or laid out), the implications of change over time, and their contribution in the present.

28 The local authority Historic Environment Record is an important source of information to support this assessment and, in most cases, will be able to provide information on the wider landscape context of the heritage asset as well as on the asset itself. Landscape Character Assessments, Historic Landscape Character Assessments, Conservation Area Appraisals, the Register of Parks and Gardens and the Parks & Gardens UK database are also important sources in this regard.

29 This assessment of the contribution to significance made by setting will provide the baseline for establishing the effects of a proposed development on significance, as set out in 'Step 3' below. It will, therefore, be focused on the need to support decision-taking in respect of the proposed development. A similar approach to

assessment may also inform the production of a strategic, management or conservation plan in advance of any specific development proposal, although the assessment of significance required for studies of this type will address the setting of the heritage asset ‘in the round’, rather than focusing on a particular development site.

30 An assessment of the contribution to significance of a view does not depend alone on the significance of the heritage assets in the view but on the way the view allows that significance to be appreciated. The view may be part of a

landscape, townscape or other design intended to allow a particular attribute of the asset to be enjoyed, such as its reflection in a body of water. Heritage assets (sometimes of different periods) may have been deliberately linked by the creation of views which were designed to have a particular effect, adding meanings through visual cross-references. Composite or fortuitous views which are the cumulative result of a long history of development, particularly in towns and cities, may become cherished and may be celebrated in artistic representations. The ability to experience

Assessment Step 2 Checklist

The starting point for this stage of the assessment is to consider the significance of the heritage asset itself and then establish the contribution made by its setting. The following is a (non-exhaustive) check-list of potential attributes of a setting that may help to elucidate its contribution to significance. It may be the case that only a limited selection of the attributes listed is likely to be particularly important in terms of any single asset.

The asset’s physical surroundings

- Topography
- Aspect
- Other heritage assets (including buildings, structures, landscapes, areas or archaeological remains)
- Definition, scale and ‘grain’ of surrounding streetscape, landscape and spaces
- Formal design eg hierarchy, layout
- Orientation and aspect
- Historic materials and surfaces
- Green space, trees and vegetation
- Openness, enclosure and boundaries
- Functional relationships and communications
- History and degree of change over time

Experience of the asset

- Surrounding landscape or townscape character
- Views from, towards, through, across and including the asset
- Intentional intervisibility with other historic and natural features
- Visual dominance, prominence or role as focal point
- Noise, vibration and other nuisances
- Tranquillity, remoteness, ‘wildness’
- Busyness, bustle, movement and activity
- Scents and smells
- Diurnal changes
- Sense of enclosure, seclusion, intimacy or privacy
- Land use
- Accessibility, permeability and patterns of movement
- Degree of interpretation or promotion to the public
- Rarity of comparable survivals of setting
- Cultural associations
- Celebrated artistic representations
- Traditions

these same views today can illuminate the design principles and taste of our predecessors.

31 The impact of seasonal and day/night changes on a view or views needs to be considered, including other changes that may mean that a view at a particular point in time may not be representative of the experience over longer periods. Does summer foliage hide an asset that is visible in winter? Does artificial external lighting at night emphasise some aspects of an asset and leave others in the dark.

Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on the significance or on the ability to appreciate it

32 The third stage of any analysis is to identify the effects a development may have on setting(s) and to evaluate the resultant degree of harm or benefit to the significance of the heritage asset(s). In some circumstances, this evaluation may need to extend to cumulative and complex impacts which may have as great an effect on heritage assets as large-scale development and which may not solely be visual.

33 The wide range of circumstances in which setting may be affected and the range of heritage assets that may be involved precludes a single approach for assessing effects. Different approaches will be required for different circumstances. In general, however, the assessment should address the attributes of the proposed development in terms of its:

- location and siting
- form and appearance
- wider effects
- permanence

34 The box (see [below](#)) provides a more detailed list of attributes of the development proposal that it may be appropriate to consider during the assessment process. This list is not intended to be exhaustive and not all attributes will apply to a particular development proposal.

Depending on the level of detail considered proportionate to the purpose of the assessment, it would normally be appropriate to make a selection from the list, identifying those particular attributes of the development requiring further consideration and considering what emphasis attaches to each. The key attributes chosen for consideration can be used as a simple check-list, supported by a short explanation, as part of a Design and Access Statement, or may provide the basis for a more complex assessment process that might sometimes draw on quantitative approaches to assist analysis.

35 In particular, it would be helpful for local planning authorities to consider at an early stage whether development affecting the setting of a heritage asset can be broadly categorised as having the potential to enhance or harm the significance of the asset through the principle of development alone; through the scale, prominence, proximity or placement of development; or through its detailed design. Determining whether the assessment will focus on spatial, landscape and views analysis, on the application of urban design considerations, or on a combination of these approaches will clarify for the applicant the breadth and balance of professional expertise required for its successful delivery.

36 Cumulative assessment is required under the EU Directive on EIA. Its purpose is to identify impacts that are the result of introducing the development into the view in combination with other existing and proposed developments. The combined impact may not simply be the sum of the impacts of individual developments; it may be more, or less.

Assessment Step 3 Checklist

The following is a (non-exhaustive) check-list of the potential attributes of a development affecting setting that may help to elucidate its implications for the significance of the heritage asset. It may be that only a limited selection of these is likely to be particularly important in terms of any particular development.

Location and siting of development

- Proximity to asset
- Position in relation to relevant topography and watercourses
- Position in relation to key views to, from and across
- Orientation
- Degree to which location will physically or visually isolate asset

Form and appearance of development

- Prominence, dominance, or conspicuousness
- Competition with or distraction from the asset
- Dimensions, scale and massing
- Proportions
- Visual permeability (extent to which it can be seen through), reflectivity
- Materials (texture, colour, reflectiveness, etc)
- Architectural and landscape style and/or design
- Introduction of movement or activity
- Diurnal or seasonal change

Wider effects of the development

- Change to built surroundings and spaces
- Change to skyline, silhouette
- Noise, odour, vibration, dust, etc
- Lighting effects and 'light spill'
- Change to general character (eg urbanising or industrialising)
- Changes to public access, use or amenity
- Changes to land use, land cover, tree cover
- Changes to communications/accessibility/permeability, including traffic, road junctions and car-parking, etc
- Changes to ownership arrangements (fragmentation/permitted development/etc)
- Economic viability

Permanence of the development

- Anticipated lifetime/temporariness
- Recurrence
- Reversibility

Step 4: Explore ways to maximise enhancement and avoid or minimise harm

37 Maximum advantage can be secured if any effects on the significance of a heritage asset arising from development likely to affect its setting are considered from the project's inception. Early assessment of setting may provide a basis for agreeing the scope and form of development, reducing the potential for disagreement and challenge later in the process.

38 Enhancement (see [NPPF, paragraph 137](#)) may be achieved by actions including:

- removing or re-modelling an intrusive building or feature
- replacement of a detrimental feature by a new and more harmonious one
- restoring or revealing a lost historic feature or view
- introducing a wholly new feature that adds to the public appreciation of the asset
- introducing new views (including glimpses or better framed views) that add to the public experience of the asset, or
- improving public access to, or interpretation of, the asset including its setting

39 Options for reducing the harm arising from development may include the repositioning of a development or its elements, changes to its design, the creation of effective long-term visual or acoustic screening, or management measures secured by planning conditions or legal agreements. For some developments affecting setting, the design of a development may not be capable of sufficient adjustment to avoid or significantly reduce the harm, for example where impacts are caused by fundamental issues such as the proximity, location, scale, prominence or noisiness of a development. In other cases, good design may reduce or remove the harm, or provide enhancement. Here the design quality may be

an important consideration in determining the balance of harm and benefit.

40 Where attributes of a development affecting setting may cause some harm to significance and cannot be adjusted, screening may have a part to play in reducing harm. As screening can only mitigate negative impacts, rather than removing impacts or providing enhancement, it ought never to be regarded as a substitute for well-designed developments within the setting of heritage assets. Screening may have as intrusive an effect on the setting as the development it seeks to mitigate, so where it is necessary, it too merits careful design. This should take account of local landscape character and seasonal and diurnal effects, such as changes to foliage and lighting. The permanence or longevity of screening in relation to the effect on the setting also requires consideration. Ephemeral features, such as hoardings, may be removed or changed during the duration of the development, as may woodland or hedgerows, unless they enjoy statutory protection. Management measures secured by legal agreements may be helpful in securing the long-term effect of screening.

Step 5: Make and document the decision and monitor outcomes

41 It is good practice to document each stage of the decision-making process in a non-technical and proportionate way, accessible to non-specialists. This should set out clearly how the setting of each heritage asset affected contributes to its significance or to the appreciation of its significance, as well as what the anticipated effect of the development will be, including of any mitigation proposals. Despite the wide range of possible variables, normally this analysis should focus on a limited number of key attributes of the asset, its setting and the proposed development, in order to avoid undue complexity. Such assessment work is a potentially valuable resource and should be logged in the local Historic Environment Record.

42 The true effect of a development on setting may be difficult to establish from plans, drawings and visualisations. It may be helpful to review the success of a scheme and to identify any ‘lessons learned’ once a development affecting setting has been implemented that was intended to enhance, or was considered unlikely to detract from, the significance of a heritage asset. This will be particularly useful where similar developments are anticipated in the future.

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APPENDIX 4

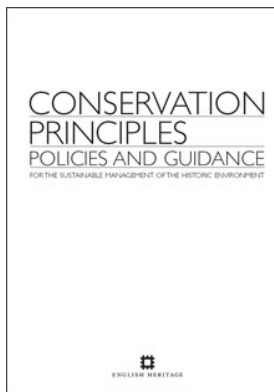
CONSERVATION PRINCIPLES, POLICIES AND GUIDANCE (2008)

<https://historicengland.org.uk/images-books/publications/conservation-principles-sustainable-management-historic-environment/conservationprinciplespoliciesandguidanceapril08web/>



Historic England

Conservation Principles, Policies and Guidance



On 1st April 2015 the Historic Buildings and Monuments Commission for England changed its common name from English Heritage to Historic England. We are now re-branding all our documents.

Although this document refers to English Heritage, it is still the Commission's current advice and guidance and will in due course be re-branded as Historic England.

[Please see our website](#) for up to date contact information, and further advice.

We welcome feedback to help improve this document, which will be periodically revised. Please email comments to guidance@HistoricEngland.org.uk

We are the government's expert advisory service for England's historic environment. We give constructive advice to local authorities, owners and the public. We champion historic places helping people to understand, value and care for them, now and for the future.

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CONSERVATION
PRINCIPLES
POLICIES AND GUIDANCE
FOR THE SUSTAINABLE MANAGEMENT OF THE HISTORIC ENVIRONMENT



ENGLISH HERITAGE

FOREWORD

The sustainable management of the historic environment depends on sound principles, clear policies and guidance based on those principles, and the quality of decisions that stem from their consistent application. We need a clear, over-arching philosophical framework of what conservation means at the beginning of the 21st century; and to distil current good practice in casework, given the impending reform of legislation and the need for more integrated practice.

These *Principles, Policies and Guidance* for the sustainable management of the historic environment have been developed through extensive debate and consultation, both within English Heritage and with colleagues in the historic environment sector and beyond. Our main purpose in producing the *Principles, Policies and Guidance* is to strengthen the credibility and consistency of decisions taken and advice given by English Heritage staff, improving our accountability by setting out the framework within which we will make judgements on casework. Our success will also be measured by the extent to which this document is taken up more widely in the sector.

Over time, and in conjunction with legislative reform and improving capacity in the sector, we hope that the document will help to create a progressive framework for managing change in the historic environment that is clear in purpose and sustainable in its application – constructive conservation.



Lord Bruce-Lockhart

Chairman
English Heritage
April 2008

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DEFINITIONS

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Using this document

- 1 English Heritage sets out in this document a logical approach to making decisions and offering guidance about all aspects of England's historic environment. This will help us to ensure consistency in carrying out our role as the Government's statutory advisor on the historic environment.
- 2 As the **Introduction** (pages 13-16) explains, we have avoided using the terminology of current heritage designations. Instead, we have adopted the term 'place' for any part of the historic environment that can be perceived as having a distinct identity.
- 3 The **Conservation Principles** (pages 19-24) provide a comprehensive framework for the sustainable management of the historic environment, under six headlines:
 - Principle 1: The historic environment is a shared resource
 - Principle 2: Everyone should be able to participate in sustaining the historic environment
 - Principle 3: Understanding the significance of places is vital
 - Principle 4: Significant places should be managed to sustain their values
 - Principle 5: Decisions about change must be reasonable, transparent and consistent
 - Principle 6: Documenting and learning from decisions is essential
- 4 We define *conservation* (under Principle 4.2) as the process of managing change to a significant place in its setting in ways that will best sustain its heritage values, while recognising opportunities to reveal or reinforce those values for present and future generations.
- 5 **Understanding the values** (pages 27-32) describes a range of *heritage values*, arranged in four groups, which may be attached to places. These are:
 - Evidential value: the potential of a place to yield evidence about past human activity.
 - Historical value: the ways in which past people, events and aspects of life can be connected through a place to the present – it tends to be illustrative or associative.
 - Aesthetic value: the ways in which people draw sensory and intellectual stimulation from a place.
 - Communal value: the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory.

- 6 Assessing heritage significance** (pages 35-40) sets out a process for *assessing the heritage significance* of a place:
- Understand the fabric and evolution of the place
 - Identify who values the place, and why they do so
 - Relate identified heritage values to the fabric of the place
 - Consider the relative importance of those identified values
 - Consider the contribution of associated objects and collections
 - Consider the contribution made by setting and context
 - Compare the place with other places sharing similar values
 - Articulate the significance of the place.
- 7 Managing change to significant places** (pages 43-48) explains how to apply the *Principles* in **making decisions** about change to significant places by:
- Establishing whether there is sufficient information to understand the impacts of potential change
 - Considering the effects on authenticity and integrity
 - Taking account of sustainability
 - Considering the potential reversibility of changes
 - Comparing options and making the decision
 - Applying mitigation
 - Monitoring and evaluating outcomes.
- 8 English Heritage Conservation Policies and Guidance** (pages 51-63), a series of *Policies* specific to some common kinds of action, followed by associated *Guidance* on their interpretation. While some of these policies have a close relationship to particular principles, it is important that they are interpreted in the context of the *Principles* as a whole. These policies, which English Heritage will follow, are that:
- 9** The conservation of significant places is founded on **appropriate routine management and maintenance**.
- 10** **Periodic renewal** of elements of a significant place, intended or inherent in the design, is normally desirable unless any harm caused to heritage values would not be recovered over time.
- 11** **Repair** necessary to sustain the heritage values of a significant place is normally desirable if:
- a. there is sufficient information comprehensively to understand the impact of the proposals on the significance of the place; and
 - b. the long term consequences of the proposals can, from experience, be demonstrated to be benign, or the proposals are designed not to prejudice alternative solutions in the future; and
 - c. the proposals are designed to avoid or minimise harm, if actions necessary to sustain particular heritage values tend to conflict.

- 12 Intervention in significant places primarily to increase knowledge of the past involving material loss of evidential values, should normally be acceptable if:
- a. preservation *in situ* is not reasonably practicable; or
 - b. it is demonstrated that the potential increase in knowledge
 - cannot be achieved using non-destructive techniques; and
 - is unlikely to be achieved at another place whose destruction is inevitable; and
 - is predicted decisively to outweigh the loss of the primary resource.

This policy most commonly applies to research excavation.

- 13 Restoration to a significant place should normally be acceptable if:
- a. the heritage values of the elements that would be restored decisively outweigh the values of those that would be lost;
 - b. the work proposed is justified by compelling evidence of the evolution of the place, and is executed in accordance with that evidence;
 - c. the form in which the place currently exists is not the result of an historically-significant event;
 - d. the work proposed respects previous forms of the place;
 - e. the maintenance implications of the proposed restoration are considered to be sustainable;
- 14 New work or alteration to a significant place should normally be acceptable if:
- a. there is sufficient information comprehensively to understand the impacts of the proposal on the significance of the place;
 - b. the proposal would not materially harm the values of the place, which, where appropriate, would be reinforced or further revealed;
 - c. the proposals aspire to a quality of design and execution which may be valued now and in the future;
 - d. the long-term consequences of the proposals can, from experience, be demonstrated to be benign, or the proposals are designed not to prejudice alternative solutions in the future.

- 15** Changes which would **harm the heritage values of a significant place** should be unacceptable unless:
- a. the changes are demonstrably necessary either to make the place sustainable, or to meet an overriding public policy objective or need;
 - b. there is no reasonably practicable alternative means of doing so without harm;
 - c. that harm has been reduced to the minimum consistent with achieving the objective;
 - d. it has been demonstrated that the predicted public benefit decisively outweighs the harm to the values of the place, considering:
 - its comparative significance,
 - the impact on that significance, and
 - the benefits to the place itself and/or the wider community or society as a whole.
- 16** **Enabling development** to secure the future of a significant place should be unacceptable unless:
- a. it will not materially harm the heritage values of the place or its setting
 - b. it avoids detrimental fragmentation of management of the place;
 - c. it will secure the long term future of the place and, where applicable, its continued use for a sympathetic purpose;
 - d. it is necessary to resolve problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid;
 - e. sufficient subsidy is not available from any other source;
 - f. it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place, and that its form minimises harm to other public interests;
 - g. the public benefit of securing the future of the heritage asset through such enabling development decisively outweighs the disbenefits of breaching other public policies.
- 17** We conclude with a general statement about **Applying the Principles** (page 67), acknowledging that the cultural and natural heritage values of significant places, including those reflected in landscape designations, should be managed in parallel, fostering close working relationships between cultural and natural heritage interests. Finally, we provide a set of key **Definitions** (pages 71-72).

INTRODUCTION

Aims

- 18** The historic environment is central to England's cultural heritage and sense of identity, and hence a resource that should be sustained for the benefit of present and future generations. English Heritage's aim in this document is to set out a logical approach to making decisions and offering guidance about all aspects of the historic environment, and for reconciling its protection with the economic and social needs and aspirations of the people who live in it.
- 19** The *Conservation Principles, Policies and Guidance* are primarily intended to help us to ensure consistency of approach in carrying out our role as the Government's statutory advisor on the historic environment in England. Specifically, they make a contribution to addressing the challenges of modernising heritage protection by proposing an integrated approach to making decisions, based on a common process. The *Principles* look forward to the consolidated framework of heritage protection proposed in the White Paper *Heritage Protection for the 21st Century* (March 2007), but their application is not dependent upon it.
- 20** The *Principles* will inform English Heritage's approach to the management of the historic environment as a whole, including the community engagement, learning and access issues addressed under Principle 2. The *Policies and Guidance* will specifically guide our staff in applying the *Principles* to English Heritage's role in the development process, and in managing the historic sites in our care. We hope, of course, that, like all our guidance, the *Principles* will also be read and used by local authorities, property owners, developers, and their advisers. In due course, the *Principles, Policies and Guidance* will be supported by further, more detailed guidance about particular types of proposal or place, and current English Heritage guidance will make specific reference to them as it is updated.

Terms and concepts

- 21** The practice of recognising, formally protecting and conserving particular aspects of the historic environment has developed along parallel paths, trodden by different professional disciplines. The lack of a common, 'high level' terminology has been a barrier to articulating common principles, and using them to develop a more integrated approach. We have therefore deliberately avoided the specialised terminology of current law and public policy relating to heritage designations, such as 'listed building' and 'scheduled monument'. We use the word 'place' as a proxy for any part of the historic environment, including under the ground or sea, that people (not least practitioners) perceive as having a distinct identity, although recognising that there is no ideal term to cover everything from a shipwreck to a landscape.

- 22 The term 'place' goes beyond physical form, to involve all the characteristics that can contribute to a 'sense of place'. It embraces the idea that places, of any size from a bollard to a building, an historic area, a town, or a region, need to be understood and managed at different levels for different purposes; and that a particular geographical location can form part of several overlapping 'places' defined by different characteristics. Similarly, we have stretched the concept of 'fabric', commonly used to describe the material from which a building is constructed, to include all the material substance of places, including geology, archaeological deposits, structures and buildings, and the flora growing in and upon them. 'Designation' embraces any formal recognition of heritage value, including registration, listing, scheduling and inscription.
- 23 Our approach anticipates the proposed consolidation of national cultural heritage protection and, more importantly, avoids the suggestion that the *Principles* are concerned only with places that meet the particular thresholds of significance necessary for formal international, national or local designation. Beyond heritage designations, in the wider framework of environmental management and spatial planning, an understanding of the heritage values a place may have for its owners, the local community and wider communities of interest should be seen as the basis for making sound decisions about its future.
- 24 Sustainable management of a place begins with understanding and defining how, why, and to what extent it has cultural and natural heritage values: in sum, its significance. Communicating that significance to everyone concerned with a place, particularly those whose actions may affect it, is then essential if all are to act in awareness of its heritage values. Only through understanding the significance of a place is it possible to assess how the qualities that people value are vulnerable to harm or loss. That understanding should then provide the basis for developing and implementing management strategies (including maintenance, cyclical renewal and repair) that will best sustain the heritage values of the place in its setting. Every conservation decision should be based on an understanding of its likely impact on the significance of the fabric and other aspects of the place concerned.

- 25 Our definition of conservation includes the objective of sustaining heritage values. In managing significant places, 'to preserve', even accepting its established legal definition of 'to do no harm', is only one aspect of what is needed to sustain heritage values. The concept of conservation area designation, with its requirement 'to preserve or enhance', also recognises the potential for beneficial change to significant places, to reveal and reinforce value. 'To sustain' embraces both preservation and enhancement to the extent that the values of a place allow. Considered change offers the potential to enhance and add value to places, as well as generating the need to protect their established heritage values. It is the means by which each generation aspires to enrich the historic environment.

Relationship to other policy documents

- 26 Planning Policy Statement 1 *Delivering Sustainable Development* (2005) includes the explicit objective of 'protecting and enhancing the natural and historic environment'.¹ In these *Principles, Policies and Guidance*, we provide detailed guidance on sustaining the historic environment within the framework of established government policy. In particular, the document distils from Planning Policy Guidance note (PPG) 15 *Planning and the Historic Environment* (1994) and PPG16 *Archaeology and Planning* (1990) those general principles which are applicable to the historic environment as a whole. It also provides a structure within which other current English Heritage policy and guidance should be applied. The *Policies and Guidance* will be updated to refer to and reflect new heritage legislation and government policy as they emerge, and in the light of experience in use.
- 27 At the international level,² the *Principles* reflect many of the presumptions of the *World Heritage Convention*, with its call to give all natural and cultural heritage a function in the life of communities. The *Principles* are consistent with the *Granada Convention* on the protection of the architectural heritage, and the *Valletta Convention* on the protection of the archaeological heritage, both ratified by the United Kingdom. The *European Landscape Convention*, also ratified by the United Kingdom, has been influential, not least for its definition of a landscape as 'an area, as perceived by people...', and its references to the need to consider sustaining cultural values in managing all landscapes, as well as the importance of public engagement in that process.

¹ See paragraphs 5, 17-18

² *Convention concerning the Protection of the World Cultural and Natural Heritage* (UNESCO, 1972)
Convention for the Protection of the Architectural Heritage of Europe (Granada: Council of Europe, 1985, ETS 121)
European convention on the Protection of the Archaeological Heritage (Valletta: Council of Europe, 1992, ETS 143)
European Landscape Convention (Florence: Council of Europe, 2000, ETS 176)

Correlation with current and proposed legislation

- 28** The White Paper *Heritage Protection for the 21st Century* (March 2007) proposed a single national *Register of historic buildings and sites of special architectural, historic or archaeological interest*, which will include all those places currently on the statutory list of buildings of special architectural or historic interest and the schedule of monuments, the non-statutory registers of historic parks and gardens and of battlefields, and World Heritage Sites (although the latter are designated internationally). 'Historic asset' is the proposed shorthand for registered places, although marine 'historic assets' will remain outside this system. Conservation areas will continue to be designated at local level, alongside non-statutory local designations, and much of the archaeological resource will continue to be managed by policy, rather than designation.
- 29** In the proposed new national system of cultural heritage protection, 'reasons for designation' will set out why each 'historic asset' is above the threshold for designation for its 'architectural, historic or archaeological interest'. Grounds for designation will necessarily be confined to specific values under these headings, directly related to published selection criteria. The statutory basis of designation will, however, be sufficiently broad to embrace the range of values which the *Principles* identify as desirable to take into account in the management of significant places.

Equalities impact assessment

Public bodies are legally required to ensure that their plans, policies and activities do not unfairly discriminate against a group protected by equalities legislation. It is the responsibility of those public bodies for whom we provide advice to ensure that that they have conducted any relevant Equalities Impact Assessment that may be required when implementing the advice of English Heritage.

CONSERVATION PRINCIPLES

I The historic environment is a shared resource

- I.1 Our environment contains a unique and dynamic record of human activity. It has been shaped by people responding to the surroundings they inherit, and embodies the aspirations, skills and investment of successive generations.
- I.2 People value this historic environment as part of their cultural and natural heritage. It reflects the knowledge, beliefs and traditions of diverse communities. It gives distinctiveness, meaning and quality to the places in which we live, providing a sense of continuity and a source of identity. It is a social and economic asset and a resource for learning and enjoyment.
- I.3 Each generation should therefore shape and sustain the historic environment in ways that allow people to use, enjoy and benefit from it, without compromising the ability of future generations to do the same.
- I.4 Heritage values represent a public interest in places, regardless of ownership. The use of law, public policy and public investment is justified to protect that public interest.
- I.5 Advice and assistance should be available from public sources to help owners sustain the heritage in their stewardship.

2 Everyone should be able to participate in sustaining the historic environment

- 2.1** Everyone should have the opportunity to contribute his or her knowledge of the value of places, and to participate in decisions about their future, by means that are accessible, inclusive and informed.
- 2.2** Learning is central to sustaining the historic environment. It raises people's awareness and understanding of their heritage, including the varied ways in which its values are perceived by different generations and communities. It encourages informed and active participation in caring for the historic environment.
- 2.3** Experts should use their knowledge and skills to encourage and enable others to learn about, value and care for the historic environment. They play a crucial role in discerning, communicating and sustaining the established values of places, and in helping people to refine and articulate the values they attach to places.
- 2.4** It is essential to develop, maintain and pass on the specialist knowledge and skills necessary to sustain the historic environment.

3 Understanding the significance of places is vital

- 3.1** Any fixed part of the historic environment with a distinctive identity perceived by people can be considered a place.
- 3.2** The significance of a place embraces all the diverse cultural and natural heritage values that people associate with it, or which prompt them to respond to it. These values tend to grow in strength and complexity over time, as understanding deepens and people's perceptions of a place evolve.
- 3.3** In order to identify the significance of a place, it is necessary first to understand its fabric, and how and why it has changed over time; and then to consider:
- who values the place, and why they do so
 - how those values relate to its fabric
 - their relative importance
 - whether associated objects contribute to them
 - the contribution made by the setting and context of the place
 - how the place compares with others sharing similar values.
- 3.4** Understanding and articulating the values and significance of a place is necessary to inform decisions about its future. The degree of significance determines what, if any, protection, including statutory designation, is appropriate under law and policy.

4 Significant places should be managed to sustain their values

4.1 Change in the historic environment is inevitable, caused by natural processes, the wear and tear of use, and people's responses to social, economic and technological change.

4.2 Conservation is the process of managing change to a significant place in its setting in ways that will best sustain its heritage values, while recognising opportunities to reveal or reinforce those values for present and future generations.

4.3 Conservation is achieved by all concerned with a significant place sharing an understanding of its significance, and using that understanding to:

- judge how its heritage values are vulnerable to change
- take the actions and impose the constraints necessary to sustain, reveal and reinforce those values
- mediate between conservation options, if action to sustain one heritage value could conflict with action to sustain another
- ensure that the place retains its authenticity – those attributes and elements which most truthfully reflect and embody the heritage values attached to it.

4.4 Action taken to counter harmful effects of natural change, or to minimise the risk of disaster, should be timely, proportionate to the severity and likelihood of identified consequences, and sustainable.

4.5 Intervention may be justified if it increases understanding of the past, reveals or reinforces particular heritage values of a place, or is necessary to sustain those values for present and future generations, so long as any resulting harm is decisively outweighed by the benefits.

4.6 New work should aspire to a quality of design and execution which may be valued both now and in the future. This neither implies nor precludes working in traditional or new ways, but should respect the significance of a place in its setting.

5 Decisions about change must be reasonable, transparent and consistent

- 5.1** Decisions about change in the historic environment demand the application of expertise, experience and judgement, in a consistent, transparent process guided by public policy.
- 5.2** The range and depth of understanding, assessment and public engagement should be sufficient to inform and justify the decision to be made, but efficient in the use of resources. Proportionality should govern the exercise of statutory controls.
- 5.3** Potential conflict between sustaining heritage values of a place and other important public interests should be minimised by seeking the least harmful means of accommodating those interests.
- 5.4** If conflict cannot be avoided, the weight given to heritage values in making the decision should be proportionate to the significance of the place and the impact of the proposed change on that significance.

6 Documenting and learning from decisions is essential

- 6.1** Accessible records of the justification for decisions and the actions that follow them are crucial to maintaining a cumulative account of what has happened to a significant place, and understanding how and why its significance may have been altered.
- 6.2** Managers of significant places should monitor and regularly evaluate the effects of change and responses to it, and use the results to inform future decisions. Public bodies similarly should monitor and respond to the effects on the historic environment of their policies and programmes.
- 6.3** If all or part of a significant place will be lost, whether as a result of decision or inevitable natural process, its potential to yield information about the past should be realised. This requires investigation and analysis, followed by archiving and dissemination of the results, all at a level that reflects its significance.
- 6.4** Where such loss is the direct result of human intervention, the costs of this work should be borne by those who benefit from the change, or whose role it is to initiate such change in the public interest.

