

Woodsford Farms

Bournemouth, Dorset & Poole Mineral Sites Plan Examination

Representations

Allocation AS19 Woodsford Quarry Extension Moreton Area

Heritage Matters

September 2018

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1.0 INTRODUCTION

- 1.1 Montagu Evans LLP have been instructed by Woodsford Farms to prepare these Representations in response to the proposed allocation of Site AS19, Woodsford Quarry Extension, in the Draft Bournemouth, Dorset and Poole Minerals Sites Plan.
- 1.2 Where relevant, in relation to cumulative effects, reference is made to Sites AS25 and AS26, the other proposed allocations in the Moreton Area (Cluster 4).
- 1.3 The Representations respond to the Inspector's Matters, Issues and Questions (MIQs). For clarity, the question is reproduced in bold, and our response follows.
- 1.4 The Representations relate to heritage matters, including historic landscape, historic buildings and archaeology. MOLA have produced a detailed archaeological assessment, provided as Appendix 1, which we refer to where relevant.
- 1.5 The details of the professionals who prepared this representation are set out at Appendix 2. The individuals have qualifications in heritage and town planning.

2.0 RESPONSE TO INSPECTOR'S MATTERS, ISSUES AND QUESTIONS

Issue: Whether the allocations provide a sufficient supply of economically viable minerals, and whether an appropriate balance between the economic, social and environmental roles of plan making has been achieved.

Cluster 4 - Moreton Area of Dorset: AS-19 Woodsford Extension, AS-25 Station Road and AS-26 Hurst Farm

Question 50. Given their close proximity to each other, have these sites' potential cumulative effects been adequately assessed including traffic impacts, harm to landscape, residents' visual and other amenity, and the historic environment?

Question 51. Should more direction be given in the Development Guidelines (DG) on mitigating cumulative effects to an acceptable level?

- 2.1 We consider questions 50 and 51 together, because these both concern cumulative effects, and respond in relation to the historic environment.
- 2.2 The Strategic Environmental Directive defines cumulative effects as those which may be small in relation to one policy, may combine across a plan to produce an overall effect which is more significant. Synergistic effects are those where the combined effect of a number of policies is greater than the sum of individual effects.
- 2.3 The allocation of AS19, AS25 and AS26 would involve direct effects on below-ground archaeology; however, the combination of these effects would not increase the significance of the effect overall.
- 2.4 The primary basis for judging the effects of development in the setting of a heritage asset on its significance is visual – a point established in the recent Court of Appeal decision reproduced at Appendix 4. The Court held, in line with guidance, that historical relationships and associations between places may sometimes create a setting relationship. This kind of relationship will necessarily be very fact specific. Distance is also another relevant factor (see Historic England guidance, GPA3, at Appendix 9).
- 2.5 In relation to the setting effects on listed buildings, AS25 (Station Road) is located over 600m to the south-east of AS19 and is separated by dense woodland at Hurst Heath, so there is no visual connection between the proposed allocation sites. The closest listed buildings to AS19 and AS25 are located in Moreton, c. 770m to the south of

AS19, and separated by interposing development and dense woodland so there is no potential for a cumulative effect.

- 2.6 AS19 and AS26 are adjacent, separated by Woodsford Road. The closest listed buildings to AS19 and AS26 are two listed buildings in Pallington, to the north of A26, but there is no intervisibility with either allocation site, because of the screening effects of existing trees and vegetation. The representations prepared by Oxford Archaeological Associates Ltd on behalf of FRAME (the “OAA Representations”, MSPEXT-07) agree there will be no visual effect, see paragraph 4.4.6.
- 2.7 Any noise effects are capable of mitigation through bunds, noise limits, limits on hours of working and limits on working adjacent parts of AS19 and AS26 at the same time. There would be no harmful cumulative effects on these listed buildings.
- 2.8 OAA argue that both AS19 and AS26 would be visible from the upper windows of Clyffe House, which is grade II listed. OAA make an unsubstantiated claim that this is a designed view. Even if the quarry sites were visible in these private views, it would be at a considerable distance (AS19 is over 1.5km), and the effect could be mitigated by bunds and vegetation screening. The allocation of neither site would harm the appreciation of the significance of Clyffe House, nor would the cumulative effect. Furthermore, this is an effect **from** an asset not **of** an asset.
- 2.9 There is potential for a cumulative effect from AS19 and AS26 on “Sculpture by the Lakes” which OAA have identified as a non-designated heritage asset, however, we explain in response to Question 135 that if there are any significant effects they are capable of mitigation. Mitigation has already been discussed with the owner and implemented, as explained below in paragraph 2.23.
- 2.10 We note that the OAA Representations claim that AS19 would have a cumulative effect with the existing Woodsford quarry (paragraph 4.4.5). This is a confused proposition, because using EIA methodology the existing quarry is the baseline condition.
- 2.11 We conclude that the potential for significant cumulative effects on the historic environment as a result of the allocation of AS19, AS25 and AS26 is very limited and capable of mitigation. The Sustainability Appraisal (SA) and Site Assessments (SiA) for AS19, AS25 and AS26 provide an adequate discussion of the potential for cumulative effects on the historic environment, and the Development Guidelines provide sufficient direction on mitigating cumulative effects.

AS-19: Woodsford Quarry Extension, Woodsford

Question 133. Can the “Very significant adverse impacts” (Category A) identified in the Site Assessment on criteria C9–historic landscape, C11 – archaeology, and C13–surface waters be adequately mitigated?

- 2.12 We comment only on C9 (historic landscape) and C11 (archaeology).
- 2.13 The Site Assessment (SiA) identified that the impact on water meadow systems had potential for a range of impacts on the historic landscape and archaeology, ranging from no significant or negligible impact (D) to very significant adverse impact (A), and that a full assessment of potential impact on the water meadow system and appropriate mitigation could address this potential effect. The SiA therefore identifies potential for very significant adverse impacts, in the worst case scenario.
- 2.14 Additionally in relation to archaeology the Site Assessment identifies that impacts on below-ground archaeology, the setting of Frome Bridge and other historic features need to be assessed, but considers that this could be completed at the application stage. The setting of Frome Bridge should be considered under criterion C10, impact on historic buildings.
- 2.15 The MOLA report reproduced as Appendix 1 provides a more detailed assessment of the water meadows, see paragraphs 4.2.23, 5.3.6 and 7.1.2. MOLA conclude that the significance of water meadows on the site is generally medium, and could be high (for particularly well preserved remains), but that there is no evidence of remains of national significance, equivalent to designated heritage assets as per footnote 63 to paragraph 194 of the Revised NPPF. There would therefore not be any category A impacts. A planning application would be accompanied by an Environmental Statement (ES) which would provide a detailed assessment of the impact on the water meadows, with a proper investigation prior to extraction, which would acceptably mitigate the potential harm.
- 2.16 The MOLA report also identifies potential for evidence of pre-historic settlements (up to medium significance), Romano-British field systems (low significance) and quarrying (medium significance), early and later medieval field systems and quarry pits (low significance) and post medieval quarry pits (low significance), but conclude there is no evidence of remains of national significance.
- 2.17 Appendix 1 of the Minerals Strategy identifies that a very significant adverse archaeological impact (category A) would apply when a site contains a nationally important archaeological site, such as a Scheduled Monument, or seriously affects the setting of the Monument. MOLA do not consider there to be nationally important

remains in AS19 associated with the water meadows or other below-ground archaeology, so the concern about the category A impact has proved unfounded.

- 2.18 Similarly Appendix 1 of the Minerals Strategy identifies that a very significant adverse historic landscape impact (category A) would apply to a site that contains a Grade I Registered Park, of historic landscape of national importance. AS19 contains no landscape designations or Registered Parks, so the concern about the category A impact has proved unfounded. Water meadows are features of some age, and so contribute to the time depth of any landscape; they are not, however, heritage assets in their own right.
- 2.19 The MOLA report identifies a series of mitigation measures, including geophysical survey, targeted evaluation trenching to produce an appropriate mitigation strategy for preservation by record, which could comprise a watching brief, ‘strip, map and sample’ under a Written Scheme of Investigation. The archaeological effects could therefore be adequately mitigated.
- 2.20 The Development Guidelines (DG) identifies that after mineral working there is potential for restoration to grazing and/or large scale wetland restoration. This could include restoration of aspects of the historic water meadows. The DG anticipate the creation of green infrastructure links, and the use of the land for recreation and amenity that has potential to increase public appreciation of the historic landscape.

Question 134. Have all significant matters been properly taken into account in the Sustainability Appraisal (SA) and Site Assessment and, if not, what matters require further consideration?

- 2.21 Yes.

Question 135. Has the potential impact on “Sculpture by the Lakes”, been taken into account? I understand that this is a cultural heritage site, which is also a Nature Improvement Area, adjacent to the allocation, and is an important arts venue for the county that relies on tranquil surroundings.

- 2.22 “Sculpture by the Lakes” is located to the north-east of AS19 and north of AS26. The lakes were created in the 1970s, following mineral extraction, as fisheries and have recently (in 2007) been converted into a sculpture park by Simon Gudgeon as a place to display his work. The site is clearly not of historic interest but is a cultural destination and so comprises an amenity. It is, however, not freely accessible to the public; there is an entrance charge.

- 2.23 Woodsford Farms has already discussed mitigation with Mr Gudgeon of “Sculpture by the Lakes” and planning officers at Dorset County Council, including changing the boundary of the proposed allocation, so that it was moved south by c. 150-200m in the north-east (as now proposed) and the planting of trees as visual screening (see the plan at Appendix 7). The Forestry Commission introduced tree planting in two areas of land to the north-east of AS-19 under Woodland Grant and MOREwoods schemes, in liaison with the Environment Agency as part of enhancement works to the River Frome (see the plans at Appendices 5 and 6). Woodsford Farms increased the area of tree planting, to also provide additional visual screening of the quarry extension. The trees were planted in 2014 so this mitigation is already in place, as indicated by the birdseye photograph at Appendix 8.
- 2.24 The setting effect on the paying public’s ability to appreciate and enjoy this cultural attraction would be considered as part of a planning application and assessed through EIA procedures. Any potential effects are likely capable of full mitigation through buffer zones, bunds, screening with vegetation, dust suppression, control of working hours, noise limits and limits on simultaneous working of sites AS19 and AS26.

Question 136. The Historic Assessment (Context One) refers to numerous heritage assets within the vicinity. Does the Heritage Assessment adequately cover the potential impacts on the significance of all heritage assets?

- 2.25 The Heritage Assessment produced by Context One was commissioned by Dorset County Council to form part of the evidence base for the proposed allocation of AS19. We note that the report was produced in November 2017, so after the Oxford Archaeological Associates Ltd representations on behalf of FRAME (the “OAA Representations”, MSPEXT-07) of October 2015.
- 2.26 The Context One assessment applies the Historic England Advice Note 3 on ‘the Historic Environment and Site Allocations’. It identifies the heritage assets within a 500m study area and assesses the potential effect of the site allocation. The level of detail is appropriate for the allocation stage.
- 2.27 The OAA representations agree that because of the existing tree cover intervisibility between the listed buildings and AS19 is restricted (paragraph 4.4.4). OAA therefore rely on visual effects from upper windows, which are not relevant to the assessment of effects on non-designated heritage assets, and of only limited relevance when considering setting effects on listed buildings.
- 2.28 OAA also equate a visual impact with harm, as if the simple fact of being able to perceive one thing harms the ability to appreciate an asset. This is the wrong approach

as a matter of policy – as outlined in GPA 3 (see Appendix 7, paragraphs 14, 16, 19, checklists on pages 11 and 13).

- 2.29 Similarly recent case law is clear that visual effects do not necessarily result in harm to heritage assets. We refer the Inspector to the Williams decision, reproduced at Appendix 3, which clarified that the mere fact of seeing a listed building and proposed development at the same time does not necessarily mean it would affect its setting (paragraph 56), and that a proposed development may affect the setting of even a listed building and not harm it all provided that the ability to appreciate its significance is not undermined or weakened (paragraph 58). Of course, non-designated assets do not enjoy anything like the protection afforded a listed building through the provisions of section 66 (1) of the Planning (LBCA) Act 1990.
- 2.30 The Council has not identified the Lower Dairy Farm as a non-designated heritage asset and none of these building would be demolished as part of the allocation or subsequent planning application. Although the older buildings may date from the late C19, they are merely of ordinary quality, lacking architectural interest in any way special even in a local context. We agree that the Farm does not possess any heritage significance material to the site allocation. Were the Council to identify the Farm as a heritage asset, the setting effect could be assessed as part of the planning application, which would be supported by an ES. The level of harm to their setting be low, given it is of low significance and does not benefit from statutory protection.
- 2.31 A planning application for mineral extraction at AS19 would be supported by a detailed heritage assessment, which would consider the potential effect on the setting and appreciation of the significance of listed buildings and other heritage assets, amenity effects, such as noise and dust, and if there are significant effects would include ES chapters on cultural heritage, noise and dust. The application proposals would also include mitigation measures of the type described in paragraph 2.19 and 2.34 to reduce the potential harmful effects.
- 2.32 The MOLA report reproduced as Appendix 1 provides a more detailed assessment of below-ground archaeology, to supplement the Context One assessment. We refer the Inspector to paragraphs 2.15 to 2.20 of our Representations rather than duplicating the discussion here.
- 2.33 The heritage assessment in the draft Minerals Site Plan provides adequate assessment of the potential impacts on the significance of heritage assets in the vicinity.

