

Reserved Matters Heritage Statement

Chilgrove Drive, Heyford Park

On behalf of Dorchester Living Ltd

Date: 10/06/2024 | Pegasus Ref: P22-1611





Document Management.

Version	Date	Author	Checked / Approved by:	Reason for revision
3	10.06.24	AR	GS	



Contents.

1. Introduction.....	3
2. Site Description and the Historic Environment.....	6
3. Methodology.....	7
4. Policy Framework.....	9
5. Assessment of Proposals.....	11

Appendices contents.

Appendix 1: Assessment Methodology.....	12
Appendix 2: Legislative Framework.....	18
Appendix 3: National Policy Guidance.....	20

Plates:

Plate 1: Site Location Plan.....	3
Plate 2: Extract of approved Composite Parameters Plan reference P16-0631_08 rev.AS.....	5

1. Introduction

1.1. Pegasus Group have been commissioned by Dorchester Living Ltd to prepare a Heritage Assessment to consider the detailed proposals for the Chilgrove Drive bus loop and access and at Heyford Park, for which a Reserved Matters Application is to be made to Cherwell District Council pursuant to Hybrid Permission 18/00825/HYBRID.

1.2. The details of the Reserved Matters application are as follows:

“Reserved Matters relating to infrastructure works, namely the upgrade of Chilgrove Drive to provide primary HGV access, associated roads, bus loop, link to Primary School parcel and the provision of an associated signalised junction with Camp Road (as per the approved Composite Parameters Plan relating to planning permission 18/00825/HYBRID”

1.3. The boundaries of the access are shown in the plan provided at Plate 1.



Plate 1: Site Location Plan.

1.4. This Assessment has been prepared in the context of the Hybrid approval (18/00825/HYBRID) for the redevelopment of the wider site, and in order to fulfil the requirement given in paragraph 200 of the Government's *National Planning Policy Framework* (the *NPPF*) which requires:

"...an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting".¹

1.5. The significance of the heritage resource within the site was considered in detail within the Environmental Statement which accompanied the Hybrid Permission and which considered a full set of parameters plans. This assessment thus considers the impact of the detailed proposals in the context of the baseline established through the Hybrid Permission.

1.6. An extract of the updated composite parameters plan reference P16-0631_08 rev. AS is provided at Plate 2.

1.7. The approved parameter plans detail the creation of a primary HGV access route, bus route, vehicle access and footway, along with adjacent footpath and bridleway route and associated landscaping.

¹ Department for Levelling Up, Housing and Communities (DLUHC), *National Planning Policy Framework (NPPF)* (London, December 2023), para. 200.