UNDERSTANDING HERITAGE VALUES

Preamble

- 30** People may value a place for many reasons beyond utility or personal association: for its distinctive architecture or landscape, the story it can tell about its past, its connection with notable people or events, its landform, flora and fauna, because they find it beautiful or inspiring, or for its role as a focus of a community. These are examples of cultural and natural heritage values in the historic environment that people want to enjoy and sustain for the benefit of present and future generations, at every level from the ‘familiar and cherished local scene’³ to the nationally or internationally significant place.
- 31** Many heritage values are recognised by the statutory designation and regulation of significant places, where a particular value, such as ‘architectural or historic interest’ or ‘scientific interest’, is judged to be ‘special’, that is above a defined threshold of importance. Designation necessarily requires the assessment of the importance of specific heritage values of a place; but decisions about its day-to-day management should take account of *all* the values that contribute to its significance. Moreover, the significance of a place should influence decisions about its future, whether or not it is has statutory designation.
- 32** Although most places of heritage value are used, or are capable of being used, for some practical purpose, the relationship between their utility and their heritage values can range from mutual support (in the normal situation of use justifying appropriate maintenance) to conflict. Places with heritage values can generate wider social and economic (‘instrumental’) benefits, for example as a learning or recreational resource, or as a generator of tourism or inward economic investment, although their potential to do so is affected by external factors, such as ease of access. Utility and market values, and instrumental benefits, are different from heritage values in nature and effect.
- 33** This section is intended to prompt comprehensive thought about the range of inter-related heritage values that may be attached to a place. The high level values range from evidential, which is dependent on the inherited fabric of the place, through historical and aesthetic, to communal values which derive from people’s identification with the place.
- 34** Some values can be appreciated simply as a spontaneous, although culturally influenced, response; but people’s experience of all heritage values tends to be enhanced by specific knowledge about the place.

³ PPG 15, *Planning and the historic environment* (1994), para 1.1.

Evidential value

- 35 Evidential value derives from the potential of a place to yield evidence about past human activity.
- 36 Physical remains of past human activity are the primary source of evidence about the substance and evolution of places, and of the people and cultures that made them. These remains are part of a record of the past that begins with traces of early humans and continues to be created and destroyed. Their evidential value is proportionate to their potential to contribute to people's understanding of the past.
- 37 In the absence of written records, the material record, particularly archaeological deposits, provides the only source of evidence about the distant past. Age is therefore a strong indicator of relative evidential value, but is not paramount, since the material record is the primary source of evidence about poorly-documented aspects of any period. Geology, landforms, species and habitats similarly have value as sources of information about the evolution of the planet and life upon it.
- 38 Evidential value derives from the physical remains or genetic lines that have been inherited from the past. The ability to understand and interpret the evidence tends to be diminished in proportion to the extent of its removal or replacement.

Historical value

- 39 Historical value derives from the ways in which past people, events and aspects of life can be connected through a place to the present. It tends to be *illustrative* or *associative*.
- 40 The idea of *illustrating* aspects of history or prehistory – the perception of a place as a link between past and present people – is different from purely evidential value. Illustration depends on visibility in a way that evidential value (for example, of buried remains) does not. Places with illustrative value will normally also have evidential value, but it may be of a different order of importance. An historic building that is one of many similar examples may provide little unique evidence about the past, although each illustrates the intentions of its creators equally well. However, their distribution, like that of planned landscapes, may be of considerable evidential value, as well as demonstrating, for instance, the distinctiveness of regions and aspects of their social organisation.

- 41 Illustrative value has the power to aid interpretation of the past through making connections with, and providing insights into, past communities and their activities through shared experience of a place. The illustrative value of places tends to be greater if they incorporate the first, or only surviving, example of an innovation of consequence, whether related to design, technology or social organisation. The concept is similarly applicable to the natural heritage values of a place, for example geological strata visible in an exposure, the survival of veteran trees, or the observable interdependence of species in a particular habitat. Illustrative value is often described in relation to the subject illustrated, for example, a structural system or a machine might be said to have 'technological value'.
- 42 *Association* with a notable family, person, event, or movement gives historical value a particular resonance. Being at the place where something momentous happened can increase and intensify understanding through linking historical accounts of events with the place where they happened – provided, of course, that the place still retains some semblance of its appearance at the time. The way in which an individual built or furnished their house, or made a garden, often provides insight into their personality, or demonstrates their political or cultural affiliations. It can suggest aspects of their character and motivation that extend, or even contradict, what they or others wrote, or are recorded as having said, at the time, and so also provide evidential value.
- 43 Many buildings and landscapes are associated with the development of other aspects of cultural heritage, such as literature, art, music or film. Recognition of such associative values tends in turn to inform people's responses to these places. Associative value also attaches to places closely connected with the work of people who have made important discoveries or advances in thought about the natural world.
- 44 The historical value of places depends upon both sound identification and direct experience of fabric or landscape that has survived from the past, but is not as easily diminished by change or partial replacement as evidential value. The authenticity of a place indeed often lies in visible evidence of change as a result of people responding to changing circumstances. Historical values are harmed only to the extent that adaptation has obliterated or concealed them, although completeness does tend to strengthen illustrative value.

- 45 The use and appropriate management of a place for its original purpose, for example as a place of recreation or worship, or, like a watermill, as a machine, illustrates the relationship between design and function, and so may make a major contribution to its historical values. If so, cessation of that activity will diminish those values and, in the case of some specialised landscapes and buildings, may essentially destroy them. Conversely, abandonment, as of, for example, a medieval village site, may illustrate important historical events.⁴

Aesthetic value

- 46 Aesthetic value derives from the ways in which people draw sensory and intellectual stimulation from a place.
- 47 Aesthetic values can be the result of the conscious *design* of a place, including artistic endeavour. Equally, they can be the seemingly *fortuitous* outcome of the way in which a place has evolved and been used over time. Many places combine these two aspects – for example, where the qualities of an already attractive landscape have been reinforced by artifice – while others may inspire awe or fear. Aesthetic values tend to be specific to a time and cultural context, but appreciation of them is not culturally exclusive.
- 48 *Design value* relates primarily to the aesthetic qualities generated by the conscious design of a building, structure or landscape as a whole. It embraces composition (form, proportions, massing, silhouette, views and vistas, circulation) and usually materials or planting, decoration or detailing, and craftsmanship. It may extend to an intellectual programme governing the design (for example, a building as an expression of the Holy Trinity), and the choice or influence of sources from which it was derived. It may be attributed to a known patron, architect, designer, gardener or craftsman (and so have associational value), or be a mature product of a vernacular tradition of building or land management. Strong indicators of importance are quality of design and execution, and innovation, particularly if influential.
- 49 Sustaining design value tends to depend on appropriate stewardship to maintain the integrity of a designed concept, be it landscape, architecture, or structure.
- 50 It can be useful to draw a distinction between design created through detailed instructions (such as architectural drawings) and the direct creation of a work of art by a designer who is also in significant part the craftsman. The value of the artwork is proportionate to the extent that it remains the actual product of the artist's hand. While the difference between design and 'artistic' value can be clear-cut, for example statues on pedestals (artistic value) in a formal garden (design value), it is often far less so, as with repetitive ornament on a medieval building,

⁴ For guidance on the restoration on ruins see para 133, on alterations to sustain use, para 154.

- 51 Some aesthetic values are not substantially the product of formal design, but develop more or less *fortuitously* over time, as the result of a succession of responses within a particular cultural framework. They include, for example, the seemingly organic form of an urban or rural landscape; the relationship of vernacular buildings and structures and their materials to their setting; or a harmonious, expressive or dramatic quality in the juxtaposition of vernacular or industrial buildings and spaces. Design in accordance with Picturesque theory is best considered a design value.
- 52 Aesthetic value resulting from the action of nature on human works, particularly the enhancement of the appearance of a place by the passage of time ('the patina of age'), may overlie the values of a conscious design. It may simply add to the range and depth of values, the significance, of the whole; but on occasion may be in conflict with some of them, for example, when physical damage is caused by vegetation charmingly rooting in masonry.
- 53 While aesthetic values may be related to the age of a place, they may also (apart from artistic value) be amenable to restoration and enhancement. This reality is reflected both in the definition of conservation areas (areas whose 'character or appearance it is desirable to preserve or enhance') and in current practice in the conservation of historic landscapes.

Communal value

- 54 Communal value derives from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory. Communal values are closely bound up with historical (particularly associative) and aesthetic values, but tend to have additional and specific aspects.
- 55 *Commemorative* and *symbolic* values reflect the meanings of a place for those who draw part of their identity from it, or have emotional links to it. The most obvious examples are war and other memorials raised by community effort, which consciously evoke past lives and events, but some buildings and places, such as the Palace of Westminster, can symbolise wider values. Such values tend to change over time, and are not always affirmative. Some places may be important for reminding us of uncomfortable events, attitudes or periods in England's history. They are important aspects of collective memory and identity, places of remembrance whose meanings should not be forgotten. In some cases, that meaning can only be understood through information and interpretation, whereas, in others, the character of the place itself tells most of the story.

- 56** *Social value* is associated with places that people perceive as a source of identity, distinctiveness, social interaction and coherence. Some may be comparatively modest, acquiring communal significance through the passage of time as a result of a collective memory of stories linked to them. They tend to gain value through the resonance of past events in the present, providing reference points for a community's identity or sense of itself. They may have fulfilled a community function that has generated a deeper attachment, or shaped some aspect of community behaviour or attitudes. Social value can also be expressed on a large scale, with great time-depth, through regional and national identity.
- 57** The social values of places are not always clearly recognised by those who share them, and may only be articulated when the future of a place is threatened. They may relate to an activity that is associated with the place, rather than with its physical fabric. The social value of a place may indeed have no direct relationship to any formal historical or aesthetic values that may have been ascribed to it.
- 58** Compared with other heritage values, social values tend to be less dependent on the survival of historic fabric. They may survive the replacement of the original physical structure, so long as its key social and cultural characteristics are maintained; and can be the popular driving force for the re-creation of lost (and often deliberately destroyed or desecrated) places with high symbolic value, although this is rare in England.
- 59** Spiritual value attached to places can emanate from the beliefs and teachings of an organised religion, or reflect past or present-day perceptions of the spirit of place. It includes the sense of inspiration and wonder that can arise from personal contact with places long revered, or newly revealed.
- 60** Spiritual value is often associated with places sanctified by longstanding veneration or worship, or wild places with few obvious signs of modern life. Their value is generally dependent on the perceived survival of the historic fabric or character of the place, and can be extremely sensitive to modest changes to that character, particularly to the activities that happen there.

Preamble

- 61 Understanding a place and assessing its significance demands the application of a systematic and consistent process, which is appropriate and proportionate in scope and depth to the decision to be made, or the purpose of the assessment. This section sets out such a process, which can be applied not only to places already acknowledged as significant, but also to those where the potential for change generates the need for assessment. Not all stages will be applicable to all places.

Understand the fabric and evolution of the place

- 62 To identify the cultural and natural heritage values of a place, its history, fabric and character must first be understood. This should include its origins, how and why it has changed over time (and will continue to change if undisturbed), the form and condition of its constituent elements and materials, the technology of its construction, any habitats it provides, and comparison with similar places. Its history of ownership may be relevant, not only to its heritage values, but also to its current state.
- 63 The study of material remains alone will rarely provide sufficient understanding of a place. The information gained will need to be set in the context of knowledge of the social and cultural circumstances that produced the place. Documentation underpinning any existing statutory designations is also important. Historical and archaeological archives always help with understanding how and why the place has changed over time, as may personal recollections, which can be fundamental to identifying some historical and communal values. Published research frameworks may highlight particular aspects of evidential value or potential, but absence of evidence is not evidence of absence, especially of concealed or buried remains.
- 64 Historic Environment Records play a vital role in developing a comprehensive and dynamic information resource, both for understanding particular places and as a wider research tool. Key elements of documentation generated through understanding places, and making changes to significant places, should be copied to Historic Environment Records, as well as remaining accessible to everyone directly concerned with the place.

- 65 Extensive mapping, description, understanding and assessment – ‘characterisation’ – can facilitate rapid analysis of large areas, both urban and rural. Its aim is to help people recognise how the past has shaped the present landscape, by identifying the distinctive historic elements of an area, and explaining past contexts of particular places within it.⁵

Identify who values the place, and why they do so

- 66 To provide a sound basis for management, the people and communities who are likely to attach heritage values to a place should be identified, and the range of those values understood and articulated, not just those that may be a focus of contention. This involves engaging with owners, communities and specialists with a sufficient range of knowledge of the place, subject to the need for proportionality.
- 67 Different people and communities may attach different weight to the same heritage values of a place at the same time. Experience shows that judgements about heritage values, especially those relating to the recent past, tend to grow in strength and complexity over time, as people’s perceptions of a place evolve. It is therefore necessary to consider whether a place might be so valued in the future that it should be protected now.
- 68 Understanding the history of a place does not necessarily make it significant; but the process of investigation often generates and helps to define perceptions of heritage value. This may happen through physical or documentary discoveries, or dialogue; but equally may be prompted by the articulation of links between the qualities of a particular place and the evolution of the culture that produced it, or the events that happened there.

⁵ See *Boundless Horizons: Historic Landscape Characterisation* and *Using Historic Landscape Characterisation* (English Heritage, 2004) and at a more detailed level, *Guidance on conservation area appraisals* (English Heritage, 2006).

Relate identified heritage values to the fabric of the place

- 69** An assessment of significance will normally need to identify how particular parts of a place and different periods in its evolution contribute to, or detract from, each identified strand of cultural and natural heritage value. This is current practice in statutory designation, in relation to those particular values that are the basis of selection. The most useful categories for differentiating between the components of a place ('what') are temporal ('when', often linked to 'by whom') and spatial ('where', 'which part', often linked to 'why'). Understanding a place should produce a chronological sequence of varying precision, allowing its surviving elements to be ascribed to 'phases' in its evolution. Some phases are likely to be of greater significance than others, while some values, such as historical or communal, will apply to the place as a whole. For example:

'The evidential value and potential of Smith's Hall lies primarily in the timber-framed elements of the medieval hall house and 16th century cross-wing, and to a moderate extent in the 18th century alterations and partial casing. The latter is, however, of high architectural value, marred by superficial 19th century accretions, but complemented by a study extension of c1970 by A Architect. The contemporary garden is an outstanding design, integrating framework, sculpture and planting. The building well illustrates a regionally typical pattern of development from a medieval core, and its historical value is enhanced by its association with the writer A Wordsmith who commissioned the study and garden. Since his death Smith's Hall has developed as a creative writing centre and the focus of an annual literary festival'.⁶

- 70** In other cases, differentiation will be spatial, for example:

'The street block of the factory was designed by A N Other to demonstrate the architectural potential of the company's terracotta; it is a bold and well-proportioned design which was followed by others in the district. Its architectural value is reinforced by the technological [*ie illustrative historical*] value of the fireproof construction of the floors using hollow pots. The rear block, although it followed soon afterwards, is by contrast architecturally entirely typical of its date and place. While of lesser architectural value, it and the other buildings on the site, each of which fulfilled a specific role in the manufacturing process, are collectively of high evidential and historical value.'

- 71** In many cases, differentiation will be a combination of the spatial and the temporal. It will normally best be illustrated by maps or plans showing the age and relative significance of the components or character areas of a place. Where the assessment is prompted by potential change, it is important that elements that would be directly affected are addressed at an appropriate level of detail, but always in relation to the place as a whole.

⁶ As a result of which it may also acquire social value over time.

Consider the relative importance of those identified values

- 72** It is normally desirable to sustain all the identified heritage values of a place, both cultural and natural; but on occasion, what is necessary to sustain some values will conflict with what is necessary to sustain others (paragraphs 91-92). If so, understanding the relative contribution of each identified heritage value to the overall value of the place – its significance – will be essential to objective decision-making. A balanced view is best arrived at through enabling all interested parties to appreciate their differing perspectives and priorities.
- 73** As the 'Smith's Hall' example above demonstrates, some elements of a place may actually mar or conceal its significance. Identifying these is current good practice in statutory designation, both national and local, the latter through conservation area character appraisals. Eliminating or mitigating negative characteristics may help to reveal or reinforce heritage values of a place and thus its significance.

Consider the contribution of associated objects and collections

- 74** Historically-associated objects can make a major contribution to the significance of a place, and association with the place can add heritage value to those objects. The range includes, but is not limited to, artefacts recovered through archaeological fieldwork, artworks and furnishings, collections, tools and machinery, and related archives, both historical and archaeological. The value of the whole is usually more than the sum of the parts, so that permanent separation devalues both place and objects. The contribution of such objects and archives, including evolving collections, should be articulated, even if they are currently held elsewhere, and regardless of whether their contribution falls within the scope of statutory protection.
- 75** Where places have been created around accumulated collections (for example, museums or libraries), the interior of a room or part of a garden has been designed as an entity (including a specific collection of furniture or sculpture, as well as fixed elements), or where an industrial building was designed around or to accommodate particular machinery, the relationship between the objects or elements and the place is fundamental to the significance of the place.

Consider the contribution made by setting and context

- 76** 'Setting' is an established concept that relates to the surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape. Definition of the setting of a significant place will normally be guided by the extent to which material change within it could affect (enhance or diminish) the place's significance.
- 77** 'Context' embraces any relationship between a place and other places. It can be, for example, cultural, intellectual, spatial or functional, so any one place can have a multi-layered context. The range of contextual relationships of a place will normally emerge from an understanding of its origins and evolution. Understanding context is particularly relevant to assessing whether a place has greater value for being part of a larger entity, or sharing characteristics with other places.

Compare the place with other places sharing similar values

- 78** Understanding the importance of a place by comparing it with other places that demonstrate similar values normally involves considering:
- how strongly are the identified heritage values demonstrated or represented by the place, compared with those other places?
 - how do its values relate to statutory designation criteria, and any existing statutory designations of the place?
- 79** Designation at an international, national or local level is an indicator of the importance of particular value(s) of a place; but the absence of statutory designation does not necessarily imply lack of significance. Detailed research and analysis may reveal new evidence about any place, and designation criteria are reviewed from time to time. The heritage values of a place established through detailed study should therefore normally be compared with current selection criteria for designation or the application of protective policies.

- 80** Value-based judgements about elements of the historic environment have implications both for places and for everyone with an interest in them. Such judgements provide the basis for decisions about whether, or to what extent, a place should be conserved, rather than remade or replaced. Designation forms the basis of the statutory system of heritage protection. It may have important financial and other consequences for owners, while the refusal to designate may mean the loss of a place to which some people attached considerable significance. Consistency of judgement is therefore crucial to the public acceptability and fairness of the process. Detailed criteria for statutory designation, periodically updated,⁷ and a methodical articulation of how a particular place does or does not meet such criteria, make a major contribution to achieving that consistency.
- 81** The fact that a place does not meet current criteria for formal designation does not negate the values it may have to particular communities. Such values should be taken into account in making decisions about its future through the spatial planning system,⁸ or incentive schemes like Environmental Stewardship.

Articulate the significance of the place

- 82** A 'statement of significance' of a place should be a summary of the cultural and natural heritage values currently attached to it and how they inter-relate, which distils the particular character of the place. It should explain the relative importance of the heritage values of the place (where appropriate, by reference to criteria for statutory designation), how they relate to its physical fabric, the extent of any uncertainty about its values (particularly in relation to potential for hidden or buried elements), and identify any tensions between potentially conflicting values. So far as possible, it should be agreed by all who have an interest in the place. The result should guide all decisions about material change to a significant place.
- 83** Assessments in support of a decision that a place passes the threshold for statutory designation for a particular value normally stand the test of time. However, the values of a place tend to extend beyond those which justify designation, and to grow in strength and complexity as time passes (Principle 3.3). A statement of significance is an informed and inclusive judgement made on a particular set of data, applying prevailing perceptions of value, primarily to inform the management of a significant place. The statement will therefore need review in the light of new information, and periodically to reflect evolving perceptions of value (Principle 3.4).

⁷ Communities and Local Government Circular 01/2007, *Revision to principles of selection for listing buildings* complemented by detailed *Selection Guides* for particular building types produced by English Heritage, are a major step towards achieving this objective for listed buildings.

⁸ In line with the *European Landscape Convention*, Articles 5, 6.

MANAGING CHANGE
TO SIGNIFICANT
PLACES

Preamble

- 84** Conservation involves people managing change to a significant place in its setting, in ways that sustain, reveal or reinforce its cultural and natural heritage values (Principle 4.2). Conservation is not limited to physical intervention, for it includes such activities as the interpretation and sustainable use of places. It may simply involve maintaining the *status quo*, intervening only as necessary to counter the effects of growth and decay, but equally may be achieved through major interventions; it can be active as well as reactive. Change to a significant place is inevitable, if only as a result of the passage of time, but can be neutral or beneficial in its effect on heritage values. It is only harmful if (and to the extent that) significance is eroded.
- 85** The public interest in significant places is recognised through specific legislative and policy constraints on their owners, but there are few fiscal concessions to encourage conservation, and direct financial assistance is very limited. It is the potential of significant places to be used and enjoyed that generates value in the market or to a community, and so tends to motivate and enable their owners to exercise positive, informed stewardship. Very few significant places can be maintained at either public or private expense unless they are capable of some beneficial use; nor would it be desirable, even if it were practical, for most places that people value to become solely memorials of the past.
- 86** Keeping a significant place in use is likely to require continual adaptation and change; but, provided such interventions respect the values of the place, they will tend to benefit public (heritage) as well as private interests in it. Many places now valued as part of the historic environment exist because of past patronage and private investment, and the work of successive generations often contributes to their significance. Owners and managers of significant places should not be discouraged from adding further layers of potential future interest and value, provided that recognised heritage values are not eroded or compromised in the process.
- 87** The shared public and private interest in sustaining significant places in use demands mutual co-operation and respect between owners or managers and regulators. The best use for a significant place – its 'optimum viable use'⁹ – is one that is both capable of sustaining the place and avoids or minimises harm to its values in its setting. It is not necessarily the most profitable use if that would entail greater harm than other viable uses.

⁹ PPG 15, paragraph 3.9, in the context of listed buildings, but the principle is applicable to most significant places.

- 88 Decisions about change to significant places may be influenced by a range of interests. They may involve balancing the heritage value(s) of what exists now against the predicted benefits and disbenefits of the proposed intervention; that is to say, the public interest in the historic environment (which, if statutorily protected, is subject to a policy presumption in favour of preservation), with other, usually inter-related, public and private interests. There is rarely a single right answer, so adequate information and adopting a consistent, rigorous process are crucial to reaching publicly-justifiable decisions.

Establish whether there is sufficient information

- 89 Understanding the impacts or consequences of proposed change should go beyond implications that are immediately apparent; for example, how much physical intervention would really be required to implement a proposal or a change of use? Specific investigation is often required, not only of ongoing processes of growth, change and decay, and other factors which may make the significance of the place vulnerable to harm or loss, but also of technical information about all the implications of a potential change, and often of the methods by which it would be achieved.
- 90 Having understood the scope of continuing or proposed change, sufficient information about the values of the elements of the place that would be affected is essential. The general process of assessing values and significance is addressed above (paragraphs 61-65). But detailed, targeted investigation and evaluation may be required, particularly of habitats, and of potential buried archaeological deposits or concealed structure, in order adequately to establish the contribution they make to the significance of the place. If required as part of a statutory process, such research must, however, be directly and proportionately related to the nature of proposal and its potential effects.

Consider the effects on authenticity and integrity

- 91** Evidential value, historical values and some aesthetic values, especially artistic ones, are dependent upon a place retaining (to varying degrees) the actual fabric that has been handed down from the past; but authenticity lies in whatever most truthfully reflects and embodies the values attached to the place (Principle 4.3). It can therefore relate to, for example, design or function, as well as fabric. Design values, particularly those associated with landscapes or buildings, may be harmed by losses resulting from disaster or physical decay, or through ill-considered alteration or accretion. Design value may be recoverable through repair or restoration, but perhaps at the expense of some evidential value. Keeping a large machine, like a water mill or boat lift, in use, may require replacement and modification of structural or moving parts which could be retained if it ceased to operate, producing a tension between authenticity of fabric and function.
- 92** The decision as to which value should prevail if all cannot be fully sustained always requires a comprehensive understanding of the range and relative importance of the heritage values involved (guided by the assessment of significance: paragraphs 82-83), and what is necessary (and possible) to sustain each of them. Retaining the authenticity of a place is not always achieved by retaining as much of the existing fabric as is technically possible.
- 93** A desire to retain authenticity tends to suggest that any deliberate change to a significant place should be distinguishable, that is, its extent should be discernible through inspection. The degree of distinction that is appropriate must take account of the aesthetic values of the place. In repair and restoration, a subtle difference between new and existing, comparable to that often adopted in the presentation of damaged paintings, is more likely to retain the coherence of the whole than jarring contrast.
- 94** Integrity (literally, 'wholeness, honesty') can apply, for example, to a structural system, a design concept, the way materials or plants are used, the character of a place, artistic creation, or functionality. Decisions about recovering any aspect of integrity that has been compromised must, like authenticity, depend upon a comprehensive understanding of the values of the place, particularly the values of what might be lost in the process.
- 95** Every place is unique in its combination of heritage values, so, while it is technically possible to relocate some structures, their significance tends to be diminished by separation from their historic location. There are exceptions, for example public sculpture not significantly associated with its current site, or moving a structure back from an eroding cliff edge, thus recovering its intended relationship with the landform. Relocated structures may also acquire new values in a new location.

Take account of sustainability

- 96** Significant places should be used and managed in ways that will, wherever possible, ensure that their significance can be appreciated by generations to come, an established aspect of stewardship. Sustaining the value of the historic environment as a whole depends also on creating in the present the heritage of the future, through changes that enhance and enrich the values of places. Both objectives involve the difficult task of anticipating the heritage values of future generations, as well as understanding those of our own.
- 97** Sustaining heritage values is likely to contribute to environmental sustainability, not least because much of the historic environment was designed for a comparatively low-energy economy. Many historic settlements and neighbourhoods, tending towards high density and mixed use, provide a model of sustainable development. Traditional landscape management patterns have been sustained over centuries. Many traditional buildings and building materials are durable, and perform well in terms of the energy needed to make and use them. Their removal and replacement would require a major reinvestment of energy and resources.
- 98** The re-use of sound materials derived from the place being repaired or altered is traditional practice and contributes to the sustainable use of energy and material resources. Mixing old and new materials in exposed situations, however, may be inadvisable. Maintaining demand for new traditional and local materials will also stimulate their continued or renewed production, and help to ensure a sustainable supply and the craft skills to utilise it.
- 99** The re-use of sound traditional materials recovered from alteration and demolition elsewhere can also contribute to sustainability, provided they are not derived from degrading other significant places primarily because of the value of their materials.

Consider the potential reversibility of changes

- 100** In reality, our ability to judge the long-term impact of changes on the significance of a place is limited. Interventions may not perform as expected. As perceptions of significance evolve, future generations may not consider their effect on heritage values positive. It is therefore desirable that changes, for example those to improve energy efficiency in historic buildings, are capable of being reversed, in order not unduly to prejudice options for the future.

- I01** However, places should not be rendered incapable of a sustainable use simply because of a reluctance to make modest, but irreversible, changes. It is also unreasonable to take the idea of reversibility to the point that intervention in significant places diminishes their aesthetic values by appearing contrived, awkward or ugly, in order to ensure that it can be undone. Unless of very short duration, crude and intrusive changes are certainly not justifiable simply because they are theoretically temporary or reversible, for they risk becoming permanent.

Compare options and make the decision

- I02** Ideally, proposed changes will cause no harm to any of the values of the place, and the right decision will be obvious. In practice, however, there tend to be options for achieving the objective of proposed change, each of which will have different impacts on values. The predicted long-term or permanent consequences of proposals (in terms of degree, and whether positive, negative or neutral) on each of the identified heritage values of a place, and thus on the significance of the whole, should provide the reasoned basis for a decision, where necessary taking other interests into account.
- I03** Where there are options for the conservation management of change, or reconciling conservation and other interests, 'heritage impact assessment' can be used to compare the predicted effects of alternative courses of action (including taking no action) on the values of a place, in order to identify the optimum solution. The approach can be refined by weighting different values to reflect their relative importance for the place and its significance. Heritage impact assessment can be particularly useful if applied at the conceptual stage of a proposal, and refined at each successive step towards making a decision.

Apply mitigation

- I04** If some negative impact or loss of fabric is unavoidable, mitigation should be considered to minimise harm. This will normally include making records and archiving parts of significant elements, including archaeological deposits, that will be removed or altered prior to and during the work, in accordance with Principles 6.3 and 6.4. A high quality of design of proposed interventions is not mitigation; it is essential in any significant place (Principle 4.6), regardless of any unavoidable harm. Mitigation should not be confused with compensation – non-essential benefits to other aspects of the place, or to other heritage interests.

Monitor and evaluate outcomes

- I05** Monitoring implementation helps to ensure that outcomes reflect expectations. If, despite prior investigation, the unexpected is revealed during implementation, proposals should, so far as is reasonably possible, be amended to minimise harm.
- I06** The management of significant places should include regular monitoring and evaluation of the effects of change, in accordance with Principles 6.1 and 6.2. This provides the basis for action to address ongoing change (including action by authorities to mitigate the effects of deliberate neglect). Outcomes of decisions can be compared with expectations, often revealing unanticipated consequences, and informing future policy and decisions.
- I07** Conservation management plans, regularly reviewed, can provide a sound framework for the management of significant places, particularly those in responsible long-term ownership.

ENGLISH HERITAGE
CONSERVATION
POLICIES AND
GUIDANCE

Preamble

- 108** This section summarises the policies that will guide English Heritage in offering advice or making decisions about particular types of change affecting significant places. More than one type of change may of course be included in any particular proposal. English Heritage is primarily concerned with the effect of proposals on the heritage values of places, and its policies are framed accordingly.
- 109** While some of the policies have a close relationship to particular principles (for example 'New work and alteration' to Principle 4.6), it is important that all the policies are interpreted in the framework of the *Principles* as a whole.
- 110** Tension between conservation and other public policies usually arises from a perceived need to harm the heritage values of a place in order to achieve another important public policy objective, or to sustain the place itself (paragraph 150). The converse is 'enabling development' contrary to public policy, which is proposed in order to sustain a significant place (paragraph 158). In both cases, it is important to keep a sense of proportion, and not automatically to assume that cultural or natural heritage values must prevail over all other public interests. Such tensions are usually best reconciled by integrating conservation with the other public interests through dialogue, based on mutual understanding and respect.