Question 137. Should the DGs provide more direction on the mitigation measures required for the potential harm to these heritage assets and other category “A” impacts?

- 2.34 The Site Assessment for AS19 identifies negligible or no significant impacts on historic buildings; we agree with this assessment. Section 11 of the Sustainability Appraisal provides details of appropriate mitigation, including buffer zones, bunds, screening with planting, noise limits, control of working hours, etc. There is therefore no need for the Development Guidelines to provide more direction on mitigation measures.
- 2.35 We refer the Inspector to our response to question 133 on the mitigation of archaeological impacts.

Question 138. Should more direction on the mitigation measures required to conserve historic features such as ancient trees and hedgerows be set out in the DGs as suggested by Historic England?

- 2.36 In their consultation response to the Minerals Sites Plan Pre-Submission Draft of 31 January 2018, Historic England asked whether it would be possible for small plot phased extraction within AS19 to allow for the conservation of ancient trees and hedgerows. This letter does not appear to be included in the Examination Library so is included as Appendix 10.
- 2.37 Historic hedgerows are features of the historic landscape and those dating to the early C19 are recognised as being of interest in the 1997 Hedgerow Regulations; this does not, however, make them non-designated assets. The landscape is not formally designated in any way for its cultural interest (e.g., as a National Park or AONB).
- 2.38 The DGs state that existing hedgerows around the site will be maintained and enhanced, so the allocation only has potential to affect hedgerows within AS19.
- 2.39 Woodsford Farms would excavate AS19 in small plots, retaining existing drainage ditches and hedgerows. There would therefore be no harmful effect on ancient hedgerows or trees, which would be retained.

Question 146. Are there any other details that should be added to the DGs, including issues raised by statutory consultees and other representors?

- 2.40 No, although we would like to take this opportunity to comment on the OAA Representations on AS19, AS25 and AS26, as follows:
- The report is drafted by Dr Simon Colcutt who has no qualifications as a built heritage expert or as a town planner.

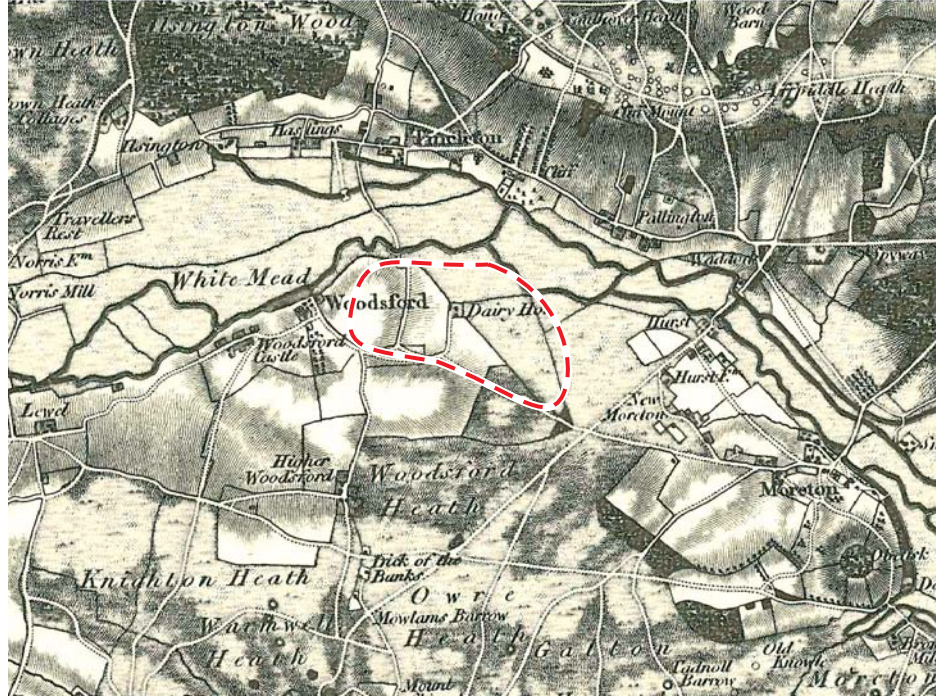
- The representations construct a fallacious argument that the allocation of these sites would establish a presumption in favour of consent notwithstanding the particular impacts of the proposals. See 2.3.19, 7.1, 7.3 and 8.1, first bullet point. The representation hints, on this basis, that confirming the allocation would somehow be subject to challenge in the Courts. This is contrary to the established principles of the development plan system, and paragraph 2.6 of the Pre-Submission Draft Plan specifically states that the allocations do not equate to the granting of planning permission. An allocation does not fetter the judgment of a planning decision maker considering the details of a specific application made on allocated land. The assertion is, thus, fallacious and misinformed.
- OAA provide no assessment of the significance of the heritage assets.
- OAA does not apply the Historic England GPA3 setting guidance.
- As noted, OAA also equate a visual effect to harm, which is not the correct approach (as confirmed, amongst places, in the Courts).

2.41 Accordingly, and in summary, we can see not basis for the objection to the allocation on heritage grounds, as alleged by OAA on behalf of the local objectors. MoLA forms a similar conclusion in respect of the archaeological part of the objection.

Word count: 2,792 (excluding text reproduced from MIQs)

Appendix 1

**MOLA, Woodsford Farm Estate Historic Environment
Assessment, June September 2018**



WOODSFORD FARM ESTATE

County of Dorset

Historic environment assessment

September 2018



**Woodsford Farm Estates
Crossways
Dorset**

Historic environment assessment

NGR 377578 090438

Sign-off history

issue no.	Issue date	Prepared by	Reviewed by	Project Manager	Notes
1	17/07/2018	Jonathan Hutchings (Archaeology) Tom Light (Graphics)	Rupert Featherby Lead Consultant Archaeology	Chris Thomas Director Heritage Consultancy	Issue to client
2	05/09/2018	Jonathan Hutchings Rupert Featherby (Archaeology) Tom Light (Graphics)	Rupert Featherby Lead Consultant Archaeology	Chris Thomas Director Heritage Consultancy	Site boundary revision, client comments

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Cover: Old Series Ordnance Survey 1": mile map (1811)

Fig 1 Site location

Fig 2 Historic environment features map

Fig 3 Geology map (BGS digital data)

Fig 4 Crop mark features in the site surveyed as part of the Wild Purbeck Mapping Programme

Fig 5 Old Series Ordnance Survey 1": mile map (1811)

Fig 6 Ordnance Survey First Edition 6": mile map 1886

Note: site outlines may appear differently on some figures owing to distortions in historic maps. North is approximate on early maps.

Executive summary

Woodsford Farm has commissioned MOLA to carry out a historic environment assessment in advance of proposed minerals extraction at Woodsford Farm, Dorset. This document is to provide an evidence base for a proposed site allocation for minerals extraction.

This desk-based study assesses the impact of the scheme on buried heritage assets (archaeological remains). Above ground heritage assets (historic structures) are not discussed in detail, but they have been noted where they assist in the archaeological interpretation of the site. No past investigations have been carried out within the site, but it is within the area of the Wild Purbeck Mapping Project, which has digitised crop mark features from aerial photograph analysis.

The site covers an area of 109.5ha of Greenfield. With the exception of the dairy farm, no development has taken place on the site and archaeological survival is expected to be generally high. Buried heritage assets that may be affected by the proposals comprise:

- **Prehistoric settlement evidence**, including hut circles, field systems, enclosures, and trackways as well as possible quarrying evidence identified through aerial photograph analysis. These would be of up to medium significance (with associated value for the field systems);
- **Romano-British field systems** overlay the previous prehistoric fields, indicating continuous activity, although the area of settlement has not been identified (low significance). The area was an important source of shale and Purbeck marble, evidence of quarrying industry for these resources would be of medium significance;
- **Early and later medieval field systems and quarry pits** associated with the settlement of East Woodsford, of low significance;
- **Post medieval water meadows and quarry pits** in the north and east of the site. Quarry pits would be of low significance. The significance of water meadows on the site would depend upon the preservation and date, but could be up to medium or high (for particularly well preserved remains).

The excavation of the site for minerals extraction would entirely remove any archaeological remains present and extend into natural gravels.

There is no evidence that there are remains of national significance on the site that would be deemed as equivalent to designated heritage assets as per paragraph 139 of the NPPF. Further, Paragraph 135 of the 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 affect directly or indirectly 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.

In addition paragraph 152 states that:

Significant adverse impacts...should be avoided and, wherever possible, alternative options which reduce or eliminate such impacts should be pursued. Where adverse impacts are unavoidable, measures to mitigate the impact should be considered.

As the proposal for minerals extraction would not impact upon remains of national significance, it is recommended that a programme of preservation by record would form the most appropriate mitigation. The exact nature of this would be the decision of the local authority's archaeological advisory body, but could take the form an initial evaluation comprised of geophysical survey to identify buried anomalies which would inform and focus potential targeted evaluation trenching. The results of the evaluation would allow an appropriate mitigation strategy to be drawn up for the preservation by record of any significant archaeological assets.

This might comprise a watching brief during ground works where the evaluation identified a low level of or no archaeological features or features of lesser significance, and a 'strip, map and sample' (also known as 'strip, map and record') within the areas where the evaluation identified a high level of archaeological features or features of high significance. Any such works would be carried out under an approved Written Scheme of Investigation (WSI))

1 Introduction

1.1 Origin and scope of the report

- 1.1.1 Woodsford Farms has commissioned MOLA (Museum of London Archaeology) to carry out a historic environment assessment in advance of proposed minerals extraction at Woodsford Farm, Dorset; National Grid Reference (NGR) 377578 390438: Fig 1. This document is to provide an evidence base for a proposal for minerals extraction site allocation.
- 1.1.2 This desk-based study assesses the impact of the scheme on buried heritage assets (archaeological remains). It forms an initial stage of investigation of the area of proposed development (hereafter referred to as 'the site') and may be required in relation to the planning process in order that the local planning authority (LPA) can formulate an appropriate response in the light of the impact on any known or possible heritage assets. These are parts of the historic environment which are considered to be significant because of their historic, evidential, aesthetic and/or communal interest.
- 1.1.3 This report deals solely with the archaeological implications of the development and does not cover possible built heritage issues, except where buried parts of historic fabric are likely to be affected. Above ground assets (i.e., designated and undesignated historic structures and conservation areas) on the site or in the vicinity that are relevant to the archaeological interpretation of the site are discussed. Whilst the significance of above ground assets is not assessed in this archaeological report, direct physical impacts upon such assets arising from the development proposals are noted. The report does not assess issues in relation to the setting of above ground assets (e.g., visible changes to historic character and views).
- 1.1.4 The assessment has been carried out in accordance with the requirements of the National Planning Policy Framework (NPPF) (DCLG 2012, 2014; see section 10 of this report) and to standards specified by the Chartered Institute for Archaeologists (CIfA Dec 2014a, 2014b), Historic England (EH 2008, HE 2015). Under the 'Copyright, Designs and Patents Act' 1988 MOLA retains the copyright to this document.
- 1.1.5 Note: within the limitations imposed by dealing with historical material and maps, the information in this document is, to the best knowledge of the author and MOLA, correct at the time of writing. Further archaeological investigation, more information about the nature of the present buildings, and/or more detailed proposals for redevelopment may require changes to all or parts of the document.

1.2 Designated heritage assets

- 1.2.1 Historic England's National Heritage List for England (NHL) is a register of all nationally designated (protected) historic buildings and sites in England, such as scheduled monuments, listed buildings and registered parks and gardens. The List does not include any nationally designated heritage assets within the site.
- 1.2.2 The nearest designated asset to the site is the Grade II listed Frome Bridge, 110m north of the site.
- 1.2.3 The site is not within an Area of Archaeological Importance or Potential as designated by the Local Planning Authority.

1.3 Aims and objectives

- 1.3.1 The aim of the assessment is to:
- identify the presence of any known or potential buried heritage assets that may be affected by the proposals;
 - describe the significance of such assets, as required by national planning policy (see section 9 for planning framework and section 10 for methodology used to determine significance);

- assess the likely impacts upon the significance of the assets arising from the proposals; and
- provide recommendations for further assessment where necessary of the historic assets affected, and/or mitigation aimed at reducing or removing completely any adverse impacts upon buried heritage assets and/or their setting.