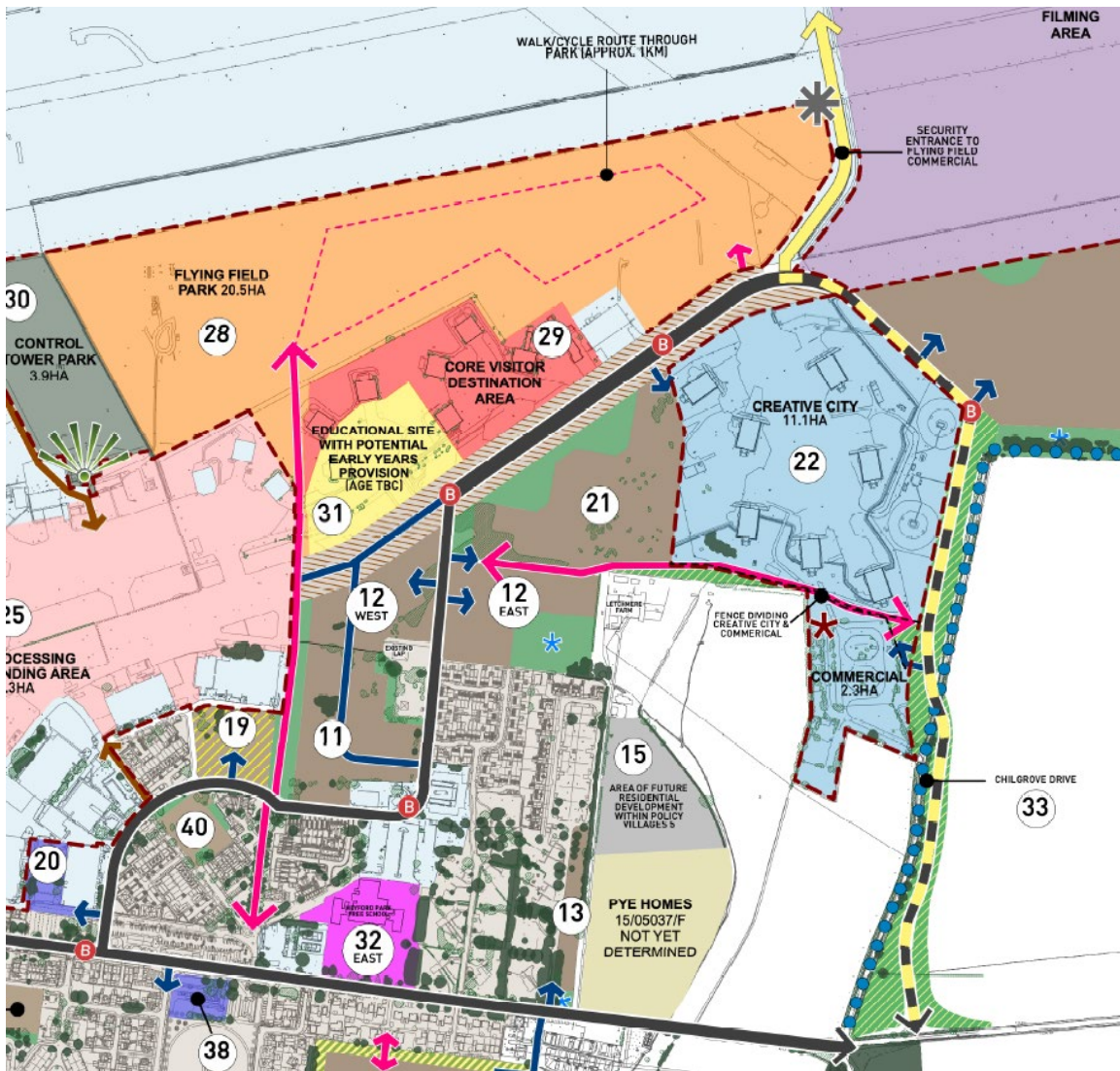


Plate 2: Extract of approved Composite Parameters Plan reference P16-0631_08 rev.AS

2. Site Description and the Historic Environment

- 2.1. The route of the Chilgrove Drive Reserved Matters application, to which this Assessment relates, runs from Camp Road in the south, north, adjacent to the original route of Chilgrove Drive (which will be converted to a bridleway) and turns west towards the Education Site (Parcel 31) and other residential parcels, before looping back down to the Village Centre.
- 2.2. The first leg of the route, north from Camp Road, lies outside of the Conservation Area boundary, with the route crossing into the Conservation Area to the east of Parcel 22 (Creative City).
- 2.3. The proposed route follows the alignment of the former southern taxi way, to the south of Parcels 29 (Core Visitor Destination Area) and 31 (Education Site).
- 2.4. Whilst being partly within the Conservation Area boundary, this route is not located in close proximity to any of the Listed Buildings or Scheduled Monuments within the site, which lie beyond intervening built form.
- 2.5. The various parcels within the Conservation Area which the route passes through are defined and described within the Environmental Statement, identified as Areas OA1D, OA3 and OA6.
- 2.6. The extant planning permission (18/00825/HYBRID), including its constituent Composite Parameter Plan and associated Planning Obligation, provides the baseline for assessment. In particular, condition 3 of the planning permission requires the development to be carried out in strict accordance with approved plans and documents, including the Composite Parameter Plan, the latter clearly defining the proposed road infrastructure which is the subject of this RM application.

3. Methodology

3.1. The aims of this Report are to identify any harm or benefit to the historic environment which may result from the implementation of the development proposals beyond that which has been established as being acceptable under the Hybrid Planning Permission, along with the level of any harm caused, if relevant.

Site Visit

3.2. Site visits have been undertaken by Heritage Consultant from Pegasus Group during the course of 2023 and 2024 during which the site and its surrounds were assessed in detail.

Assessment Methodology

3.3. Full details of the assessment methodology used in the preparation of this Report are provided within **Appendix 1**. However, for clarity, this methodology has been informed by the following:

- *Historic Environment Good Practice Advice in Planning: 2 – Managing Significance in Decision-*

Taking in the Historic Environment (hereafter GPA:2);²

- *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition) – The Setting of Heritage Assets*, the key guidance of assessing setting (hereafter GPA:3);³
- *Historic England Advice Note 1 (Second Edition) – Conservation Area Appraisal, Designation and Management* (hereafter HEAN:1).⁴
- *Historic England Advice Note 12 – Statements of Heritage Significance: Analysing Significance in Heritage Assets* (hereafter HEAN:12);⁵ and
- *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment*.⁶

Assessment of Impacts

3.4. As detailed above, the *Planning and Compulsory Purchase Act (2004)* requires that applications for Planning Permission are determined in accordance with

² Historic England, *Historic Environment Good Practice Advice in Planning: 2 – Managing Significance in Decision-Taking in the Historic Environment* (GPA:2) (2nd edition, Swindon, July 2015).