Routine management and maintenance

- 111** **The conservation of significant places is founded on appropriate routine management and maintenance.**
- 112** The values of landscapes and buildings tend to be quickly obscured or lost if long-standing management and maintenance regimes are discontinued. Such regimes are often closely linked to historic design, function and stewardship, and dependent on traditional processes and materials. Since most habitats in England are the result of long-established land management practices, sustaining their ecosystems can depend upon continuing those practices. Reinstating a lapsed regime can help to recover both cultural and natural heritage values.
- 113** Regular monitoring should inform continual improvement of planned maintenance and identify the need for periodic repair or renewal at an early stage. If a permanent solution to identified problems is not immediately possible, temporary works should be undertaken to prevent the problems from escalating. Temporary solutions should be effective, timely and reversible.

Periodic renewal

- I 14** Periodic renewal of elements of a significant place, intended or inherent in the design, is normally desirable unless any harm caused to heritage values would not be recovered over time.
- I 15** Periodic renewal, such as re-covering roofs, differs from maintenance in that it occurs on a longer cycle, is usually more drastic in nature and often has a greater visual impact. It involves the temporary loss of certain heritage values, such as the aesthetic value of the patina of age on an old roof covering, or the value of a dying tree as a habitat for invertebrates; but these values are likely to return within the next cycle, provided the replacement is physically and visually compatible (normally 'like for like', to the extent that this is sustainable). By contrast, the consequence of not undertaking periodic renewal is normally more extensive loss of both fabric and heritage values.
- I 16** The justification required for periodic renewal will normally be that the fabric concerned is becoming incapable of fulfilling its intended functions through more limited intervention; and additionally, in the case of landscapes, that succession planting cannot achieve the objective in a less drastic way. Harm to values that will normally be recovered during the next cycle can, in most cases, be discounted, but potential permanent harm cannot be ignored in making the decision.

Repair

- I 17** Repair necessary to sustain the heritage values of a significant place is normally desirable if:
- a. there is sufficient information comprehensively to understand the impacts of the proposals on the significance of the place; and
 - b. the long term consequences of the proposals can, from experience, be demonstrated to be benign, or the proposals are designed not to prejudice alternative solutions in the future; and
 - c. the proposals are designed to avoid or minimise harm, if actions necessary to sustain particular heritage values tend to conflict.
- I 18** It is important to look beyond the immediate need for action, to understand the reasons for the need for repair and plan for the long-term consequences of inevitable change and decay. While sufficient work should be undertaken to achieve a lasting repair, the extent of the repair should normally be limited to what is reasonably necessary to make failing elements sound and capable of continuing to fulfil their intended functions.

- I19** The use of materials or techniques with a lifespan that is predictable from past performance, and which are close matches for those being repaired or replaced, tends to carry a low risk of future harm or premature failure. By contrast, the longer term effects of using materials or techniques that are innovative and relatively untested are much less certain. Not all historic building materials or techniques were durable – iron cramps in masonry, or un-galvanised steel windows, for example, are both subject to corrosion. Some structural failures are the inevitable, if slowly developing, consequences of the original method of construction. Once failure occurs, stabilising the structure depends on addressing the underlying causes of the problem, not perpetuating inherent faults.
- I20** The use of original materials and techniques for repair can sometimes destroy more of the original fabric, and any decoration it carries, than the introduction of reinforcing or superficially protective modern materials. These may offer the optimum conservation solution if they allow more significant original fabric to be retained. In historic landscapes, planting may need to utilise alternative species, to resist disease or the effects of climate change. Before making decisions, it is essential to understand all the heritage values of the elements concerned, and to consider the longer term, as well as the immediate, conservation objectives.
- I21** Sometimes, the action necessary to sustain or reinforce one heritage value can be incompatible with the actions necessary to sustain others. Understanding the range, inter-relationships and relative importance of the heritage values associated with a place should establish priorities for reconciling or balancing such tensions. While every reasonable effort should be made to avoid or minimise potential conflict, contrived solutions requiring intensive maintenance are likely to be difficult to sustain.

Intervention to increase knowledge of the past

- I22** Intervention in significant places primarily to increase knowledge of the past, involving material loss of evidential values, should normally be acceptable if:
- a. preservation *in situ* is not reasonably practicable; or
 - b. it is demonstrated that the potential increase in knowledge
 - cannot be achieved using non-destructive techniques; and
 - is unlikely to be achieved at another place whose destruction is inevitable; and
 - is predicted decisively to outweigh the loss of the primary resource.

If acceptable, an intervention demands:

- c. a skilled team, with the resources to implement a project design based on explicit research objectives;
 - d. funded arrangements for the subsequent conservation and public deposit of the site archive, and for appropriate analysis and dissemination of the results within a set timetable;
 - e. a strategy to ensure that other elements and values of the place are not prejudiced by the work, whether at the time or subsequently, including conservation of any elements left exposed.
- I23** The historic environment provides a unique record of past human activity, but differs from written archives in that 'reading' some parts of it can only be achieved through the destruction of the primary record. This policy applies particularly to the excavation of buried archaeological deposits, but can be relevant to the physical investigation of structures. It concerns intervention that goes beyond the evaluation and targeted investigation that may be necessary to inform and justify conservation management decisions.
- I24** The continuing development of investigative techniques suggests that, in future, it will be possible to extract more data from excavation and intervention than is currently possible, just as now it is usual to extract much more information than was possible a few decades ago. This demands a cautious approach to the use of a finite resource, and seeking to avoid loss of integrity, but it cannot reasonably exclude all research at a significant place. It must be recognised that much of the evidential value of the primary archive – the place itself – lies in its potential to increase knowledge of the past, to help protect the place and other similar places by a better understanding of their significance, to stimulate research, to encourage the further development of techniques to extract data, and to train successive generations of archaeologists.

- I25** Intervention must be justified primarily by considering the potential gain in knowledge in relation to the impact on the archaeological resource, and specifically on the place or type of site in question. Established, relevant research framework priorities should be taken into account. Intervention should always be the minimum necessary to achieve the research objectives, fully utilising the potential of non-destructive techniques; but also extensive enough to ensure that the full research potential of what is necessarily to be destroyed in the process can be realised.

Restoration

- I26** Restoration to a significant place should normally be acceptable if:
- a. the heritage values of the elements that would be restored decisively outweigh the values of those that would be lost;
 - b. the work proposed is justified by compelling evidence of the evolution of the place, and is executed in accordance with that evidence;
 - c. the form in which the place currently exists is not the result of an historically-significant event;
 - d. the work proposed respects previous forms of the place;
 - e. the maintenance implications of the proposed restoration are considered to be sustainable.
- I27** Restoration is intervention made with the deliberate intention of revealing or recovering a known element of heritage value that has been eroded, obscured or previously removed, rather than simply maintaining the *status quo*. It may also achieve other conservation benefits, for example restoring a roof on a roofless building may make it both physically and economically sustainable in the long term. Restoration of some elements of a place may be a desirable precursor to the introduction of new work (paragraph I38), which will necessarily take over where the evidence for restoration ends.
- I28** The concept of authenticity (paragraph 91) demands that proposals for restoration always require particularly careful justification. Reinstating damaged elements of work directly created by the hand of an artist normally runs counter to the idea of authenticity and integrity. However, the reinstatement of damaged architectural or landscape features in accordance with an historic design evidenced by the fabric of a place may not do so, if the design itself was the artistic creation, intended to be constructed by others, and the necessary materials and skills are available.
- I29** Mitigation through recording (paragraph I04) is particularly important in restoration work. The results should be integrated with and used to update the initial analysis of the evidence for restoration (which will often be expanded and modified in detail during the early stages of work), and the result deposited in the appropriate Historic Environment Record.

‘The heritage values of the elements that would be restored decisively outweigh the values of those that would be lost.’

- I30** Any restoration inevitably removes or obscures part of the record of past change to a significant place, and so reduces its evidential value, as well as potentially affecting its historical and aesthetic values. Restoration may, however, bring gains by revealing other heritage values, such as the integrity and quality of an earlier and more important phase in the evolution of a place, which makes a particular contribution to its significance. Careful assessment of the values of the elements affected is essential. Where the significance of a place is the result of centuries of change, restoration to some earlier stage in its evolution is most unlikely to meet this criterion.

‘The nature of the work proposed is justified by compelling evidence of the evolution of the place, and is executed in accordance with that evidence’.

- I31** Evidence of the evolution of the place, and particularly of the phase to which restoration is proposed, should be drawn from all available sources – from study of the fabric of the place itself (the primary record of its evolution), any documentation of the original design and construction process, and subsequent archival sources, including records of previous interventions. The results of this research and the reasoned conclusions drawn from it should be clearly set out.
- I32** Speculative or generalised re-creation should not be presented as an authentic part of a place: the criteria for new work should apply to its design. But judgement is needed in determining the level of information specific to the place required to justify restoration. For example, reinstatement of an historic garden requires compelling evidence of its planned layout and hard materials, usually based upon or verified by archaeological investigation, and the structure of its planting; but it would be neither essential nor possible to replicate the precise location of every plant once within the garden.

‘The form in which the place currently exists is not the result of an historically-significant event’.

- I33** If a building or structure was ruined or its character fundamentally changed as a consequence of an important historical event, its subsequent state will contribute to its significance: castles slighted in the Civil War, or monastic houses unroofed at the Dissolution, provide examples. In the wake of such episodes, some places were ruined, some cleared away completely, and others repaired and adapted for new purposes. Attempts to restore those exceptional places that have survived as ruins would deny their strong visual and emotional evidence of important historic events. Ruins – real or contrived – can also play a major role in designed landscapes, define the character of places, or be celebrated in art. Even so, their restoration or adaptive re-use may be justified if the alternative is loss.

- I34** The response to dramatic contemporary events which may ultimately come to be seen as historically significant – to memorialise, rebuild or redevelop – tends to be driven by public debate. If the place involved was not previously considered significant, such debate may be regarded solely as part of the event. Physical sustainability and changing values will, however, tend to influence the medium- to long-term future of memorialised ruins of comparatively modern buildings, or the scars of conflict.
- I35** By contrast, neglect and decay, abandonment, including the removal of roofs, crude adaptation for transient uses, accidental fires and similar circumstances are not normally historically-significant events, and subsequent restoration of the damaged parts of the place, even after a long interval, will not fail this test. Retaining gutted shells as monuments is not likely, in most cases, to be an effective means of conserving surviving fabric, especially internal fabric never intended to withstand weathering; nor is this approach likely to be economically sustainable. In such cases, it is appropriate to restore to the extent that the evidence allows, and thereafter to apply the policy for new work (paragraph I38).
- I36** **‘The work proposed respects previous forms of the place’**
The more radical the restoration, the more likely it is to introduce an element of incongruity. The reversal of relatively minor but harmful changes, to restore a place to a form in which it recently existed as a complete entity, is unlikely to contradict this criterion. By contrast, the restoration of isolated parts of a place to an earlier form, except as legible elements of an otherwise new design, would produce an apparently historic entity that had never previously existed, which would lack integrity.
- I37** **‘The maintenance implications of the proposed restoration are considered to be sustainable’**
It is essential to consider the long term implications of a proposed restoration for viability and sustainability. If, for instance, a place or part of it was modified primarily in order to reduce maintenance costs, restoration without considering the increased resources needed for maintenance is likely to be counter-productive. The reinstatement of elaborate parterres in historic gardens is an obvious example, but others can have more serious consequences. For example, reversing a ‘crown flat’ – a flat roof inserted between ridges to eliminate a valley gutter in an historic roof – will lead to rapid decay if the restored valley gutter is not readily accessible and adequately maintained.

New work and alteration

- I38** New work or alteration to a significant place should normally be acceptable if:
- there is sufficient information comprehensively to understand the impacts of the proposal on the significance of the place;
 - the proposal would not materially harm the values of the place, which, where appropriate, would be reinforced or further revealed;
 - the proposals aspire to a quality of design and execution which may be valued now and in the future;
 - the long-term consequences of the proposals can, from experience, be demonstrated to be benign, or the proposals are designed not to prejudice alternative solutions in the future.
- I39** The recognition of the public interest in heritage values is not in conflict with innovation, which can help to create the heritage of the future. Innovation is essential to sustaining cultural values in the historic environment for present and future generations, but should not be achieved at the expense of places of established value.
- ‘The proposal would not materially harm the values of the place, which, where appropriate, would be reinforced or further revealed’**
- I40** The greater the range and strength of heritage values attached to a place, the less opportunity there may be for change, but few places are so sensitive that they, or their settings, present no opportunities for change. Places whose significance stems essentially from the coherent expression of their particular cultural heritage values can be harmed by interventions of a radically different nature.
- I41** Quality of design, materials, detailing and execution is obviously essential in places of established value. Conversely, places of lesser significance offer the greatest opportunity for the creation of the heritage values of tomorrow, because they have the greatest need of quality in what is added to them. Their potential will only be achieved if all new work aspires to the quality routinely expected in more sensitive places.
- ‘The proposals aspire to a quality of design and execution which may be valued now and in the future’**
- I42** The need for quality in new work applies at every level, from small interventions in an historic room, to major new buildings or developments. Small changes need as much consideration as large ones, for cumulatively their effect can be comparable.

- I43** There are no simple rules for achieving quality of design in new work, although a clear and coherent relationship of all the parts to the whole, as well as to the setting into which the new work is introduced, is essential. This neither implies nor precludes working in traditional or new ways, but will normally involve respecting the values established through an assessment of the significance of the place.
- I44** Quality is enduring, even though taste and fashion may change. The eye appreciates the aesthetic qualities of a place such as its scale, composition, silhouette, and proportions, and tells us whether the intervention fits comfortably in its context. Achieving quality always depends on the skill of the designer. The choice of appropriate materials, and the craftsmanship applied to their use, is particularly crucial to both durability and to maintaining the specific character of places.
- ‘The long-term consequences of the proposals can, from experience, be demonstrated to be benign, or the proposals are designed not to prejudice alternative solutions in the future’**
- I45** New work frequently involves some intervention in the existing fabric of a place, which can be necessary to keep it in or bring it back into use. A ‘presumption in favour of preservation’ (doing no harm), even preservation of evidential value, does not equate to a presumption against any intervention into, or removal of, existing fabric; but such interventions require justification in terms of impacts on heritage values.
- I46** There are limits, however; beyond which loss of inherited fabric compromises the authenticity and integrity of a place. At the extreme, a proposal to retain no more than the façade of an historic building attached to a modern structure must be considered in the light of an assessment of the existing values of the building, both as a whole and in its elements. The relationship between the façade and the existing and proposed structures behind will be crucial to the decision, but retaining the façade alone will not normally be acceptable.
- I47** Changes designed to lessen the risk or consequences of disaster to a significant place require a balance to be struck between the possibility of major harm to heritage values without them, and the certainty of the lesser, but often material, harm caused by the works themselves. The need for physical precautions should be considered as part of disaster response and recovery planning for the place as a whole, based on risk assessment and management requirements, and any statutory duties. All options should be evaluated, including improved management as an alternative to, or in conjunction with, lower levels of physical intervention.

- 148** As with repair, the use in interventions of materials and techniques proven by experience to be compatible with existing fabric, including recycled material from an appropriate source (paragraphs 98-99), tends to bring a low risk of failure. Work which touches existing fabric lightly, or stands apart from it, brings progressively greater opportunity for innovation. Energy efficiency (in production as well as use), sustainable sourcing of materials, and environmental good practice should guide all new work, but not to the extent of causing harm to the heritage values of the place.

Integrating conservation with other public interests

- 149** Changes which would harm the heritage values of a significant place should be unacceptable unless:
- a. the changes are demonstrably necessary either to make the place sustainable, or to meet an overriding public policy objective or need;
 - b. there is no reasonably practicable alternative means of doing so without harm;
 - c. that harm has been reduced to the minimum consistent with achieving the objective;
 - d. it has been demonstrated that the predicted public benefit decisively outweighs the harm to the values of the place, considering
 - its comparative significance,
 - the impact on that significance, and
 - the benefits to the place itself and/or the wider community or society as a whole.
- 150** The integration of heritage and other environmental interests with economic and social objectives at every level of strategic planning – national, regional, local – helps to minimise conflict. A willingness to consider and compare the impacts on the significance of a place of a range of options to achieve the public objective concerned is essential, as is selecting an option that either eliminates, or (as far as is possible) mitigates harm. This will often involve those representing heritage interests in employing the skills necessary critically to appraise the case and options for development, as well as its promoters employing the skills needed to evaluate heritage implications. The heritage case should be put fully and robustly.
- ‘Comparative significance’**
- 151** The greater the significance of a place to society, the greater the weight that should be attached to sustaining its heritage values. This concept of ‘proportionality’ (Principle 5.4) relies on judgement rather than formulae, but is fundamental to equitable reconciliation of the public interest in heritage with other public and private interests.

- I52** Since statutory designation, at local as well as national level, is a clear indicator of the significance of a place, the fact of designation can itself play a vital role in guiding options for strategic change. The absence of designation, however, does not necessarily mean that a place is of low significance (paragraphs 79, 81). The weight to be attached to heritage values relative to other public interests should not be considered until those heritage values have been properly evaluated, assessed against current criteria and, if they meet them, safeguarded by designation.
- ‘Impact on significance’**
- I53** The assessment of the degree of harm to the significance of a place should consider the place as a whole and in its parts, its setting, and the likely consequences of doing nothing. In the case of a derelict historic building, for example, should a viable, but modestly damaging, proposal be refused in the hope that a better or less damaging scheme will come forward before the place reaches the point of no return? In such circumstances, the known or predicted rate of deterioration is a crucial factor, and hope must be founded on rational analysis. The potential availability of subsidy as an alternative to harmful change, or to limit its impact, should be considered. The fact that a place is neglected should not, of itself, be grounds for agreeing a scheme that would otherwise be unacceptable.
- ‘Benefits to the place’**
- I54** Quite minor changes, for example to meet the duties to make ‘reasonable adjustments’ under the Disability Discrimination Act 1995, or accommodate changing liturgy in a church, may keep a place fit for use. This in turn can make a place sustainable by maintaining its market value, or allowing its continued use by a community. Any changes that would cause harm to the heritage values of the place should obviously be limited to what is necessary to sustain it in use, and their impacts mitigated so far as possible. However, a high quality of design of proposed interventions is not mitigation, but essential in any significant place (Principle 4.6), and offers of compensation should not make harmful proposals more acceptable (paragraph 104).
- ‘Benefits to the wider community or society as a whole’**
- I55** These assessments are broader and more complex than those concerned only with the gains and losses for the heritage values of a place. The underlying considerations should always be proportionality and reasonableness: whether, in relation to the place or society, the predicted benefits of change outweigh the residual, unavoidable harm that would be done to the significance of the place. The balance lies between retaining significance – the sum of the heritage values ascribed at the point of change to something which, if lost, cannot be replaced – and the predicted, and potentially short-term, benefits of development. The benefits, including those of strategies to mitigate and adapt to climate change, need to be subject to scrutiny in proportion to their impact on heritage values.

156 Reconciling conservation and other public objectives can be most difficult when the heritage values of a significant place, often an archaeological site or an historic building, must be compared with the potential of a replacement to enhance the place because of its allegedly greater cultural value. Subjective claims about the architectural merits of replacements cannot justify the demolition of statutorily-protected buildings.¹⁰ There are less clear-cut situations, however, in which it is proposed to replace a building or develop a place of modest, but positive, heritage value with one that is claimed to be of much greater architectural quality, or where such a proposal would affect the setting of a significant place. Its supporters claim net enhancement, while its opponents claim absolute harm to the heritage values of the place. Each is making a value-based judgement, but choosing to attach different weights to particular values. If such positions are maintained, the choice is ultimately a political one, or for decision at public inquiry.

Enabling development

157 Enabling development that would secure the future of a significant place, but contravene other planning policy objectives, should be unacceptable unless:

- a. it will not materially harm the heritage values of the place or its setting
- b. it avoids detrimental fragmentation of management of the place;
- c. it will secure the long term future of the place and, where applicable, its continued use for a sympathetic purpose;
- d. it is necessary to resolve problems arising from the inherent needs of the place, rather than the circumstances of the present owner, or the purchase price paid;
- e. sufficient subsidy is not available from any other source;
- f. it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the place, and that its form minimises harm to other public interests;
- g. the public benefit of securing the future of the significant place through such enabling development decisively outweighs the disbenefits of breaching other public policies.

158 Enabling development is development that would deliver substantial benefit to a place, but which would be contrary to other objectives of national, regional or local planning policy. It is an established planning principle that such development may be appropriate if the public benefit of rescuing, enhancing, or even endowing a significant place decisively outweighs the harm to other material interests. Enabling development must always be in proportion to the public benefit it offers.

¹⁰ This is currently stated as government policy in PPG 15, *Planning and the historic environment* (1994) at paragraph 3.19 (iii).

- 159** If it is decided that a scheme of enabling development meets all the criteria set out above, planning permission should be granted only if:
- a. the impact of the development is precisely defined at the outset, normally through the granting of full, rather than outline, planning permission;
 - b. the achievement of the heritage objective is securely and enforceably linked to the enabling development, bearing in mind the guidance in ODPM Circular 05/05, *Planning obligations*;
 - c. the place concerned is repaired to an agreed standard, or the funds to do so made available, as early as possible in the course of the enabling development, ideally at the outset and certainly before completion or occupation; and
 - d. the planning authority closely monitors implementation, if necessary acting promptly to ensure that obligations are fulfilled.

CONCLUSION

Applying the *Principles*

- 160** These *Conservation Principles, Policies and Guidance* build on earlier statements and experience, to formalise an approach which takes account of a wide range of heritage values. They are intended to help everyone involved to take account of the diverse ways in which people value the historic environment as part of their cultural and natural heritage. They acknowledge that the cultural and natural heritage values of places, including those reflected in landscape designations, should be managed in parallel, fostering close working relationships between cultural and natural heritage interests.
- 161** Balanced and justifiable decisions about change in the historic environment depend upon understanding who values a place and why they do so, leading to a clear statement of its significance and, with it, the ability to understand the impact of the proposed change on that significance.
- 162** Every reasonable effort should be made to eliminate or minimise adverse impacts on significant places. Ultimately, however, it may be necessary to balance the public benefit of the proposed change against the harm to the place. If so, the weight given to heritage values should be proportionate to the significance of the place and the impact of the change upon it.
- 163** The historic environment is constantly changing, but each significant part of it represents a finite resource. If it is not sustained, not only are its heritage values eroded or lost, but so is its potential to give distinctiveness, meaning and quality to the places in which people live, and provide people with a sense of continuity and a source of identity. The historic environment is a social and economic asset and a cultural resource for learning and enjoyment.
- 164** Although developed primarily to guide the activities of English Heritage staff, we therefore commend these *Principles, Policies and Guidance* for adoption and application by all involved with the historic environment and in making decisions about its future.

DEFINITIONS

This section includes words used in a specific or technical sense. The *Oxford English Dictionary* definition otherwise applies.

Alteration

Work intended to change the function or appearance of a place

Authenticity

Those characteristics that most truthfully reflect and embody the cultural heritage values of a place¹¹

Conservation

The process of managing change to a significant place in its setting in ways that will best sustain its heritage values, while recognising opportunities to reveal or reinforce those values for present and future generations

Conservation area

'An area of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance', designated under what is now s69 of the Planning (Listed Buildings and Conservation Areas) Act 1990

Context

Any relationship between a place and other places, relevant to the values of that place

Designation

The recognition of particular heritage value(s) of a significant place by giving it formal status under law or policy intended to sustain those values

Fabric

The material substance of which places are formed, including geology, archaeological deposits, structures and buildings, and flora

Harm

Change for the worse, here primarily referring to the effect of inappropriate interventions on the heritage values of a place

Heritage

All inherited resources which people value for reasons beyond mere utility

Heritage, cultural

Inherited assets which people identify and value as a reflection and expression of their evolving knowledge, beliefs and traditions, and of their understanding of the beliefs and traditions of others

Heritage, natural

Inherited habitats, species, ecosystems, geology and landforms, including those in and under water, to which people attach value

Historic environment

All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible or buried, and deliberately planted or managed flora

Historic Environment Record

A public, map-based data set, primarily intended to inform the management of the historic environment

Integrity

Wholeness, honesty

Intervention

Any action which has a physical effect on the fabric of a place

Maintenance

Routine work regularly necessary to keep the fabric of a place in good order

Material

Relevant to and having a substantial effect on, demanding consideration

Natural change

Change which takes place in the historic environment without human intervention, which may require specific management responses (particularly maintenance or periodic renewal) in order to sustain the significance of a place

¹¹ This definition is based on *The Nara Document on Authenticity* (ICOMOS 1994)

Object

Anything not (now) fixed to or incorporated within the structure of a place, but historically associated with it

Place

Any part of the historic environment, of any scale, that has a distinctive identity perceived by people

Preserve

To keep safe from harm¹²

Proportionality

The quality of being appropriately related to something else in size, degree, or other measurable characteristics

Public

Of, concerning, done, acting, etc. for people as a whole

Renewal

Comprehensive dismantling and replacement of an element of a place, in the case of structures normally reincorporating sound units

Repair

Work beyond the scope of maintenance, to remedy defects caused by decay, damage or use, including minor adaptation to achieve a sustainable outcome, but not involving restoration or alteration

Restoration

To return a place to a known earlier state, on the basis of compelling evidence, without conjecture

Reversible

Capable of being reversed so that the previous state is restored

Transparent

Open to public scrutiny

Setting

The surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape

Significance [of a place]

The sum of the cultural and natural heritage values of a place, often set out in a statement of significance

Significant place

A place which has heritage value(s)

Sustain

Maintain, nurture and affirm validity

Sustainable

Capable of meeting present needs without compromising ability to meet future needs

Value

An aspect of worth or importance, here attached by people to qualities of places

Value, aesthetic

Value deriving from the ways in which people draw sensory and intellectual stimulation from a place

Value, communal

Value deriving from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory

Value, evidential

Value deriving from the potential of a place to yield evidence about past human activity

Value, historical

Value deriving from the ways in which past people, events and aspects of life can be connected through a place to the present

Value-based judgement

An assessment that reflects the values of the person or group making the assessment

¹² The legal interpretation established in *South Lakeland DC v Secretary of State for the Environment and Rowbotham* [1991] 2 L.P.R. 97

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APPENDIX 5

Mordue v Secretary of State for Communities and Local Government and others [2015]

EWCA Civ 1243.

Judgments

CA, CIVIL DIVISION

Neutral Citation Number: [2015] EWCA Civ 1243

Case No: C1/2015/1067

IN THE COURT OF APPEAL (CIVIL DIVISION)

ON APPEAL FROM THE HIGH COURT OF JUSTICE

QUEENS BENCH DIVISION, PLANNING COURT

MR JOHN HOWELL QC

[\[2015\] EWHC 539 \(Admin\)](#)

Royal Courts of Justice

Strand, London, WC2A 2LL

Date: Thursday 3rd December 2015

Before :

LORD JUSTICE RICHARDS

LORD JUSTICE FLOYD

and

LORD JUSTICE SALES

Between :

Aidan Jones

and

Jane Margaret Mordue

and

**Secretary of State for Communities
and Local Government**

Appellant

**First
Respondent
Second
Respond-
ent**

and

South Northamptonshire Council

Third

Respondent

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Official Shorthand Writers to the Court)

Mr Alistair Mills (instructed by Wilkin Chapman LLP) for the Appellant

Mr Juan Lopez (instructed by Direct Access) for the First Respondent

The 2nd Respondent did not appear and was not represented

The 3rd Respondent did not appear and was not represented

Hearing date: 28 October 2015

Judgment

As Approved by the Court

Lord Justice Sales:

1. This appeal relates to planning permission granted by an Inspector (Mr John Braithwaite) for the erection of a single freestanding wind turbine with associated hard standing, access road and electricity sub-station on land at Poplars Farm, Wappenham, Towcester. The land is owned by the appellant. The respondent is chairperson of a local group of objectors. She made an application to the High Court under [section 288](#) of the Town and Country Planning Act 1990 (“the 1990 Act”) to quash that grant of permission. Her application was successful before John Howell QC, sitting as a deputy judge of the High Court. The appellant appeals to this court.

2. The wind turbine will impinge to a certain extent on views of the Church of St Mary in Wappenham (“the Church”), which is a Grade II* listed building. It will also affect to a very limited degree the setting of certain other listed buildings: The Manor at Wappenham, which is located close to the Church of St Mary, and the Church of St Botolph at Slapton, which is located some distance away. Listed buildings and their settings are accorded special protection under the planning controls regime by virtue of [section 66\(1\)](#) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”) and chapter 12 (“Conserving and enhancing the historic environment”), paras. 126-141, of the National Planning Policy Framework (“the NPPF”).

3. Since the wind turbine would affect the setting of the Church and, to a lesser extent, the other listed buildings, the deputy judge correctly held that the Inspector was obliged to give considerable weight to that harm when considering whether planning permission should nonetheless be granted. Under Ground 2 of the respondent's application, the deputy judge held that the respondent could not show that the Inspector had in fact failed to give the considerable weight to any harm to the setting of the listed buildings which he was required to give: para. [42] of the judgment. The deputy judge also rejected a claim by the respondent (Ground 1 of her application) that the Inspector failed to apply properly the duty imposed by [section 38\(6\)](#) of

the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”), which required the application for planning permission to be determined “in accordance with the [development] plan unless material considerations [indicated] otherwise”.

4. However, the deputy judge allowed the respondent's application to quash the planning permission under a second limb of Ground 2, because he accepted her submission that the Inspector had failed *to demonstrate* in the reasons he gave that he had complied with his duty under section 66(1) of the Listed Buildings Act to have special regard to the desirability of preserving the setting of the Church and other listed buildings by giving considerable weight to the desirability of preserving that setting: see, in particular, para. [48] of the judgment. The deputy judge considered that he was bound to reach this conclusion by the decision of this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2014] EWCA Civ 137; [2015] 1 WLR 45 (“the *East Northamptonshire case*”), in particular at [29] per Sullivan LJ (with whose judgment Rafferty and Maurice Kay LJJ agreed).

5. The deputy judge, however, also gave what are to my mind excellent reasons for thinking that this result would be out of line with other high authority, *Save Britain's Heritage v Number 1 Poultry Limited* [1991] 1 WLR 153, HL. That in turn calls in question whether he was right to interpret Sullivan LJ's judgment in the *East Northamptonshire case* in the way he did.

6. The deputy judge rejected a further claim by the respondent (Ground 3 of her application) that the Inspector had failed properly to consider the intrinsic significance of the heritage assets and the contribution which their settings made to their significance, as required by the NPPF. Finally, the deputy judge held that the claim by the respondent (Ground 4 of her application) that she had been substantially prejudiced by a failure on the part of the Inspector to give reasons for his decision was made out for the same reason that Ground 2 was made out, but added nothing material to that Ground.