2 Methodology and sources consulted

2.1 Sources

- 2.1.1 For the purposes of this report, documentary and cartographic sources including results from any archaeological investigations in the site and the area around it were examined in order to determine the likely nature, extent, preservation and significance of any buried heritage assets that may be present within the site or its immediate vicinity. This information has been used to determine the potential for previously unrecorded heritage assets of any specific chronological period to be present within the site.
- 2.1.2 In order to set the site into its full archaeological and historical context, information was collected on the known historic environment features within a 1km-radius study area around it, as held by the primary repositories of such information within Dorset. These comprise the Dorset Historic Environment Record (DHER). The DHER is managed by Historic England and includes information from past investigations, local knowledge, find spots, and documentary and cartographic sources. The study area was considered through professional judgement to be appropriate to characterise the historic environment of the site. Occasionally there may be reference to assets beyond this, where appropriate, e.g., where such assets are particularly significant and/or where they contribute to current understanding of the historic environment.
- 2.1.3 In addition, the following sources were consulted:
- MOLA – in-house Geographical Information System (GIS) with statutory designations GIS data, the locations of all ‘key indicators’ of known prehistoric and Roman activity across Greater London, past investigation locations, projected Roman roads; burial grounds from the Holmes burial ground survey of 1896; georeferenced published historic maps; Defence of Britain survey data, in-house archaeological deposit survival archive and archaeological publications;
 - Historic England – information on statutory designations including scheduled monuments and listed buildings, along with identified Heritage at Risk;
 - The London Society Library – published histories and journals;
 - Groundsure– historic Ordnance Survey maps from the first edition (1860–70s) to the present day;
 - British Geological Survey (BGS) – solid and drift geology digital map; online BGS geological borehole record data;
 - Historic England Archive, Swindon – vertical and specialist (oblique) air photographs;
 - Internet – web-published material including the LPA local plan, and information on conservation areas and locally listed buildings.
- 2.1.4 A site visit was not considered necessary. Aerial photographs were obtained for the site, showing cropmark features, which may not be wholly visible from ground level. Aerial photographs have not been reproduced owing to copyright, but features visible in them have been digitised as part of the Wild Purbeck Mapping Programme and incorporated into the Dorset HER.

2.2 Methodology

- 2.2.1 Fig 2 shows the location of known historic environment features within the study area. These have been allocated a unique historic environment assessment reference number (**HEA 1, 2, etc**), which is listed in a gazetteer at the back of this report and is referred to in the text. Where there are a considerable number of listed buildings in the study area, only those within the vicinity of the site (i.e. within 120m) are included, unless their inclusion is considered relevant to the study. Conservation areas and archaeological priority areas are not shown. All distances quoted in the text are approximate (within 5m). Given the size of the site, all distances are measured from the nearest site boundary to the nearest feature boundary.
- 2.2.2 Section 10 sets out the criteria used to determine the significance of heritage assets. This is

based on four values set out in Historic England's *Conservation principles, policies and guidance* (EH 2008), and comprise evidential, historical, aesthetic and communal value. The report assesses the likely presence of such assets within (and beyond) the site, factors which may have compromised buried asset survival (i.e. present and previous land use), as well as possible significance.

- 2.2.3 Section 11 includes non-archaeological constraints. Section 12 contains a glossary of technical terms. A full bibliography and list of sources consulted may be found in section 13 with a list of existing site survey data obtained as part of the assessment.

3 The site: topography and geology

3.1 Site location

- 3.1.1 The site comprises two areas of field at Woodsford Lower Dairy (NGR 377578 90438: Fig 1). The total site area is 109.5 ha. The western (17.4 ha) and eastern (92.1 ha) areas of the site are divided by Watery Lane, and it is bound to the south by an unnamed road (noted on Google Earth as 'National Cycle Route 2') which connects Woodsford to the west with Moreton to the east. It is bounded to the west, north, and east by fields, with the south-east edge bounded by Hurst Heath. The site falls within the historic parish of Woodsford, within the county of Dorset.
- 3.1.2 The River Frome passes approximately 110m–160m north of the site (owing to the irregular shape of the site and river course). The river rises at Evershot, 23km to the north-west of the site, and its mouth is at Poole Harbour as part of the Wareham Channel, 16km to the south-east of the site.

3.2 Topography

- 3.2.1 Topography can provide an indication of suitability for settlement, and ground levels can indicate whether the ground has been built up or truncated, which can have implications for archaeological survival (see section 5.2).
- 3.2.2 At the time of writing, no topographic data was available. The landscape gently undulates but also gently slopes from south to north into the valley of the River Frome. Spot heights on historic mapping show the ground level varies between 42.4m Ordnance Datum (OD) in the west of the site and 37.8m OD in the east of the site. The Ordnance Survey Terrain 50, 10m contour data and historic mapping show ground level at 34.7m OD 175m north of the site and at 30m OD in the north-east corner of the site.

3.3 Geology

- 3.3.1 Geology can provide an indication of suitability for early settlement, and potential depth of remains.
- 3.3.2 The British Geological Survey (BGS) 1:50,000 scale digital data indicates the subsurface geology chiefly comprises River Terrace Deposits, 4: a sand and gravel deposit laid in the Late Quarternary Period. The site is crossed from north-west to south-east by an area of Poole Formation sands, with no superficial deposits, which may indicate a former course of the River Frome, which now passes to the north of the site. Localised Head deposits (mixed upland gravels and sands pulled down by gravity) are also present. Fig 3 shows the geology of the site.
- 3.3.3 There is no readily available geotechnical data for the site. Given the lack of development on the site, it is expected that natural deposits lie immediately beneath the topsoil; a past investigation, 420m south-west of the site (**HEA 2**) identified archaeological remains cut into natural gravels at a depth of 0.4m below ground level.

4 Archaeological and historical background

4.1 Overview of past investigations

- 4.1.1 No past archaeological investigations have been carried out within the site, and only two are recorded in the study area; an archaeological evaluation and excavation 420m to the south-west of the site (**HEA 2**) and an archaeological watching brief monitoring the works to the church of St John the Baptist, Woodford, 465m to the west of the site (**HEA 3**). The excavation, in response to an earlier evaluation revealed a range of late Roman landscape features. Furthermore, at the time of writing TVAS (Thames Valley Archaeological Service) were still undertaking further archaeological monitoring of quarrying works to the south of the site which has yet to be incorporated into the HER (C Pinder *pers comm* 01/06/2018). The site and surrounding area was incorporated into the Wild Purbeck Mapping Project, by Cornwall Archaeological Unit as part of the National Mapping Project in 2016 (**HEA 1a-1k, 4–25, 28**). The project digitised landscape features from historic aerial photographs, and provides extensive information on the background archaeological characteristic of the site and surrounding area.
- 4.1.2 The results of these investigations, along with other known sites and finds within the study area, are discussed by period, below. The date ranges given are approximate.

4.2 Chronological summary

Prehistoric period (800,000 BC–AD 43)

- 4.2.1 The Lower (800,000–250,000 BC) and Middle (250,000–40,000 BC) Palaeolithic saw alternating warm and cold phases and intermittent perhaps seasonal occupation. During the Upper Palaeolithic (40,000–10,000 BC), after the last glacial maximum, and in particular after around 13,000 BC, further climate warming took place and the environment changed from steppe-tundra to birch and pine woodland. It is probably at this time that Britain first saw continuous occupation. Erosion has removed much of the Palaeolithic land surfaces and finds are typically residual. There are no known finds dated to this period within the study area, although a hoard of 57 Palaeolithic axes was recovered from Red Bridge Pits, c 1.6km south-east of the site (outside the study area).
- 4.2.2 The Mesolithic hunter-gatherer communities of the postglacial period (10,000–4000 BC) inhabited a still largely wooded environment. The river valleys and coast would have been favoured in providing a dependable source of food (from hunting and fishing) and water, as well as a means of transport and communication. Evidence of activity is characterised by flint tools rather than structural remains. There are no known finds dated to this period within the study area.
- 4.2.3 The Neolithic (4000–2000 BC) is usually seen as the time when hunter gathering gave way to farming and settled communities, and forest clearance occurred for the cultivation of crops and the construction of communal monuments. Pollen records indicate forest clearance over large areas of the British Isles during this period. Evidence for Neolithic activity is confined to a barrow at Corfe Castle, 20km south-east of the site.
- 4.2.4 The Bronze Age (2000–600 BC) is characterised by technological change, when copper and then bronze eventually replaced flint and stone as the main material for everyday tools. It is seen as a period of increasing social complexity and organised landscapes, probably due to increasing pressure on available resources. Within Dorset the Bronze Age is well represented by the numerous burial mounds in the county, as evidenced in Cranborne Chase, in the Dorset Downs, 28km to the north-west of the site. There is possibly a barrow within the north of the site (**HEA 1g**), measuring 19m in diameter identified through aerial photography analysis. A smaller possible barrow is located 170m south of the site (**HEA 29**), although this appears to have been largely damaged by ploughing. Two bowl barrows are noted on the DHER 555m south of the site (**HEA 26**) and 600m south of the site (**HEA 27**).
- 4.2.5 During the Iron Age (600 BC–AD 43), the climate deteriorated with colder weather and more

rainfall. The period is characterised by expanding population, which necessitated the intensification of agricultural practices and the utilisation of marginal land. Hillforts were established in lowland Britain, linked to tribal land ownership. Iron Age activity in the county is generally represented by the hillforts at Woodbury Hill, 8.6km north-east of the site, Bulbury Camp, 15.2km north-east of the site, and Woodsbarrow, 9.8km north-east of the site.

- 4.2.6 The results of the Wild Purbeck Mapping Project appear to show extensive prehistoric or Roman occupation within the site (Fig 2; Fig 4). A series of enclosures, trackways and field boundaries were identified in western area of the site (**HEA 1a**), along with an area of hut circles in the centre (**HEA 1c**). In the eastern area of the site, a series of field systems and trackways were noted (**HEA 1b**). Further east in the site, quarrying pits, tentatively dated to this period and later were also recorded (**HEA 1d, 1e**). A possible prehistoric trackway is recorded in the east of the site (**HEA 1f**). Immediately outside the site, to the south-west and north-west, a further settlement area was identified (**HEA 13**). It is likely that this is a continuation of the area within the site.
- 4.2.7 The excavation at Woodsford Farm, Field 3, 420m south-west of the site (**HEA 2**), identified cut ditches and gullies representing enclosures and field systems, including one enclosure covering an area of seven hectares. Adjacent to this area of excavation, further field boundaries and trackways were plotted as part of the Mapping Project (**HEA 14**). Smaller areas denoting field boundaries are recorded 900m south-west of the site (**HEA 21**), and 665m south of the site (**HEA 22**). A sub-square enclosure, measuring 37m x 37m approximately, was identified from aerial photographs 895m south of the site (**HEA 38**), no surviving earthworks were found, and no internal features could be discerned.
- 4.2.8 Whilst the majority of prehistoric activity appears to be confined to the south of the River Frome in the study area, an area of field systems was recorded by the Mapping Project, 770m north-west of the site (**HEA 9**), possibly indicating an area of further settlement.
- 4.2.9 The nature of the aerial photography makes it difficult to date these features. Dating from aerial photography is based on the morphologies of the cropmarks observed. As a result, only identifiably datable features can be assigned to a period. It appears likely, however, that prehistoric activity in this area dates from at least the Bronze Age (based on the presence of barrows) to the Iron Age (based on the identification of later, Romano-British material), and may indicate a degree of continued occupation.

Roman period (AD 43–410)

- 4.2.10 The site is 2.8km south of the principal Roman road connecting *Durnovaria* (Dorchester) to Old Sarum in Wiltshire. The town of *Durnovaria*, 7.2km west of the site, was established around AD70 following the defeat of the local *Durotriges* tribe by the Roman army (Trevarthen and Barnett, 2008). It was initially as a military settlement, but the town later became an important market centre, particularly for Purbeck marble, shale, and black-burnished ware potteries (Allen *et al* 2017, 198).
- 4.2.11 It is possible that during this period, settlement in the specific areas noted above in 4.2.6 and 4.2.7 was continued (**HEA 1a, 1b, 1f, 13, 14, 38**), or started, as it is difficult to discern the date of the identified features without intrusive investigation. The site was likely part of a wide agricultural landscape that extended throughout study area. The archaeological excavation at Woodsford Farm, Field 3, 420m south-west of the site (**HEA 2**), found that a reorganisation of the field systems in this area occurred in the late-Roman period, suggesting continuation of use, or a period of re-use.
- 4.2.12 Within the site, some of the extraction pits identified as part of the Wild Purbeck Mapping Programme have been tentatively dated from the prehistoric to medieval periods (**HEA 1d, 1e**). It is possible that these are indicative of Roman quarrying in the area, particularly for shale and Purbeck marble deposits which formed the base of the regional economy, although in the wider area, these have been dated to the later medieval and post-medieval periods. As with other features identified by the Wild Purbeck Mapping Programme, it is difficult to accurately ascribe a date to these features. Chance finds of two spindle whorls and a flint tool were found in the area of the medieval settlement of Woodsford, 725m west of the site (**HEA 37**).
- 4.2.13 Whilst in the prehistoric period, hut circles indicated occupation on the site (**HEA 1c**), it appears likely, based on the absence of morphologically identifiable features, that during the Roman period, the focus of settlement moved outside the site. The site would have been used

predominantly for agricultural purposes, and possibly for quarrying.