³ Historic England, *Historic Environment Good Practice Advice in Planning Note 3 – The Setting of Heritage Assets* (GPA:3) (2nd edition, Swindon, December 2017).

⁴ Historic England, *Historic England Advice Note 1 – Conservation Area Appraisal, Designation and Management* (HEAN:1) (2nd edition, Swindon, February 2019).

⁵ Historic England, *Historic England Advice Note 12 – Statements of Heritage Significance: Analysing Significance in Heritage Assets* (HEAN:12) (Swindon, October 2019).

⁶ English Heritage, *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (London, April 2008).

the Development Plan, unless material considerations indicate otherwise. The policy guidance set out within the *NPPF* is considered to be a material consideration which attracts significant weight in the decision-making process.

- 3.5. The statutory requirement set out in Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* confirms that special regard should be given to the preservation of the special historic and architectural interest of Listed Buildings and their settings. Section 72(1) of the Act confirms that special attention should be paid to the desirability of preserving or enhancing the character or appearance of the asset, as well as the protection of the character and appearance of a Conservation Area.
- 3.6. In addition, the *NPPF* states that the impact of development proposals should be considered against the particular significance of heritage assets, such as Listed Buildings and Conservation Areas, and this needs to be the primary consideration when determining the acceptability of the proposals.
- 3.7. It is also important to consider whether the proposals cause harm. If they do, then one must consider whether the harm represents "*substantial harm*" or "*less than*

substantial harm" to the identified designated heritage assets, in the context of paragraphs 207 and 208 of the *NPPF*.⁷ With regard to non-designated heritage assets, potential harm should be considered within the context of paragraph 209 of the *NPPF*.⁸

- 3.8. The *PPG* clarifies that within each category of harm ("*less than substantial*" or "*substantial*"), the extent of the harm may vary and should be clearly articulated.⁹
- 3.9. The guidance set out within the *PPG* also clarifies that "*substantial harm*" is a high test, and that it may not arise in many cases. It makes it clear that it is the degree of harm to the significance of the asset, rather than the scale of development, which is to be assessed.¹⁰ In addition, it has been clarified in a High Court Judgement of 2013 that substantial harm would be harm that would:

"...have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced."¹¹

⁷ DLUHC, *NPPF*, paras. 207 and 208.

⁸ DLUHC, *NPPF*, para. 209.

⁹ DLUHC, *PPG*, Paragraph: 018 (ID: 18a-018-20190723 Revision date: 23.07.2019).

¹⁰ DLUHC, *PPG*, Paragraph: 018 (ID: 18a-018-20190723 Revision date: 23.07.2019).

¹¹ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council.

4. Policy Framework

Legislation

- 4.1. Legislation relating to the built historic environment is primarily set out within the *Planning (Listed Buildings and Conservation Areas) Act 1990*, which provides statutory protection for Listed Buildings and their settings and Conservation Areas.¹²
- 4.2. In addition to the statutory obligations set out within the aforementioned Act, Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that all planning applications, including those for Listed Building Consent, are determined in accordance with the Development Plan unless material considerations indicate otherwise.¹³
- 4.3. Full details of the relevant legislation are provided in **Appendix 2**.

National Planning Policy Guidance

- 4.4. National Planning Policy guidance relating to the historic environment is provided within Section 16 of the Government's *National Planning Policy Framework (NPPF)*, an updated version of which was published in December 2023. The *NPPF* is also supplemented by the national *Planning Policy Guidance (PPG)* which comprises a full and consolidated review of planning practice guidance

documents to be read alongside the *NPPF* and which contains a section related to the Historic Environment.¹⁴ The PPG also contains the *National Design Guide*.¹⁵

- 4.5. Full details of the relevant national policy guidance is provided within **Appendix 3**.

The Development Plan

- 4.6. The Development Plan for the site comprises the adopted Cherwell Local Plan Part 1 (2011–2031) which includes the allocation of land at Heyford Park, including Parcel 10, for a new settlement under Policy Villages 5. This policy also set out a range of design and place shaping principles which are relevant to the detailed design for Phase 10.
- 4.7. Policy ESD15 which relates to the character of the built and historic environment is also relevant.
- 4.8. Additionally, a number of policies of the Cherwell Local Plan (Nov 1996) remain extant, including the following:
 - Policy C23 (Retention of features contributing to character or appearance of a Conservation Area)

¹² UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990.