7. In the event, Sullivan LJ himself granted permission to appeal in relation to Grounds 2 and 4 on the footing that the appellant had a good prospect of successfully persuading the Court of Appeal that either the deputy judge had misunderstood the judgment in the *East Northamptonshire case* or that that judgment had been decided *per incuriam* and was not to be followed. In relation to the first of these points, Sullivan LJ wrote:

“The basis for the Deputy Judge's central conclusion in paragraph 48 of his judgment appears to be the short extract from paragraph 29 of my judgment in *East Northamptonshire* which he cited in paragraph 43 of his judgment. It is strongly arguable that paragraph 29 of *East Northamptonshire* should be read as a whole, in the context of the preceding paragraphs in the judgment referred to in the Appellant's Skeleton Argument; and if that is done, that it was clear from the Inspector's reasoning in his decision in *East Northamptonshire* that he had not given 'considerable importance and weight' to the 'detrimental effect' of the turbine array upon the setting of a group of designated heritage assets which he had found to have 'archaeological, architectural, artist and historic significance of the highest magnitude.’”

8. The respondent supports the deputy judge's decision for the reasons he gave and also, by a respondent's notice, seeks to uphold it on the basis that he should have accepted Ground 1 of her application (alleged failure to comply with section 38(6) of the 2004 Act).

The statutory and policy framework

9. By virtue of sections 70(2) and 79(4) of the 1990 Act, regard must be had to the provisions of the

development plan for the area. Section 38(6) of the 2004 Act provides that:

“If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.”

10. The relevant policies in the local development plan for the area were saved Policies G3 and EV1, which related to general design and landscaping and amenity considerations, and Policy EV12 in relation to Listed Buildings. Policy EV12 provides as follows:

“When considering applications for alterations or extensions to buildings of special architectural or historical interest which constitute development the council will have special regard to the desirability of securing their retention, restoration, maintenance and continued use. Demolition or partial demolition of listed buildings will not be permitted. The council will also seek to preserve and enhance the setting of listed buildings by control over the design of new development in their vicinity, the use of adjoining land and, where appropriate, by the preservation of trees and landscape features.”

11. The development plan also set out a paragraph of commentary on Policy EV12, which included the statement: “In accordance with the duty under the Planning (Listed Building and Conservation Areas) Act 1990, the Council will pay careful attention to the protection and improvement of Listed Buildings and their setting.”

12. Section 66(1) of the Listed Buildings Act provides as follows:

“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

13. The relevant paragraphs in the NPPF are as follows:

“131. In determining planning applications, local planning authorities should take account of:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
- the desirability of new development making a positive contribution to local character and distinctiveness.

132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require

clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site; and
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
- conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
- the harm or loss is outweighed by the benefit of bringing the site back into use.

134. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including securing its optimum viable use.”

The decision of the Inspector

14. The Inspector made the relevant decision on behalf of the Secretary of State. The Inspector identified the main issues for consideration on the appeal at para. 3 of the Decision Letter, as follows:

“3. The main issues are; first, the effect of the erection of the turbine on the character of the landscape, particularly when seen from footpaths and viewpoints in the area; second, the effect of the development on heritage assets; third, whether the development would cause any other harm; and fourth, whether the harm caused is outweighed by the environmental benefits of the renewable energy scheme.”

15. He considered the second issue, the effect of the development on heritage assets, in these paragraphs of the Decision Letter:

“10. The nearest non-residential heritage asset to the location of the proposed turbine is the Church of St Mary in Wappenham, a Grade II* listed building. The immediate setting of the Church is its churchyard, an intimate area confined by buildings and vegetation. It is unlikely that the turbine would be visible from within the churchyard. The Church is at the heart of the village and it is a prominent feature particularly from the north within the village. The turbine would be more than 1 km from the church and it is unlikely that it would be visible in the background in these village views of the church. The tower of the Church is visible from outside the village from some directions and it is possible that the tower and the turbine would be seen in the same views. However, given the distance between them the turbine would not compete with, or detract from, the landmark feature that is the Church tower. Nevertheless, the turbine would be a feature in the

countryside setting of the Church and it would cause harm to this setting, though the harm would be less than substantial.

11. The Manor, a dwelling that is a Grade II* listed building, is situated close to the Church of St Mary in Wappenham. It is within the tight core of mainly historic development around the Church and the effect of the turbine on its setting would be negligible. The same conclusion can be reached for other listed buildings within the village. Further afield is the Church of St Botolph at Slapston, a Grade I listed building. This Church is over 2 kms from the location of the proposed turbine and, though it is located on slightly elevated ground, views towards the turbine from its immediate surroundings would be filtered by a belt of trees to the south-west. It is possible even that the turbine would not be visible from the surroundings of the Church and, despite its high sensitivity, the potential harm to its setting can only be regarded to be negligible. The same conclusion can be reached for other listed buildings in the vicinity of the Church, such as Manor Farm and an associated barn.

12. The aforementioned listed buildings are all more than 1 km from the location of the proposed turbine and no other heritage asset, listed building or registered park and garden, would be any closer. The turbine would not cause harm, greater than negligible, to the setting of any of these other heritage assets.

13. The proposed turbine would harm the setting of the Church of St Mary but the harm would be less than substantial. The turbine would have a negligible harmful effect on the settings of other heritage assets in the area. The cumulative harm to the settings of heritage assets is less than substantial. Nevertheless, the proposed development is in conflict with saved LP policy EV12.”

16. The fourth issue identified by the Inspector, regarding the environmental benefits of the development, was considered in these paragraphs of the Decision Letter:

“20. The landscape was formed by the most recent ice age and has been altered by man for farming and other purposes. These activities, such as an increasing reliance on motorised transport, have contributed to changes in the global climate that are having a detrimental effect on, amongst other things, the landscape. The landscape of South Northamptonshire is not immune from the effects of climate change. Flooding is a serious issue and will have affected South Northamptonshire as it has to devastating effect elsewhere in the country. This one effect of climate change causes erosion of the landscape and alters how the landscape can be farmed and used. It also causes hardship for those who suffer the direct consequences of climate change; flooding of their homes and businesses.

21. A suggested condition would require the removal of the wind turbine within twenty-five years after it is brought into operation. Twenty-five years is a fraction of the history of the landscape of South Northamptonshire and if the landscape is not to suffer serious erosion in the long-term future then consideration must be given to accepting short-term harm to the character of the landscape. A low carbon future is at the heart of Government policy that seeks to meet the challenge of climate change, as set out in the National Planning Policy Framework (NPPF). In paragraph 93 it is stated that “Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change, and supporting the delivery of renewable and low carbon energy and associated infrastructure”.

22. The candidate turbine, an Enercon E53, is rated at 0.8 MW but would be operated to produce no more than 0.5 MW. It would be de-rated because supply to the National Grid of over 0.5 MW would require upgrading about 4 kms of electricity transmission lines and this would be financially prohibitive. Furthermore, de-rating a 0.8 MW turbine would produce a consistent output close to the limit of 0.5 MW whereas a 0.5 MW

turbine could not produce such a consistent output, and an Enercon 0.5 MW turbine is not materially smaller than their 0.8 MW turbine. The specification of an Enercon E53 turbine maximises the potential for electricity generation at Poplars Farm within the limit set by existing transmission lines. The development would make a small contribution to meeting the effects of climate change, an objective of the NPPF and of National Policy Statements.”

17. The Inspector then turned to the balancing exercise he had to perform, as follows:

“23. Paragraph 134 of the NPPF states that “Where a development proposal would lead to less than substantial harm to the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal...”. The public benefits of the proposal must also be weighed against public opposition to the proposal. In this regard over half of households in Wappenham have signed a petition against the turbine and some residents have suggested that the [Localism Act 2011](#) and Ministerial Statements made in 2013 indicate that local opinion should be given considerable weight. Some have also pointed to paragraph 5 of Planning Practice Guidance for Renewable Energy which states that “...all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities”. It is worth noting, with regard to responsibility, that some residents of the village have written in support of the proposed development of a wind turbine at Poplars Farm.

24. Paragraph 98 of the NPPF states that local planning authorities should “...not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy...”. There is no quota for the production of renewable energy and the proposed development would contribute to meeting the effects of climate change. The significant adverse effect of the development on the character of the landscape is limited to a small area and no heritage asset in the area would suffer substantial harm. In this case, the harm that would be caused by the development is outweighed by its environmental benefits.

25. Saved LP policies G3, EV1 and EV12 are part of the development plan for the area. With regard to [Section 38\(6\)](#) of the Planning and Compulsory Purchase Act 2004, material considerations in this case, the environmental benefits of the renewable energy development, indicate that determination of this appeal must be made other than in accordance with the development plan.”

18. Accordingly, the Inspector granted planning permission for the development.

Discussion

19. As the deputy judge correctly pointed out, *Save Britain's Heritage v Number 1 Poultry Ltd* [\[1991\] 1 WLR 153](#), HL, is authority regarding the standard of reasons to be expected where a planning decision is taken granting permission for development which has a detrimental impact upon listed buildings. In that case, permission was granted by the Secretary of State, on the recommendation of his inspector, for a redevelopment scheme involving the demolition of eight Grade II listed buildings. The merits of the redevelopment scheme were assessed to override the Secretary of State's stated policy of the time, that listed buildings capable of economic use should not be demolished. An objector applied to quash the permission. At first instance, the application was unsuccessful; but the applicant was successful in the Court of Appeal, on the grounds that the court was not satisfied from the reasons given for the decision that there had been no error of approach on the part of the Secretary of State. The House of Lords, however, overturned that decision on appeal. Lord Bridge of Harwich gave the leading speech. At pp. 167C-168E he said this:

“Whatever may be the position in any other legislative context, under the planning legislation, when it comes to deciding in any particular case whether the reasons given are deficient, the question is not to be answered in vacuo. The alleged deficiency will only afford a ground for quashing the decision if the court is satisfied that the interests of the applicant have been substantially prejudiced by it. This reinforces the view I have already expressed that the adequacy of reasons is not to be judged by reference to some abstract standard. There are in truth not two separate questions: (1) were the reasons adequate? (2) if not, were the interests of the applicant substantially prejudiced thereby? The single indivisible question, in my opinion, which the court must ask itself whenever a planning decision is challenged on the ground of a failure to give reasons is whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given. Here again, I disclaim any intention to put a gloss on the statutory provisions by attempting to define or delimit the circumstances in which deficiency of reasons will be capable of causing substantial prejudice, but I should expect that normally such prejudice will arise from one of three causes. First, there will be substantial prejudice to a developer whose application for permission has been refused or to an opponent of development when permission has been granted where the reasons for the decision are so inadequately or obscurely expressed as to raise a substantial doubt whether the decision was taken within the powers of the Act. Secondly, a developer whose application for permission is refused may be substantially prejudiced where the planning considerations on which the decision is based are not explained sufficiently clearly to enable him reasonably to assess the prospects of succeeding in an application for some alternative form of development. Thirdly, an opponent of development, whether the local planning authority or some unofficial body like Save, may be substantially prejudiced by a decision to grant permission in which the planning considerations on which the decision is based, particularly if they relate to planning policy, are not explained sufficiently clearly to indicate what, if any, impact they may have in relation to the decision of future applications.

Here again, I regret to find myself in disagreement with Woolf L.J. who said, *60 P. & C.R.* 539, 557:

“Once it is accepted that the reasoning is not adequate, then in a case of this sort it seems to me that, apart from the exceptional case where it can be said with confidence that the inadequacy in the reasons given could not conceal a flaw in the decision-making process, it is not possible to say that a party who is entitled to apply to the court under section 245 has not been substantially prejudiced.”

The flaw in this reasoning, it seems to me, is that it assumes an abstract standard of adequacy determined by the court and then asserts, in effect, that a failure by the decision-maker to attain that standard will give rise to a presumption of substantial prejudice which can only be rebutted if the court is satisfied that the inadequacy “*could not* conceal a flaw in the decision-making process.” But this reverses the burden of proof which the statute places on the applicant to satisfy the court that he has been substantially prejudiced by the failure to give reasons. When the complaint is not of an absence of reasons but of the inadequacy of the reasons given, I do not see how that burden can be discharged in the way that Woolf L.J. suggests unless the applicant satisfies the court that the shortcoming in the stated reasons is of such a nature that it may well conceal a flaw in the reasoning of a kind which would have laid the decision open to challenge under the other limb of section 245. If it was necessary to the decision to resolve an issue of law and the reasons do not disclose how the issue was resolved, that will suffice. If the decision depended on a disputed issue of fact and the reasons do not show how that issue was decided, that may suffice. But in the absence of any such defined issue of law or fact left unresolved and when the decision was essentially an exercise of discretion, I think that it is for the applicant to satisfy the court that the lacuna in the stated reasons is such as to raise a substantial doubt as to whether the decision was based on relevant grounds and was otherwise free from any flaw in the decision-making process which would afford a ground for quashing the decision.”

20. The guidance in *Save Britain's Heritage* was followed by Lord Brown of Eaton-under-Heywood in his speech in *South Bucks District Council v Porter (No. 2)* [\[2004\] UKHL 33](#); [\[2004\] 1 WLR 1953](#), leading to his very familiar summary of the relevant principles at [36] as follows:

“The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the “principal important controversial issues”, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision.”

21. In the *East Northamptonshire* case the local planning authority refused the developer's application for planning permission to erect wind turbines in a location where this would have a detrimental effect on the setting of listed buildings. An inspector appointed by the Secretary of State allowed the developer's appeal and granted planning permission. The local planning authority applied to quash that decision on the ground that the inspector had failed to give sufficient weight to the desirability of preserving the setting of the listed buildings as required by section 66(1) of the Listed Buildings Act, and was successful at first instance. The appeal to this court was dismissed.

22. This court held that the judge had been correct to rule that section 66(1) requires the decision-maker to give “the desirability of preserving the building or its setting” not merely careful consideration for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm: [22]-[24] per Sullivan LJ. The judge found that the inspector had failed to comply with this duty, as evidenced by the reasoning in his decision letter, and had instead downplayed the desirability of preserving the setting of the listed buildings. This court agreed.

23. At para. [29] Sullivan LJ said this:

“For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The second defendant's skeleton argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the inspector's planning judgment. In his oral submissions Mr Nardell contended that the inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the “significant weight” which the inspector expressly gave in para 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.”

24. In the present case, the deputy judge treated this passage as authority for the proposition that there is an onus on a decision-maker positively to demonstrate by the reasons given that considerable weight has been given to the desirability of preserving the setting of relevant listed buildings, notwithstanding that this is contrary to the general position explained in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*: see [43]-[49], [58] (where he said that “the normal burden of proof is reversed in respect of the requirement to give considerable weight to any harm to a listed building or its setting which section 66(1) of the Listed Buildings Act is taken to impose”), [65] and [73]. The deputy judge also drew support for this conclusion from the first instance decisions in *R (The Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895; [2015] JPL 22 and *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin): see [44].

25. Accordingly, the deputy judge found that the complaint in Ground 2 (failure to comply with the duty in section 66(1) of the Listed Buildings Act) was made out, because the Inspector had failed positively to demonstrate in his reasons that he had referred to and applied that provision. He also found that the complaint in Ground 4 regarding the alleged inadequacy of the reasons given was made out for the same reason. The deputy judge was correct to treat these two grounds as being in substance the same, since the only evidence as to whether the Inspector had failed in fact to comply with the duty in section 66(1) was what was contained in the reasons he gave in the decision letter. The deputy judge reached the conclusion that the decision should be quashed only because he regarded himself as bound to do so by the *East Northamptonshire* case and with considerable reluctance, as he explained at para. [73], not least because in his judgment “it is clear in this case why the Inspector decided to grant planning permission”. I agree with this last comment.

26. With respect to the deputy judge, I think he read too much into para. [29] of the judgment of Sullivan LJ in the *East Northamptonshire* case. I do not consider that, read in the context of the judgment as a whole, Sullivan LJ and the court intended to state an approach to the reasons required to be given by a decision-maker dealing with a case involving application of section 66(1) of the Listed Buildings Act which was at variance from, and more demanding than, that stated in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*. Sullivan LJ's comments in para. [29] were made in the context of a decision letter which positively gave the impression that the inspector had *not* given the requisite considerable weight to the desirability of preserving the setting of the relevant listed buildings, where as a result it would have required a positive statement by the inspector referring to the proper test under section 66(1) to dispel that impression. In my judgment, the relevant standard to be applied in assessing the adequacy of the reasons given in the present case is indeed the usual approach explained in *Save Britain's Heritage and South Bucks DC v Porter (No. 2)*, which is what the deputy judge correctly thought it ought to be.

27. Mr Lopez, for the respondent, took us to first instance authorities - *The Forge Field Society and North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) - in which the reasons for decisions in cases involving application of section 66(1) of the Listed Buildings Act had been found to be inadequate and invited us to compare them with the reasons given by the Inspector in this case. I did not find this a helpful exercise. Reasons for planning decisions have to be read as a whole in their proper context, and there will inevitably be differences of context, expression and nuance between cases which may be highly relevant. Reading other decision letters (and the judgments in relation to them) can take up considerable time and effort without adding value for the determination of the particular case before the court. The relevant principles in relation to the giving of reasons are well-established and very well known, and it should be sufficient for a judge to be reminded of them and taken to the reasons in the case before him or her to assess them in light of those principles, without any need for exegetical comparison with reasons given in relation to other planning decisions. I would add, however, that on my reading of them the judgments we were taken to concerned reasons for decisions which, as in the *East Northamptonshire* case itself, contained positive indications that the decision-maker had failed to comply with the duty under section 66(1) of the Listed Buildings Act: see *The Forge Field Society* [2015] JPL 22, at [42] and [53], and *North Norfolk DC v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin), at [72]-[73]. Such indications would have had to have been dispelled by a countervailing positive reference to the relevant duty in the reasons themselves in order to avoid the conclusion that the

decision-maker had erred as a matter of substance in the test being applied. Although *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)* were not referred to, there is nothing in the judgments themselves to show that the familiar basic principles laid down in them were departed from on the facts of these cases.

28. If one applies the correct approach in the present case, as set out in *Save Britain's Heritage* and *South Bucks DC v Porter (No. 2)*, it cannot be said that the reasoning of the Inspector gives rise to any substantial doubt as to whether he erred in law. On the contrary, the express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. Policy EV12 reflects that duty, and the textual commentary on it reminds the reader of that provision. Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons - the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within paragraph 134, as the Inspector did.

29. The Inspector was lawfully entitled to assess that the harm to the setting of the listed buildings identified and discussed by him at paras. 10-13 of the Decision Letter, giving that factor the weight properly due to it under section 66(1) of the Listed Buildings Act and paras. 131-134 of the NPPF, was outweighed by the environmental benefits from the turbine identified and discussed by him at paras. 20-22 of the Decision Letter.

30. For these reasons, I would allow the appeal and uphold the decision of the Inspector.

31. The additional contention raised in the respondent's notice, namely that the Inspector failed properly to comply with the duty in section 38(6) of the 2004 Act, is wholly devoid of merit and should be dismissed. The Inspector clearly considered that there were good reasons to depart from the relevant policies in the development plan, for the reasons he explained. That was an entirely lawful exercise of planning judgment by him.

Lord Justice Floyd:

32. I agree

Lord Justice Richards:

33. I also agree.

APPENDIX 6

East Northamptonshire v. Secretary of State for Communities and Local Government [2015]

1 W.L.R. 45

Barnwell Manor Wind Energy Limited v East Northamptonshire District Council, English Heritage, National Trust, The Secretary of State for Communities and Local Government



Positive/Neutral Judicial Consideration

Court

Court of Appeal (Civil Division)

Judgment Date

18 February 2014

Case No: C1/2013/0843

Court of Appeal (Civil Division)

[2014] EWCA Civ 137, 2014 WL 517738

Before: Lord Justice Maurice Kay Vice President of the Court of Appeal, Civil Division Lord Justice Sullivan and Lady Justice Rafferty

Date: Tuesday 18th February 2014

On Appeal from the High Court of Justice Queen's Bench Division Administrative Court

The Hon. Mrs Justice Lang

CO/4231/2012

Representation

Gordon Nardell QC and Justine Thornton (instructed by Eversheds LLP) for the Appellant.
Morag Ellis QC and Robin Green (instructed by Sharpe Pritchard) for the First, Second and Third Respondents.
The Fourth Respondent did not appear and was not represented.

Judgment

Lord Justice Sullivan:

Introduction

1. This is an appeal against the order dated 11th March 2013 of Lang J quashing the decision dated 12th March 2012 of a Planning Inspector appointed by the Secretary of State granting planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire. The background to the appeal is set out in Lang J's judgment: [2013] EWHC 473 (Admin).

Section 66

2. [Section 66 of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) (“the imposes a “General duty as respects listed buildings in exercise of planning functions.” [Subsection \(1\)](#) provides:

“In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

Planning Policy

3. When the permission was granted the Government's planning policies on the conservation of the historic environment were contained in Planning Policy Statement 5 (PPS5). In PPS5 those parts of the historic environment that have significance because of their historic, archaeological, architectural or artistic interest are called heritage assets. Listed buildings, Scheduled Ancient Monuments and Registered Parks and Gardens are called “designated heritage assets.” Guidance to help practitioners implement the policies in PPS5 was contained in “PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide” (“the Practice Guide”). For present purposes, Policies HE9 and HE10 in PPS5 are of particular relevance. Policy HE9.1 advised that:

“There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be.... Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, including scheduled monuments ... grade I and II* listed buildings and grade I and II* registered parks and gardens... should be wholly exceptional.”

Policy HE9.4 advised that:

“Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should:

- (i) weigh the public benefit of the proposal (for example, that it helps to secure the optimum viable use of the heritage asset in the interests of its long-term conservation) against the harm; and
- (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss.”

Policy HE10.1 advised decision-makers that when considering applications for development that do not preserve those elements of the setting of a heritage asset, they:

“should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval.”

The Inspector's decision

4. The Inspector concluded that the wind farm would fall within and affect the setting of a wide range of heritage assets [22]¹. For the purposes of this appeal the parties' submissions largely focussed on one of the most significant of those assets: a site owned by the National Trust, Lyveden New Bield. Lyveden New Bield is covered by a range of heritage designations: Grade I listed building, inclusion in the Register of Parks and Gardens of Special Historic Interest at Grade I, and Scheduled Ancient Monument [44].

5. It was common ground between the parties at the inquiry that the group of designated heritage assets at Lyveden New Bield was probably the finest surviving example of an Elizabethan Garden, and that as a group the heritage asset at Lyveden New Bield had a cultural value of national, if not international significance. The Inspector agreed, and found that:

“...this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude.” [45]

6. The closest turbine in the wind farm site (following the deletion of one turbine) to Lyveden New Bield was around 1.3 km from the boundary of the Registered Park and 1.7 km from the New Bield itself. The Inspector found that:

“The wind turbines proposed would be visible from all around the site, to varying degrees, because of the presence of trees. Their visible presence would have a clear influence on the surroundings in which the heritage assets are experienced and as such they would fall within, and affect, the setting of the group.” [46]

This conclusion led the Inspector to identify the central question, as follows:

“Bearing in mind PPS5 Policy HE7, the central question is the extent to which that visible presence would affect the significance of the heritage assets concerned.” [46]

7. The Inspector answered that question in relation to Lyveden New Bield in paragraphs 47-51 of his decision letter.

“47. While records of Sir Thomas Tresham's intentions for the site are relatively, and unusually, copious, it is not altogether clear to what extent the gardens and the garden lodge were completed

and whether the designer considered views out of the garden to be of any particular significance. As a consequence, notwithstanding planting programmes that the National Trust have undertaken in recent times, the experience of Lyveden New Bield as a place, and as a planned landscape, with earthworks, moats and buildings within it, today, requires imagination and interpretation.

48. At the times of my visits, there were limited numbers of visitors and few vehicles entering and leaving the site. I can imagine that at busy times, the situation might be somewhat different but the relative absence of man-made features in views across and out of the gardens compartments, from the prospect mounds especially, and from within the garden lodge, give the place a sense of isolation that makes the use of one's imagination to interpret Sir Thomas Tresham's design intentions somewhat easier.

49. The visible, and sometimes moving, presence of the proposed wind turbine array would introduce a man-made feature, of significant scale, into the experience of the place. The array would act as a distraction that would make it more difficult to understand the place, and the intentions underpinning its design. That would cause harm to the setting of the group of designated heritage assets within it.

50. However, while the array would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the moated orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres, the turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site. Moreover, the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter). Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

51. On that basis, the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield and Lyveden Old Bield, or their relationship to each other. As a consequence, the effect on the setting of these designated heritage assets, while clearly detrimental, would not reach the level of substantial harm.”

8. The Inspector carried out “The Balancing Exercise” in paragraphs 85 and 86 of his decision letter.

“85. The proposal would harm the setting of a number of designated heritage assets. However, the harm would in all cases be less than substantial and reduced by its temporary nature and reversibility. The proposal would also cause harm to the landscape but this would be ameliorated by a number of factors. Read in isolation though, all this means that the proposal would fail to accord with [conservation policies in the East Midlands Regional Plan (EMRP)]. On the other hand, having regard to advice in PPS22, the benefits that would accrue from the wind farm in the 25 year period of its operation attract significant weight in favour of the proposal. The 10 MW that it could provide would contribute towards the 2020 regional target for renewable energy, as required by EMRP Policy 40 and Appendix 5, and the wider UK national requirement.

86. PPS5 Policies HE9.4 and HE10.1 require the identified harm to the setting of designated heritage assets to be balanced against the benefits that the proposal would provide. Application of the development plan as a whole would also require that harm, and the harm to the landscape, to be weighed against the benefits. Key principle (i) of PPS22 says that renewable energy developments should be capable of being accommodated throughout England in locations where the technology is

viable and environmental, economic, and social impacts can be addressed satisfactorily. I take that as a clear expression that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided. In my view, the significant benefits of the proposal in terms of the energy it would produce from a renewable source outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape.”

Lang J's Judgment

9. Before Lang J the First, Second and Third Respondents (“the Respondents”) challenged the Inspector's decision on three grounds. In summary, they submitted that the Inspector had failed to:

- (1) have special regard to the desirability of preserving the settings of listed buildings, including Lyveden New Bield;
- (2) correctly interpret and apply the policies in PPS5; and
- (3) give adequate reasons for his decision.

The Secretary of State, the Fourth Respondent, had conceded prior to the hearing that the Inspector's decision should be quashed on ground (3), and took no part in the proceedings before Lang J and in this Court.

10. Lang J concluded that all three grounds of challenge were made out. [72] ² In respect of ground (1) she concluded that:

“In order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the “desirability of preserving... the setting” of listed buildings when weighing this factor in the balance with other ‘material considerations’ which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann's statement in *Tesco Stores v Secretary of State for the Environment & Ors* [1995] 1 WLR 759 , at 780F-H that the weight to be given to a material consideration was a question of planning judgment for the planning authority” [39]

Applying that interpretation of [section 66\(1\)](#) she concluded that:

“...the Inspector did not at any stage in the balancing exercise accord “special weight”, or considerable importance to “the desirability of preserving the setting”. He treated the “harm” to the setting and the wider benefit of the wind farm proposal as if those two factors were of equal importance. Indeed, he downplayed “the desirability of preserving the setting” by adopting key principle (i) of PPS22, as a “clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided” (paragraph 86). In so doing, he applied the policy without giving effect to the section 66(1) duty, which applies to all listed buildings, whether the “harm” has been assessed as substantial or less than substantial.” [46]

11. In respect of ground (2) Lang J concluded that the policy guidance in PPS5 and the Practice Guide required the Inspector to assess the contribution that the setting made to the significance of the heritage assets, including Lyveden New Bield, and the effect of the proposed wind turbines on both the significance of the heritage asset and the ability to appreciate that

significance. Having analysed the Inspector's decision, she found that the Inspector's assessment had been too narrow. He had failed to assess the contribution that the setting of Lyveden New Bield made to its significance as a heritage asset and the extent to which the wind turbines would enhance or detract from that significance, and had wrongly limited his assessment to one factor: the ability of the public to understand the asset based on the ability of "the reasonable observer" to distinguish between the "modern addition" to the landscape and the "historic landscape." [55] — [65]

12. In respect of ground (3) Lang J found that the question whether Sir Thomas Tresham intended that the views from the garden and the garden lodge should be of significance was a controversial and important issue at the inquiry which the Inspector should have resolved before proceeding to assess the level of harm.[68] However, the Inspector's reasoning on this issue was unclear. Having said in paragraph 47 of his decision that it was "not altogether clear ... whether the designer considered views out of the garden to be of any significance", he had concluded in paragraph 50 that "the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter)." It was not clear whether this was a conclusion that there were no planned views (as submitted by the Appellant) or a conclusion that there were such views but the turbine array would not intrude into them. [70] – [71].

The Grounds of Appeal

13. On behalf of the Appellant, Mr. Nardell QC challenged Lang J's conclusions in respect of all three grounds. At the forefront of his appeal was the submission that Lang J had erred in concluding that [section 66\(1\)](#) required the Inspector, when carrying out the balancing exercise, to give "considerable weight" to the desirability of preserving the settings of the many listed buildings, including Lyveden New Bield. He submitted that [section 66\(1\)](#) did not require the decision-maker to give any particular weight to that factor. It required the decision-maker to ask the right question – would there be some harm to the setting of the listed building – and if the answer to that question was "yes" – to refuse planning permission unless that harm was outweighed by the advantages of the proposed development. When carrying out that balancing exercise the weight to be given to the harm to the setting of the listed building on the one hand and the advantages of the proposal on the other was entirely a matter of planning judgment for the decision-maker.

14. Turning to the policy ground, he submitted that Lang J had erred by taking an over-rigid approach to PPS5 and the Practice Guide which were not intended to be prescriptive. Given the way in which those objecting to the proposed wind farm had put their case at the inquiry, the Inspector had been entitled to focus on the extent to which the presence of the turbines in views to and from the listed buildings, including Lyveden New Bield, would affect the ability of the public to appreciate the heritage assets.

15. In response to the reasons ground, he submitted that the question whether any significant view from the lodge or garden at Lyveden New Bield was planned or intended was a subsidiary, and not a "principal important controversial", issue. In any event, he submitted that on a natural reading of paragraph 50 of the decision letter the Inspector had simply found that the turbines would not intrude into such significant views, if any, as were obviously planned or intended, so it had been unnecessary for him to resolve the issue that he had left open in paragraph 47 of the decision.