Early medieval (Saxon) period (AD 410–1066)

- 4.2.14 Following the withdrawal of the Roman army from England in the early 5th century AD, Germanic ('Saxon') settlers arrived from mainland Europe, with occupation in the form of small villages and an economy initially based on agriculture. By the end of the 6th century a number of Anglo-Saxon kingdoms had emerged, and as the ruling families adopted Christianity, endowments of land were made to the church. Landed estates (manors) can be identified from the 7th century onwards; some, as Christianity was widely adopted, with a main 'minster' church and other subsidiary churches or chapels. In the 9th and 10th centuries, the Saxon Minster system began to be replaced by local parochial organisation, with formal areas of land centred on settlements served by a parish church.
- 4.2.15 The *Domesday* survey records the manor of Woodsford as "*Waredesford*", which could denote a river crossing belonging to a certain Wared or 'the beacon river crossing' (kepn.nottingham.ac.uk/map/place/Dorset/Woodsford accessed 06/06/2018). The manor totalled at five hides (a unit of measurement denoting the amount of land required to sustain a household), which was divided equally at the time of Edward between the church, and a certain Leofgar (Williams and Martin, 1992, *Domesday* 205, 229). These two holdings are likely represented by the present East Woodsford, 435m west of the site, and West Woodsford (now Woodsford Castle), 970m south-west of the site (RCHME *Dorset vol 2*, 397–402). Although the division in land ownership is not noted in the *Domesday*, it seems reasonable to suggest the site was within that part owned by the Church, owing to the Parish church being located 470m west of the site. The manor house of Woodsford Castle for West Woodsford is 900m south-west of the site.
- 4.2.16 There is no identifiable evidence for early medieval settlement in the study area owing to the relatively small number of investigations. What evidence is available is from documentary sources only, although features identified in the Wild Purbeck Mapping Programme may date to this period, but are morphologically similar to Roman features. During this time the site was likely still in agricultural fields associated with East Woodsford. It is possible that field boundaries were continued from the Roman period, or maintained in later periods, obscuring evidence of early medieval activity.

Later medieval period (AD 1066–1485)

- 4.2.17 At the time of the *Domesday* survey (1086) the site was within the manor of Woodsford, likely the portion that was maintained by the church, and was worth 30 shillings. The western manor was originally worth 100 shillings, but this had depreciated to only 60 shillings at the time of the survey. The closest settlement to the site would have been East Woodsford, 470m west of the site, centred on the church there. The remains of the manor house are 280m west of the site.
- 4.2.18 The study area appears to have been well settled during this period. The settlement of West Woodsford was located 720m south-west of the site (**HEA 36**), and the Wild Purbeck Mapping Project identified a possible hollow way and field system, probably associated with the settlement (**HEA 12**), 80m east of the manor house and 260m east of the village. Other settlements from this period are recorded in the study area are Pallington, 540m north-east of the site (**HEA 11**), Tincton, 720m north of the site (**HEA 33**) and Clyffe, 720m north of the site (**HEA 34**). These survive as deserted or shrunken settlements, indicating that the populations had migrated or succumb to plague, illness or famine at some point or that the village was relocated for economic reasons (Beresford and Hurst 1971; Astill and Grant 1992).
- 4.2.19 The surrounding landscape was primarily agricultural at the time, and evidence of ridge and furrow field systems 485m south-east of the site have been identified from aerial photographs (**HEA 28**). It is likely that other field systems identified (such as **HEA 12**) were also ridge and furrow, but subsequent ploughing has eroded this. It appears that the site was in part quarried during this period, as the extraction pits identified within the site from aerial photographs have been tentatively dated to this period (**HEA 1d, 1e, 1h, 1k**), a further area of extraction pits identified 600m south-east of the site at Moreton (**HEA 20**) also has been tentatively dated to this period.
- 4.2.20 The site would have been primarily in open, likely agricultural field during this period, in proximity to the manor house and settlement of East Woodsford, although at some point areas

appear to have been exploited for minerals.

Post-medieval period (AD 1485–present)

- 4.2.21 The earliest maps of Dorset are county-wide and do not show the site in its context well. The Ordnance Survey 1":mile map of 1811 (Fig 5) is the first to show the site and its surroundings in any detail. The site was still open field at this time, bisected by the existing north/south road to Tincton. Along the southern edge of the site, the existing dairy farm is shown as "Dairy Ho[use]". The settlements of Woodsford East and Woodsford Castle (Woodsford West) are shown much in their present configuration.
- 4.2.22 The Ordnance Survey 6":mile map of 1886–7 (Fig 6) shows the site in greater detail. The site is crossed from the north to the south-east by a stream, possibly a minor channel, connected to the River Frome, which may be the cause of Poole Formation sands crossing the site with no superficial deposits (see Section 3.3). The dairy building identified on Fig 5 is clearly shown as a complex of two long north-east/south-west aligned buildings adjoining the farmhouse to the south-west. Several old gravel pits are noted which may relate to the earlier medieval or earlier quarrying identified in the Wild Purbeck Mapping Project (**HEA 1d, 1e, 1h, 1k**) and discussed above, although it is possible that these quarry pits are specific to this period.
- 4.2.23 In the east of the site, a series of sluices are noted. These appear in the areas of water meadow identified in the Wild Purbeck Mapping Project (**HEA 1i, 1j**). The water meadows on the site and in the surrounding area are likely to have been in place from at least the 16th century onwards in the form of Bedworks, much like the example found 3.5km north-east at Afpuddle, where manorial court books reference describes ditches and channels (English Heritage, 2013, 2). Although it appears their heyday was in the 18th and 19th centuries as an agricultural "improvement" (*ibid*). Bedworks were used to irrigate level ground of river floodplains, and have a weir or damn containing sluices placed across the river (*ibid*, 4). The map shows two weirs 135m and 180m north of the site, and 'Stuart's Weir', 390m west of the site. The Bedworks systems can resemble areas of ridge and furrow ploughing, but for their riverine location (*ibid*).
- 4.2.24 Subsequent historic mapping shows no substantial change to the site. Some additional field boundaries are noted in the OS 1:10,000 scale map of 1963 (not reproduced). The site remains open field today.

5 Statement of significance

5.1 Introduction

- 5.1.1 The following section discusses historic impacts on the site which may have compromised archaeological survival from earlier periods, identified primarily from historic maps, and information on the likely depth of deposits.
- 5.1.2 In accordance with the NPPF, this is followed by a statement on the likely potential and significance of buried heritage assets within the site, derived from current understanding of the baseline conditions, past impacts, and professional judgement.

5.2 Factors affecting archaeological survival

Natural geology

- 5.2.1 There is no topographic survey data for the site. Based on historic OS mapping, and the Ordnance Survey Terrain 50, 10m contour data, ground levels on the site are:
- 42.4m – 30m OD sloping down from west to north-east
- 5.2.2 There is no geotechnical data for the site. Based on the information from archaeological investigations in the vicinity (**HEA 2**, 420m south-west of the site), the predicted level of natural geology within the site is as follows:
- The top of untruncated Gravel is likely to be directly below topsoil, 0.4m below ground level.

Past impacts

- 5.2.3 Archaeological survival on the site is expected to be generally high. Past impacts to archaeological remains may have arisen from subsequent ploughing, which will have eroded remains to between 0.2m and 1.0m below ground level.
- 5.2.4 The 'Enhancement' scheme, comprising woodland planting and water management with some further ditches, undertaken in the 2014/15 in the area abutting the eastern half of the northern boundary although not impacting the site directly may have some impact on water levels which may have resulted in some changes to any relic water meadow features directly adjacent, if present.

Likely depth/thickness of archaeological remains

- 5.2.5 Owing to the lack of development on the site, archaeological remains are expected to be immediately beneath topsoil deposits. Based on the excavation, 420m south-west of the site (**HEA 2**), this would be at 0.4m below ground level and extend to an unknown depth.

5.3 Archaeological potential and significance

- 5.3.1 The nature of possible archaeological survival in the area of the proposed development is summarised here, taking into account the levels of natural geology and the level and nature of later disturbance and truncation discussed above.
- 5.3.2 *The site has a high potential for prehistoric remains.* The results of the Wild Purbeck Mapping Project show that the site and surrounding area are located within an extensive potentially prehistoric landscape. The western extent of the site a settlement area containing hut circles, enclosures, track-ways and field systems has been recorded and tentatively dated on their morphology from aerial photographs (but without confirmation by excavation) to this period. In the south of the site, a possible barrow is noted from aerial photographs. Owing to the high concentration of Bronze Age activity in the county, and the proximity to the barrow (along with others in the study area), it is possible that the settlement dates at least to the Bronze Age or Iron Age periods (owing to the possible presence of Romano-British activity). A past archaeological investigation 420m south-west of the site (**HEA 2**) uncovered prehistoric and

Romano-British field systems, which showed changes in alignment, suggesting a protracted period of use. Remains of prehistoric settlement may be of up to **Medium** significance based on their evidential value for particularly extensive or well-preserved remains. The remains of field systems, enclosures, and trackways would be of **Low** significance, however based on their associated value, they may be of up to **Medium** significance.

- 5.3.3 *The site has a moderate potential for Roman remains.* The site is 2.8km south of the principal Roman road connecting Dorchester and Old Sarum. The archaeological excavation 420m south-west of the site (**HEA 2**) noted a shift in field alignment in the Roman period, suggesting that a degree of settlement in the study area was ongoing, and it is likely that some of the field systems identified from aerial photographs may be Romano-British in date. Remains of field systems would be of **low** significance based on their evidential value. The area was an important source of shale and Purbeck marble, and the results of the Wild Purbeck Mapping Project have identified several quarry pits in the site and surrounding area. It is possible that these date to the Roman (or later) periods. Remains of Purbeck marble and shale industries would be of **medium** significance based on their evidential value.
- 5.3.4 *The site has a moderate potential for early medieval remains.* The site was within the manor of East Woodsford, centred 420m to the west, as suggested by the later Domesday Survey, within open, agricultural field. Although no remains dating specifically to this period have been identified in the study area, it is likely that due to the similarities in the morphologies of field systems and other cropmarks/earthworks from this and earlier periods, some identified from aerial photographs may date to this period. Agricultural remains would be of **low** significance, whereas settlement evidence may be of **medium** significance, based on their evidential values.
- 5.3.5 *The site has a high potential for later medieval remains.* The *Domesday Survey* (1086) places the site within the manor of East Woodsford, focused 420m west of the site. It appears that during this period, the settlement of West Woodsford (**HEA 12**) was deserted, possibly through plague or general migration, and now only survives as earthworks in the landscape. The Wild Purbeck Mapping Project identified possible hollow ways and trackways in the study area around the site, and it is possible that other similar features within the site may also date to this period. A number of quarry pits in the site may also date to this period, perhaps indicating a renewal in shale and Purbeck marble extraction. Agricultural and quarrying features dating to this period would be of **low** significance.
- 5.3.6 *The site has a high potential for post-medieval remains.* The site appears to have remained largely unchanged throughout the post-medieval period, and the dairy farm in the south of the site was present from at least the early 19th century. The north-east of the site was occupied predominantly by water meadows similar in morphology to those at Affpuddle, possibly from at least the 16th century onwards. Further to this, areas of the site may have been used for quarrying. The significance of water meadows is not fully understood in the historic environment record (English Heritage 2013, 8), but may be of up to **medium** significance, although particularly well preserved examples could be of up to **high** significance. Quarry pits would be of **low** significance.

6 Impact of proposals

6.1 Proposals

- 6.1.1 The proposal is to allocate the site for aggregates extraction. It is assumed that this would entail the removal of all natural gravels on the site to the underlying bedrock.

6.2 Implications

- 6.2.1 The identification of physical impacts on buried heritage assets within a site takes into account any activity which would entail ground disturbance, for example site set up works, remediation, landscaping and the construction of new basements and foundations. As it is assumed that the operational (completed development) phase would not entail any ground disturbance there would be no additional archaeological impact and this is not considered further.
- 6.2.2 It is outside the scope of this archaeological report to consider the impact of the proposed development on upstanding structures of historic interest, in the form of physical impacts which would remove, alter, or otherwise change the building fabric, or predicted changes to the historic character and setting of historic buildings and structures within the site or outside it.

Aggregates extraction

- 6.2.3 The removal of the natural gravel terrace on the site down to bedrock would entirely remove any archaeological remains present.