¹³ UK Public General Acts, Planning and Compulsory Purchase Act 2004, Section 38(6).

¹⁴ Department for Levelling Up, Housing and Communities (DLUHC), *Planning Practice Guidance: Historic Environment (PPG)* (revised edition, 23rd July 2019), <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment>.

¹⁵ Department for Levelling Up, Housing and Communities (DLUHC), *National Design Guide* (London, January 2021).

- Policy C25: Development affecting the site or setting of a scheduled ancient monument

4.9. A full assessment of the relevant Local Planning Policy is set out within the accompanying Reserved Matters documentation.

5. Assessment of Proposals

- 5.1. This Section considers the detailed proposals for the Chilgrove Drive works against the baseline established via the Hybrid Permission for the wider site, application reference 18/00825/HYBRID.
- 5.2. Consideration has been made as to whether the detailed development would have a greater, or lesser impact than that previously accepted.
- 5.3. As set out above, the new primary, former Flying Field access was shown on the approved composite parameter plan as comprising the primary HGV access, bus route, vehicle access and footways set within a strategic landscape buffer to where it meets the Conservation Area boundary. Within the Conservation Area, it is shown to run along the route of the existing, former taxi ways to provide access to development parcels including Parcel 31 (the Education Site), and Parcel 29 (the Core Visitor Destination Area), as well as other parcels proposed for residential use.
- 5.4. Alongside the new roadway, the former Chilgrove Drive route would form a bridle way to link into the footpath/bridleway network across the site.
- 5.5. The detailed design for the access route closely follows the agreed alignment from Camp Road, entering the Conservation Area at the agreed location and following the agreed routing through the established routes within the site.
- 5.6. The strategic landscape buffer along the initial length of the access, outside the Conservation Area boundary will retain and strengthen the majority of the existing landscaping to echo the character of the existing greened trackway.
- 5.7. Where the access route runs through the Conservation Area, this will have an open character with pavements and incorporate bus stops and traffic calming measures such as narrowing of the carriageway.
- 5.8. Street trees will be provided at appropriate locations along the length of the access route, although the general character of the route will retain an open feel to respond to the existing character of the former taxi ways.
- 5.9. Overall, it is considered that the proposed infrastructure works related to the implementation of the Chilgrove Drive access would accord with the parameters set out by the Hybrid permission (application reference 18/00825/HYBRID) and would not cause any additional impact above that which was assessed within the Environmental Statement.

Appendix 1: Assessment Methodology

Assessment of significance

In the *NPPF*, heritage significance is defined as:

“The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.”¹⁶

Historic England's *GPA:2* gives advice on the assessment of significance as part of the application process. It advises understanding the nature, extent, and level of significance of a heritage asset.¹⁷

In order to do this, *GPA 2* also advocates considering the four types of heritage value an asset may hold, as identified in *English Heritage’s Conservation Principles*.¹⁸ These essentially cover the heritage ‘interests’ given in the glossaries of the *NPPF* and the *PPG* which are archaeological, architectural and artistic, and historic.¹⁹

The *PPG* provides further information on the interests it identifies:

- **Archaeological interest:** As defined in the *Glossary to the National Planning Policy Framework*, there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.
- **Architectural and artistic interest:** These are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skills, like sculpture.
- **Historic interest:** An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation’s history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity.²⁰

¹⁶ DLUHC, *NPPF*, Annex 2.

¹⁷ Historic England, *GPA:2*.

¹⁸ Historic England, *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (London, April 2008). These heritage values

are identified as being ‘aesthetic’, ‘communal’, ‘historical’ and ‘evidential’, see *idem* pp. 28–32.

¹⁹ DLUHC, *NPPF*, Annex 2; DLUHC, *PPG*, paragraph 006, reference ID: 18a-006-20190723.

²⁰ DLUHC, *PPG*, paragraph 006, reference ID: 18a-006-20190723.

Significance results from a combination of any, some, or all of the interests described above.

Historic England guidance on assessing heritage significance, *HEAN:12*, advises using the terminology of the *NPPF* and *PPG*, and thus it is that terminology which is used in this Report.²¹

Listed Buildings and Conservation Areas are generally designated for their special architectural and historic interest. Scheduling is predominantly, although not exclusively, associated with archaeological interest.

Setting and significance

As defined in the *NPPF*:

“Significance derives not only from a heritage asset’s physical presence, but also from its setting.”²²

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.”²³

Therefore, setting can contribute to, affect an appreciation of significance, or be neutral with regards to heritage values.

²¹ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (Swindon, October 2019).

²² DLUHC, *NPPF*, Annex 2.