Discussion

Ground 1

16. What was Parliament's intention in imposing both the [section 66](#) duty and the parallel duty under [section 72\(1\) of the Listed Buildings Act](#) to pay "special attention ... to the desirability of preserving or enhancing the character or appearance" of conservation areas? It is common ground that, despite the slight difference in wording, the nature of the duty is the same under both enactments. It is also common ground that "preserving" in both enactments means doing no harm: see *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141, per Lord Bridge at page 150.

17. Was it Parliament's intention that the decision-maker should consider very carefully whether a proposed development would harm the setting of the listed building (or the character or appearance of the conservation area), and if the conclusion was that there would be some harm, then consider whether that harm was outweighed by the advantages of the proposal, giving that harm such weight as the decision-maker thought appropriate; or was it Parliament's intention that when deciding whether the harm to the setting of the listed building was outweighed by the advantages of the proposal, the decision-maker should give particular weight to the desirability of avoiding such harm?

18. Lang J analysed the authorities in paragraphs [34]–[39] of her judgment. In chronological order they are: *The Bath Society v Secretary of State for the Environment* [1991] 1 WLR 1303 ; South Lakeland (see paragraph 16 above); *Heatherington (UK) Ltd. v Secretary of State for the Environment* (1995) 69 P & CR 374 ; and *Tesco Stores Ltd. v Secretary of State for the Environment* [1995] 1 WLR 759 . Bath and South Lakeland were concerned with (what is now) the duty under section 72 . Heatherington is the only case in which the section 66 duty was considered. Tesco was not a section 66 or section 72 case, it was concerned with the duty to have regard to “other material considerations” under section 70(2) of the Town and Country Planning Act 1990 (“the Planning Act”).

19. When summarising his conclusions in Bath about the proper approach which should be adopted to an application for planning permission in a conservation area, Glidewell LJ distinguished between the general duty under (what is now) section 70(2) of the Planning Act , and the duty under (what is now) section 72(1) of the Listed Buildings Act . Within a conservation area the decision-maker has two statutory duties to perform, but the requirement in section 72(1) to pay “special attention” should be the first consideration for the decision-maker (p. 1318 F-H). Glidewell LJ continued:

“Since, however, it is a consideration to which special attention is to be paid as a matter of statutory duty, it must be regarded as having considerable importance and weight.... As I have said, the conclusion that the development will neither enhance nor preserve will be a consideration of considerable importance and weight. This does not necessarily mean that the application for permission must be refused, but it does in my view mean that the development should only be permitted if the decision-maker concludes that it carries some advantage or benefit which outweighs the failure to satisfy the section [72(1)] test and such detriment as may inevitably follow from that.”

20. In South Lakeland the issue was whether the concept of “preserving” in what is now section 72(1) meant “positively preserving” or merely doing no harm. The House of Lords concluded that the latter interpretation was correct, but at page 146E-G of his speech (with which the other members of the House agreed) Lord Bridge described the statutory intention in these terms:

“There is no dispute that the intention of section [72(1)] is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria.”

21. In Heatherington , the principal issue was the interrelationship between the duty imposed by section 66(1) and the newly imposed duty under section 54A of the Planning Act (since repealed and replaced by the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004). However, Mr. David Keene QC (as he then was), when referring to the

[section 66\(1\)](#) duty, applied Glidewell LJ's dicta in the Bath case (above), and said that the statutory objective “remains one to which considerable weight should be attached” (p. 383).

22. Mr. Nardell submitted, correctly, that the Inspector's error in the Bath case was that he had failed to carry out the necessary balancing exercise. In the present case the Inspector had expressly carried out the balancing exercise, and decided that the advantages of the proposed wind farm outweighed the less than substantial harm to the setting of the heritage assets. Mr. Nardell submitted that there was nothing in Glidewell LJ's judgment which supported the proposition that the Court could go behind the Inspector's conclusion. I accept that (subject to grounds 2 and 3, see paragraph 29 et seq below) the Inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell LJ's judgment is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give “considerable importance and weight.”

23. That conclusion is reinforced by the passage in the speech of Lord Bridge in South Lakeland to which I have referred (paragraph 20 above). It is true, as Mr. Nardell submits, that the ratio of that decision is that “preserve” means “do no harm”. However, Lord Bridge's explanation of the statutory purpose is highly persuasive, and his observation that there will be a “strong presumption” against granting permission for development that would harm the character or appearance of a conservation area is consistent with Glidewell LJ's conclusion in Bath . There is a “strong presumption” against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of “considerable importance and weight.”

24. While I would accept Mr. Nardell's submission that Heatherington does not take the matter any further, it does not cast any doubt on the proposition that emerges from the Bath and South Lakeland cases: that Parliament in enacting [section 66\(1\)](#) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.

25. In support of his submission that, provided he asked the right question – was the harm to the settings of the listed buildings outweighed by the advantages of the proposed development – the Inspector was free to give what weight he chose to that harm, Mr. Nardell relied on the statement in the speech of Lord Hoffmann in Tesco that the weight to be given to a material consideration is entirely a matter for the local planning authority (or in this case, the Inspector):

“If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State.” (p.780H).

26. As a general proposition, the principle is not in doubt, but Tesco was concerned with the application of [section 70\(2\) of the Planning Act](#) . It was not a case under [section 66\(1\) or 72\(1\) of the Listed Buildings Act](#) . The proposition that decision-makers may be required by either statute or planning policy to give particular weight to certain material considerations was not disputed by Mr. Nardell. There are many examples of planning policies, both national and local, which require decision-makers when exercising their planning judgment to give particular weight to certain material considerations. No such policies were in issue in the Tesco case, but an example can be seen in this case. In paragraph 16 of his decision letter the Inspector referred to Planning Policy Statement 22 Renewable Energy (PPS22) which says that the wider environmental and economic benefits of all proposals for renewable energy, whatever their scale, are material considerations which should be given “significant weight”. In this case, the requirement to give “considerable importance and weight” to the policy objective of preserving the setting of listed buildings has been imposed by Parliament. [Section 70\(3\) of the Planning Act](#) provides that [section 70\(1\)](#) , which confers the power to grant planning permission, has effect subject to, inter alia, [sections 66 and 72 of the Listed Buildings Act](#) . [Section 70\(2\)](#) requires the decision-maker to have regard to “material considerations” when granting planning permission, but Parliament has made the power to grant permission having regard to material considerations expressly subject to the [section 66\(1\)](#) duty.

27. Mr. Nardell also *referred us to the decisions of Ouseley J and this Court in Garner v Elmbridge Borough Council [2011] EWCA Civ 891* , but the issue in that case was whether the local planning authority had been entitled to conclude that no harm would be caused to the setting of another heritage asset of the highest significance, Hampton Court Palace. Such was the weight given to the desirability of preserving the setting of the Palace that it was common ground that it would not be acceptable to grant planning permission for a redevelopment scheme which would have harmed the setting of the Palace on the basis that such harm would be outweighed by some other planning advantage: see paragraph 14 of my judgment. Far from assisting Mr. Nardell's case, Garner is an example of the practical application of the advice in policy HE9.1: that substantial harm to designated heritage assets of the highest significance should not merely be exceptional, but “wholly exceptional”.

28. It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE9.4 and HE 10.1 should ignore the overarching statutory duty imposed by [section 66\(1\)](#) , which properly understood (see Bath , South Somerset and Heatherington) requires considerable weight to be given by decision-makers to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings. That general duty applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer have to be “wholly exceptional”), but it does not follow that the “strong presumption” against the grant of planning permission has been entirely removed.

29. For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting [section 66\(1\)](#) was that decision-makers should give “considerable importance and weight” to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the Inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The Appellant's Skeleton Argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the Inspector's planning judgment. In his oral submissions Mr. Nardell contended that the Inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the “significant weight” which the Inspector expressly gave in paragraph 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the [section 66\(1\)](#) duty. It is true that the Inspector set out the duty in paragraph 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.

Ground 2

30. Grounds 2 and 3 are interlinked. The Respondents contend that the Inspector either misapplied the relevant policy guidance, or if he correctly applied it, failed to give adequate reasons for his conclusion that the harm to the setting of the listed buildings, including Lyveden New Bield, would in all cases be less than substantial. I begin with the policy challenge in ground 2. Lang J set out the policy guidance relating to setting in PPS5 and the Practice Guide in paragraphs 62-64 of her judgment. The contribution made by the setting of Lyveden New Bield to its significance as a heritage asset was undoubtedly a “principal controversial” issue at the inquiry. In paragraph 4.5.1 of his Proof of Evidence on behalf of the Local Planning Authority Mr. Mills, its Senior Conservation Officer, said:

“To make an assessment of the indirect impact of development or change upon an asset it is first necessary to make a judgment about the contribution made by its setting.”

Having carried out a detailed assessment of that contribution he concluded in paragraph 4.5.17:

“In summary, what Tresham created at the site was a designed experience that was intimately linked to the surrounding landscape. The presence of the four prospect mounts along with the raised terrace provide a clear indication of the relationship of the site with the surrounding landscape.”

Only then did he assess the impact of the proposed development on the setting by way of “a discussion as to the impact of the proposal on how the site is accessed and experienced by visitors.”

31. In its written representations to the inquiry English Heritage said of the significance and setting of Lyveden New Bield:

“The aesthetic value of the Lyveden Heritage Assets partly derives from the extraordinary symbolism and quality of the New Bield and the theatrical design of the park and garden. However, it also derives from their visual association with each other and with their setting. The New Bield is a striking presence when viewed on the skyline from a distance. The New Bield and Lyveden park and garden are wonderfully complemented by their undeveloped setting of woodland, pasture and arable land.”

In paragraph 8.23 English Heritage said:

“The New Bield and Lyveden park and garden were designed to be prominent and admired in their rural setting, isolated from competing structures. The character and setting of the Lyveden Heritage Assets makes a crucial contribution to their significance individually and as a group.”

32. In its written representations to the inquiry the National Trust said that each arm of the cruciform New Bield “was intended to offer extensive views in *all directions* over the surrounding parks and the Tresham estate beyond” (paragraph 11). The National Trust’s evidence was that “one if not *the Principal designed view from* within the lodge was from the withdrawing rooms which linked to the important Great Chamber and Great Hall on the upper two levels of the west arm of the lodge” (paragraph 12). The Trust contended that this vista survived today, and was directly aligned with the proposed wind farm site (emphasis in both paragraphs as in the original).

33. In his proof of evidence, the planning witness for the Stop Barnwell Manor Wind Farm Group said that:

“...the views of Lyveden New Bield from the east, south-east and south, both as an individual structure and as a group with its adjoining historic garden and listed cottage, are views of a very high order. The proposed turbines, by virtue of their monumental scale, modern mechanical appearance, and motion of the blades, would be wholly alien in this scene and would draw the eye away from the New Bield, destroying its dominating presence in the landscape.”

34. This evidence was disputed by the Appellant’s conservation witness, and the Appellant rightly contends that a *sectio* appeal is not an opportunity to re-argue the planning merits. I have set out these extracts from the objectors’ evidence at the inquiry because they demonstrate that the objectors were contending that the undeveloped setting of Lyveden New Bield

made a crucial contribution to its significance as a heritage asset; that the New Bield (the lodge) had been designed to be a striking and dominant presence when viewed in its rural setting; and that the lodge had been designed so as to afford extensive views in all directions over that rural setting. Did the Inspector resolve these issues in his decision, and if so, how?

35. I endorse Lang J's conclusion that the Inspector did not assess the contribution made by the setting of Lyveden New Bield, by virtue of its being undeveloped, to the significance of Lyveden New Bield as a heritage asset. The Inspector did not grapple with (or if he did consider it, gave no reasons for rejecting) the objectors' case that the setting of Lyveden New Bield was of crucial importance to its significance as a heritage asset because Lyveden New Bield was designed to have a dominating presence in the surrounding rural landscape, and to afford extensive views in all directions over that landscape; and that these qualities would be seriously harmed by the visual impact of a modern man-made feature of significant scale in that setting.

36. The Inspector's reason for concluding in paragraph 51 of the decision that the presence of the wind turbine array, while clearly having a detrimental effect on the setting of Lyveden New Bield, would not reach the level of substantial harm, was that it would not be so distracting that it would not prevent, or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield or Lyveden Old Bield or their relationship to each other.

37. That is, at best, only a partial answer to the objectors' case. As the Practice Guide makes clear, the ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset. The contribution that setting makes does not depend on there being an ability to access or experience the setting: see in particular paragraphs 117 and 122 of the Practice Guide, cited in paragraph 64 of Lang J's judgment.

Ground 3

38. The Inspector said that his conclusion in paragraph 51 of the decision letter that the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield had been reached on the basis of his conclusions in paragraph 50. In that paragraph, having said that the wind turbine array “would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres”, the Inspector gave three reasons which formed the basis of his conclusion in paragraph 51.

39. Those three reasons were:

- (a) The turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site.
- (b) The turbine array would not intrude on any obviously intended, planned view out of the garden or the garden lodge (which has windows all around its cruciform perimeter).
- (c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

40. Taking those reasons in turn, reason (a) does not engage with the objectors' contention that the setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset because Lyveden New Bield was designed to be the dominant feature in the surrounding rural landscape. A finding that the “readily visible” turbine array would not dominate the outlook from the site puts the boot on the wrong foot. If this aspect of the objectors' case was not rejected (and there is no reasoned conclusion to that effect) the question was not whether the turbine array would dominate the outlook from Lyveden New Bield, but whether Lyveden New Bield would continue to be dominant within its rural setting.

41. Mr. Nardell's submission to this Court was not that the Inspector had found that there were no planned views (cf. the submission recorded in paragraph 70 of Lang J's judgment), but that the Inspector had concluded that the turbine array would not intrude into obviously intended or planned views if any. That submission is difficult to understand given the Inspector's conclusion that the turbine array would be “readily visible” from the garden lodge, from the prospect mounds, and from various other places around the site. Unless the Inspector had concluded that there were no intended or planned views from the garden or the garden lodge, and he did not reach that conclusion (see paragraph 47 of the decision letter), it is difficult to see how he could have reached the conclusion that the “readily visible” turbine array would not “intrude” on any obviously intended or planned views from the garden lodge. I am inclined to agree with Mr. Nardell's alternative submission that the Inspector's conclusion that while “readily visible” from the garden lodge, the turbine array would not “intrude” on any

obviously intended or planned view from it, is best understood by reference to his third conclusion in paragraph 50. While visible in views from the garden lodge the turbine array would not intrude upon, in the sense of doing substantial harm to, those views, for the reasons given in the last sentence of paragraph 50.

42. I confess that, notwithstanding Mr. Nardell's assistance, I found some difficulty, not in understanding the final sentence of paragraph 50 – plainly any reasonable observer would know that the turbine array was a modern addition to the landscape and was separate from the planned historic landscape at Lyveden New Bield – but in understanding how it could rationally justify the conclusion that the detrimental effect of the turbine array on the setting of Lyveden New Bield would not reach the level of substantial harm. The Inspector's application of the “reasonable observer” test was not confined to the effect of the turbine array on the setting of Lyveden New Bield. As Lang J pointed out in paragraph 57 of her judgment, in other paragraphs of his decision letter the Inspector emphasised one particular factor, namely the ability of members of the public to understand and distinguish between a modern wind turbine array and a heritage asset, as his reason for concluding either that the proposed wind turbines would have no impact on the settings of other heritage assets of national significance [28] – [31]; or a harmful impact that was “much less than substantial” on the setting of a Grade 1 listed church in a conservation area [36].

43. Matters of planning judgment are, of course, for the Inspector. No one would quarrel with his conclusion that “any reasonable observer” would understand the differing functions of a wind turbine and a church and a country house or a settlement [30]; would not be confused about the origins or purpose of a settlement and a church and a wind turbine array [36]; and would know that a wind turbine array was a modern addition to the landscape [50]; but no matter how non-prescriptive the approach to the policy guidance in PPS5 and the Practice Guide, that guidance nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the “reasonable observer” test adopted by the Inspector in this decision.

44. If that test was to be the principal basis for deciding whether harm to the setting of a designated heritage asset was substantial, it is difficult to envisage any circumstances, other than those cases where the proposed turbine array would be in the immediate vicinity of the heritage asset, in which it could be said that any harm to the setting of a heritage asset would be substantial: the reasonable observer would always be able to understand the differing functions of the heritage asset and the turbine array, and would always know that the latter was a modern addition to the landscape. Indeed, applying the Inspector's approach, the more obviously modern, large scale and functional the imposition on the landscape forming part of the setting of a heritage asset, the less harm there would be to that setting because the “reasonable observer” would be less likely to be confused about the origins and purpose of the new and the old. If the “reasonable observer” test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paragraphs 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the Inspector had given proper effect to the [section 66\(1\)](#) duty.

Conclusion

45. For the reasons set out above, which largely echo those given by Lang J in her judgment, I would dismiss this appeal.

Lady Justice Rafferty:

46. I agree.

The Vice President:

47. I also agree.

Footnotes

- 1 [] refers to paragraph numbers in the Inspector's decision.
- 2 [] refers to paragraph numbers in the judgment.

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APPENDIX 7

R (James Hall & Co Ltd) v Bradford MDC [2019] EWHC 2899 (Admin).

The Queen on the application of James Hall and Company Limited v City of Bradford Metropolitan District Council v Co-Operative Group Limited, Dalehead Properties Limited



No Substantial Judicial Treatment

Court

Queen's Bench Division (Administrative Court)

Judgment Date

1 November 2019

Case No: CO/1863/2019

High Court of Justice Queen's Bench Division Planning Court (Leeds)

[2019] EWHC 2899 (Admin), 2019 WL 05864885

Before: Her Honour Judge Belcher

Date: 01/11/2019

Hearing date: 22 October 2019

Representation

Mr Killian Garvey (instructed by Shoosmiths) for the Claimant.

Mr Philip Robson (instructed by City Solicitor, City of Bradford Metropolitan Council) for the Defendant.

Approved Judgment

Her Honour Judge Belcher:

1. In this matter the Claimant challenges the Defendant Council's (the "Council") decision of 28 March 2019 granting planning permission for the demolition and development of the old Haworth fire station on Station Road in Haworth (the "Site"). The development comprises the construction of an A1 food retail unit with parking and associated works (the "Approved Development"). References in this judgment to the trial bundle will be by Tab number, followed by the page number, for example [15/276].

2. I was provided with two lever arch files containing authorities, including statutory extracts and 28 cases. Prior to the hearing I had read only those parts of the authorities which I was invited to read as part of counsels' lists of essential reading. I was already familiar with some of the other authorities. At the end of counsels' submissions, they agreed that there were a number of the cases which I did not need to read prior to giving my judgment. Those were the cases in the authorities' bundle at Tabs 5, 9, 10, 12, 13, 15, 18, 20, 21, 22, 23, 25, 26, 28, 31 and 32. I was invited to read the relevant paragraphs only of the case at Tab 19, but to otherwise read the authorities in full. I confirm that I have done so. I do not consider it necessary to refer to all of those authorities in the course of my judgment, but a failure by me to mention an authority does not mean I have not read it or considered it for the purposes of this judgment.

3. The Site is adjacent to, but not within, the Haworth Conservation Area ("HCA"), and close to the Grade II listed Bridgehouse Mills. It is otherwise bordered by residential properties and railway sidings. The Claimant challenges the grant of planning permission on three grounds:

- i) that the Council's approach to the Approved Development's impact upon the HCA was flawed
- ii) that the inclusion of the tailpiece "unless otherwise agreed in writing with the local planning authority" contained in the planning conditions 3, 7, 12 and 13 was ultra vires and/or wrong in principle
- iii) that the Council failed to comply with the requirements of Paragraph 189 of the National Planning Policy Framework ("NPPF") in that the relevant Historic Environment Record ("HER") was not consulted in considering heritage impacts.

The Facts

4. In common with many planning authorities, the Defendant offers a pre-application advice service whereby future applicants can seek preliminary views and advice from planning officers. This enables a developer to receive an early indication as to whether a proposal is likely to be acceptable, and to identify any issues that need to be addressed prior to the submission of a planning application. In this case the Second Interested Party ("Second IP") was the applicant for planning permission.

5. The Second IP took advantage of the pre-application advice service. One of the Defendant's planning officers, Laura Eastwood was the officer allocated to deal with the pre-application enquiry [15/275: Witness Statement of Laura Eastwood, paragraph 3]. On 31 January 2018 she wrote a letter responding to the pre-application enquiry. Under the heading "DESIGN/IMPACT ON CONSERVATION AREA AND HERITAGE ASSETS" that letter includes the following paragraphs:

"There would be no objections to demolition of the existing fire station building, which is agreed to be of no heritage or architectural merit...

The site is very open on all sides, any new built form will be highly visible. The site is adjacent to the Haworth Conservation Area.

The site and existing buildings are not regarded as affecting the setting of the Grade II listed Haworth station building, but the proposed development would impact on views of the Grade II listed Bridgehouse Mills

Officers consider that in order for any new structure on this site to complement its context, better analysis and subsequent respect for the prevailing character of Haworth is required. We would urge a bespoke design solution which should be harmonious to its context. An approach to design, materials that pays due respect to local context will be essential to satisfy policies DS3 and EN3 of the core strategy" [15/279B]

6. In support of its application for planning permission, the second IP submitted a Planning and Retail Statement ("PRS") dated June 2018, prepared by I D Planning. Section 6 of the PRS contains the Heritage Policy Assessment [5/104-108: paragraphs 6.1- 6.46]. At paragraph 6.5 the PRS states as follows:

"As referred to above, the application site does not fall within the conservation area but its location adjacent to it suggests that the site forms part of the setting of the asset and therefore it is prudent to assess the proposal in respect of the setting of heritage assets."

7. The PRS refers to and applies the Historic England Guidance on assessing the setting of heritage assets [5/104: paragraph 6.6]. The assessment identifies four significant key views and assesses the impact on each significant key view as "negligible" [5/107: paragraphs 6.33 (which contains a typographical error, but which is clear from its context refers to significant key view 3), 6.36, 6.38 and 6.41]. The conclusions to Section 6 include the following:

"In summary therefore the degree of harm to the conservation area and heritage assets is considered to be minimal" [5/108: paragraph 6.46]

The Claimant makes no complaint in respect of the methodology applied in the PRS.

8. As would be expected, the Council's Conservation Officer, Jonathan Ackroyd, was consulted in respect of the planning application. He has provided a Witness Statement which I shall consider later in this judgment. There is no contemporaneous documentary record as to any advice which he gave at the time. The officer's report ("OR") to the Area Planning Panel, which was drafted by Laura Eastwood, contains the following in respect of the consultation with conservation:

"Conservation-the site is adjacent to but not within the Haworth Conservation Area and does not affect the setting of the grade II listed station building but may impact that of Bridgehouse Mills. The existing fire station building is of no merit and though the proposed structure would be of a similar size, scale and form to that presently on the site the cladding has an overtly industrial appearance. A bespoke solution is required which is harmonious to the context" [2/18].

That wording mirrors what is set out in the pre-application response letter of 31 January 2018 (set out in paragraph 4 above). There is no other reference to heritage assets within the OR.

9. At its meeting on 28 March 2019 the Area Planning Panel approved the application and granted planning permission including the following conditions:

"3. The use of the premises shall be restricted to the hours from 0600 to 2300, 7 days per week including bank or public holidays unless otherwise agreed in writing by the local planning authority.

7. The servicing of the site shall be carried out in accordance with the Service Management Plan submitted to and approved in writing by the Local Planning Authority and the plan shall be retained whilst ever the use subsists. The size of vehicles servicing the site shall be limited to no larger than 10.35m rigid vehicles unless otherwise agreed in writing with the Local Planning Authority.

12. Unless otherwise agreed in writing with the Local Planning Authority, prior to construction of the development, a detailed remediation strategy which removes unacceptable risks to all identified receptors from contamination, shall be submitted to and approved in writing by the Local Planning

Authority. The remediation strategy must include proposals for verification of remedial works. Where necessary, the strategy shall include proposals for phasing of works and verification. The strategy shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.

13. Unless otherwise agreed in writing with the Local Planning Authority, a remediation verification report, including where necessary quality control of imported soil materials and clean cover systems, prepared in accordance with the approved remediation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to completion of the development. [1/2-4]

10. The Area Planning Panel resolved to approve the planning application pursuant to the following resolution:

"That the application be approved for the reasons and subject to the conditions set out in the Strategic Director, Place's technical report." [3/81]

Accordingly, the resolution was to grant planning permission in accordance with the conditions found in the OR. None of the conditions in the OR contained the words "unless otherwise agreed in writing by the Local Planning Authority".

Relevant Policies

11. By [Section 70\(2\) Town & Country Planning Act 1990](#) , in dealing with any application for planning permission the planning authority shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations. There is no dispute that The National Planning Policy Framework ("NPPF") is a material consideration for the purposes of that Section. By [Section 38\(6\) Planning and Compulsory Purchase Act 2004](#) , a planning application must be determined in accordance with the development plan unless material considerations indicate otherwise. There is no dispute that this extends to the Council's Core Strategy Policy EN3, which I consider further below.

12. Part 16 of the NPPF deals with "Conserving and enhancing the historic environment". "Heritage Asset" is defined in the glossary of terms in the NPPF as:

"A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing)." [21/390]

13. Insofar as relevant, Paragraphs 189 and 190 NPPF provide as follows:

"Proposals affecting heritage assets

"189. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary...

190. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal." [21/378]

14. The following further paragraphs of the NPPF, were also cited in argument and are of relevance in this case:

"Considering potential impacts

"193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification...

196. Where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use" [21/378-379].

15. The Council's development plan includes the Core Strategy (adopted July 2017). Policy EN3 of the Core Strategy relates to the Historic Environment. Insofar as relevant, it provides as follows:

"The Council, through planning and development decisions, will work with partners to proactively preserve, protect and enhance the character, appearance, archaeological and historic value and significance of the District's designated and undesignated heritage assets and their settings.

This will be achieved through the following mechanisms:

...

C. Require that all proposals for development conserve and where appropriate, enhance the heritage significance and setting of Bradford's heritage assets, especially those elements which contribute to the distinctive character of the District,..." [6/119]

It then goes on to specify a number of heritage assets contributing to the distinctive character of the District including "The literary and other associations of Haworth and conservation areas of Thornton with the Bronte family." [6/119] In the explanatory text to the policy, designated heritage assets are defined as including, amongst other things, 59 conservation areas. [6/122].

16. There is no dispute in this case that the Site, being adjacent to the HCA, involves development which may affect the setting of a heritage asset. It is accepted, therefore, that Paragraphs 189-190 NPPF, and Core Strategy Policy EN3 apply in this case. It is also accepted that the NPPF is a material consideration for the purposes of any planning decision. It follows that the Defendant accepts that, in determining the application, the Council was under a duty to assess the impact upon the HCA, including its setting.

17. The Statement of Facts and Grounds in this case refers to [Section 72\(1\) of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#). Mr Garvey, for the Claimant, accepts that Section applies only to land in a conservation area and, accordingly, that it has no application in this case.

Ground 1: Unlawful Approach to the Haworth Conservation Area

18. There is no dispute that the decision maker in this case was the Area Planning Panel, and not the Council officers. Further, there is no dispute that there is nothing within the main body of the OR which refers to or gives any consideration to the setting of the HCA. The only mention of the HCA was within the consultation section of the report where it is simply recorded that the site is adjacent to but not within the HCA [2/18; and set out in paragraph 7 above]. Accordingly, nowhere in the advice to members were the Area Planning Panel invited to consider the impact of the development on the HCA or its setting. There is no mention at all about heritage assets, no information about or assessment of the heritage assets and no indication of there being any duty to consider the HCA or its setting.

19. Mr Garvey submitted that there is nothing in the OR to assist the Area Planning Panel members, and, therefore, nothing at all to suggest the relevant duty was complied with. He submitted that any harm from development within the setting of a heritage asset triggers paragraph 194 NPPF. He submitted that there is a duty pursuant to paragraphs 190, 192 and 196 NPPF, firstly, to identify and secondly, to assess the impact of any harm. He relies upon the PRS prepared by the Second IP, and its conclusion that the proposed development was in the setting of the HCA and would cause minimal harm to the HCA. He submitted that evidences the need for the harm to be identified and assessed by the decision maker, namely by the Area Planning Panel. By reason of the absence of any mention of the need to identify any harm, or of the need to assess the impact of the harm and weigh it in the balance before making a decision on the application, Mr Garvey submitted that the result is that there was a complete failure to consider the impact upon the HCA. He submitted the failure to consider that impact was a clear error of law in that:

- i) the duty to consider the HCA and its setting was not discharged
- ii) the Council failed to identify and assess the particular significance of the HCA as required by paragraph 190 NPPF
- iii) there was a failure to have regard to a material consideration, namely the impact upon the HCA
- iv) there was a failure properly to consider and apply policy EN3

20. Mr Garvey referred me to case law which he submitted support his submission that the planning committee must consider the issues and must make the decision as to whether there is an impact on the setting of the HCA. The first was the Court of Appeal decision in *R (oao Graham Williams) v Powys County Council* [2017] EWCA Civ 427 . That case concerned, amongst other matters, whether the County Council had erred in failing to perform the duty in [Section 66\(1\) of the Planning \(Listed Buildings and Conservation Areas\) Act 1990](#) to have regard to the desirability of preserving the setting of a listed building. Mr Garvey relied in particular on the following passages in the judgment of Lord Justice Lindblom:

"58. There will, of course, be cases where it is quite obvious that there is no listed building whose setting is going to be affected by the proposed development, others in which it is no less obvious that the setting of a listed building will be affected, and others again where there is doubt or dispute.... Sometimes a consultee or an objector may have raised concern about the effect the development will have on the setting of a listed building but the decision maker can properly take the view that there will be no such effect, or at least no harm. On other occasions, no such concern may have been raised, but the [section 66\(1\)](#) duty will be engaged nevertheless. As the judge in this case recognised, the fact that the possible effect of the proposed development on the setting of a listed building has not been identified as an issue in responses to consultation, or in representations made by third parties, does not of itself relieve a planning authority of the duty. There will also be cases where only the developer himself identifies the possibility of some change to the setting of a listed building but contends either that the change would not be harmful or that the harm would be insignificant or acceptable. Depending on the circumstances, this too may be enough to engage the [section 66\(1\)](#) duty, and, if it does, the decision maker will err in law in failing to perform that duty.