7 Conclusion and recommendations

- 7.1.1 The site is a series of open fields belonging to Woodsford Dairy, totalling 109.5 ha. It does not contain any statutorily designated assets such as scheduled monuments or listed buildings. Owing to the general lack of past development, archaeological survival is expected to be high across the site, although past ploughing may have eroded remains.
- 7.1.2 The Wild Purbeck Mapping Project identified areas of possible prehistoric settlement, comprising huts, track ways, field systems and extraction pits within the site and the surrounding area. A nearby archaeological investigation recorded remains of Romano-British field systems, along with the prehistoric ones suggesting a continuation of settlement in the area, possibly also as a source of shale and Purbeck marble for the market at Dorchester. There is no substantive evidence for early medieval activity in the area, although the site was within the manor of East Woodsford at the time, in open field near the manor house and settlement, and it is possible some field systems date to this period. Settlement at East Woodsford continued into the later medieval period, and it is possible that cut features in the form of crop marks observed through aerial photographs date to this period. From the 16th century at least onwards, the north-east of the site was occupied by water meadows, and it is possible that quarry pits observed in aerial photographs were from this period, no development is shown on historic mapping.
- 7.1.3 There is no evidence that any of the features identified from aerial photographic surveys are of national significance, equivalent to designated heritage assets.
- 7.1.4 The excavation of the natural gravel on the site for use as an aggregate would entirely remove any archaeological remains cut into natural gravels, and extend to the bedrock.
- 7.1.5 Table 1 summarises the known or likely buried assets within the site, their significance, and the impact of the proposed scheme on asset significance.

Table 1: Impact upon heritage assets (prior to mitigation)

Asset	Asset Significance	Impact of proposed scheme
Prehistoric settlement evidence and associated field systems (High potential)	Low or Medium (depending upon extent and preservation)	Excavation of gravels to bedrock on the site would entirely remove any archaeological remains present. Significance reduced to nil .
Evidence of Romano-British shale and Purbeck marble industry (moderate potential)	Medium	
Romano-British field systems (Moderate potential)	Low	
Early medieval field systems (Moderate potential)	Low	
Later medieval field systems and quarry pits (High potential)	Low	
Post-medieval water meadows (High potential)	Medium (or High for early or well preserved examples)	
Post-medieval quarry pits (High potential)	Low	

- 7.1.6 As the proposal for minerals extraction would not impact upon remains of national significance, it is recommended that a programme of preservation by record would form the most appropriate mitigation. The exact nature of this would be the decision of the local authority's

archaeological advisory body, but could take the form an initial evaluation comprised of geophysical survey to identify buried anomalies which would inform and focus potential targeted evaluation trenching. The results of the evaluation would allow an appropriate mitigation strategy to be drawn up for the preservation by record of any significant archaeological assets.

- 7.1.7 This might comprise a watching brief during ground works where the evaluation identified a low level of or no archaeological features or features of lesser significance, and a 'strip, map and sample' (also known as 'strip, map and record') within the areas where the evaluation identified a high level of archaeological features or features of high significance. Any such works would be carried out under an approved Written Scheme of Investigation (WSI)

8 Gazetteer of known historic environment assets

- 8.1.1 The gazetteer lists known historic environment sites and finds within the 1km-radius study area around the site. The gazetteer should be read in conjunction with Fig 2.
- 8.1.2 The Dorset HER data contained within this gazetteer was obtained on 01/06/2018 and is the copyright of Historic England 2018.
- 8.1.3 Historic England statutory designations data © Historic England 2018. Contains Ordnance Survey data © Crown copyright and database right 2018. The Historic England GIS Data contained in this material was obtained in March 2018. The most publicly available up to date Historic England GIS Data can be obtained from <http://www.historicengland.org.uk>.

Abbreviations

EDO

DHER – Dorset Historic Environment Record

MDO?

NHL – National Heritage List for England (Historic England)

TA – Terrain Archaeology

TVAS – Thames Valley Archaeological Services

HEA No.	Description	Site code/ HER/NHL No.
1a	Later Prehistoric to Roman settlement, Woodsford Enclosures, trackways and field boundaries, possibly forming a settlement and field system of later prehistoric to Roman date, are visible as cropmarks on aerial photographs dating to between 1989 and 2004 to the east of East Woodsford and to the west of Watery Lane. Features digitally plotted as part of the Wild Purbeck Mapping Project (see Fig 2b).	MDO30667
1b	Later prehistoric to Roman field system and trackways, Woodsford Trackways, field boundaries and pits, possibly associated with a nearby settlement of later prehistoric to Roman date (see MDO30667), are visible as cropmarks on aerial photographs dating to between 1989 and 2004 to the east of East Woodsford and to the east of Watery Lane. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30668
1c	Later Prehistoric hut circle A possible Bronze Age or Iron Age hut circle is visible as a cropmark on aerial photographs of 2004 to the east of East Woodsford. It may be associated with an area of settlement located to the north (see MDO30667), or may predate it. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30670
1d	Later Prehistoric to medieval extractive pits An area of numerous small extractive pits, which may date to between the later prehistoric to medieval periods, are visible as cropmarks on aerial photographs of 2004 to the east of Woodsford Lower Dairy. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30671
1e	Later Prehistoric to medieval extractive pits An area of numerous small extractive pits, which may date to between the later prehistoric to medieval periods, are visible as cropmarks on aerial photographs of 2004 to the north east of Woodsford Lower Dairy. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30672
1f	Later prehistoric to medieval trackway A trackway which may date to between the later prehistoric to medieval periods, is visible as a cropmark on aerial photographs of 2004 to the north east of Woodsford Lower Dairy. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30673

HEA No.	Description	Site code/ HER/NHL No.
1g	<p>Possible Bronze Age round barrow, Woodsford A possible Bronze Age round barrow is visible as a cropmark on aerial photographs of 2004 to the north east of Woodsford Lower Dairy. The possible barrow is formed of a ring ditch measuring 19 m in diameter. This feature was digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30675
1h	<p>Medieval or Post-medieval extractive pit, Woodsford A possible medieval or post medieval extractive pit is visible as a cropmark on aerial photographs of 2004 to the north east of Woodsford Lower Dairy. This feature was digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30676
1i	<p>Post medieval water meadows An extensive system of post medieval water meadows is visible as earthworks on aerial photographs of the 1940s to the north of Woodsford and south of Ilsington. Features digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30457
1j	<p>Post medieval water meadows A system of post medieval water meadows is visible as earthworks on aerial photographs of the 1940s and as cropmarks on aerial photographs of 2004 to the east of Woodsford. Features digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30458
1k	<p>Medieval or post medieval extractive pits Two medieval or post medieval extractive pits are visible as cropmarks on aerial photographs of 2004 to the south east of Woodsford Lower Dairy. Features digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30634
1l	<p>Pillbox, Woodsford A 'one-off' design round pillbox hidden in undergrowth but adjacent to country lane</p>	MDO23812
2	<p>Woodsford Farm, Field 3 <i>Excavation. TVAS, 2010</i> A previous evaluation revealed extensive areas of occupation and landscape features, and highlighted eleven areas of higher archaeological potential thought to represent deposits of early prehistoric to Roman date. Work in Field 3 comprised supervision of stripping of topsoil and subsoil by machine using a ditching bucket, to reveal archaeological deposits at a typical depth of 0.4m. There was a high density of archaeological deposits, predominantly ditches and gullies of later Roman date representing enclosures and fields subject over time to redefinition, enlargement and reorganisation to different alignments. A series of enclosures were later connected by ditches and gullies to create drove ways and enclose more land parcels. A notable feature of this system was a large enclosure enclosing 7344 sq m, later subdivided. Another field system on a slightly different alignment was composed of large fields around a long central ditch; this appeared to be later than the majority of the enclosures.</p>	EDO5986
3	<p>Church of St John the Baptist, Woodsford <i>Watching Brief. TA, 2016</i> TA undertook archaeological observations and recording during the removal of an unsafe stretch of the churchyard wall of St John the Baptist Church, Woodsford and the erection of a temporary fence. The wall was nineteenth century in date and probably relates to the rebuilding of the church in 1862–3. No archaeologically significant features or deposits were found.</p>	EDO6144
4	<p>Post medieval water meadows, Woodsford An extensive system of post medieval water meadows is visible as earthworks on aerial photographs of the 1940s to the north of Woodsford and south of Ilsington. Features digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30455
5	<p>Post medieval extractive pits, Clyffe Copse, Tincleton Five post medieval extractive pits are visible as earthworks and cropmarks on lidar imagery of 2010 and aerial photographs of 2005 to the south of Clyffe Copse. Features digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30630
6	<p>Post medieval extractive pits, Pallington Coppice, Affpuddle Three post medieval extractive pits are visible as earthworks on lidar imagery of 2010 to the west of Pallington Coppice. Features digitally plotted as part of the Wild Purbeck Mapping Project</p>	MDO30631

HEA No.	Description	Site code/ HER/NHL No.
7	Post medieval field boundaries, Tincton Possible post medieval field boundaries are visible as earthworks on lidar imagery of 2010 to the north of Tincton and to the south of Clyfee Copse. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30654
8	Possible post-medieval field boundaries, Tincton A right-angled field boundary of possible medieval or post medieval date is visible as an earthwork on lidar imagery of 2010 to the east of Tincton. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30655
9	Later prehistoric field boundaries, Tincton An area of field boundaries of possible later prehistoric date are visible as low earthworks on aerial photographs of 1947 and partially survive as earthworks on lidar imagery of 2010 to the north of Eweleaze Farm, Tincton. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30657
10	Post medieval extractive pit, Tincton A post medieval extractive pit is visible as an earthwork on lidar imagery of 2010 to the north east of Eweleaze Farm, Tincton. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30659
11	Medieval or Post-medieval shrunken village earthworks, Pallington, Affpuddle Medieval or post medieval shrunken village earthworks are visible on aerial photographs of 1947 adjacent to Pallington Farm, Pallington. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30660
12	Medieval field system and hollow way, Woodsford Strangways, Woodsford Strip field boundaries and a hollow way, possibly associated with the deserted medieval settlement of Woodford Strangways are visible on aerial photographs of the 1940s to the south and east of the site of Woodsford Castle, West Woodsford. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30666
13	Later prehistoric to Roman settlement, Woodsford Enclosures, trackways and field boundaries, possibly forming a settlement and field system of later prehistoric to Roman date, are visible as cropmarks on aerial photographs dating to between 1989 and 2004 to the east of East Woodsford and to the west of Watery Lane. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30667
14	Later prehistoric to Roman trackways and field boundaries, Woodsford Trackways, field boundaries and pits, possibly associated with a nearby settlement of later prehistoric to Roman date (see MDO30667), are visible as cropmarks on aerial photographs of 2004 to the south of East Woodsford. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30669
15	Post medieval field boundary or wood bank, Pallington Heath, Affpuddle A possible post medieval field boundary or wood bank is visible as an earthwork on aerial photographs of 1947 to the east of Pallington Coppice. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30677
16	Post medieval extractive pit, Clyffe Copse, Tincton A post medieval extractive pit is visible as an earthwork on lidar imagery of 2010 to the north east of Tincton and to the west of Clyffe Copse. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO30629
17	Post-medieval to modern sand and gravel pit, Moreton pit, Crossways A large post medieval to modern sand and gravel pit is visible as an earthwork on aerial photographs of the 1940s to the north east of Crossways. The area of extraction has been digitally plotted to its extent in the 1940s, but now forms part of Moreton Pit.	MDO31840
18	Second World War airfield ancillary site, RAF Warmwell, Crossways An outlying site associated with the Second World War airfield of RAF Warmwell, is visible as a structure on aerial photographs of the 1940s to the north of the airfield. Possibly the site of Moreton Admiralty Airship Station. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO31844
19	Second World War airfield ancillary site, RAF Warmwell, Crossways An ancillary site associated with the Second World War airfield of RAF Warmwell is visible as a structure on aerial photographs of the 1940s immediately to the north of the airfield. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO31845
20	Medieval to post medieval extractive pits, Moreton A large area of medieval or post medieval extractive pits is visible as cropmarks on aerial photographs of 2002 to the north east of Moreton Pit, Moreton. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO32033