Assessing change through alteration to setting

How setting might contribute to these values has been assessed within this Report with reference to *GPA:3*, particularly the checklist given on page 11. This advocates the clear articulation of “*what matters and why*”.²⁴

In *GPA:3*, a stepped approach is recommended, of which Step 1 is to identify which heritage assets and their settings are affected. Step 2 is to assess whether, how and to what degree settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated. The guidance includes a (non-exhaustive) checklist of elements of the physical surroundings of an asset that might be considered when undertaking the assessment including, among other things: topography, other heritage assets, green space, functional relationships and degree of change over time. It also lists aspects associated with the experience of the asset which might be considered, including: views, intentional intervisibility, tranquillity, sense of enclosure, accessibility, rarity and land use.

Step 3 is to assess the effect of the proposed development on the significance of the asset(s). Step 4 is to explore ways to maximise enhancement and minimise harm. Step 5 is to make and document the decision and monitor outcomes.

A Court of Appeal judgement has confirmed that whilst issues of visibility are important when assessing setting, visibility does not necessarily confer a contribution to significance and factors other than visibility should also be considered, with Lindblom LJ stating at

²³ DLUHC, *NPPF*, Annex 2.

²⁴ Historic England, *GPA:3*, pp. 8, 11.

paragraphs 25 and 26 of the judgement (referring to an earlier Court of Appeal judgement):

Paragraph 25 – “But – again in the particular context of visual effects – I said that if “a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one’s experience of the listed building in its surrounding landscape or townscape” (paragraph 56)”.

Paragraph 26 – “This does not mean, however, that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building’s setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in Williams (see also, for example, the first instance judgment in R. (on the application of Miller) v North Yorkshire County Council [2009] EWHC 2172 (Admin), at paragraph 89). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in paragraph 18a-013-20140306 of the PPG, that the Government recognizes the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, “the historic relationship between places”. Historic England’s advice in GPA3 was broadly to the same effect.”²⁵

²⁵ Catesby Estates Ltd. v. Steer [2018] EWCA Civ 1697, paras. 25 and 26.

²⁶ DLUHC, NPPF, para. 206 and fn. 72.

Levels of significance

Descriptions of significance will naturally anticipate the ways in which impacts will be considered. Hence descriptions of the significance of Conservation Areas will make reference to their special interest and character and appearance, and the significance of Listed Buildings will be discussed with reference to the building, its setting and any features of special architectural or historic interest which it possesses.

In accordance with the levels of significance articulated in the NPPF and the PPG, three levels of significance are identified:

- **Designated heritage assets of the highest significance**, as identified in paragraph 206 of the NPPF, comprising Grade I and II* Listed Buildings, Grade I and II* Registered Parks and Gardens, Scheduled Monuments, Protected Wreck Sites, World Heritage Sites and Registered Battlefields (and also including some Conservation Areas) and non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments, as identified in footnote 72 of the NPPF;²⁶
- **Designated heritage assets of less than the highest significance**, as identified in paragraph 206 of the NPPF, comprising Grade II Listed Buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);²⁷ and

²⁷ DLUHC, NPPF, para. 206.

- **Non-designated heritage assets.** Non-designated heritage assets are defined within the PPG as *“buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets”*.²⁸

Additionally, it is of course possible that sites, buildings or areas have no heritage significance.

Assessment of harm

Assessment of any harm will be articulated in terms of the policy and law that the proposed development will be assessed against, such as whether a proposed development preserves or enhances the character or appearance of a Conservation Area, and articulating the scale of any harm in order to inform a balanced judgement/weighting exercise as required by the NPPF.

In accordance with key policy, the following levels of harm may potentially be identified for designated heritage assets:

- **Substantial harm or total loss.** It has been clarified in a High Court Judgement of 2013 that this would be harm that would *“have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced”*;²⁹ and

- **Less than substantial harm.** Harm of a lesser level than that defined above.

With regards to these two categories, the PPG states:

“Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.”³⁰

Hence, for example, harm that is less than substantial would be further described with reference to where it lies on that spectrum or scale of harm, for example low end, middle, and upper end of the less than substantial harm spectrum/scale.

With regards to non-designated heritage assets, there is no basis in policy for describing harm to them as substantial or less than substantial, rather the NPPF requires that the scale of any harm or loss is articulated whilst having regard to the significance of the asset. Harm to such assets is therefore articulated as a level of harm to their overall significance, using descriptors such as minor, moderate and major harm.