64. The officer said nothing in her report about the application of the [section 66\(1\)](#) duty to the proposed development. She mentioned policy ENV14 as one of the development plan policies relevant to the proposal, and Welsh Office Circular 61/96 as relevant national policy. But she did not apply those policies to the proposal before the committee, nor explain how they were relevant..."

65. In short, nowhere in the advice the members were given on this proposal was there any mention of the listed building, or of the effect the development might have on its setting, taking into account views in which both it and the proposed wind turbine would or might be visible.....

66. In my view the lack of relevant advice from the officer and of any relevant discussion at either committee meeting, was, in the particular circumstances of this case, enough to amount to an error of law....

67. The first question for the county council, inherent in [section 61\(1\)](#) , was whether there would be an effect on the setting of the listed building, and, if so, what that effect would be. This, I think, was undoubtedly a case in which that question had to be confronted in the making of the decision, and a distinct conclusion reached.... In any event, it seems to me that in this case, without that exercise having been gone through explicitly in the officer's report so as to show that the [section 66\(1\)](#) duty had been heeded and performed, and also without some trace of it having been undertaken by the members in their consideration of the proposal, the court can only conclude that the county council's decision-making was, in this particular and significant respect, deficient and therefore unlawful. The county council failed to discharge its duty under [section 66\(1\)](#) , and failed also to have regard to relevant development plan and national planning policy as material considerations."

21. Mr Garvey submitted that the situation in this case is exactly the same. There is nothing in the OR to direct the Area Planning Panel to the issue of the possible impact on the heritage asset, namely the setting of the HCA. He further submitted that there is nothing from which the court could conclude that the Area Planning Panel had assessed what, if any impact, the development might have on the setting of the HCA. Further he submitted there was no evidence that any such impact had been weighed in the balance when reaching a decision on whether or not to approve the planning application.

22. Mr Garvey also referred me to the decision of Stewart J in *Obar Camden Ltd v Camden LBC* [2015] EWHC 2475 (Admin). That case involved a challenge to planning permission based, amongst other grounds, on a failure to assess heritage impact of the proposed development, both by reference to the statutory duties under the [Planning \(Listed Buildings and Conservation Areas\) Act 1990](#), and by reason of failing to comply with national policy and the relevant local development plan policy, referred to in that case as CLARPA. At paragraph 14 of his judgment Stewart J dealt with the statutory duties and concluded that there was a failure to comply with the statutory duty. He then went on to deal with the NPPF and CLARPA. At paragraph 15 he stated as follows:

"15. As to the four other points made by C, the NPPF para 128 and CLARPA both required the applicant to describe the significance of any heritage assets affected including any contribution made by their setting. Nowhere in the OR is there an assessment of the significance of the heritage assets. It is submitted by C that it is not possible to come to a conclusion about harm until an assessment has been made of the significance of the asset affected. Nor were members told that the NPPF s.12 (particularly at para. 128) required the applicant to describe the significance of heritage assets affected. D accepted that the process had become "truncated" but again emphasised that officers had come to the conclusion that there was no harm and that the committee were experienced. One wonders in those circumstances why there is the requirement in CLARPA and the NPPF para. 128 as stated above. The reality is, in my judgment, that these were material considerations which were not considered and therefore the decision is flawed (cf. [TCPA 1990 section 70\(2\)](#); [Planning and Compulsory Purchase Act 2004 section 38 \(6\)](#))."

23. Counsel are agreed that Paragraph 189 of the current version of the NPPF is in the same terms as Paragraph 128 in the earlier version of the NPPF being considered by Stewart J in that judgment. Accordingly, his references to Paragraph 128 can be read as if they were references to the current Paragraph 189. Mr Garvey submitted that the same points in paragraph 15 of Stewart J's judgment apply in this case. He asked the rhetorical question: "Why have a duty but allow the Council not to do anything to discharge it?"

24. The Council has filed Witness Statements from two of its officers, Jonathan Mark Ackroyd, Senior Conservation and Design Officer [14/270-273], and Laura Joanne Eastwood a Planning Officer [15/274-278]. In general terms the evidence from the two officers asserts that Mr Ackroyd assessed the significance of the HCA and its setting in accordance with NPPF Paragraph 190, and concluded that there was no harm to the significance of the HCA through the impact on its setting [14/271: Witness Statement of Jonathan Ackroyd, paragraph 2; 15/277: Witness Statement of Laura Eastwood, paragraph 5]. In relation to this evidence, Mr Garvey urged caution and submitted that I should disregard it as ex-post facto rationalisation. Further, in any event, he submitted that the witness evidence is irrelevant because the officers are not the decision maker, and their conclusions on these issues are irrelevant. Mr Garvey further pointed to the fact that there is nothing before the court predating the grant of planning permission which shows that any consideration was given by the Area Planning Panel, as decision-maker, to the setting of the conservation area.

25. I do not understand Mr Robson for the Defendant to dissent from the proposition that the decision maker in this instance is the Area Planning Panel and not the officers. He submitted that experienced officers can use their professional judgement to reach the conclusion that negligible or minimal harm to the HCA does not engage the policy, and, therefore, that it does not need to be included in the OR. In those circumstances, he submitted that it was sufficient for an experienced Area Planning Panel to be directed to the NPPF and policy EN3, and to be told that the Site was adjacent to but not within a conservation area. He submitted that if the Area Planning Panel felt that was not sufficient information, they could ask for more information. He submitted that this Area Planning Panel obviously felt this was not necessary.

26. The thrust of Mr Robson's submissions was that because the council officers formed the view that there was no harm to the setting of the conservation area, that did not need to go into the OR, and the Area Planning Panel was not materially misled in any way. He sought to draw a distinction between compliance with a statutory duty and the application of policy, and he submitted that because this case concerns the application of policy, that affects the level of detail required in an officer report.

27. As set out in paragraph 7 above, the PRS reached the conclusion that the degree of harm to the conservation area and heritage assets is considered to be minimal [5/108: paragraph 6.46]. In the Detailed Grounds this is described as a finding of no material harm [17/301: heading to paragraph 39]. It is asserted in Paragraph 40 of the Detailed Grounds that had Mr Ackroyd disagreed with the conclusions of the PRS on heritage, he is perfectly capable of disagreeing with them but that instead he "*acknowledged*" the conclusions in the PRS. Mr Garvey submitted that the Detailed Grounds were trying to suggest that this conclusion in the PRS had been adopted by, and should be considered to be, the decision of the Area Planning Panel. Having taken instructions in response to a question from me, Mr Robson conceded that the PRS was not before the Area Planning Panel. Very sensibly, he did not seek to persuade me that the Area Planning Panel could be considered to have adopted the conclusion in the PRS as their own.

28. In my judgment, the evidence of Mr Ackroyd does not suggest that he "*acknowledged*" the conclusions in the PRS. At paragraph 2 of his Witness Statement, Mr Ackroyd states that he concluded at the pre-application stage that there was no harm to the significance of the conservation area through the impact on its setting. At that stage the Council was not in possession of the PRS which was produced by the Second IP having received the pre-application response letter from Laura Eastwood. In her evidence Laura Eastwood also asserts that she and her colleague (which I was told is a reference to Mr Ackroyd) concluded at the pre-application stage that the impact on the conservation area was not material [15/277: paragraph 5].

29. Mr Ackroyd goes on in his Witness Statement to say that having received the PRS, its conclusions were regarded as being comprehensive and agreeable. Based upon the submitted information and his own personal expertise, the Historic England guidance, adopted local policies and having regard for adopted character appraisals, he concluded that the principle of development would not harm the setting of the conservation area or the setting of the Grade II listed Bridgehouse Mills [14/272: paragraphs 4 and 6].

30. I have to say I have some concerns about the evidence of these officers in this respect. The conservation summary in the OR refers to the possible impact on Bridgehouse Mills but also asserts that the Grade II listed station building will not be affected. It seems surprising that the OR should address both things that will be affected in heritage terms and things that will not, but is silent as to the alleged conclusion reached by the officers that the HCA would not be affected. I regret that I am forced to the conclusion that there is some *ex post facto* rationalisation in this evidence. My view on this matter is reinforced by the approach of the Defendant's Detailed Grounds which suggest that Mr Ackroyd "*acknowledged*" the PRS findings as opposed to disagreeing with them. That is carried through from the Summary Grounds of Resistance [11/168; Paragraph 30] which were of course lodged prior to the Witness Statements being made. At that stage it was the express position that Mr Ackroyd was perfectly capable of disagreeing with the conclusions had he wanted to but **instead** (my emphasis) he "*acknowledged*" them. The evidence of the witnesses is at odds with the instructions which were provided for the purposes of the Summary Grounds, and that gives me cause for concern. As I have also noted at paragraph 8 above, the Conservation entry in the OR is in identical terms to the pre-application response letter, which, in the absence of any documentary evidence to the contrary, suggests that no further consideration had been given to these matters.

31. Mr Garvey attacks the Defendant's case as being confused in this respect. He submitted that in the Detailed Grounds, the Defendant was saying that it agreed with the finding of minimal harm. However, they now seek to say that their officers made a positive finding that there was no material harm. He suggests the two things are different and irreconcilable. He submitted that the words "minimal harm" do not necessarily mean "no material harm" and that it would be wrong, indeed dangerous, for the court to say that any minimal harm can be discounted. He pointed to Paragraph 193 NPPF [21/378] which acknowledges three brackets of harm to heritage assets, substantial harm which is addressed in Paragraph 195 [21/379]; less than substantial harm which is addressed in Paragraph 196 [21/379], and no harm. Mr Garvey submitted that the Defendant is trying to say that minimal harm equates to no harm and does not need to be given any weight. Mr Garvey submitted that minimal harm (which by definition must be something more than no harm) falls to be considered within Paragraph 196 NPPF as less than substantial harm. In those circumstances, he submitted that Paragraph 193 NPPF required the Area Planning Panel to give great weight to that impact, whereas it failed to assess it, and therefore failed to give it any weight at all.

32. In response to this, Mr Robson relied upon the conclusions in the PRS which were that the impact in respect of each of the four key views was negligible [5/107: paragraphs 6.33, 6.36, 6.38, and 6.41]. Whilst acknowledging that the degree of harm in the conclusions section is considered to be minimal [5/108: paragraph 6.46], Mr Robson submitted that where

the conclusions in respect of each of the key views is that the impact will be negligible, the harm can be nothing but also negligible. He submitted that the word "minimal" is interchangeable with "negligible" which is used throughout the PRS.

33. In response to that Mr Garvey submitted that the conclusion is one of minimal harm. There is nothing from the author of this document as to whether he uses the terms interchangeably. Mr Garvey made the point that whilst negligible might be less than minimal, the author's conclusion, having identified four instances of negligible impact, is that the impact overall is minimal. Mr Garvey submitted that whilst they might be one and the same, there is no evidence from which this court could properly conclude that is the case. He submitted that the category of less than substantial harm in Paragraph 196 NPPF is a broad spectrum and there is no reason why even a negligible harm should not fall within that bracket.

34. In my judgment the three categories of harm recognised in the NPPF are clear. There is substantial harm, less than substantial harm and no harm. There are no other grades or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than substantial harm will cover a broad range of harm. It will be a matter of planning judgement as to the point at which a particular degree of harm moves from substantial to less than substantial, but it is equally the case that there will be a number of types of harm that will fall into less than substantial, including harm which might otherwise be described as very much less than substantial. There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF. However, in my judgment, minimal harm must fall to be considered within the category of less than substantial harm.

35. Mr Robson sought to persuade me that in his judgment in *Blackpool Borough Council v The Secretary of State for Communities and Local Government and Thomson Property Investments Ltd* [2016] EWHC 1059 (Admin), Kerr J recognised that it was only above de minimis harm that falls into the category of less than substantial. He based this on the following single sentence at Paragraph 48 of Kerr J's judgement:

"This case was, moreover, one in which the parties appeared to be in agreement that this was a case where the harm to the heritage asset was less than substantial, but more than de minimis."

I do not accept that in acknowledging the parties agreement on that matter, Kerr J was intimating that in order to be less than substantial, harm to the heritage asset had to be more than de minimis. It simply amounts to an acknowledgement that the harm in that case was more than de minimis. I further note that in Paragraph 51 of that judgment Kerr J referred to the Inspector's finding that the proposals in question would "do little harm", adding that the inspector did not say they would do no harm. I do not consider this case assists Mr Robson's submission.

36. Mr Robson's alternative submission was that even if "minimal" in the PRS meant something material, Mr Ackroyd's evidence is that he disagreed with that and he formed the conclusion that the principle of development would not harm the setting of the HCA [14/272: paragraph 6]. I have already indicated that I have concerns about that evidence, but for the purposes of dealing with Mr Robson's submissions, I shall approach the matter as if the evidence was properly elucidatory only (untrammelled by any ex post facto justification) and, therefore, properly admissible.

37. Mr Robson submitted that this case does not involve statutory duty but rather policy as to how to assess the potential impact to the heritage assets. This he submitted affects the level of detail required in an OR. He submitted that having used their professional judgement that there was no harm to the HRA, the officers were entitled to reach the further judgement that the policies were not engaged. In those circumstances, he submitted, it was not necessary for there to be anything more in the OR than a reference to the policy because this is an informed committee.

38. In support of these submissions Mr Robson took me to a number of authorities. He first of all referred me to judgment of Lindblom LJ in *Michael Mansell v Tonbridge and Malling BC and Others* [2017] EWCA Civ. 1314. At paragraph 42 Lindblom LJ said this:

"The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled.... The principles are not complicated. Planning officers' reports to

committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge..... The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice and the officer's report is such as to misdirect the members in a material way - so that, but for the flawed advice it was given, the committee's decision would or might have been different - that the court will be able to conclude that the decision itself was rendered unlawful by that advice."

39. Mr Robson submitted that the Area Planning Panel in this case can be expected to understand national and local policies. He pointed to list of designated heritage assets contained in the explanatory text to Policy EN3 which lists the Saltaire World Heritage site, over 2289 listed building entries on the National Heritage List for England, 59 conservation areas, 14 historic parks and gardens, 194 scheduled ancient monuments and one historic battlefield site at Adwalton Moor, Tong. Mr Robson submitted this is a Council with significant heritage assets and that the Area Planning Panel would be well used to dealing with policies covering this area of planning law. He further submitted that given Policy EN3 is referenced in the OR, it can be expected that the Area Planning Panel was well aware of its contents and how it operated.

40. Mr Robson referred me to the judgment of Sullivan J in *R v Mendip District Council, ex parte Philippe Cyprian Fabre [2000] 80 P & CR 500*, at paragraph 102 where he stated as follows:

"It is for the committee to decide, in the first instance, whether it has sufficient information to enable it to reach a decision one way or the other. The court can review the committee's decision on Wednesbury grounds, if it considers that no reasonable committee could have reached a decision to grant planning permission without having a particular piece of information."

Mr Robson submitted that this is an experience Area Planning Panel which was directed by the OR to the NPPF and to Policy EN3, that the OR set out that the Site was adjacent to but not within a conservation area, and that if this Area Planning Panel had felt they did not have sufficient information, they could have asked for it. He submitted they obviously felt that was not necessary.

41. Mr Robson placed particular reliance on the decision of Andrews J in *Pagham Parish Council v Arun District Council and Others [2019] EWHC 1721 (Admin)*. ("Pagham"). Mr Robson urged me that this was a case which I should read carefully on the basis that it has close parallels to the case I have to decide. Mr Robson particularly relied on Paragraphs 60 to 65 in the judgment, and he relied on these to support his submission that it was not necessary for the OR to say that the PRS thought there would be some harm to the HCA, but that the planning officers did not agree.

42. The difficulty for Mr Robson is that he has taken those paragraphs in isolation and not in the full context of the judgment in the case. The factual position in that case is completely different. In that case the applicant produced an impact assessment which identified very slight harm in heritage terms. As is clear from paragraphs 3,5 and 6 of the judgement in *Pagham*, a 52 page OR cited the relevant passages from the NPPF and expressly considered the impact that the proposed development would have on each of a number of listed buildings situated within close proximity to the application site. The OR also summarised the views of Historic England, the statutory consultee, and correctly informed the committee that the LPA's conservation officer had raised no objection. The OR then set out the planning officer's conclusions in the following terms:

"Therefore, it is considered that the proposed development will preserve the setting of the listed buildings surrounding the site and as such would accord with policies HER SP1, HER DM1, and HER DM4 of the Arun local plan. "

The officer added

"It should also be considered that the proposed development makes a significant contribution to the local planning authority's housing land supply and is an allocated site within the Arun local plan. Therefore, it is considered that the public benefits of the development would outweigh any harm to the setting or significance of heritage assets in accordance with paragraphs 196 and 197 of the NPPF."

43. It is quite clear from the judgment that in *Pagham* the OR expressly addressed these issues, concluded explicitly that there was no heritage harm, and undertook the assessment looking at the benefits of development weighed against any harm to the setting or significance of the heritage assets. The criticism in the judicial review in that case was that the planning officer had materially misled the committee by not adequately summarising the views of the heritage impact assessment submitted in support of the application in which the consultant had expressed the view that there would be slight harm to the setting of a listed building which could be considered less than substantial in the context of the NPPF.

44. At paragraphs 40 and 41 of her judgment, Andrews J makes the following points

"40. The assessment of whether any harm would be caused by the impact of the development on the heritage asset or its setting is likewise **a matter for the decision maker**, not the author of the HIA...

41. The evaluation of harm was ultimately a matter for the committee, having been furnished with the necessary information by the planning officer. Thus if the planning officer, having taken all relevant factors into account, was entitled to take the view that there was no harm, and therefore that the setting would be preserved, and **so advise the committee, who accepted that advice**, on the face of it the decision is unimpeachable. It cannot be said there was a failure to comply with the duty under [section 66\(1\)](#) or para 193 of the NPPF because there was no harm to weigh in the balance." (my emphasis added in each case)

45. The paragraphs in the judgment which Mr Robson seeks to rely on, have to be read against that factual background and in the context of those observations made by Andrews J. The relevant parts are as follows:

"60. Thus once it is accepted (as it was, and had to be) that it was rationally open to decide that there was no harm to the wider setting of the Church, which was the conclusion of this planning officer, **and implicitly endorsed by the committee when they accepted his recommendations**, there was no legal duty on anyone within the LPA to explain why they disagreed with the contrary view that had been expressed by the consultant engaged by the applicant for planning permission.

63. The planning officer did not mislead the committee, let alone mislead it in any material respect... He was under no obligation to say that the consultant had identified something which could be regarded as minor harm to the vistas from a different perspective but that he, the officer, disagreed with that assessment.

64. The officer then said that he considered the development would preserve the setting of all the listed buildings in the vicinity. **He furnished the committee with all the information he**

rationaly considered would help them to decide whether they agreed or disagreed with that assessment.

65. On the basis of the material before him, having taken all relevant information into account, the planning officer was entitled to **so advise the committee** ." (my emphasis added in each case)

46. In my judgment the passages I have emphasised in the judgment of Andrews J underline the very real difficulty that Mr Robson has in this case. Mr Garvey does not dispute that a planning officer is entitled to form a view on matters relevant to the decision to be made by the decision maker, and to tell the decision maker what his or her opinion on that matter is. That does not take the decision making process away from the decision maker. The decision maker is at liberty to adopt the planning officer's opinion or to reject it. The whole of Andrews J's judgment is predicated on advice being given to the committee and, by implication, being accepted by the committee. In my judgment that is entirely different from the situation here.

47. In his closing submissions in reply, Mr Garvey accepted that there is no obligation in an OR to address everything said by an applicant which the officer may disagree with. He said that if the OR before this court had done a proper assessment of heritage impact, and had concluded there was no harm, he would not be here. That would be on all fours with the case that Andrews J was considering in *Pagham* . In my judgment what has happened here, is that the officers have made the decision and, in effect, withdrawn it from the Area Planning Panel. By failing to make any mention of it in the OR, it cannot be said that the Area Planning Panel has, by implication, agreed with the conclusions of the officers. As is made clear in the judgment of Andrews J, the evaluation of harm was ultimately a matter for the Area Planning Panel, having been furnished with the necessary information by the planning officer. In this case the Area Planning Panel was furnished with no necessary information and was in no position to assess whether there was any harm, or to carry out the balancing exercise of any harm found against the public benefits of the development. In those circumstances, I am entirely satisfied that Ground 1 is made out.

48. By [Section 31\(2A\) Senior Courts Act 1981](#) , the High Court must refuse to grant relief on an application for judicial review if it appears to the Court to be highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred. Mr Robson relied on [Section 31\(2A\)](#) both in the detailed grounds and in his skeleton argument.

49. In the course of argument, I indicated that it seemed to me inevitable that if I were to find Ground 1 proved, I would inevitably have concluded that a matter calling for a planning judgement by the Area Planning Panel had been withdrawn from them. Matters of planning judgement are matters for the decision makers and not for this court. The decision to assess whether there is any harm in heritage terms to the setting of the HCA inevitably involves a planning judgement, as does the balancing exercise to be carried out if it is found that there is some harm to place into the balance. In my judgment, I cannot properly conclude that the outcome for the Claimant in this case would not have been substantially different if the conduct complained of had not occurred. After I had given that indication, Mr Robson withdrew his reliance on [Section 31\(2A\)](#) .

Ground 2: The Conditions Relied Upon Were Unlawful.

50. This challenge relates to the addition of the words "unless otherwise agreed in writing" (the tailpieces) in each of conditions 3,7, 12 and 13 of the conditions attached to the planning permission [1/2-4]. Mr Garvey submitted firstly, that the addition of these words was ultra vires, and secondly, that they are wrong in principle.

51. The Summary Grounds in this case were accompanied by a Witness Statement from Mark Julian Hutchinson, Area Planning Manager for the Defendant. In that Witness Statement he confirms that the OR to the Area Planning Panel did not include the tailpieces, that no further material came to the attention of the LPA between the Area Planning Panel's resolution and the issuing of the decision notice. He states that it was a simple administrative oversight that resulted in the tailpieces being added to conditions 3, 7, 12 and 13. [11/183, paragraph 7]. In those circumstances, it is clear that the tailpieces are ultra vires having been added without any decision from the Area Planning Panel to support their inclusion.

52. Mr Robson accepted the unlawfulness of these conditions, and addressed me only on the issue of the appropriate form of relief. He referred me to the decision of Ousley J in *R (oao Midcounties Co-operative Ltd) v Wyre Forest District Council [2009] EWHC 964 (Admin)* , at paragraph 74, where he rejected a submission that the tailpieces in that case should lead to the quashing of the whole planning permission. He found that severance of the offending tailpieces was sufficient.

53. Given my conclusions on Ground 1 which will lead to the quashing of this planning permission, I do not consider it necessary to go into any detail on the issue of relief the Ground 2. In any event, Mr Garvey reserved his submissions on relief pending my decision on the other Grounds. Whilst I have not heard those submissions, it would appear that if only the tail conditions were in issue, then excision would seem to be the appropriate remedy.

54. Given the Defendant's concession that the conditions are unlawfully included, I do not consider it necessary to explore the alternative challenge as to whether they are wrong in principle.

Ground 3: Failure to Have Regard to the Relevant Historic Environment Record

55. Given my conclusion in relation to Ground 1, I can deal with Ground 3 shortly. Paragraph 189 NPPF [21/378; and set out at paragraph 13 above] provides that in undertaking the heritage asset assessment, as a minimum the relevant HER should have been consulted and the heritage assets assessed using appropriate expertise where necessary. There is no dispute that the HER was not consulted in this case.

56. Mr Robson submitted that the fact that the HER has not been consulted is of no substantive consequence in this case. He relies upon Mr Ackroyd's evidence:

"It was not felt necessary to refer to the Historic Environment Record as the applicant's statement was assessed as having properly identified and considered the heritage impacts in more detail than is included in the Historic Environment Record." [14/272: paragraph 5]

I have already indicated that I have concerns that the officers' evidence in this case does amount to ex-post facto rationalisation. There is nothing in the paperwork to suggest that this was even considered by Mr Ackroyd prior to the grant of the planning permission in this case.

57. That would not necessarily be the end of Ground 3 as Mr Robson submitted that there is no evidence that any failure to consult the HER was of any consequence to the final decision. Mr Robson told me that the HER is simply a database. When I pointed out that there was no evidence to that effect, Mr Robson submitted that the HER is a public document which the Claimant could have put before the court. That may be right, but equally the Defendant could put this document before the court, and it is the Defendant who is seeking to argue that the failure to consult the HER is of no consequence. The Claimant's case clearly raises an issue which needs to be answered. It has not been, save by the evidence of Mr Ackroyd which, for reasons I have already given, I do not regard as sufficient.

58. In the absence of the HER having been produced in evidence, or even any evidence from an officer as to what the HER comprises, I am left with Mr Robson telling me, on instructions, that the HER is simply a database. I have no information as to what is in that database and nothing from which I could properly make any judgment as to whether the failure to consult the HTR is of no consequence to the final decision. It follows that I could not properly conclude that it is highly likely that the outcome for the Claimant would not have been substantially different if the HER had been consulted. Accordingly, [Section 31\(2A\) Senior Courts Act 1981](#) has no application to this Ground of challenge. Accordingly, I find Ground 3 is also proved.

59. To summarise my conclusions, I find all three Grounds proved. I think it likely that had Ground 2 been the only successful ground, the appropriate relief would have been excision of the tailpieces, although I would have heard further submissions from Mr Garvey as to relief in those circumstances. However, given that Grounds 1 and 3 are proved, it follows that the planning permission in this case must be quashed.

APPENDIX 8

Bramshill v SSHCLG [2021] EWCA Civ 320



Neutral Citation Number: [2021] EWCA Civ 320

Case No: C1/2020/0160

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(PLANNING COURT)
THE HONOURABLE MR JUSTICE WAKSMAN
[2019] EWHC 3437 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/03/2021

Before:

SIR KEITH LINDBLOM, SENIOR PRESIDENT OF TRIBUNALS
LORD JUSTICE PHILLIPS
and
LORD JUSTICE ARNOLD

Between:

City & Country Bramshill Limited

Appellant

- and -

**(1) Secretary of State for Housing, Communities and
Local Government**

Respondents

- and -

(2) Hart District Council

- and -

(3) Historic England

- and -

**(4) The National Trust for Places of Historic Interest or
Natural Beauty**

James Strachan Q.C. and Ned Helme (instructed by **Pinsent Masons LLP**) for the **Appellant**
Guy Williams and **Alistair Mills** (instructed by the **Government Legal Department**)
for the **First Respondent**
Ben Du Feu (instructed by **Historic England Governance and Legal**)
for the **Third Respondent**
Melissa Murphy (instructed by **Sharpe Pritchard LLP**) for the **Fourth Respondent**

Hearing dates: 1 and 2 December 2020

**Judgment Approved by the court
for handing down**

The Senior President of Tribunals:

Introduction

1. This appeal raises questions on the interpretation and application of policies in the National Planning Policy Framework (“NPPF”) against the development of “isolated homes in the countryside” and on the assessment of harm and benefit to “heritage assets”.
2. The appellant, City & Country Bramshill Ltd., appeals against the order of Waksman J., dated 20 December 2019, partly allowing and partly dismissing applications and appeals under sections 288 and 289 of the Town and Country Planning Act 1990 (“the 1990 Act”) and section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”), which challenged the decisions of an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government, on 33 statutory appeals, under sections 78 and 174 of the 1990 Act, against refusals of planning permission and enforcement notices issued by the second respondent, Hart District Council, relating to development at Bramshill Park in Hampshire. The third and fourth respondents, Historic England and the National Trust, were objectors.
3. The site, which extends to about 106 hectares, lies between the villages of Hazeley and Eversley. It was previously used as a national and international police training college. On it stands a grade I listed Jacobean mansion and various other buildings. It also contains a grade I registered park and garden. The proposed development included the conversion of the mansion to 16 apartments and the adjoining stable block to five (appeal 1), or its conversion to a single dwelling (appeal 2), or to class B1 office space (appeal 3); the construction of 235 houses in place of some of the existing buildings (appeal 4), 14 more to the south-west (appeal 5), and nine to the north of an existing lake (appeal 6); the use of 51 residential units – once occupied by staff employed at the training college – as separate dwellings (appeal 7), retaining those against which the council had taken enforcement action alleging a material change of use without planning permission (appeals 8 to 33).
4. The inspector held a long inquiry into the appeals, which ended in February 2018. In her decision letter, dated 31 January 2019, she allowed appeals 2 and 3, granting planning permission for those proposals. She also allowed appeals 15 and 17 to 33, quashing the enforcement notices in those appeals. She dismissed appeals 1, 4 to 14 and 16. In a separate decision letter dated 14 March 2019 she dismissed City & Country Bramshill’s application for costs against the council. City & Country Bramshill challenged her decisions on appeals 4 to 14 and 16, and on the application for costs. Waksman J. upheld the challenges to the decisions on appeals 7 to 14 and 16. He rejected those to the decisions on appeals 4 to 6 and on costs. The appeal before us is against that part of his order. Permission to appeal was granted by Lewison L.J. on 28 February 2020.

The issues in the appeal

5. The grounds of appeal raise four principal issues: first, whether the inspector erred in law in her interpretation and application of the policy against “isolated homes in the countryside” in paragraph 79 of the version of the NPPF published in July 2018 (ground 1); second, whether she erred in her approach to “sustainability” (ground 4); third, whether,

in performing the duty in section 66 of the Listed Buildings Act and applying the corresponding policies in the NPPF, she failed to comply with a “principle” identified by this court in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061, [2017] 1 W.L.R. 411 (ground 2); and fourth, whether she erred in her approach to applying development plan policies for the protection of the historic environment, in particular policies CON11, CON12, CON17 and CON18 of the adopted local plan for Hart district (ground 3). It is also contended that the decision on the application for costs was unlawful.

The inspector’s “Overall Conclusions” on appeals 4, 5 and 6

6. The inspector’s decision letter runs to 433 paragraphs. Her “Overall Conclusions” on appeals 4, 5 and 6 were these (in paragraph 417):

“417. Appeals 4, 5 and 6 would not provide appropriate sites for development being in an unsustainable location and resulting in isolated housing in the countryside. They would be harmful to the character and appearance of the area and would not preserve the special qualities of the listed buildings, their settings or the [registered park and garden (“RPG”)]. These matters are not outweighed by public benefits. They would not be in accord with [local plan] policies GEN1, GEN3, GEN4, T14, CON12, CON17 and national planning policy.”