HEA No.	Description	Site code/ HER/NHL No.
21	Prehistoric field boundaries, Higher Woodsford, Woodsford Possible prehistoric field boundaries are visible as cropmarks on aerial photographs of 2005 to the west of Higher Woodsford, Woodsford. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO32039
22	Prehistoric Field Boundaries, Higher Woodsford, Woodsford An area of scattered possible prehistoric field boundaries is visible as cropmarks on aerial photographs of 2005 to the east of Higher Woodsford, Woodsford. The boundaries consist of: two L-shaped ditches, a south west-north east oriented linear ditch, two parallel north-south oriented ditches and a partial, sub-rectangular, enclosure. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO32040
23	Post medieval trackway or field boundary, east of Higher Woodsford, Woodsford A post medieval trackway or field boundary is visible as a cropmark on aerial photographs of 1957 to the east of Higher Woodsford. The trackway or field boundary is defined by a north-south oriented ditch. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO32041
24	Post medieval or modern extractive pit, north of Higher Woodsford, Woodsford A post medieval or modern extractive pit is visible as an earthwork on aerial photographs of 1948 to the north of Higher Woodsford. The pit area is formed of four small pits, it is still visible as an earthwork, although disused, on recent aerial photography. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO32042
25	Earthworks, including fishpond north of Woodsford Castle, Woodsford Earthworks thought to be associated with nearby Woodsford Castle, and therefore medieval in date. The nature of the earthworks is not clear, though one section is interpreted as the remains of a cluster of three fishponds. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO3434
26	Bowl Barrow, Moreton A mound interpreted as a probable bowl barrow, now ploughed almost flat. This monument is thought to be one of two barrows in the 'neighbourhood of Woodsford' investigated by the antiquarian Charles Warne, who found a number of urns in each mound. The site of barrow is visible as a cropmark ring ditch on aerial photographs of 1947.	MDO3435
27	Bowl Barrow, Woodsford A mound interpreted as a probable bowl barrow, now ploughed almost flat. This monument is thought to be one of two barrows in the 'neighbourhood of Woodsford' investigated by the antiquarian Charles Warne, who found a number of urns in each mound. The site of Bronze Age barrow is visible as a cropmark ring ditch on aerial photographs of 1947.	MDO3436
28	Medieval or Post-medieval ridge and furrow A block of medieval or post medieval ridge and furrow is visible as a cropmark on aerial photographs of 2002 to the north east of Moreton Station. Features digitally plotted as part of the Wild Purbeck Mapping Project	MDO32021
29	Round barrow, c 600metres south-east of Cuckoo Mead A possible plough-levelled round barrow faintly visible as an indistinct circular, annular cropmark with a diameter of approximately 14 metres on aerial photographs dated 2005.	MDO38030
30	Frome Bridge Grade II listed 19th century road bridge	NHLE: 1425414
31	Woodsford Castle Pillbox An unusual pillbox in that it is built into the garden wall of Woodsford Castle	MDO17955
32	White Mead Pillbox, Puddletown A type 22 Pillbox on the parish boundary between Puddletown and Tincleton. The pillbox is visible as a structure on aerial photographs of the 1940s.	MDO23813
33	Deserted Medieval Settlement, Tincleton There were two original settlements, Tincleton and Clyffe; the former was near the church and the latter lay about ¼ mile to the east, where Clyffe farm now stands	MDO2728
34	Parish Church (demolished), Tincleton Deserted Medieval Settlement, Clyffe, Tincleton There were two original settlements, Tincleton and Clyffe; the former was near the church and the latter lay about ¼ mile to the east, where Clyffe farm now stands	MDO2729 MDO2727
35	Tincleton Hang, Tincleton Earthwork feature, no further information given in the DHER	MDO2733
36	Shrunken Medieval Village – West Woodsford, Woodsford	MDO3433

HEA No.	Description	Site code/ HER/NHL No.
	Formerly part of West Woodsford village and now almost destroyed, covered nearly 10 acres immediately south-east and east of Woodsford Castle	
37	Findspot – Woodsford Two Romano-British type spindle whorls and a flint tool came from the area of the medieval settlement.	MDO3438
38	Sub-square ditched enclosure, Woodsford Square ditched enclosure measuring c 37 m by c 37 m and with slightly rounded corners, visible on aerial photographs dated 2005. No evidence for surviving earthworks or internal features could be discerned. Located 270m north-west of Higher Woodsford	MDO37175
39	Findspot – Moreton A worked flint object is recorded here on the DHER	MDO7850

9 Planning framework

9.1 National Planning Policy Framework

9.1.1 The Government issued the National Planning Policy Framework (NPPF) in March 2012 (DCLG 2012) and supporting Planning Practice Guidance in 2014 (DCLG 2014). As a result of the Housing White Paper, a draft revision to the NPPF was proposed in March 2018. The draft has been put to public consultation, which closed on 10th May 2018. On adoption, the revised NPPF (including any amendments) will replace the existing NPPF but until that time the NPPF, March 2012, stands. However, while the draft is given very limited weight, it should be noted that as far as archaeology is concerned, there is little change from the existing NPPF. One of the 12 core principles that underpin both plan-making and decision-taking within the framework is to 'conserve heritage assets 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' (DCLG 2012 para 17). It recognises that heritage assets are an irreplaceable resource (para 126), and requires the significance of heritage assets to be considered in the planning process, whether designated or not. The contribution of setting to asset significance needs to be taken into account (para 128). The NPPF encourages early engagement (i.e. pre-application) as this has significant potential to improve the efficiency and effectiveness of a planning application and can lead to better outcomes for the local community (para 188).

9.1.2 NPPF Section 12: Conserving and enhancing the historic environment, is produced in full below:

Para 126. Local planning authorities should set out in their Local Plan a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats. In doing so, they should recognise that heritage assets are an irreplaceable resource and conserve them in a manner appropriate to their significance. In developing this strategy, local planning authorities should take into account:

- the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
- the wider social, cultural, economic and environmental benefits that conservation of the historic environment can bring;
- the desirability of new development making a positive contribution to local character and distinctiveness; and
- opportunities to draw on the contribution made by the historic environment to the character of a place.

Para 127. When considering the designation of conservation areas, local planning authorities should ensure that an area justifies such status because of its special architectural or historic interest, and that the concept of conservation is not devalued through the designation of areas that lack special interest.

Para 128. 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. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

Para 129. 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 assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.

Para 130. Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.

Para 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.

Para 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.

Para 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.

Para 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.

Para 135. 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 affect directly or indirectly 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.

Para 136. Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred.

Para 137. 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 or better reveal the significance of the asset should be treated favourably.

Para 138. Not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance. 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 133 or less than substantial harm under paragraph 134, 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.

Para 139. Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

Para 140. Local planning authorities should assess whether the benefits of a proposal for enabling development, which would otherwise conflict with planning policies but which would secure the future conservation of a heritage asset, outweigh the disbenefits of departing from those policies.

Para 141. Local planning authorities should make information about the significance of the historic environment gathered as part of plan-making or development management publicly accessible. They should also require developers to record and advance understanding of the

significance of any heritage assets to be lost (wholly or in part) in a manner proportionate to their importance and the impact, and to make this evidence (and any archive generated) publicly accessible. However, the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted.

9.2 West Dorset District Council and Weymouth & Portland Borough Council Local Plan

9.2.1 West Dorset District Council and Weymouth & Portland Borough Council have prepared a joint Local Plan. The adopted Local Plan forms the main basis for making decisions on planning applications.

9.2.2 It was adopted by Weymouth & Portland Borough Council on 15 October 2015 and by West Dorset District Council on 22 October 2015.

9.2.3 The Local Plan sets out a long term planning strategy for the area and includes detailed policies and site proposals for housing, employment, leisure and infrastructure. The adopted Local Plan covers the administrative areas of Weymouth and Portland Borough and West Dorset District and forms part of the Development Plan for these areas. The Local Plan guides development in the area until 2031.

9.2.4 West Dorset District Council and Weymouth & Portland Borough Council have embarked on a review of their recently adopted Joint Local Plan (October 2015) as recommended by the local plan Inspector in his report on the local plan examination.

9.2.5 Heritage assets and the historic environment are dealt covered under Environment and Climate Change within the Local Plan which states its strategic approach as

Strategic Approach

Development should protect and enhance the natural environment - its landscape, seascapes and geological conservation interests, its wildlife and habitats and important local green spaces – by directing development away from sensitive areas that cannot accommodate change. Where development is needed and harm cannot be avoided, appropriate mitigation to off-set any adverse impact to the landscape, wildlife and green infrastructure network will be required.

High priority will be given to protecting and enhancing the area's heritage assets – including its Listed Buildings and Conservation Areas, and other features with local historic or cultural associations, particularly where they contribute to the area's local distinctiveness.

Development will be directed away from areas where there is likely to be significant risk to human health or the wider environment, through flooding, coastal erosion and land instability, air and water pollution.

Development should be of high quality design to help achieve sustainable, safe and inclusive communities, enhancing quality of life for residents and visitors, and designed in keeping with or to positively contribute towards the local identity of the area.

9.2.6 and more specifically for archaeology

ENV4. HERITAGE ASSETS

i) The impact of development on a designated or non-designated heritage asset and its setting must be thoroughly assessed against the significance of the asset. Development should conserve and where appropriate enhance the significance.

ii) Applications affecting the significance of a heritage asset or its setting will be required to provide sufficient information to demonstrate how the proposals would positively contribute to the asset's conservation.

iii) A thorough understanding of the significance of the asset and other appropriate evidence including conservation area character appraisals and management plans should be used to inform development proposals including potential conservation and enhancement measures.

iv) Any harm to the significance of a designated or non-designated heritage asset must be justified. Applications will be weighed against the public benefits of the proposal; if it has been demonstrated that all reasonable efforts have been made to sustain the existing use, find new uses, or mitigate the extent of the harm to the significance of the asset, and; if the works proposed are the optimum required to secure the sustainable use of the asset.

v) The desirability of putting heritage assets to an appropriate and viable use that is consistent with their conservation will be taken into account.

vi) Where harm can be justified, appropriate provision will be required to capture and record features, followed by analysis and where appropriate making findings publically available.

9.3 Bournemouth, Dorset and Poole Minerals Strategy

9.3.1 The Bournemouth, Dorset and Poole Minerals Strategy was formally adopted by Dorset County Council in May 2014. The Minerals Strategy replaces a number of saved minerals policies of the Dorset Minerals and Waste Local Plan (1999). The plan provides the statutory policy framework to plan for mineral extraction in the county until 2028.

9.3.2 Policy DM 7 covers the Historic Environment and states:

Proposals for minerals development in Bournemouth, Dorset and Poole will only be permitted where it can be demonstrated through an authoritative process of assessment and evaluation that heritage assets and their settings will be conserved in a manner appropriate to their significance. Adverse impacts should be avoided or mitigated to an acceptable level.

Where the presence of historic assets of national significance is proven, either through designation or a process of assessment, their preservation in situ will be required.

Any other historic assets should be preserved in situ if possible, or otherwise by record.

10 Determining significance

10.1.1 'Significance' lies in the value of a heritage asset to this and future generations because of its heritage interest, which may be archaeological, architectural, artistic or historic. Archaeological interest includes an interest in carrying out an expert investigation at some point in the future into the evidence a heritage asset may hold of past human activity, and may apply to standing buildings or structures as well as buried remains. Known and potential heritage assets within the site and its vicinity have been identified from national and local designations, HER data and expert opinion. The determination of the significance of these assets is based on statutory designation and/or professional judgement against four values (EH 2008):

- *Evidential value*: the potential of the physical remains to yield evidence of past human activity. This might take into account date; rarity; state of preservation; diversity/complexity; contribution to published priorities; supporting documentation; collective value and comparative potential.
- *Aesthetic value*: this derives from the ways in which people draw sensory and intellectual stimulation from the heritage asset, taking into account what other people have said or written;
- *Historical value*: the ways in which past people, events and aspects of life can be connected through heritage asset to the present, such a connection often being illustrative or associative;
- *Communal value*: this derives from the meanings of a heritage asset for the people who know about 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, along with and educational, social or economic values.

10.1.2 Table 2 gives examples of the significance of designated and non-designated heritage assets.

Table 2: Significance of heritage assets

Heritage asset description	Significance
World heritage sites Scheduled monuments Grade I and II* listed buildings Historic England Grade I and II* registered parks and gardens Protected Wrecks Heritage assets of national importance	Very high (International/ national)
Historic England Grade II registered parks and gardens Conservation areas Designated historic battlefields Grade II listed buildings Burial grounds Protected heritage landscapes (e.g. ancient woodland or historic hedgerows) Heritage assets of regional or county importance	High (national/ regional/ county)
Heritage assets with a district value or interest for education or cultural appreciation Locally listed buildings	Medium (District)
Heritage assets with a local (i.e. parish) value or interest for education or cultural appreciation	Low (Local)
Historic environment resource with no significant value or interest	Negligible
Heritage assets that have a clear potential, but for which current knowledge is insufficient to allow significance to be determined	Uncertain

10.1.3 Unless the nature and exact extent of buried archaeological remains within any given area has been determined through prior investigation, significance is often uncertain.

11 Non-archaeological constraints

- 11.1.1 It is anticipated that live services will be present on the site, the locations of which have not been identified by this archaeological report. The north and east of the site was occupied by water meadows, and may be more prone to flooding. Other than this, no other non-archaeological constraints to any archaeological fieldwork have been identified within the site.
- 11.1.2 Note: the purpose of this section is to highlight to decision makers any relevant non-archaeological constraints identified during the study, that might affect future archaeological field investigation on the site (should this be recommended). The information has been assembled using only those sources as identified in section 2 and section 13.4, in order to assist forward planning for the project designs, working schemes of investigation and risk assessments that would be needed prior to any such field work. MOLA has used its best endeavours to ensure that the sources used are appropriate for this task but has not independently verified any details. Under the Health & Safety at Work Act 1974 and subsequent regulations, all organisations are required to protect their employees as far as is reasonably practicable by addressing health and safety risks. The contents of this section are intended only to support organisations operating on this site in fulfilling this obligation and do not comprise a comprehensive risk assessment.