It is also possible that development proposals will cause no harm or preserve the significance of heritage assets. Here, a High Court Judgement of 2014 is relevant. This concluded that with regard to preserving the setting of a Listed building or preserving the character and appearance of a Conservation Area, *“preserving”* means doing *“no harm”*.³¹

²⁸ DLUHC, PPG, paragraph 039, reference ID: 18a-039-20190723.

²⁹ Bedford Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin), para. 25.

³⁰ DLUHC, PPG, paragraph 018, reference ID: 18a-018-20190723.

³¹ R (Forge Field Society) v Sevenoaks District Council [2014] EWHC 1895 (Admin).

Preservation does not mean no change, it specifically means no harm. *GPA:2* states that “*Change to heritage assets is inevitable but it is only harmful when significance is damaged*”.³² Thus, change is accepted in Historic England’s guidance as part of the evolution of the landscape and environment. It is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.

As part of this, setting may be a key consideration. When evaluating any harm to significance through changes to setting, this Report follows the methodology given in *GPA:3*, described above. Fundamental to this methodology is a consideration of “*what matters and why*”.³³ Of particular relevance is the checklist given on page 13 of *GPA:3*.³⁴

It should be noted that this key document also states:

“Setting is not itself a heritage asset, nor a heritage designation...”³⁵

Hence any impacts are described in terms of how they affect the significance of a heritage asset, and heritage interests that contribute to this significance, through changes to setting.

With regards to changes in setting, *GPA:3* states that:

“Conserving or enhancing heritage assets by taking their settings into account need not prevent change”.³⁶

Additionally, whilst the statutory duty requires that special regard should be paid to the desirability of not harming the setting of a Listed Building, that cannot mean that any harm, however minor, would necessarily require Planning Permission to be refused. This point has been clarified in the Court of Appeal.³⁷

Benefits

Proposed development may also result in benefits to heritage assets, and these are articulated in terms of how they enhance the heritage interests, and hence the significance, of the assets concerned.

As detailed further in **Appendix 3**, the *NPPF* (at Paragraphs 207 and 208) requires harm to a designated heritage asset to be weighed against the public benefits of the development proposals.³⁸

Recent High Court Decisions have confirmed that enhancement to the historic environment should be considered as a public benefit under the provisions of Paragraphs 207 to 209.³⁹

The *PPG* provides further clarity on what is meant by the term ‘public benefit’, including how these may be derived from enhancement to the historic environment (‘heritage benefits’), as follows:

“Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8).

³² Historic England, *GPA:2*, p. 9.

³³ Historic England, *GPA:3*, p. 8.

³⁴ Historic England, *GPA:3*, p. 13.

³⁵ Historic England, *GPA:3*, p. 4.

³⁶ Historic England, *GPA 3*, p. 8.

³⁷ *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061.

³⁸ DLUHC, *NPPF*, paras. 207 and 208.

³⁹ *Including – Kay, R (on the application of) v Secretary of State for Housing Communities and Local Government & Anor* [2020] EWHC 2292 (Admin); DLUHC, *NPPF*, paras. 207 and 209.

Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.

Examples of heritage benefits may include:

- ***sustaining or enhancing the significance of a heritage asset and the contribution of its setting***
- ***reducing or removing risks to a heritage asset***
- ***securing the optimum viable use of a heritage asset in support of its long term conservation.***⁴⁰

Any "heritage benefits" arising from the proposed development, in line with the narrative above, will be clearly articulated in order for them to be taken into account by the decision maker.

⁴⁰ DLUHC, PPG, paragraph 020, reference ID: 18a-020-20190723.

Appendix 2: Legislative Framework

Legislation relating to the built historic environment is primarily set out within the *Planning (Listed Buildings and Conservation Areas) Act 1990*, which provides statutory protection for Listed Buildings and Conservation Areas.⁴¹ It does not provide statutory protection for non-designated or Locally Listed heritage assets.

Section 66(1) of the Act goes on to state that:

“In considering whether to grant planning permission [or permission in principle] 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.”⁴²

In the 2014 Court of Appeal judgement in relation to the Barnwell Manor case, Sullivan LJ held 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”

⁴¹ UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990.

⁴² UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990, Section 66(1).

when the decision-maker carries out the balancing exercise.”⁴³

A judgement in the Court of Appeal (‘Mordue’) has clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular paragraph 134 of the 2012 version of the NPPF, the requirements of which are now given in paragraph 208 of the current, revised NPPF, see **Appendix 3**), this is in keeping with the requirements of the 1990 Act.⁴⁴

With regards to development within Conservation Areas, Section 72(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* states:

“In the exercise, with respect to any buildings or other land in a conservation area, of any powers under 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.”⁴⁵

Unlike Section 66(1), Section 72(1) of the Act does not make reference to the setting of a Conservation Area. This makes it plain that it is the character and appearance of the designated Conservation Area that is the focus of special attention.

