

Land East of Warwick Road, Banbury  
Heritage Statement of Common Ground APP/C3105/W/24/3338211  
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1. Introduction

1.1 This Statement of Common Ground (SoCG) on Heritage Matters has been prepared between Vistry Group (the Appellant) and Cherwell District Council (herein referred to as 'the Council') in respect of a planning appeal (APP/C3105/W/24/3338211) made under S78 of the Town and Country Planning Act 1990.

1.2 The appeal has been made following the Council's decision to refuse planning permission for the planning application (reference 23/00853/OUT) submitted to them for the following development:

"Outline application for up to 170 dwellings (Use Class C3) with associated open space and vehicular access off Warwick Road, Banbury; All matters reserved except for access".

1.3 This SoCG relates solely to heritage matters and should be read in conjunction with the separate SoCG prepared for the Appellant by Turley and covering the background to the site and matters of policy.

1.4 This SoCG has been prepared with the aim of identifying and agreeing matters of common ground amongst the heritage experts at the Inquiry and with the intention of defining the heritage issues which remain in disagreement and require to be resolved through the exchange of written and oral evidence at the Inquiry.

2. General Matters of Agreement

2.1 Firstly, insofar as heritage matters are concerned in general, it is common ground between the Appellant and the Council that:

- The effects of the appeal proposals on archaeological features within the appeal site are not a matter of dispute in this appeal. An appropriate programme of archaeological work, comprising an Archaeological and Heritage Assessment and the results of a geophysical survey and archaeological evaluation of the appeal site, has been completed to inform determination of an outline application in respect of archaeological matters. It is agreed that further archaeological mitigation can be secured by a condition attached to planning permission;



- The only heritage assets of relevance for consideration in this appeal are:
  1. Hanwell Conservation Area to the north of the appeal site;
  2. Grade I listed St Peter's Church (List Entry Number 1216364) at Hanwell, located 300m to the north-east of the appeal site; and
  3. Grade II\* listed Hanwell Castle (List Entry Number 1287674) located 350m to the north-east of the appeal site.
- No other designated heritage assets are considered to be affected by the appeal proposals.

### 3. The Significance and Setting of Heritage Assets

#### 3.1 It is common ground that:

- When assessing the impact of development proposals through change to the setting of a heritage asset, it is not a question of simply determining whether an asset's setting would be affected or changed, but rather, whether the change within an asset's setting would lead to a loss of 'significance'; i.e. harm; to the asset itself;
- Significance is defined as "The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting.";
- Setting is defined 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.";
- In terms of defining the extent of an asset's setting, the Court of Appeal considered this at length in *Catesby Estates v Steer*<sup>1</sup>, concluding that there must be a "distinct visual relationship" but other factors, such as economic, social or historical factors, should also be considered;
- The most up to date guidance on the methodology for assessing setting is set out in *Historic England (2017) The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (GPA3)*;

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<sup>1</sup> *Catesby Estates v Steer* [2018] EWCA Civ 1697 per Lindblom LJ (the 'Kedleston Hall' Court of Appeal judgement)



- GPA3 (para 9) identifies that “setting is not a heritage asset. nor a heritage designation.... Its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance.”;
- Elements of the setting of a conservation area may make a contribution to its overall significance, but this is a smaller contribution than is derived from the built form and fabric of special architectural and historic interest within the designated area;
- Elements of the setting of a listed building may make a contribution to its overall significance, but this is a smaller contribution than is derived from its built form and fabric that is of special architectural and historic interest;
- The setting of the Hanwell Conservation Area includes surrounding agricultural fields and woodland, as well as 20<sup>th</sup> century residential development to the west of the conservation area;
- The appeal site is separated from the Hanwell Conservation Area by agricultural fields, agricultural buildings, vegetation, and the residential dwellings and gardens either side of Gullicott Lane; and
- The settings of the Grade I listed St Peter’s Church and Grade II\* listed Hanwell Castle should not simply be conflated with the setting of the Hanwell Conservation Area because the conservation area comprises an extensive asset, while the listed buildings are each discrete assets within the conservation area.

#### 4. The Impact of the Appeal Proposals upon Heritage Assets

- As the appeal site is wholly outside the Hanwell Conservation Area, the only aspect of this asset that the appeal proposals may potentially impact is its setting;
- As the appeal site is wholly outside the curtilage of the Grade I listed St Peter’s Church and Grade II\* listed Hanwell Castle, the only aspect of these assets the appeal proposals may potentially impact is their setting; i.e. there will be no physical impact or change to the fabric or curtilage of these listed buildings;
- It is common ground that the overall heritage impact of the appeal proposals would be ‘less than substantial harm’ to the Hanwell Conservation Area, in terms of the NPPF;
- The impact of the appeal proposals on the Grade I listed St Peter’s Church and Grade II\* listed Hanwell Castle is not agreed. The Appellant’s position is that these listed buildings would not be harmed, while it is the Council’s position that the appeal proposals would result in ‘less than substantial harm’ to these listed buildings, in terms of the NPPF;

- It is Historic England's view (as per correspondence of 20 December 2023 and 24 January 2024) that the appeal proposals would result in less than substantial harm to the Hanwell Conservation Area, the Grade I listed St Peter's Church and Grade II\* listed Hanwell Castle. Historic England consider that the identified harm to the listed buildings is "at a lower level than that identified for Hanwell Conservation Area"; and
- In respect of a finding of less than substantial harm to a designated heritage asset, Paragraph 208 of the NPPF makes it clear that even harmful development can be acceptable, if the public benefits that it would bring forward are of sufficient weight to outweigh the less than substantial harm generated by its implementation.

## 5. Public Benefits

- 5.1 It is common ground that it is the role of the decision-taker, not heritage consultees, to undertake the Paragraph 208 planning balance of any less than substantial harm against the public benefits of the proposals.


## 6. Other Areas of Disagreement

- 6.1 Insofar as heritage matters are concerned, the following issues are not agreed and will need to be resolved at the Public Inquiry:
- It is not agreed whether the public benefits of the proposals outweigh the alleged less than substantial harm to the significance of the identified heritage assets, for the purposes of the Paragraph 208 balancing exercise.

## 7. Declaration

This Statement of Common Ground is agreed by EDP on behalf of Vistry Group (the Appellant) and Cherwell District Council.

Signed on behalf of the Appellants:

A handwritten signature in black ink, appearing to read 'Eddy Stratford', written in a cursive style.

Eddy Stratford, Associate Director, The Environmental Dimension Partnership (EDP)

Signed on behalf of Cherwell District Council:

**Nick Wyke**