12 Glossary

<i>Alluvium</i>	Sediment laid down by a river. Can range from sands and gravels deposited by fast flowing water and clays that settle out of suspension during overbank flooding. Other deposits found on a valley floor are usually included in the term alluvium (e.g. peat).
<i>Archaeological Priority Area/Zone</i>	Areas of archaeological priority, significance, potential or other title, often designated by the local authority.
<i>Brickearth</i>	A fine-grained silt believed to have accumulated by a mixture of processes (e.g. wind, slope and freeze-thaw) mostly since the Last Glacial Maximum around 17,000BP.
<i>B.P.</i>	Before Present, conventionally taken to be 1950
<i>Bronze Age</i>	2,000–600 BC
<i>Building recording</i>	Recording of historic buildings (by a competent archaeological organisation) is undertaken <i>'to document buildings, or parts of buildings, which may be lost as a result of demolition, alteration or neglect'</i> , amongst other reasons. Four levels of recording are defined by Royal Commission on the Historical Monuments of England (RCHME) and Historic England. Level 1 (basic visual record); Level 2 (descriptive record), Level 3 (analytical record), and Level 4 (comprehensive analytical record)
<i>Built heritage</i>	Upstanding structure of historic interest.
<i>Colluvium</i>	A natural deposit accumulated through the action of rainwash or gravity at the base of a slope.
<i>Conservation area</i>	An area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance. Designation by the local authority often includes controls over the demolition of buildings; strengthened controls over minor development; and special provision for the protection of trees.
<i>Cropmarks</i>	Marks visible from the air in growing crops, caused by moisture variation due to subsurface features of possible archaeological origin (i.e. ditches or buried walls).
<i>Cut-and-cover [trench]</i>	Method of construction in which a trench is excavated down from existing ground level and which is subsequently covered over and/or backfilled.
<i>Cut feature</i>	Archaeological feature such as a pit, ditch or well, which has been cut into the then-existing ground surface.
<i>Devensian</i>	The most recent cold stage (glacial) of the Pleistocene. Spanning the period from c 70,000 years ago until the start of the Holocene (10,000 years ago). Climate fluctuated within the Devensian, as it did in other glacials and interglacials. It is associated with the demise of the Neanderthals and the expansion of modern humans.
<i>Early medieval</i>	AD 410–1066. Also referred to as the Saxon period.
<i>Evaluation (archaeological)</i>	A limited programme of non-intrusive and/or intrusive fieldwork which determines the presence or absence of archaeological features, structures, deposits, artefacts or ecofacts within a specified area.
<i>Excavation (archaeological)</i>	A programme of controlled, intrusive fieldwork with defined research objectives which examines, records and interprets archaeological remains, retrieves artefacts, ecofacts and other remains within a specified area. The records made and objects gathered are studied and the results published in detail appropriate to the project design.
<i>Findspot</i>	Chance find/antiquarian discovery of artefact. The artefact has no known context, is either residual or indicates an area of archaeological activity.
<i>Geotechnical</i>	Ground investigation, typically in the form of boreholes and/or trial/test pits, carried out for engineering purposes to determine the nature of the subsurface deposits.
<i>Head</i>	Weathered/soliflucted periglacial deposit (i.e. moved downslope through natural processes).
<i>Heritage asset</i>	A building, monument, site, place, area or landscape positively identified as having a degree of significance meriting consideration in planning decisions. Heritage assets are the valued components of the historic environment. They include designated heritage assets and assets identified by the local planning authority (including local listing).
<i>Historic environment assessment</i>	A written document whose purpose is to determine, as far as is reasonably possible from existing records, the nature of the historic environment resource/heritage assets within a specified area.
<i>Historic Environment Record (HER)</i>	Archaeological and built heritage database held and maintained by the County authority. Previously known as the Sites and Monuments Record
<i>Holocene</i>	The most recent epoch (part) of the Quaternary, covering the past 10,000 years during which time a warm interglacial climate has existed. Also referred to as the 'Postglacial' and (in Britain) as the 'Flandrian'.
<i>Iron Age</i>	600 BC–AD 43

<i>Later medieval</i>	AD 1066 – 1500
<i>Last Glacial Maximum</i>	Characterised by the expansion of the last ice sheet to affect the British Isles (around 18,000 years ago), which at its maximum extent covered over two-thirds of the present land area of the country.
<i>Locally listed building</i>	A structure of local architectural and/or historical interest. These are structures that are not included in the Secretary of State's Listing but are considered by the local authority to have architectural and/or historical merit
<i>Listed building</i>	A structure of architectural and/or historical interest. These are included on the Secretary of State's list, which affords statutory protection. These are subdivided into Grades I, II* and II (in descending importance).
<i>Made Ground</i>	Artificial deposit. An archaeologist would differentiate between modern made ground, containing identifiably modern inclusion such as concrete (but not brick or tile), and undated made ground, which may potentially contain deposits of archaeological interest.
<i>Mesolithic</i>	12,000 – 4,000 BC
<i>National Record for the Historic Environment (NRHE)</i>	National database of archaeological sites, finds and events as maintained by Historic England in Swindon. Generally not as comprehensive as the country HER.
<i>Neolithic</i>	4,000 – 2,000 BC
<i>Ordnance Datum (OD)</i>	A vertical datum used by Ordnance Survey as the basis for deriving altitudes on maps.
<i>Palaeo-environmental</i>	Related to past environments, i.e. during the prehistoric and later periods. Such remains can be of archaeological interest, and often consist of organic remains such as pollen and plant macro fossils which can be used to reconstruct the past environment.
<i>Palaeolithic</i>	700,000–12,000 BC
<i>Palaeochannel</i>	A former/ancient watercourse
<i>Peat</i>	A build-up of organic material in waterlogged areas, producing marshes, fens, mires, blanket and raised bogs. Accumulation is due to inhibited decay in anaerobic conditions.
<i>Pleistocene</i>	Geological period pre-dating the Holocene.
<i>Post-medieval</i>	AD 1500–present
<i>Preservation by record</i>	Archaeological mitigation strategy where archaeological remains are fully excavated and recorded archaeologically and the results published. For remains of lesser significance, preservation by record might comprise an archaeological watching brief.
<i>Preservation in situ</i>	Archaeological mitigation strategy where nationally important (whether Scheduled or not) archaeological remains are preserved <i>in situ</i> for future generations, typically through modifications to design proposals to avoid damage or destruction of such remains.
<i>Registered Historic Parks and Gardens</i>	A site may lie within or contain a registered historic park or garden. The register of these in England is compiled and maintained by Historic England.
<i>Residual</i>	When used to describe archaeological artefacts, this means not <i>in situ</i> , i.e. Found outside the context in which it was originally deposited.
<i>Roman</i>	AD 43–410
<i>Scheduled Monument</i>	An ancient monument or archaeological deposits designated by the Secretary of State as a 'Scheduled Ancient Monument' and protected under the Ancient Monuments Act.
<i>Site</i>	The area of proposed development
<i>Site codes</i>	Unique identifying codes allocated to archaeological fieldwork sites, e.g. evaluation, excavation, or watching brief sites.
<i>Study area</i>	Defined area surrounding the proposed development in which archaeological data is collected and analysed in order to set the site into its archaeological and historical context.
<i>Solifluction, Soliflucted</i>	Creeping of soil down a slope during periods of freeze and thaw in periglacial environments. Such material can seal and protect earlier landsurfaces and archaeological deposits which might otherwise not survive later erosion.
<i>Stratigraphy</i>	A term used to define a sequence of visually distinct horizontal layers (strata), one above another, which form the material remains of past cultures.
<i>Truncate</i>	Partially or wholly remove. In archaeological terms remains may have been truncated by previous construction activity.
<i>Watching brief (archaeological)</i>	A formal programme of observation and investigation conducted during any operation carried out for non-archaeological reasons.

13 Bibliography

13.1 Published and documentary sources

- Allen M, Lodwick L, Brindle T, Fulford M, Smith A, 2017 *The Rural Economy of Roman Britain, Britannia Monograph 30* Society for the Promotion of Roman Studies
- Astill G and Grant A (eds.), 1992 *The Countryside of Medieval England*, Oxford: Blackwell
- Beresford M, and Hurst J, 1971 *Deserted Medieval Villages*, London: Lutterworth Press
- ClfA [Chartered Institute for Archaeologists] Dec 2014a, *Standards and guidance for commissioning work or providing consultancy advice on archaeology and the historic environment*, Reading.
- ClfA [Chartered Institute for Archaeologists] Dec 2014b, *Standards and guidance for historic environment desk-based assessment*, Reading
- DCC [Dorset County Council] 2017 *The Bournemouth, Dorset and Poole Mineral Strategy*
- DCLG [Department of Communities and Local Government], March 2012 *National Planning Policy Framework*
- DCLG [Department of Communities and Local Government], March 2014 *Conserving and Enhancing the Historic Environment: Planning Practice Guide*
- Domesday Book, A Complete Translation*, eds Williams, A. and Martin, G.H. 1992, 2002. London: Penguin Books
- EH [English Heritage], 2008 *Conservation principles, policies and guidance*. Swindon
- EH [English Heritage] 2013, *Introduction to Heritage Assets: Water Meadows*, Swindon
- HE [Historic England] 2015a, *The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning: 3*. Historic England in collaboration with the Historic Environment Forum, second edition, Historic England July 2015.
- HE [Historic England] 2015b *Managing Significance in Decision-Taking in the Historic Environment – Historic Environment Good Practice Advice in Planning: 2*. Historic England in collaboration with the Historic Environment Forum, second edition, Historic England July 2015.
- Humphery-Smith C, 1984 *The Phillimore Atlas and Index of Parish Registers*.
- MHCLG [Ministry for Housing, Communities and Local Government], March 2018, *Draft revisions to the National Planning Policy Framework*
- Trevarthen M, Barnett C, 2008, *Suburban Life in Roman Durnovaria: Excavations at the Former County Hospital Site, Dorchester 2000-2001* Wessex Archaeology
- Williams A, Martin G H (eds.), 1992 *Domesday: A Complete Translation* London: Penguin

13.2 Other Sources

- British Geological Survey online historic geology borehole data and digital drift and solid geology data
- Dorset Historic Environment Record
- Historic England designation data
- Historic England Archive, Swindon (aerial photographs)
- Internet – web-published sources:
- Greater London Authority 2017 - <https://www.london.gov.uk/what-we-do/planning/london-plan/new-london-plan/what-new-london-plan>
 - University of Nottingham, Key to English Place names
Kepn.nottingham.ac.uk
- Groundsure historic Ordnance Survey mapping

13.3 Cartographic sources

- Ordnance Survey 1" map (1811) in Margary H, *The Old Series Ordnance Survey Maps of England and Wales, Volume III: South-central England, Kent*
- Ordnance Survey first edition 6":mile map (1887)

13.4 Available site survey information checklist

Information from client	Available	Format	Obtained
Plan of existing site services (overhead/buried)	not known	-	-
Levelled site survey as existing (ground and buildings)	not known	-	-
Contamination survey data ground and buildings (inc. asbestos)	not known	-	-
Geotechnical report	not known	-	-
Envirocheck report	not known	-	-
Information obtained from non-client source	Carried out	Internal inspection of buildings	
Site inspection	N	-	