⁴³ Barnwell Manor Wind Energy Ltd v (1) East Northamptonshire DC & Others [2014] EWCA Civ 137. para. 24.

⁴⁴ Jones v Mordue [2015] EWCA Civ 1243.

⁴⁵ UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990. Section 72(1).

In addition to the statutory obligations set out within the *Planning (Listed Buildings and Conservations Area) Act 1990*, Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that all planning applications, including those for Listed Building Consent, are determined in accordance with the Development Plan unless material considerations indicate otherwise.⁴⁶

⁴⁶ UK Public General Acts, Planning and Compulsory Purchase Act 2004, Section 38(6).

Appendix 3: National Policy Guidance

The National Planning Policy Framework (December 2023)

National policy and guidance is set out in the Government's *National Planning Policy Framework (NPPF)* published in December 2023. This replaced and updated the previous *NPPF* (September 2023). The *NPPF* needs to be read as a whole and is intended to promote the concept of delivering sustainable development.

The *NPPF* sets out the Government's economic, environmental and social planning policies for England. Taken together, these policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The *NPPF* continues to recognise that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.

The overarching policy change applicable to the proposed development is the presumption in favour of sustainable development. This presumption in favour of sustainable development (the 'presumption') sets out the tone of the Government's overall stance and operates with and through the other policies of the *NPPF*. Its purpose is to send a strong signal to all those involved in the planning process about the need to plan positively for appropriate new development; so that both plan-making and development management are proactive and driven by a search for opportunities to deliver sustainable development, rather than barriers. Conserving historic assets in a manner appropriate to their significance forms part of this drive towards sustainable development.

The purpose of the planning system is to contribute to the achievement of sustainable development and the *NPPF* sets out three 'objectives' to facilitate sustainable development: an economic objective, a social objective, and an environmental objective. The presumption is key to delivering these objectives, by creating a positive pro-development framework which is underpinned by the wider economic, environmental and social provisions of the *NPPF*. The presumption is set out in full at paragraph 11 of the *NPPF* and reads as follows:

"Plans and decisions should apply a presumption in favour of sustainable development.

For plan-making this means that:

- a. all plans should promote a sustainable pattern of development that seeks to: meet the development needs of their area; align growth and infrastructure; improve the environment; mitigate climate change (including by making effective use of land in urban areas) and adapt to its effects;***
- b. strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:***
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting***

the overall scale, type or distribution of development in the plan area; or

- ii. ***any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.***

For decision-taking this means:

- a. ***approving development proposals that accord with an up-to-date development plan without delay; or***
- b. ***where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:***
 - i. ***the application policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or***
 - ii. ***any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.***⁴⁷

However, it is important to note that footnote 7 of the NPPF applies in relation to the final bullet of paragraph 11. This provides a context for paragraph 11 and reads as follows:

“The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 187) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 72); and areas at risk of flooding or coastal change.”⁴⁸ (our emphasis)

The NPPF continues to recognise that the planning system is planned and that therefore, Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application.

Heritage Assets are defined 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).”⁴⁹

⁴⁷ DLUHC, NPPF, para. 11.

⁴⁸ DLUHC, NPPF, para. 11, fn. 7.

⁴⁹ DLUHC, NPPF, Annex 2.

The NPPF goes on to define a Designated Heritage Asset as a:

“World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under relevant legislation.”⁵⁰

As set out above, significance is also 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. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.”⁵¹

Section 16 of the NPPF relates to ‘Conserving and enhancing the historic environment’ and states at paragraph 201 that:

“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.”⁵²

⁵⁰ DLUHC, NPPF, Annex 2.

⁵¹ DLUHC, NPPF, Annex 2.

Paragraph 203 goes on to state that:

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

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;***
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and***
- c. the desirability of new development making a positive contribution to local character and distinctiveness.”⁵³***

With regard to the impact of proposals on the significance of a heritage asset, paragraphs 205 and 206 are relevant and read as follows:

“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

⁵² DLUHC, NPPF, para. 201.

⁵³ DLUHC, NPPF, para. 203.

substantial harm, total loss or less than substantial harm to its significance.”⁵⁴

“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:

- a. grade II listed buildings, or grade II registered parks or gardens, should be exceptional;**
- b. assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”⁵⁵**

Section b) of paragraph 206, which describes assets of the highest significance, also includes footnote 72 of the NPPF, which states that non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments should be considered subject to the policies for designated heritage assets.