The policy in paragraph 79 of the NPPF

7. Under the heading “Identifying land for homes”, paragraph 72 of the July 2018 version of the NPPF stated:

“72. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities. Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. . . .”

8. In a passage headed “Rural housing”, paragraphs 78 and 79 stated:

“78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.

79. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
a) there is an essential need for a rural worker ... to live permanently at or near their place of work in the countryside;

- b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future use of heritage assets;
- c) the development would re-use redundant or disused buildings and enhance its immediate setting;
- d) the development would involve the subdivision of an existing residential dwelling; or
- e) the design is of exceptional quality ...”.

Those two paragraphs re-appeared in the version of the NPPF published in February 2019.

9. The previous policy, in paragraph 55 of the original version of the NPPF published in March 2012, was in slightly different terms. It stated:

“55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: ...”.

10. The interpretation of the policy in paragraph 55 of the original version of the NPPF was considered by this court in *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, [2018] 2 P. & C.R. 9. In that case I said (in paragraphs 29 to 32):

“29. ... [Under] this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of “sustainable development in rural areas” than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.

...

31. In my view, in its particular context in paragraph 55 of the NPPF, the word “isolated” in the phrase “isolated homes in the countryside” simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is or is not “isolated” in this sense is a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.

32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definition of a “community”, a “settlement”, or a “village”. There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in

a particular case, a group of dwellings constitutes a settlement or a “village” for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. ...”

and (in paragraph 38):

“38. This all seems at one with Lewison L.J.’s observation about the policy – brief as it was – in paragraph 15 of his judgment in [*Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, [2017] P.T.S.R. 737].”

and (in paragraph 42):

“42. ... To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be “functionally” isolated as well as “physically”. He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement.”

11. Though it was not referred to either in evidence or in argument before the inspector, the decision of this court in *Dartford Borough Council* has been relied upon by City & Country Bramshill in these proceedings. The “sole issue” in that case, as Lewison L.J. said (in paragraph 1 of his judgment), was “the meaning of “previously developed land” ... as defined by the glossary” in the NPPF. In his view, the expression “[land] in built-up areas” in the definition could not mean “land *not* in built-up areas” (paragraph 9). And he saw no conflict between that definition and the policy in paragraph 55 of the NPPF (paragraph 14). He said (in paragraph 15):

“15. ... [The] definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that the new dwelling within that curtilage will not be an “isolated” home. There will already be a permanent structure on the site. ...”.

The inspector’s conclusions on the location of the proposed development

12. The first of the “main issues” identified by the inspector was “[whether] the proposals would provide appropriate sites for development having regard to planning policies that seek to control the location of new development and their sustainability credentials” (paragraph 23 of the decision letter).

13. She described the site and the buildings on it, noting that it “contains an extensive range of modern buildings ... the lawful use ... [being] a Residential Institution under Class C2” (paragraph 27). She also described the proposals in each of the appeals, and the relationships between one proposal and another. For example, she noted that the proposal in appeal 4 would provide 235 houses to the north-west of the mansion “utilising some of the existing buildings ...” (paragraph 31), that the proposal in appeal 7 sought permission for “the use of 51 residential units on the site as C3 dwelling houses”, 26 of which were the subject of the enforcement notices in appeals 8 to 33, and that “[the] buildings concerned are also included in appeal 4 for adaptation/demolition” (paragraph 35).

14. She said the council's reasons for refusal of planning permission for the development in appeals 1, 4, 5 and 6 "[related] to the alleged unsustainable location of the site by virtue of its remote position away from nearby settlements with services and facilities", and in appeal 7 "the provision of new isolated dwellings in the open countryside" (paragraph 54). She referred to the policy in paragraph 103 of the July 2018 version of the NPPF, which, she said, "seeks to focus significant development on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of sustainable transport modes", and the policy in paragraph 110, that "[encouragement] should be given to the effective re-use of land that has been previously developed ..." (paragraph 57).
15. On the policy in paragraphs 78 and 79 of the NPPF she concluded (in paragraphs 58 to 61):
 58. In rural areas, to promote sustainable development housing should be located where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside should be avoided unless they are to serve one of [the] identified special circumstances including where such development would represent the optimum viable use of a heritage asset or would be appropriate enabling development to secure the future of the heritage assets; or where the development would re-use redundant or disused buildings and enhance its immediate setting. [Here a footnote refers to paragraph 79 of the NPPF.]
 59. Although the development plan policies relating to settlement boundaries are out of date, there is no dispute between the parties that the site is located outside any settlement area and is not in the vicinity of the boundary of any settlement. It is in the countryside.
 60. Nonetheless the appellant considers that the proposals would not result in isolated homes in the countryside under the meaning given in paragraph 79 of the [NPPF]. I have taken into account the findings of *Braintree* [Here a footnote refers to the first instance judgment in *Braintree District Council*] which remain relevant to the revised [NPPF] as the text in the revision remains essentially the same. It was held in the judgement that the word isolated should be given its ordinary objective meaning of "far away from other places, buildings or people; remote". A distinction was also made in the judgement between "rural communities", "settlements" and "villages" on the one hand and "countryside" on the other. At the Court of Appeal it was agreed that the [NPPF] does not define a community, settlement or village or that a settlement or development boundary must have been fixed in an adopted or emerging local plan. It was held that it should not necessarily have any services or public transport within easy reach. Whether in any particular case a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker. [Here there is a footnote referring to this court's decision in *Braintree District Council*.]
 61. In the cases before me, whilst I acknowledge that the site contains existing buildings, it is evidently not a rural community, settlement or village but rather a discrete group of buildings used in the past for a specific purpose as a residential institution centred on a historic house. It is remote from other settlements and villages and surrounded by open countryside. In my assessment residential

development in this location would result in new isolated housing in the countryside.”

16. She acknowledged that paragraph 79 of the NPPF “allows for certain exceptions” (paragraph 62). But in the light of her conclusion that the proposals in appeals 4, 5 and 6 did not “represent the optimal viable use of a heritage asset or provide appropriate enabling development to secure the future of the heritage asset”, she concluded that “these proposals do not fall under the special circumstances allowed by paragraph 79” (paragraph 63).
17. The development in appeal 4, the inspector said, “would extend beyond what can be considered as the curtilage of previously developed land”, and this weighed against its “sustainability credentials” (paragraph 67). The proposals in appeals 5 and 6 did “not comprise the use of previously developed land” (paragraph 68).
18. On “sustainable transport”, having considered the distance of the site from services and facilities (paragraphs 69 to 80), the inspector said the section 106 agreement showed “a commitment to measures that would assist in providing alternative transport modes for some of the appeals” (paragraph 81). But there was “no evidence as to how likely these particular measures would be to reduce the use of the private car”. They “would provide some choice”, but “this would be limited”. The proposals did not “offer a genuine choice of transport modes as required by national and local policies” (paragraph 82).
19. Turning to City & Country Bramshill’s contention that the development “would represent an improvement in greenhouse gas emissions in comparison to the site’s previous use” (paragraph 83), the inspector said (in paragraphs 84 to 87):

“84. The appellant contends that due to the nature of the trips that were undertaken in association with the previous use (and that could still be undertaken) it is relevant to sustainability to consider how the proposals would result in a reduction in greenhouse gas emissions due to the nature of the trips in the extant and proposed uses. I was not provided with evidence of the comparative greenhouse gas emissions of the previous and proposed uses. I was provided with information on trip rates by both main parties although the appellant acknowledges that it is not possible to define the ultimate origin and destination of trips from the former use. [Here a footnote refers to paragraph 337 of the closing submissions for City & Country Bramshill.] The appellant instead relies on the national and international nature of the former use that is alleged to have resulted in far greater emissions arising from trip lengths and international flights.

85. The Council claims that the proposals would result in more trips than the former use. This is largely due to the residential nature of the police college which did not generate regular trips off site. The Council did not provide information on trip lengths. I reach no conclusion on whether the existing or proposed uses would generate greater trip numbers as these do not assist in concluding on the relative greenhouse gas emissions arising from each as this would depend on distance and type. In addition it is likely that residents would travel abroad for holidays.

86. The offer of electric charging points to facilitate the use of electric cars would have the potential to assist in reducing greenhouse gas emissions. However, this would be reliant on individual occupants purchasing such cars and I have no evidence before me as to the likelihood or extent of this and the associated effect on greenhouse gas emissions.
87. As such I am unable to conclude that greenhouse gas emissions would be less with the appeal schemes before me as I do not have sufficient information before me. However, even if I did reach such a conclusion, this one factor would not lead me to a conclusion that the schemes would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes.”

20. The inspector then returned (in paragraph 88) to the policies of the NPPF bearing on the sustainability of the site’s location:

“88. The [NPPF] should be read as a whole and seeks to direct development to locations which are or can be made sustainable, where services are accessible and where the natural environment is protected. I do not consider that the various measures proposed are of such weight to outweigh the conclusion that the site is in an inappropriate location in the countryside for new residential development, divorced from services and facilities. Appeals 4, 5, 6 and 7 would result in isolated homes in the countryside. Whilst the travel plan and proposals for electric charging points would potentially provide some choice of travel, given the lack of facilities within walking distance of the site, the distance to the bus stops and the unattractive nature of the road network to walk and cycle, the site’s location is not one that is or can be made sustainable. The developments would not enhance or maintain the vitality of the local communities or result in strong and vibrant rural communities. I conclude that the site would not be an appropriate and sustainable location for housing development in Appeals 1, 4, 5, 6, and 7-33.”

21. In her conclusions on the first “main issue”, therefore, the inspector said the proposals in appeals 1, 4, 5, 6 and 7 to 33 “would not provide appropriate sites for housing development in respect of their location and sustainability credentials”, and “would not be in accord with ... the objectives of national planning policy” (paragraph 91). However, the site in appeal 2 “would be an appropriate site for a single dwelling”, and that in appeal 3 “an appropriate site for offices given the fallback position”. Both of those proposals were “in accord with local and national policies in this regard” (paragraph 92).

22. Later, when dealing with the ground (c) appeals against the enforcement notices, she considered the lawfulness of the uses to which the notices related (paragraphs 363 to 376).

Did the inspector misinterpret and misapply the policy for “isolated homes in the countryside” in paragraph 79 of the NPPF?

23. For City & Country Bramshill, Mr James Strachan Q.C. argued – as he did before Waksman J. – that in concluding the proposals would create “isolated homes in the countryside” the inspector misinterpreted the policy in paragraph 79 of the NPPF.

24. Mr Strachan made three main submissions. First, the inspector failed to comply with the “principle” stated by Lewison L.J. in paragraph 15 of his judgment in *Dartford Borough Council*, which was binding on her even though that case had not been mentioned at the inquiry. She did not grapple with the fact that the proposed housing would be on “previously developed land” within the curtilage of existing permanent structures, and so would not be “isolated homes in the countryside”. As she was reminded in City & Country Bramshill’s closing submissions, this was conceded in cross-examination by the council’s witness Mr Archibald, and, for the development in appeals 4, 5 and 6, by its witness Mr Stevenson. Secondly, she failed to consider whether there was a “cluster” of dwellings forming a “settlement” on the site, as envisaged in *Braintree District Council*. There were already at least 18 residential units in lawful use as independent dwellings (those in appeals 15 and 17 to 33), and at least 17 more containing staff accommodation, which could also be used as new dwellings. So to describe the proposed new housing as “isolated homes” was not rational. The judge’s analysis here (in paragraphs 40 to 42 of his judgment) was incorrect. And thirdly, the inspector also failed to consider how the housing proposed in appeal 4, with or without the additional housing in appeals 5 and 6, could rationally be regarded as the creation of “isolated homes in the countryside”. The judge was wrong to suggest (in paragraphs 32 and 44 of his judgment) that the number of houses proposed was irrelevant to the question of whether the proposal was for “isolated homes”. It is implicit in this court’s reasoning in *Braintree District Council* that a decision-maker should consider whether the number of dwellings proposed would be sufficient to avoid “isolation”.
25. Mr Strachan contended therefore that the inspector’s conclusion in applying the policy in paragraph 79 of the NPPF was irrational. No reasonable decision-maker could have regarded the proposed housing as “isolated homes in the countryside”. But in any event, the inspector’s reasons on this “principal important controversial issue”, were deficient.
26. Finally, Mr Strachan submitted that having upheld the challenge to the inspector’s decision on appeal 7 and having also remitted the decisions on appeals 8 to 14 and 16 for redetermination, the judge should also have quashed the decisions on appeals 4, 5 and 6. Those other decisions had implications for the “isolated homes” issue in appeals 4, 5 and 6. If the inspector had allowed appeal 7, the use of the buildings on the site for 51 dwellings would have been lawful, as well as the residential use of the mansion itself.
27. I cannot accept those submissions. In my view, as Mr Guy Williams submitted for the Secretary of State, there is nothing in the inspector’s conclusions to suggest that she misinterpreted the policy in paragraphs 78 and 79 of the NPPF, nor did she misapply it. She clearly adopted the interpretation given by this court in *Braintree District Council*. And she applied the policy reasonably and lawfully to the proposals before her. She made no error of law in either respect, and there is no reason here for the court to intervene.
28. The principles on which the court will act in a challenge to an inspector’s decision on a planning appeal are well established (see *St Modwen Developments v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] P.T.S.R. 746, at paragraph 6). The court will not be drawn into an unduly legalistic approach (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, [2018] P.T.S.R. 88, at paragraph 50). It will never trespass into areas of planning judgment, except to consider whether such judgment has been exercised lawfully, and it will keep in mind that the inspector appointed by the Secretary of State to make the decision will have

brought his or her own expertise to the task (see *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 W.L.R. 1865, at paragraph 25). Where national or development plan policy is the focus of argument, it must tell apart grounds that genuinely allege a misinterpretation of policy and those presented in that guise, which are, in truth, only a complaint about the way in which the policy has been applied (see *Hopkins Homes Ltd.*, at paragraph 26). It will read the decision letter fairly, with due tolerance for minor imperfections or infelicity. It will not expect elaborate or lengthy reasons for every conclusion, but consider “whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given” (see the speech of Lord Bridge of Harwich in *Save Britain’s Heritage v Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, at p. 167). It will keep in mind that the decision letter is directed to parties familiar with the evidence and submissions in the case (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953, at paragraph 36). It will not expect every piece of evidence, every concession made in cross-examination, and every submission of counsel to be mentioned. That would be wholly unreal.

29. I would reject the suggestion that the inspector was not entitled to apply the paragraph 79 policy to all the housing proposals before her, and not merely those to which the council was opposed on the grounds of alleged conflict with that policy. She was considering each appeal on its merits, without being confined by the council’s reasons for refusal or the reasons it had given for taking enforcement action (sections 78, 79(1) and 174(2)(a) of the 1990 Act). She was entitled to apply the policy in paragraph 79 to each of the housing proposals before her. And it was appropriate to do so when she was considering, as part of her first “main issue”, the sustainability of the site’s location for housing. Her formulation of that issue put squarely in play, for all of the proposed housing, the policies of the NPPF bearing on the sustainability of the site’s location, including the policy in paragraph 79. No unfairness or other illegality arose from proceeding as she did.
30. One must remember that the concept of “isolated homes in the countryside” is not a concept of law. It is a concept of national planning policy. It is not defined in the NPPF. It does not lend itself to rigorous judicial analysis (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at paragraph 26). As with many other broadly framed policies in the NPPF, its application will depend on the facts of the case, and decision-makers will have to exercise their planning judgment in a wide variety of circumstances (see the judgment of Lord Carnwath in *R. (on the application of Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, [2020] P.T.S.R. 221, at paragraph 39). The court’s role, therefore, both in interpreting the policy and in reviewing its application, is limited (see *Hopkins Homes Ltd.*, at paragraphs 24 to 26). As Lord Reed said in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983 (in paragraph 18), where decision-makers are required to exercise judgment in applying a policy to a given set of facts, “their exercise of their judgment can only be challenged on the ground that it is irrational or perverse”.
31. Fortunately, we are not faced with having to interpret the paragraph 79 policy. That has already been done by this court in *Braintree District Council* – though for the predecessor policy in paragraph 55 of the 2012 version of the NPPF. In *Braintree District Council* the central issue in the appeal was the meaning of the expression “new isolated homes in the countryside”. In this case, the contentious phrase – now in paragraph 79 – is simply “isolated homes in the countryside”. In substance, however, the policy is unchanged.

32. There is, therefore, no need for any further discussion of what is meant by the concept of “isolated homes in the countryside” in this policy. The essential conclusion of this court in *Braintree District Council*, in paragraph 42 of the judgment, is that in determining whether a particular proposal is for “isolated homes in the countryside”, the decision-maker must consider “whether [the development] would be physically isolated, in the sense of being isolated from a settlement”. What is a “settlement” and whether the development would be “isolated” from a settlement are both matters of planning judgment for the decision-maker on the facts of the particular case. This understanding of the policy, in its context, is not disturbed by what Lewison L.J. had earlier said in *Dartford Borough Council* (at paragraph 15). His observation was obiter, as was my comment about it in *Braintree District Council* (at paragraph 38). No conflict of authority exists between the decisions in those two cases.
33. To adopt remoteness from other dwellings, instead of remoteness from a settlement, as the test for “isolated homes in the countryside” would seem inconsistent with the Government’s evident intention in producing the policy in paragraph 79. It would mean, presumably, that the policy would not apply to a development of housing in the countryside – large or small – on land next to an individual dwelling remote from the nearest settlement, because although the new homes might be “isolated” from the settlement, they would not be “isolated” from existing development. It would prevent the policy from applying to the development of additional dwellings, one or two at a time, on sites next to other sporadic rural housing, again on the basis that they would not then be “isolated”. It might even prevent the policy from applying to a proposal for two or more dwellings on a single, undeveloped site in the countryside, because none of them would itself be “isolated” from another dwelling, and the development as a whole would therefore not be “isolated”. If this were so, only the development of a single dwelling, on its own, separate from any other dwelling already built or proposed nearby, would engage the policy. This would be hard to reconcile with the Government’s aim, as policy-maker, to “promote sustainable development in rural areas”.
34. The policy in paragraphs 78 and 79 of the NPPF aligns with that in paragraph 72. Their common theme is the need for the planning system to promote sustainably located housing development. Neither policy favours the unplanned and unsustainable development of housing in the countryside, away from existing settlements. As paragraph 72 indicates, it is for plan-making to achieve the “supply of large numbers of new homes” by “planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities”. This is within the remit of “strategic policy-making authorities”. It is their job to “identify suitable locations for such development where this can help to meet identified needs in a sustainable way”.
35. In this case the inspector’s application of the policy in paragraphs 78 and 79 was, in my view, impeccable. It shows that she understood those policies correctly. Her relevant conclusions sit within her assessment of the appropriateness and sustainability of the proposed development in this location. To get the full sense of those conclusions, one must read her assessment on this first “main issue” in its entirety. When this is done, no error of law emerges in her handling of the policy in paragraphs 78 and 79.
36. In dealing with appeals 1, 4, 5 and 6, she began by identifying the basic objection underlying the relevant reasons for refusal in the council’s decision notices, namely that the

proposed development was in an “unsustainable location ... by virtue of [the site’s] remote position away from nearby settlements with services and facilities” (paragraph 54 of the decision letter). She then referred to the general policy background for sustainable development, including paragraphs 103 and 110 of the NPPF, which emphasise, respectively, the importance of “[focusing] development on locations which are or can be made sustainable ...” and “[encouraging] ... the effective re-use of land that has been previously developed ...” (paragraph 57). It was with these principles in mind that she went on to apply the policy in paragraphs 78 and 79.

37. She summarised the policy accurately (paragraph 58). She recorded, as the parties had agreed, that the site was “located outside any settlement [,] ... not in the vicinity of the boundary of any settlement [, and] in the countryside” (paragraph 59). She then dealt with the assertion that “the proposals would not result in isolated homes in the countryside”. She confirmed that she had taken into account both the first instance judgment and the decision of the Court of Appeal in *Braintree District Council*, setting out the court’s basic conclusions on the interpretation of the policy. In the light of the Court of Appeal’s decision, she directed herself, rightly, that the question of “[whether], in a particular case, a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker” – a reference to paragraph 32 of the judgment (paragraph 60). It is clear, therefore, that she had in mind what had been said about the possibility of a “cluster of dwellings” being a settlement, which appears in the same paragraph of the judgment. She understood that it was for her to determine whether the group of buildings on the site was or was not a settlement.
38. She stated her findings of fact on the relevant questions, and the conclusion she had come to in the exercise of her planning judgment. The salient facts were that the site “contains existing buildings”; that it was “evidently not a rural community, settlement or village”, but “a discrete group of buildings used in the past ... as a residential institution centred on a historic house”; and that it was “remote from other settlements and villages and surrounded by open countryside”. None of these findings are attacked in these proceedings. The conclusion based on them, as a matter of planning judgment, was equally clear: that “residential development in this location would result in new isolated housing in the countryside” (paragraph 61). And it was later repeated (in paragraphs 87 and 88). It is invulnerable in a legal challenge. Mere disagreement is not enough to unseat it.
39. Rightly, the inspector went on to consider, for each appeal, whether the proposal fell within any of the specified exceptions in the policy. Once again, she exercised her own planning judgment, concluding that no valid exception was demonstrated for the proposals in appeals 4, 5 and 6 (paragraph 63). There is no error of law in those conclusions.
40. The inspector’s reasons are clear and complete. They express and explain the findings and conclusions required of her under the policy. She did not have to record all the evidence and submissions she had heard, or set out the concessions made by particular witnesses and the submissions of counsel in the light of those concessions. She had to set out her main findings of fact on the evidence before her, and state her conclusions. That is what she did.
41. It is not a valid criticism of her that she made no mention of *Dartford Borough Council City & Country Bramshill* did not rely on that case at the inquiry, and no one else seems to have referred to it. She was aware of it – because it is touched upon in the judgment in

Braintree District Council, which she had obviously read. But she did not have to say anything about it, for it established no “principle” relevant to her assessment.

42. In summary, therefore, the findings of fact and conclusion in paragraph 61 of the decision letter were lawful findings and a lawful conclusion in the application of the paragraph 79 policy, on its true interpretation. So too were the inspector’s findings and conclusions on the possible exceptions to the policy.
43. Her conclusion in paragraph 61 of the decision letter was clearly intended to apply to each of the proposals for housing, and to each dwelling proposed. It does not depend on the number of dwellings in any single part of the total scheme, or any of the permutations possible within that scheme, or the total number of dwellings capable of being provided if all the appeals were allowed. It goes for all of them, individually and together. It relates simply to “residential development in this location”. Such development would, as the inspector put it, “result in new isolated housing in the countryside” – because each and all of the dwellings proposed were, as she had found, “isolated” from any settlement.
44. Each of the proposals for housing was, in her planning judgment, objectionable for that reason. From this it follows that a successful challenge against one or more of her decisions in the relevant appeals on some other ground does not invalidate her conclusion on this issue, or her decision, in any of the others. It is therefore wrong to contend, as Mr Strachan did, that the judge, having decided to quash some of the decisions, ought therefore to have quashed others as well on the basis that the outcome on this issue might have been different if the inspector had allowed those other appeals. That is a misconception.
45. Implicit in the inspector’s conclusion in paragraph 61 of the decision letter is that the proposed new housing, when added to the remaining buildings on the site, would not form a settlement. This is put beyond doubt in her conclusions on the site’s lack of sustainability. Despite the various measures proposed, she did not accept that the scheme would “overall comprise sustainable development” – because of the site’s “isolated location ... and the lack of alternative transport modes” (paragraph 87). She found that “[appeals] 4, 5, [and] 6 ... would result in isolated homes in the countryside”, that “the site’s location is not one that is or can be made sustainable” and that “[the] developments would not ... result in strong and vibrant local communities”. And she concluded that “the site would not be an appropriate and sustainable location for housing development in Appeals ... 4, 5 [and] 6 ...” (paragraph 88) and that those proposals did not accord with “the objectives of national planning policy” (paragraph 91). It would be difficult to imagine any firmer conclusion that those proposals were in conflict with the policies of the NPPF for the location of housing development, including the policy in paragraph 79.
46. It cannot be said that in applying the paragraph 79 policy the inspector neglected the presence of the existing buildings on the site and the existing residential uses, or did not have in mind what the different consequences would be if some of the appeals succeeded and others failed. When describing the site, she referred to the “extensive range of modern buildings [,] ... the lawful use ... [being] a Residential Institution under Class C2” (paragraph 27). She acknowledged that it contained a “discrete group of buildings” once used as a “residential institution” and “centred on a historic house” (paragraph 61). It was on this basis that she considered whether, in its present state, the site was a settlement. She was also aware of the extent of “previously developed land” on the site, the existing residential uses, the status of those uses, and the “fall-back” on which City & Country

Bramshill relied. She referred several times to the areas of “previously developed land” (paragraphs 65, 66, 67, 68 and 89). She had regard to “the site’s previous use” (paragraphs 83 and 84), and to the “extant” or “previous” or “former” uses, in contradistinction to the uses “proposed” (paragraphs 83 and 84). She referred to the “fallback position” of the extant class C2 use (paragraph 92). And when dealing with the ground (c) appeals against the enforcement notices, she had to consider the lawfulness of the uses enforced against (paragraphs 363 to 376). That she had the “fall-back” well in mind is indisputable.

47. In these circumstances it is, I think, impossible to suggest that her findings and conclusions in the application of the policy in paragraphs 78 and 79 of the NPPF were flawed because she had somehow overlooked the relationship between various proposals, or, in particular, the relationship between appeals 4 and 7 and the potential consequences of either or both of those appeals, or any others, succeeding.
48. Nor can it be suggested that if she had not gone wrong when determining appeal 7 – as the judge held she did – and had allowed that appeal, her conclusions in applying that policy might have been different. In considering the effect of the policy on the proposals, she explicitly took account of the buildings already on the site, regardless of whether they were still in active use, and this necessarily included the buildings in appeal 7 (paragraph 61). She assumed that the buildings on the site remained in place, not that any of them had been removed or replaced by new development. And when considering whether any of the proposals qualified as an exception to the policy, she referred to individual buildings on the site, including buildings that were now “disused”, such as those in appeal 7 (paragraph 64). Her approach was consistent, and in my view perfectly sound.

Was the inspector’s approach to sustainability unlawful?

49. Mr Strachan argued that the inspector erred in her approach to the sustainability of the development in the appeals she dismissed – in particular, by failing to take proper account of the accepted “fall-back” use of the site as a residential institution. The judge was wrong to reject this argument (in paragraphs 152 to 155 of his judgment).
50. Mr Strachan submitted that the inspector failed to see the significance of the “fall-back” for her consideration of sustainability, traffic movements and the reduction in greenhouse gas emissions (in paragraphs 82 to 87 of the decision letter). Even if she was unable to find the proposed development superior to the “fall-back” in terms of traffic congestion and greenhouse gas emissions, she should have had regard to the “fall-back” when considering whether it was “locationally unsustainable”. To ignore the “fall-back” was irrational. To say she was “unable to conclude that greenhouse gas emissions would be less with the appeal schemes” because she did not have “sufficient information” was wrong. There was, in fact, a good deal of evidence on this issue, which was referred to in City & Country Bramshill’s closing submissions, including Mr Archibald’s concession that both the police college use and an alternative Class C2 use would be less sustainable in its generation of greenhouse gas emissions than the proposed development. The inspector gave no adequate reasons for disagreeing with relevant expert evidence. Her reference (in paragraph 87) to the “isolated location of the site” was based on her misunderstanding of NPPF policy on “isolated homes”. She ought to have considered whether the perceived “lack of genuine alternative transport modes” could properly be an objection here – not only because this could also be said of the “fall-back” but also because the policy for “sustainable transport”

in paragraph 103 of the NPPF was directed to reducing congestion, which was not in issue, and greenhouse gas emissions, on which she came to no firm conclusion.

51. That argument is not cogent. I need not repeat what I have said on the previous issue, though it is also relevant here. The inspector was not legally at fault in her understanding and application of national planning policy for the location of housing development. Nor did she err when considering whether the site was “locationally sustainable”.
52. Her assessment on “sustainable transport”, which resulted in her conclusion (in paragraph 82 of the decision letter) that the proposed development would not provide a “genuine choice of transport modes as required by national and local policies”, betrays no legal error. As the judge concluded (in paragraph 155 of his judgment), she was entitled to take the view – as she plainly did – that the reliance placed by City & Country Bramshill on its commitment to providing “alternative transport modes” did not support a different conclusion (paragraphs 81 and 82 of the decision letter). This was a reasonable and lawful exercise of planning judgment.
53. As I have said, it is clear that the inspector took account of the “fall-back” when assessing the locational sustainability of the proposed development. One sees this in her conclusion on the assertion that the development would reduce greenhouse gas emissions “in comparison to the site’s previous use”. She dealt with this issue even though she had concluded, applying the policy in paragraph 103 of the NPPF, that the development would not provide a choice of transport modes to reduce congestion and emissions (paragraph 83 of the decision letter). She referred to the “trips ... undertaken in association with the previous use (and that could still be undertaken) ...”. And in assessing “sustainability”, she compared greenhouse gas emissions generated by the “extant and proposed uses”. But this exercise was impeded by the lack of evidence on the “former use”, largely because, in spite of the “national and international nature” of that use (paragraph 84), it was not possible to ascertain the origins and destinations of trips to and from the site and calculate “relative greenhouse gas emissions” (paragraph 85), or to conclude that they would now be “less” (paragraph 87) (my emphasis). That she had the “fall-back” well in mind is also confirmed by her conclusions on the office use proposed in appeal 3. Here she twice referred to the “fall-back”, comparing it with the appeal proposal. She concluded that “given the fallback position of the extant C2 use of the site ... which includes B1 uses that would be comparable to the proposed use”, the latter “would not be unacceptable on the grounds of its location or sustainability credentials” (paragraph 90). The site was “appropriate ... for offices given the fallback position” (paragraph 92).
54. Nor can it be said that she neglected the evidence given by the council’s witness Mr Archibald on which Mr Strachan relied in his closing submissions. She attached a footnote to paragraph 84 of her decision letter, referring to paragraph 337 of those submissions, which is in a passage where Mr Strachan emphasised concessions made by the council’s witnesses in response to his questioning. To suggest she did not have in mind all the relevant evidence, including that given in cross-examination, and the submissions based upon it, simply because she did not refer to it all, is, I think, impossible.
55. It is quite clear, therefore, that the inspector did not ignore the existence of the “fall-back”, nor did she overlook relevant evidence and submissions. She considered the “fall-back”, with as much help as the parties could give her. Her references to the “previous use ... that could still be undertaken” and to the “extant” and “former” use are obviously to the “fall-

back” use of the site as a residential institution. On the evidence before her, she sought to compare that use with the proposals for residential development in the appeals. Doing the best she could, she was unable to come to a reliable view on the relative effects on greenhouse gas emissions. This was a conclusion reasonably open to her, as a matter of planning judgment. It is nowhere close to irrational.