In the context of the above, it should be noted that paragraph 207 reads as follows:

“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:

- a. the nature of the heritage asset prevents all reasonable uses of the site; and**
- b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and**
- c. conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and**
- d. the harm or loss is outweighed by the benefit of bringing the site back into use.”⁵⁶**

Paragraph 208 goes on to state:

“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.”⁵⁷

The NPPF also provides specific guidance in relation to development within Conservation Areas, stating at paragraph 212 that:

⁵⁴ DLUHC, NPPF, para. 205.

⁵⁵ DLUHC, NPPF, para. 206.

⁵⁶ DLUHC, NPPF, para. 207.

⁵⁷ DLUHC, NPPF, para. 208.

“Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.”⁵⁸

Paragraph 213 goes on to recognise that “not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance” and with regard to the potential harm from a proposed development states:

“Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 207 or less than substantial harm under paragraph 208, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole.”⁵⁹ (our emphasis)

With regards to non-designated heritage assets, paragraph 209 of NPPF states that:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing

applications that directly or indirectly affect 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.”⁶⁰

Overall, the NPPF confirms that the primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent it. Local Planning Authorities should approach development management decisions positively, looking for solutions rather than problems so that applications can be approved wherever it is practical to do so. Additionally, securing the optimum viable use of sites and achieving public benefits are also key material considerations for application proposals.

National Planning Practice Guidance

The then Department for Communities and Local Government (now the Department for Levelling Up, Housing and Communities (DLUHC)) launched the planning practice guidance web-based resource in March 2014, accompanied by a ministerial statement which confirmed that a number of previous planning practice guidance documents were cancelled.

This also introduced the national Planning Practice Guidance (PPG) which comprised a full and consolidated review of planning practice guidance documents to be read alongside the NPPF.

The PPG has a discrete section on the subject of the Historic Environment, which confirms that the consideration of ‘significance’ in decision taking is important and states:

⁵⁸ DLUHC, NPPF, para 212.

⁵⁹ DLUHC, NPPF, para. 213.

⁶⁰ DLUHC, NPPF, para. 209.

“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, is very important to understanding the potential impact and acceptability of development proposals.”⁶¹

In terms of assessment of substantial harm, the PPG confirms that whether a proposal causes substantial harm will be a judgement for the individual decision taker having regard to the individual circumstances and the policy set out within the NPPF. It goes on to state:

“In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset’s significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which

harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm.”⁶² (our emphasis)

National Design Guide:

Section C2 relates to valuing heritage, local history and culture and states:

“When determining how a site may be developed, it is important to understand the history of how the place has evolved. The local sense of place and identity are shaped by local history, culture and heritage, and how these have influenced the built environment and wider landscape.”⁶³

“Sensitive re-use or adaptation adds to the richness and variety of a scheme and to its diversity of activities and users. It helps to integrate heritage into proposals in an environmentally sustainable way.”⁶⁴

It goes on to state that:

“Well-designed places and buildings are influenced positively by:

- the history and heritage of the site, its surroundings and the wider area, including cultural influences;***

⁶¹ DLUHC, PPG, paragraph 007, reference ID: 18a-007-20190723.

⁶² DLUHC, PPG, paragraph 018, reference ID: 18a-018-20190723.

⁶³ DLUHC, NDG, para. 46.

⁶⁴ DLUHC, NDG, para. 47.

- *the significance and setting of heritage assets and any other specific features that merit conserving and enhancing;*
- *the local vernacular, including historical building typologies such as the terrace, town house, mews, villa or mansion block, the treatment of façades, characteristic materials and details – see Identity.*

Today's new developments extend the history of the context. The best of them will become valued as tomorrow's heritage, representing the architecture and placemaking of the early 21st century."⁶⁵

⁶⁵ DLUHC, *NDG*, paras. 48-49.

Planning (Listed Buildings and Conservation Areas) Act 1990
Town & Country Planning Act 1990 (as amended)
Planning and Compulsory Purchase Act 2004

Cirencester

33 Sheep Street, Cirencester, GL7 1RQ
T 01285 641717
Cirencester@pegasusgroup.co.uk
Offices throughout the UK.

Expertly Done.

DESIGN | ECONOMICS | ENVIRONMENT | HERITAGE | LAND & PROPERTY | PLANNING | TRANSPORT & INFRASTRUCTURE



All paper sources from sustainably managed forests

Pegasus Group is a trading name of Pegasus Planning Group Limited (07277000) registered in England and Wales.

Registered office: 33 Sheep Street, Cirencester, Gloucestershire, GL7 1RQ

We are ISO certified 9001, 14001, 45001



Pegasus_Group



pegasusgroup



Pegasus_Group

PEGASUSGROUP.CO.UK