56. And anyway it was not decisive. The inspector’s critical conclusion on the first “main issue” was that the site was inherently unsustainable as a location for housing. As she said, even if it had been shown that the proposed development would generate lower levels of greenhouse gas emissions than the “fall-back”, this would not have led her to conclude that it “would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes” (paragraph 87 of the decision letter). This too, as a matter of planning judgment, was a wholly reasonable conclusion.

The section 66(1) duty and relevant policy for “heritage assets”

57. Section 66(1) of the Listed Buildings Act provides:

“66. (1) In considering whether to grant planning permission ... for development which affects a listed building or its setting, the local planning authority or ... the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”

58. In chapter 16 of the NPPF, “Conserving and enhancing the historic environment”, paragraph 190, under the heading “Proposals affecting heritage assets”, urged local planning authorities to “identify and assess the particular significance of any heritage asset that may be affected by a proposal ...”, and to “take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal”. The “Glossary” defined “Conservation (for heritage policy)” as “[the] process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance”. Paragraphs 193 to 196 stated:

“193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:

...

b) assets of the highest significance, notably ... grade I and II* listed buildings, grade I and grade II* registered parks and gardens ... should be wholly exceptional.

195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

[Four considerations were then set out, which are not relevant in this case.]

196. Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”

59. Policy CON11 of the local plan states that “[development] that would adversely affect a Scheduled Ancient Monument, other site of archaeological importance or its setting will not be permitted”. Policy CON12, “Historic Parks and Gardens”, states:

“... DEVELOPMENT THAT WOULD ADVERSELY AFFECT HISTORIC PARKS AND GARDENS OR THEIR SETTINGS ... WILL NOT BE PERMITTED.”

Policy CON17, “Listed Buildings and Buildings of Local Interest – extension or alteration”, states:

“... PROPOSALS FOR THE EXTENSION OR ALTERATION OF LISTED BUILDINGS OR BUILDINGS OF LOCAL INTEREST, WILL NOT BE PERMITTED UNLESS:

- (i) The scale of the building is not materially changed;
- (ii) Design is appropriate to the character and setting of the building.”

Policy CON18, “Listed Buildings or Buildings of Local Interest – Change of Use”, states:

“IN ORDER TO ENSURE THE PRESERVATION OF THE BUILT STRUCTURE, THE CHANGE OF USE OF A LISTED BUILDING ... WILL ONLY BE PERMITTED IF IT IS IN KEEPING WITH THE BUILDING AND WILL NOT MATERIALLY AFFECT FEATURES OF HISTORIC OR ARCHITECTURAL IMPORTANCE.”

60. There is ample case law on the section 66 duty. In *Barnwell Manor Wind Energy Ltd. v East Northamptonshire District Council* [2014] EWCA Civ 137, [2015] 1 W.L.R. 45 Sullivan L.J. said (at paragraph 22) that the judgment of Glidewell L.J. in *The Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303 was “authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give “considerable importance and weight””. This conclusion was, he said (in paragraph 23), “reinforced” by a passage in the speech of Lord Bridge of Harwich in *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 A.C. 141 (at p.146E-G). He added (in paragraph 28) that the “general duty” in section 66(1) “applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance”. *South Lakeland District Council* was a case concerning the statutory requirement – now in section 72(1) of the Listed Buildings Act – that “special attention

shall be paid to the desirability of preserving or enhancing [the] character or appearance [of a conservation area]”. Lord Bridge (at p.150B-E) endorsed the observation of Mann L.J., in this court, that “[the] statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved”.

61. In *Jones v Mordue* [2015] EWCA Civ 1243, [2016] 1 W.L.R. 2682, Sales L.J. said (at paragraph 28):

“28. ... [The] express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF [as originally issued in 2012] are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. ... Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs ... which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions ... then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned.”

62. In *Palmer* it was argued that the local planning authority had failed to consider likely harm to the setting of a listed building by noise and smell from the proposed poultry sheds. Lewison L.J. said (in paragraph 5 of his judgment) that giving “considerable weight” to harm to the setting of a listed building “does not mean that the weight that the decision-maker must give to the desirability of preserving the building or its setting is uniform”. It “will depend on, among other things, the extent of the assessed harm and the heritage value of the asset in question: [*Barnwell Manor*, paragraph 28; *R. (on the application of Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), [2015] J.P.L. 22, paragraph 49]”. He went on to say (in paragraph 29) that the “clear thrust” of the officers’ relevant advice to the planning committee had been that “if the [proposed] mitigation measures were put in place there would be no adverse effect on the setting of the listed building”. He continued:

“29. ... I would accept ... that where proposed development would affect a listed building or its setting in different ways, some positive and some negative, the decision maker may legitimately conclude that although each of the effects has an impact, taken together there is no overall adverse effect on the listed building or its setting. That is what the officers concluded in this case.”

The inspector’s conclusions on the likely effects of the development on “heritage assets”

63. The inspector’s third “main issue” was “[whether] the works and development would preserve the listed buildings and registered park and garden or their settings, or any features of historic interest which they possess” (paragraph 23 of the decision letter). In a footnote she recited section 66(1) of the Listed Buildings Act, and paraphrased paragraphs 193 and 194 of the NPPF.

64. At the inquiry, the council accepted that the local plan policies for protecting the historic environment were not wholly consistent with the corresponding policies in the NPPF. The inspector noted that there was “disagreement on the weight to be applied to policies CON11, CON12, CON17 and CON18”; that the council agreed with City & Country Bramshill that these policies were “inconsistent with the [NPPF] due to the absence of consideration of the public benefit balance where harm is identified”; but that the council, the National Trust and Historic England said they “should be given moderate weight given that their primary objective is the preservation of designated assets which is in accordance with the [NPPF] and [the Listed Buildings Act]” (paragraph 45). She continued:

“46. Whilst the [NPPF] sets out a clear balancing exercise to be undertaken and which is absent in the relevant development plan policies, the statutory requirement ... relates to the special regard the decision maker should have to the desirability of preserving the building, its setting or its special features. Whilst I find policies CON11-CON18 to lack the balancing requirement of the [NPPF], they contain the statutory requirement. Given this, I find that the policies should be given significant weight.”

65. She confirmed that in considering the effects of the development on the listed buildings she had had regard to section 66(1) of the Listed Buildings Act, which, she said, “requires special regard to be had to the desirability of preserving buildings or their settings or any features of special architectural or historic interest which they possess” (paragraph 121). Although the registered park and garden did not have the same statutory protection, it was, she said, “recognised as a heritage asset” in the NPPF (paragraph 122). She described the relevant policies of the NPPF, including those in paragraphs 193 to 196:

“122. ... The [NPPF] recognises such assets as an irreplaceable resource, and states that they 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 this and future generations. Chapter 16 of the [NPPF] sets out the approach in determining applications (or appeals) in respect of such assets. It states that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset’s conservation with the more important the asset the greater the weight [should] be. Any harm or loss should require clear and convincing justification. The [NPPF] sets out the criteria to be considered where either substantial or less than substantial harm are identified.”

She referred (in paragraph 123) to a difference of approach in the relevant evidence:

“123. Historic England and the National Trust provided their evidence on the basis that paragraphs 195 and 196 of the [NPPF] would always be engaged where any element of harm was identified. The appellant held that this was not the correct approach based on the findings of *Palmer*. The appellant’s case is that an “internal heritage balance” should be carried out where elements of heritage harm and heritage benefit are first weighed to establish whether there is any overall heritage harm to the proposal. Paragraphs 195 and 196 would only be engaged where there is residual heritage harm. This should then be weighed against the public benefits of the scheme.”

She then (in paragraph 124) quoted the passage I have mentioned in paragraph 29 of Lewison L.J.'s judgment in *Palmer*, and went on to say (in paragraphs 125 to 127):

- “125. In my assessment the judgement does not necessarily bring me to a conclusion that an internal heritage balance should be carried out in the manner that the appellant advocates. The case clearly involved a wholly different context and set of circumstances and the conclusions relating to harm were based on avoidance through mitigation measures rather than any assessment of whether the benefits of the development outweighed any harm. However, the judgement clearly does reinforce that a balancing exercise needs to be carried out but it does not direct the decision maker to only one method by which that should be done.
126. I note the cases that have been drawn to my attention, some of which do follow the approach advocated by the appellant and some do not. These are clearly cases where alternative approaches have been taken based on the particular circumstances of each case. Nonetheless, irrespective of these decisions, the statutory duty to preserve the building should be given considerable importance and weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*].
127. The cases before me are complex with multiple works involved. Some of the benefits to the assets are not proposed with the individual developments themselves but are put forward as a part of other developments subject to separate decisions. In this context, I have adopted a straightforward application of paragraphs 190 and 193-196 of the [NPPF]. I have firstly identified the significance of the assets. I have then assessed whether each development proposal would, of its own doing, lead to substantial or less than substantial harm to that significance. Subsequent to making this assessment of harm, I have then considered whether this harm is outweighed by the public benefits of the individual proposal and provided in other proposals subject to other decisions. Paragraph 20 of the Planning Practice Guidance “Conserving and enhancing the historic environment” (the PPG) explains what is meant by public benefits (which may include heritage benefits) and that all types of public benefits can be taken together and weighed against harm.”
66. In her conclusions on appeal 4 the inspector considered the likely effects of the development on the registered park and garden and on “the setting of the various listed buildings” (paragraph 199). She concluded that it would be “harmful” both to “the visual appearance, planned design and function of the RPG” (paragraph 211) and to “the setting of all the listed buildings within the ensemble by virtue of the harm that would arise to the RPG” (paragraph 214). She considered “the harm to the significance of the setting of the listed buildings ... less than substantial”, and “weighed that harm against the public benefits of the proposal” (paragraph 215). There was “no dispute between the parties that the removal of modern buildings and parking areas and the re-instatement of the original link between the house and garden by re-aligning Reading Avenue would be of benefit to the RPG and the setting of the listed buildings” (paragraph 217). The college buildings were “clearly harmful to the RPG’s form, layout and characteristics and to the setting of the listed buildings”. The “removal of the buildings and the restoration of the park and garden would clearly be in the public interest”. She gave these matters “considerable

weight”. But the “dispute” lay in “the weight to be attributed to that benefit given the alternative development proposed” (paragraph 218). She judged “[the] benefits in removing buildings and re-aligning Reading Avenue ... not ... sufficient to outweigh the alternative and greater harm caused by developing this unspoilt part of the RPG”. The “permissive path” would be “of benefit in providing access into the Bramshill estate ...” (paragraph 221). The proposed “site wide management plan would be in the public interest” (paragraph 222). An appropriate “landscape and habitats management plan” would be “of clear benefit to the overall restoration of the RPG and wider ecological interests”. But she did “not find that this would outweigh the harm that ... would arise from the proposed development” (paragraph 223). She concluded (in paragraph 226):

“226. I find that appeal 4 would be harmful to the RPG and the setting of the listed buildings and would not preserve their special qualities. This harm would not be outweighed by public benefits. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy.”

67. A similar exercise followed for appeal 5. The inspector referred to the harm that would be caused by extending development into “open parkland”, which “would result in most of the parkland being developed” (paragraph 228). The development would “intensify and extend the harms” she had identified in appeal 4. It would be “an inappropriate development ... harmful to the RPG and the setting of the listed buildings”. This would be “less than substantial” harm, but “at the higher end of the scale” (paragraph 229). She considered the “public benefits” in the funding of repair works to the mansion and other listed buildings and curtilage buildings. But she concluded (in paragraph 235):

“235. ... [The] public benefits of appeal 5 do not outweigh the harm that I have identified. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy.”

68. In appeal 6, her approach was the same. The development would be located to the north-west of the lake, which was, she said, “one of the major features of the RPG”, had “largely [survived] in its original form” and was “of historic aesthetic and architectural significance” (paragraph 236). Though it would “not destroy or remove the presence of the lake and island ...”, and would “not interfere with the ability of those using the RPG to continue to go on a journey along the embankment and walks that were part of the Jacobean layout of the garden” (paragraph 240), the development would “reduce the aesthetic significance of the feature and wider RPG ...”, and “result in the engineered embankment being less legible and thus reduce its significance”. The harm would be “less [than] substantial but of the highest order” (paragraph 241). The “public benefit” would be the funding of £2 million for repairs to the mansion. As there was “an acceptable use for the mansion ... which would not require cross-subsidy”, the inspector saw “no justification for allowing appeal 6 with its associated harm” (paragraph 243). She concluded:

“243. ... [The] public benefits arising from appeal 6 would be clearly outweighed by its resulting harm. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy.”

Did the inspector err in performing the duty in section 66(1) of the Listed Building Act and applying the policies for “heritage assets” in the NPPF?

69. Before the judge, City & Country Bramshill argued that the inspector had erred in failing to carry out a “net” or “internal” heritage balance. Only if “overall harm” emerges from the weighing of “heritage harms” against “heritage benefits” must the “other public benefits” of the development be weighed against that “overall harm” under the policy in paragraph 196 of the NPPF. Support for this submission was to be found in paragraph 29 of the judgment of Lewison L.J. in *Palmer*. The inspector should have given “great weight” to the “heritage benefits”, to reflect the “great weight” that paragraph 193 of the NPPF requires to be given to the “conservation” of a designated heritage asset. This argument, however, did not impress Waksman J.. In his view, the decision in *Palmer* “did not impel [the inspector] to undertake an internal initial balancing exercise under paragraph 193”. Indeed, he “would have regarded that as an error of law” (paragraph 120 of the judgment). The balancing exercise itself was “a classic application of planning judgment” (paragraph 121).
70. Mr Strachan repeated the same argument before us. Relying on the first instance decision in *Safe Rottingdean v Brighton and Hove City Council* [2019] EWHC 2632 (Admin), he submitted that the *Palmer* “principle” applies both to the statutory obligation in section 66(1) and to relevant policies in the NPPF and the development plan. The inspector failed to see this. Paragraph 193 of the NPPF required “great weight” to be given to the “conservation” of a heritage asset, including enhancement of its significance. Paragraph 196 required the likely effect on the significance of the heritage asset to be assessed, which could only be done by weighing any harm to that significance against any benefits to it. If there was no “net harm”, the policy in paragraph 196 was not engaged. The definition of “Conservation (for heritage policy)” in the NPPF did not exclude “countervailing benefits”. It implied that “great weight” must attach both to any harm to the significance of the heritage asset and to any enhancement of it – such as the appeal proposals would achieve. The judge was wrong (in paragraph 112 of his judgment) to distinguish *Palmer* on the basis that the “principle” relates not to “separate benefits” but only to “mitigation measures to negate the adverse effects which would otherwise arise”. The “principle” in *Palmer* extends to cases in which there are separate elements of harm and benefit to the significance of a heritage asset.
71. Like the judge, I cannot accept those submissions. It is not stipulated, or implied, in section 66(1), or suggested in the relevant case law, that a decision-maker must undertake a “net” or “internal” balance of heritage-related benefits and harm as a self-contained exercise preceding a wider assessment of the kind envisaged in paragraph 196 of the NPPF. Nor is there any justification for reading such a requirement into NPPF policy. The separate balancing exercise for which Mr Strachan contended may have been an exercise the inspector could have chosen to undertake when performing the section 66(1) duty and complying with the corresponding policies of the NPPF, but it was not required as a matter of law. And I cannot see how this approach could ever make a difference to the ultimate outcome of an application or appeal.
72. Section 66 does not state how the decision-maker must go about discharging the duty to “have special regard to the desirability of preserving the building or its setting ...”. The courts have considered the nature of that duty and the parallel duty for conservation areas in section 72 of the Listed Buildings Act, and the concept of giving “considerable importance and weight” to any finding of likely harm to a listed building and its setting.

They have not prescribed any single, correct approach to the balancing of such harm against any likely benefits – or other material considerations weighing in favour of a proposal. But in *Jones v Mordue* this court accepted that if the approach in paragraphs 193 to 196 of the NPPF (as published in 2018 and 2019) is followed, the section 66(1) duty is likely to be properly performed.

73. As was submitted by Mr Williams, and by Mr Ben Du Feu for Historic England and Ms Melissa Murphy for the National Trust, one does not find any support for Mr Strachan’s argument in those paragraphs of the NPPF. The concept in paragraph 193 – that “great weight” should be given to the “conservation” of the “designated heritage asset”, and that “the more important the asset the greater the weight should be” – does not predetermine the appropriate amount of weight to be given to the “conservation” of the heritage asset in a particular case. Resolving that question is left to the decision-maker as a matter of planning judgment on the facts of the case, bearing in mind the relevant case law, including Sullivan L.J.’s observations about “considerable importance and weight” in *Barnwell Manor*.
74. The same can be said of the policies in paragraphs 195 and 196 of the NPPF, which refer to the concepts of “substantial harm” and “less than substantial harm” to a “designated heritage asset”. What amounts to “substantial harm” or “less than substantial harm” in a particular case will always depend on the circumstances. Whether there will be such “harm”, and, if so, whether it will be “substantial”, are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying “harm” or gauging its extent. It distinguishes the approach required in cases of “substantial harm ... (or total loss of significance ...)” (paragraph 195) from that required in cases of “less than substantial harm” (paragraph 196). But the decision-maker is not told how to assess what the “harm” to the heritage asset will be, or what should be taken into account in that exercise or excluded. The policy is in general terms. There is no one approach, suitable for every proposal affecting a “designated heritage asset” or its setting.
75. This understanding of the policies in paragraphs 193, 195 and 196 reflects what Lewison L.J. said in *Palmer* (at paragraph 5) – that the imperative of giving “considerable weight” to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is “uniform”. That will depend on the “extent of the assessed harm and the heritage value of the asset in question”. These are questions for the decision-maker, heeding the basic principles in the case law.
76. Identifying and assessing any “benefits” to weigh against harm to a heritage asset are also matters for the decision-maker. Paragraph 195 refers to the concept of “substantial public benefits” outweighing “substantial harm” or “total loss of significance”; paragraph 196 to “less than substantial harm” being weighed against “the public benefits of the proposal”. What amounts to a relevant “public benefit” in a particular case is, again, a matter for the decision-maker. So is the weight to be given to such benefits as material considerations. The Government did not enlarge on this concept in the NPPF, though in paragraph 196 it gave the example of a proposal “securing [the heritage asset’s] optimum viable use”.
77. Plainly, however, a potentially relevant “public benefit”, which either on its own or with others might be decisive in the balance, can include a heritage-related benefit as well as one that has nothing to do with heritage. As the inspector said (in paragraph 127 of the decision letter), the relevant guidance in the PPG applies a broad meaning to the concept of

“public benefits”. While these “may include heritage benefits”, the guidance confirms that “all types of public benefits can be taken together and weighed against harm”.

78. Cases will vary. There might, for example, be benefits to the heritage asset itself exceeding any adverse effects to it, so that there would be no “harm” of the kind envisaged in paragraph 196. There might be benefits to other heritage assets that would not prevent “harm” being sustained by the heritage asset in question but are enough to outweigh that “harm” when the balance is struck. And there might be planning benefits of a quite different kind, which have no implications for any heritage asset but are weighty enough to outbalance the harm to the heritage asset the decision-maker is dealing with.
79. One must not forget that the balancing exercise under the policies in paragraphs 195 and 196 of the NPPF is not the whole decision-making process on an application for planning permission, only part of it. The whole process must be carried out within the parameters set by the statutory scheme, including those under section 38(6) of the Planning and Compulsory Purchase Act 2004 (“the 2004 Act”) and section 70(2) of the 1990 Act, as well as the duty under section 66(1) of the Listed Buildings Act. In that broader balancing exercise, every element of harm and benefit must be given due weight by the decision-maker as material considerations, and the decision made in accordance with the development plan unless material considerations indicate otherwise (see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447).
80. Within that statutory process, and under NPPF policy, the decision-maker must adopt a sensible approach to assessing likely harm to a listed building and weighing that harm against benefits. Lewison L.J. was not suggesting anything else in *Palmer*. He was not seeking to establish any principle. He was saying that, in circumstances such as he was considering, a decision-maker, having considered both “positive” and “negative” effects on a listed building and its setting, “may legitimately” find there would actually be no harm. He was not saying that a decision-maker must go about the balancing of harm, if harm is found, against benefits in any particular way. There is no “*Palmer* principle” of the kind suggested by Mr Strachan. The court was simply endorsing the pragmatic and lawful approach taken by the local planning authority in the circumstances of that case. An “internal” balancing exercise was appropriate because the apprehended “harm” could be avoided through the mitigation measures proposed, and there would be “no overall adverse effect on the listed building or its setting” (paragraph 29 of Lewison L.J.’s judgment).
81. But as Waksman J. recognised here (at paragraph 111 of his judgment), “[this] is quite different from balancing an admitted or found adverse impact . . . against separate beneficial effects . . .”. The inspector grasped this. Having correctly identified the statutory duty in section 66(1) (in paragraph 121 of the decision letter) and the relevant provisions of national policy in the NPPF (in paragraph 122), she described the parties’ dispute on the correct approach (in paragraph 123). She referred (in paragraph 124) to Lewison L.J.’s judgment in *Palmer*. As she said, that case involved “a wholly different context and set of circumstances”. It was a case of “avoidance [of harm] through mitigation measures”. She acknowledged that “a balancing exercise [needed] to be carried out”, but she also recognised that there was not “only one method by which that should be done” (paragraph 125), and there were cases “where alternative approaches have been taken based on the particular circumstances of each case”. She then reminded herself that in any event “the statutory duty to preserve [a listed building] should be given considerable importance and

weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*]" (paragraph 126). All of that was correct.

82. The inspector adopted a methodical approach to the proposals before her, which, as she said, were “complex with multiple works involved”, and with “benefits” to heritage assets “not proposed with the individual developments themselves but ... put forward as a part of other developments subject to separate decisions”. She conscientiously applied the policies in paragraphs 190 and 193 to 196 of the NPPF, first identifying “significance”; then assessing whether each proposed development would, “of its own doing”, lead to “substantial” or “less than substantial harm” to that significance; then considering whether that harm was “outweighed by the public benefits”, not only of the “individual proposal” itself but also “provided in other proposals subject to other decisions”, bearing in mind the broad scope of “public benefits” in the relevant guidance (paragraph 127).
83. That approach cannot be faulted. In the circumstances of this case, it was the most realistic. It gave full credit to benefits that might potentially outweigh any harm likely to be caused to the heritage assets affected by the proposals. The inspector recorded her relevant findings and conclusions for each of those heritage assets. Her conclusions were based on a sequence of legally impeccable planning judgments. They reflected both a correct understanding and a lawful application of the NPPF policies, including the policy in paragraph 196. She plainly had those policies in mind, properly directed herself on them, worked through the requirements in them, and in this way – as Sales L.J. envisaged in *Jones v Mordue* (at paragraph 28) – succeeded in discharging the duty in section 66(1). Whether she could have taken another approach to performing that duty, or to applying the corresponding policies in the NPPF, is not the issue here. We need only be satisfied that the approach she did take was lawful. In my view, it clearly was.
84. I also reject the submission that the inspector failed to attach lawful weight to the benefits for heritage assets, contrary to the concept of “conservation” in the NPPF. Her approach to the question of weight, in paragraph 122 of the decision letter, was faithful to NPPF policy, and consistent with the principles in the case law. She expressly directed herself, as a general principle applicable to all the heritage assets she was dealing with, that she had to give “great weight ... to the [designated heritage] asset’s conservation”. It was with this general self-direction in mind that she went on to undertake a proper weighting of both harm and benefits to each of the heritage assets she had to consider.
85. Having directed herself impeccably on the law and on the relevant policies, she was entitled to exercise her own planning judgment in attributing appropriate weight to the particular benefits of the proposals before her, including their benefits for heritage assets. And she did so. In paragraph 218 of the decision letter, for example, when considering appeal 4, she said she gave “considerable weight” to the removal of existing buildings and the restoration of the park and garden. She was not constrained – by statute, authority or policy, including the definition of “Conservation (for heritage policy)” in the NPPF – to give more weight than she did to any of the heritage-related benefits of the proposals, or to any other benefit. None of the conclusions she reached on heritage-related benefits was unlawful. None of them was inconsistent with the lawful performance of the section 66(1) duty, or with the reasonable and lawful application of the relevant policies in the NPPF, including the definition of “Conservation ...”.

Did the inspector misapply development plan policies for the historic environment?

86. The argument on this issue was that the inspector erred in giving “significant weight” to policies CON11, CON12, CON17 and CON18 of the local plan, despite it being agreed at the inquiry that they were inconsistent with NPPF policy on heritage assets because they did not provide for “public benefits” to be balanced against harm. City & Country Bramshill had said they should carry “little” weight; the council, Historic England and the National Trust, “moderate weight”. No one suggested “significant weight”. Mr Strachan submitted that it was unfair for the inspector to depart without warning from the parties’ understanding of the issue between them. They should have had the opportunity to deal with this question knowing that she disagreed with both sides. She also misapplied the local plan policies. Those policies do not match the section 66(1) duty, or national policy. The words “will not be permitted” in policy CON12 and “will not be permitted unless ...” in policy CON17 do not reflect the statutory language or the policies in the NPPF. The judge was wrong (in paragraph 129 of his judgment) to conclude that the inspector was “essentially ... applying” NPPF policy when she found conflict with policies CON12 and CON17. She acknowledged (in paragraph 46 of the decision letter) that the “balancing requirement” in the NPPF was absent from those policies. But she failed to carry out any balancing exercise when considering whether the proposals were contrary to them.
87. I do not find those submissions persuasive. The absence of an explicit reference to striking a balance between “harm” and “public benefits” in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for “designated heritage assets” in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which “public benefits” are set against “harm”. But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.
88. In performing the duty under section 66(1), the inspector was free to give such weight to the local plan policies as she reasonably judged appropriate. Indeed, she was obliged to do so. She was not bound to a particular conclusion by the evidence and submissions she had heard. The parties had a reasonable opportunity to deal with the matter at the inquiry, and they took that opportunity. No unfairness arose. The inspector acknowledged the disagreement between them on weight (in paragraph 45 of the decision letter), and she clearly had regard to their competing views when forming her own conclusion. She did not have to declare her view – or provisional view – on weight and give the parties a chance to address it, simply because she disagreed with both sides. Fairness did not compel that (see *Secretary of State for Communities and Local Government v Hopkins Developments Ltd.* [2014] EWCA Civ 470, [2014] P.T.S.R. 1145, in particular the judgment of Jackson L.J. at paragraphs 62(iv) and 75, and the judgment of Beatson L.J. at paragraphs 88 and 97).
89. The inspector’s conclusion on weight, though it was not urged on her by either side at the inquiry, was nonetheless a lawful conclusion. This was a matter of planning judgment for her as decision-maker. Her conclusion was rational, and adequately reasoned. To attach “significant” weight to the local plan policies, as she did (in paragraph 46 of the decision letter), was not unreasonable. She acknowledged that those policies lacked the “balancing requirement” of the NPPF, but added that “they contain the statutory requirement”. By this

she clearly meant that they embodied the objective of preserving listed buildings and their settings, in accordance with the duty in section 66(1). She was not saying she interpreted them as shutting out the balancing exercise under paragraphs 195 and 196 of the NPPF. She went on to apply that balancing exercise in the assessment that followed, and she did so meticulously. Her assessment culminated in paragraph 417 of the decision letter, with the conclusion that the harm to the listed buildings and their settings and the registered park and garden were “not outweighed by public benefits.”

90. In short, the inspector did not fall into error in discharging the decision-maker’s duties under section 38(6) of the 2004 Act, section 70 of the 1990 Act, and section 66(1) of the Listed Buildings Act. Her approach was not contrary to any relevant case law, including this court’s decision in *Palmer*. She did not misinterpret or misapply either the local plan policies or the policies in paragraphs 193 to 196 of the NPPF. Her conclusions in applying both development plan and national planning policy for heritage assets – that the proposals in appeals 4, 5 and 6, did not accord with either – are unimpeachable.

The inspector’s decision on the application for costs

91. On the application for costs made by City & Country Bramshill against the council, the inspector said (in paragraph 14 of her decision letter of 14 March 2019):

“14. A large part of this ... application is concerned with the case put to the Inquiry in respect of the merits of the proposals and the view that the position taken by the Council was unreasonable with reference to various events. I have not considered the respective positions on merits again here as a difference of view on compliance with policy or the weight to be given to material considerations are not for the costs regime. The substantive issue is whether the Council acted unreasonably at appeal, and in particular whether it defended its position on each reason for refusal with evidence, whether it acted contrary to well-established case law, and reviewed its case following the lodging of the appeals.”

She went on to reject every contention of unreasonable conduct (paragraphs 15 to 21).

Should the inspector’s decision on the application for costs be quashed?

92. Mr Strachan submitted that in making her costs decision the inspector relied on her decisions in the appeals. Though she did not address the merits again, her consideration of the reasonableness of the council’s stance at the inquiry inevitably depended on her conclusions in the appeals themselves. Some of her decisions were quashed by the judge; others are now the subject of appeal to this court. Her errors of law in those decisions undermine her decision not to award costs to City & Country Bramshill.
93. I cannot accept those submissions. I see no reason to upset the inspector’s decision on costs. She approached the application in the conventional way. Her decision did not depend on the grounds the council had relied upon in opposing the appeals having succeeded or failed when considered on their merits, but on whether they could reasonably be advanced. The decision is unsurprising. And it is also legally sound. It is not invalidated by the

outcome of these proceedings in the court below, nor cast into doubt by any of the issues raised in the appeal to this court. It was, and remains, a perfectly lawful decision.

Conclusion

94. For the reasons I have given, I would dismiss this appeal.

Lord Justice Phillips

95. I agree.

Lord Justice Arnold

96. I also agree.