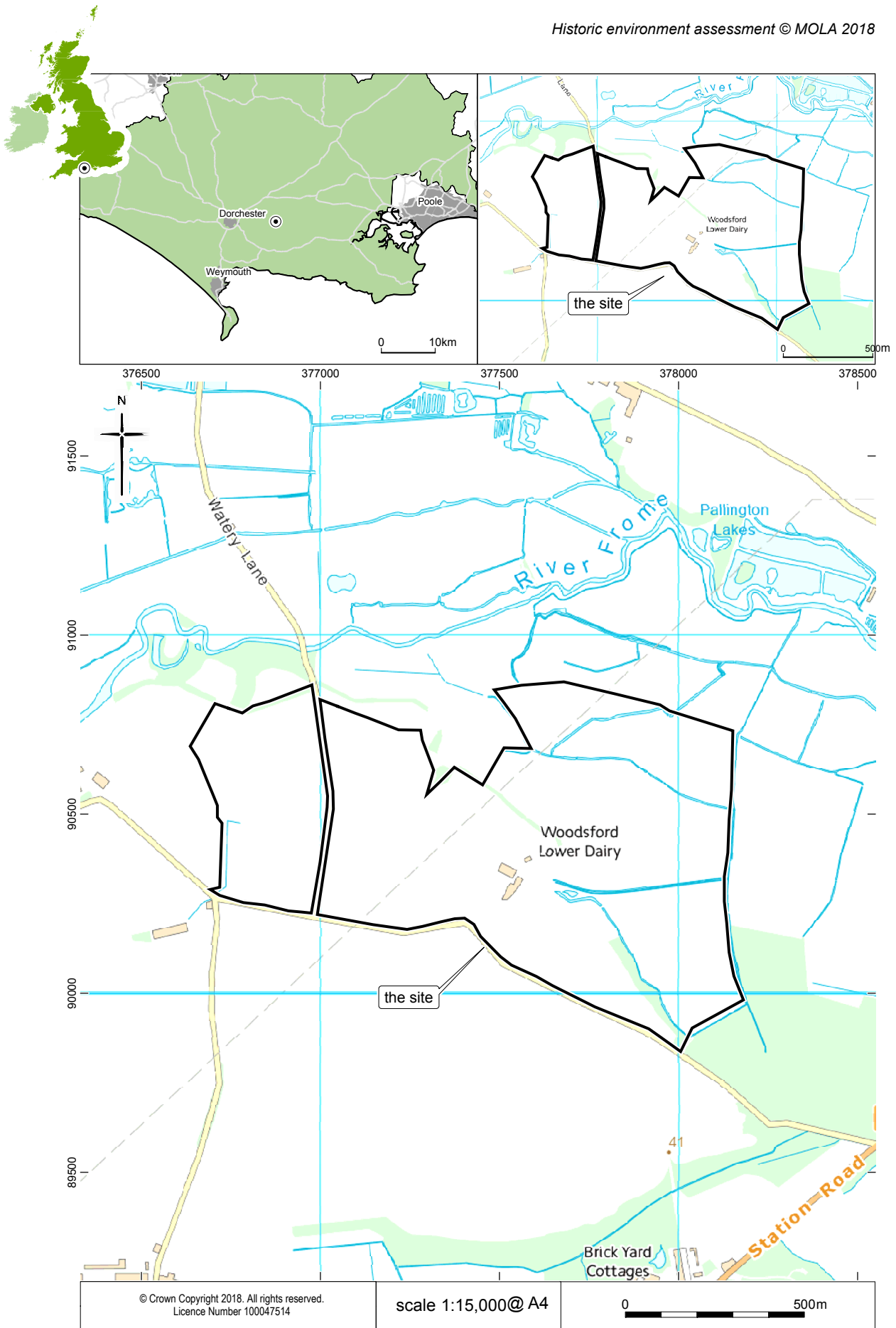


Fig 1 Site location

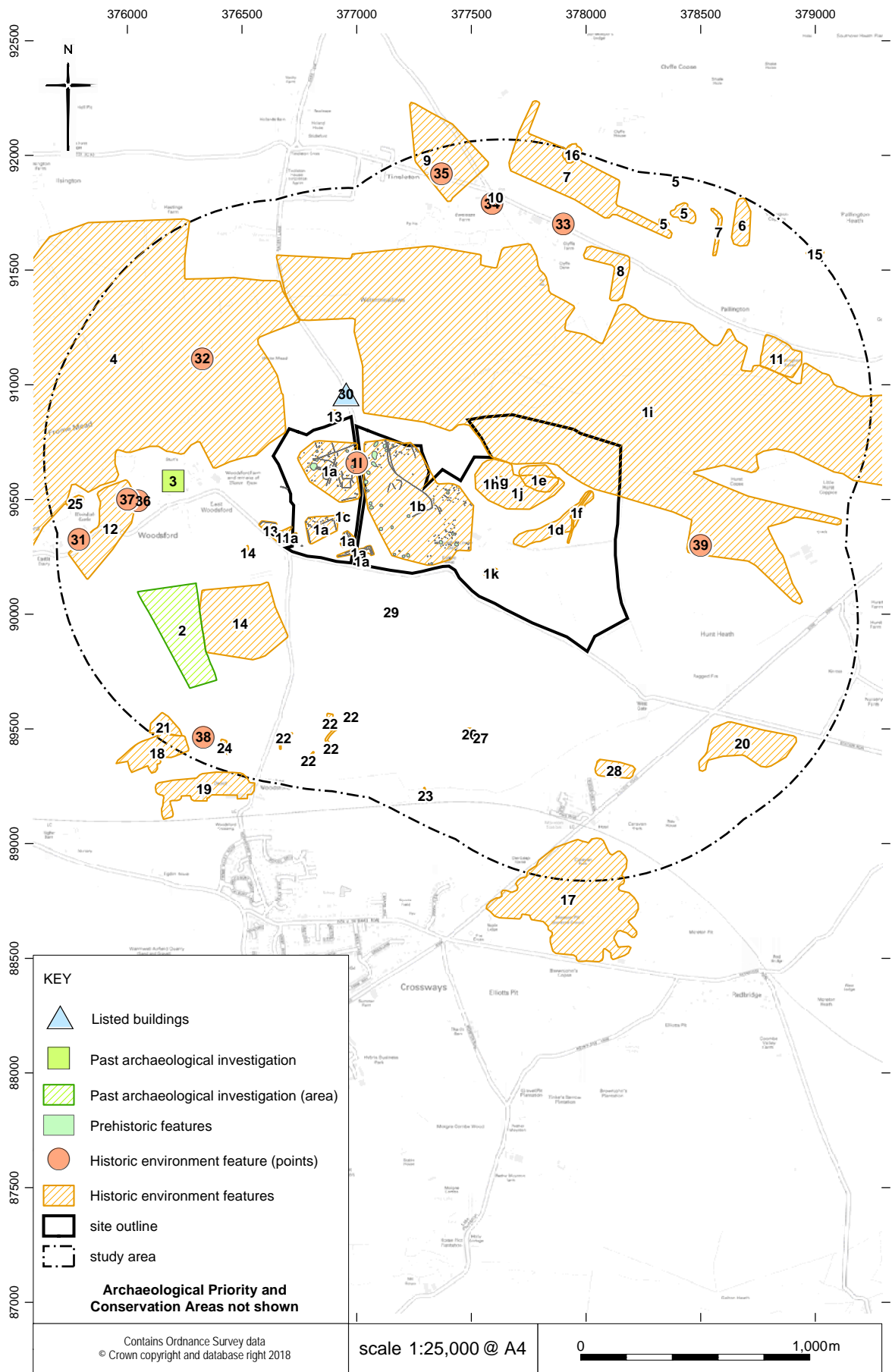


Fig 2 Historic environment features map

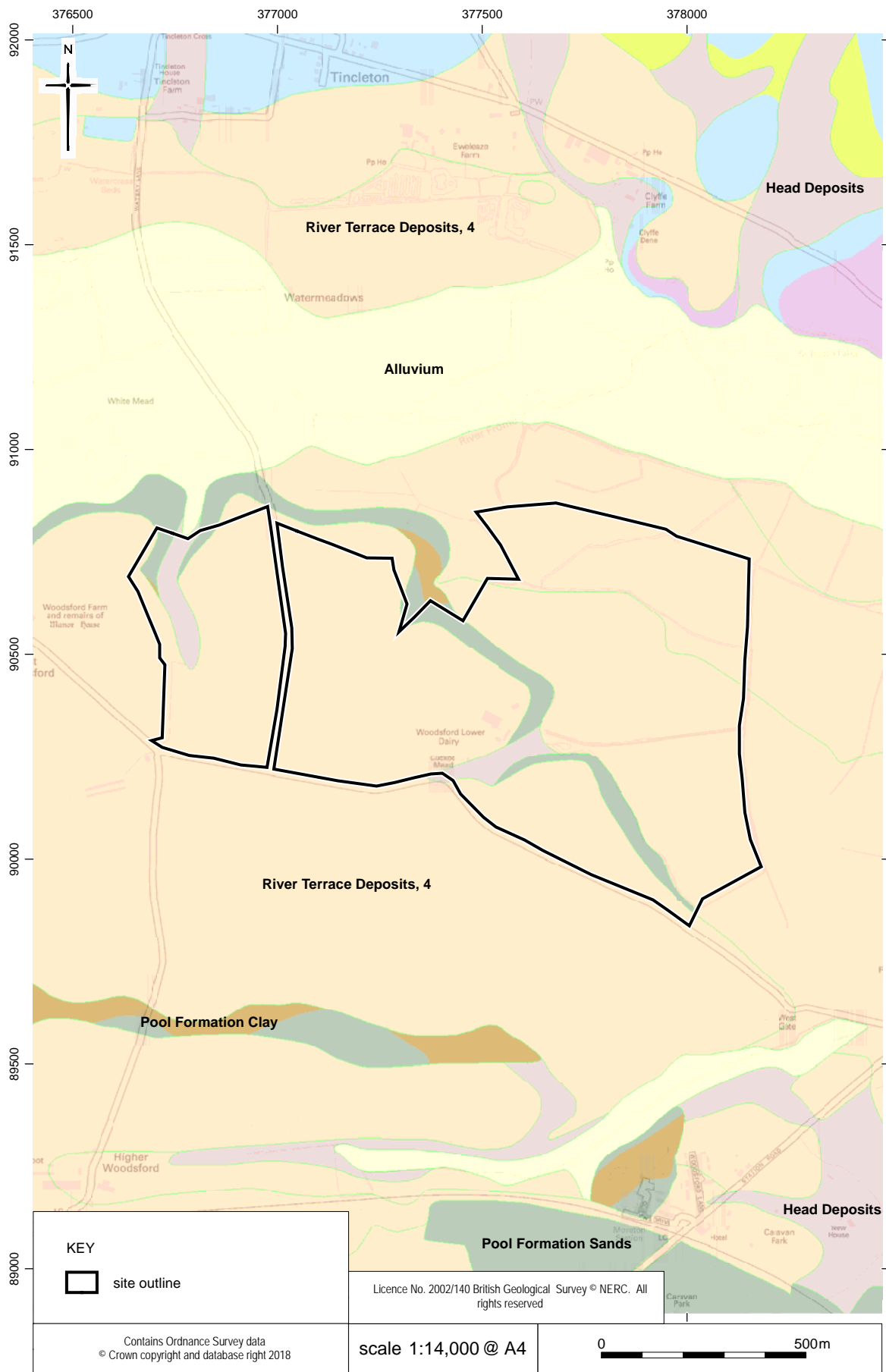


Fig 3 Geology map (BGS 50:000 digital data)



Fig 4 Crop mark features within the site, surveyed as part of the Wild Purbeck Mapping Programme

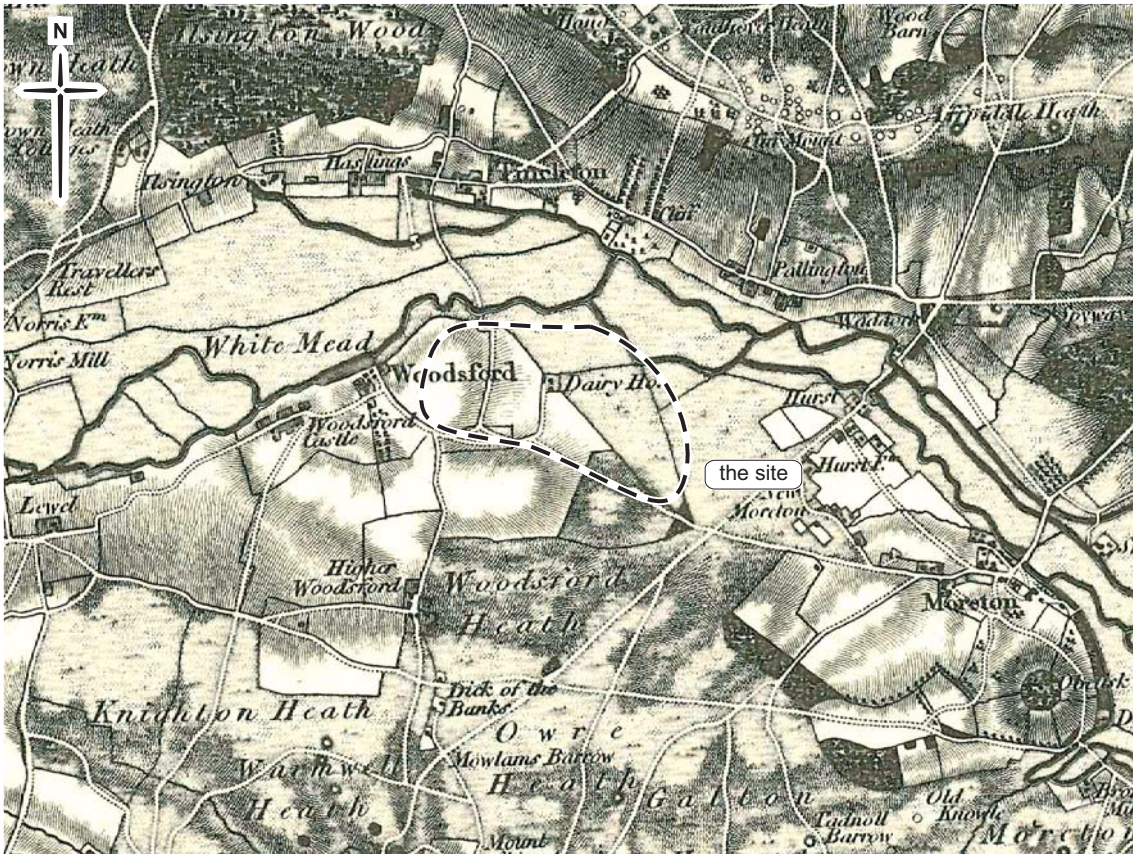


Fig 5 Old Series Ordnance Survey 1": mile map (1811) (not to scale)

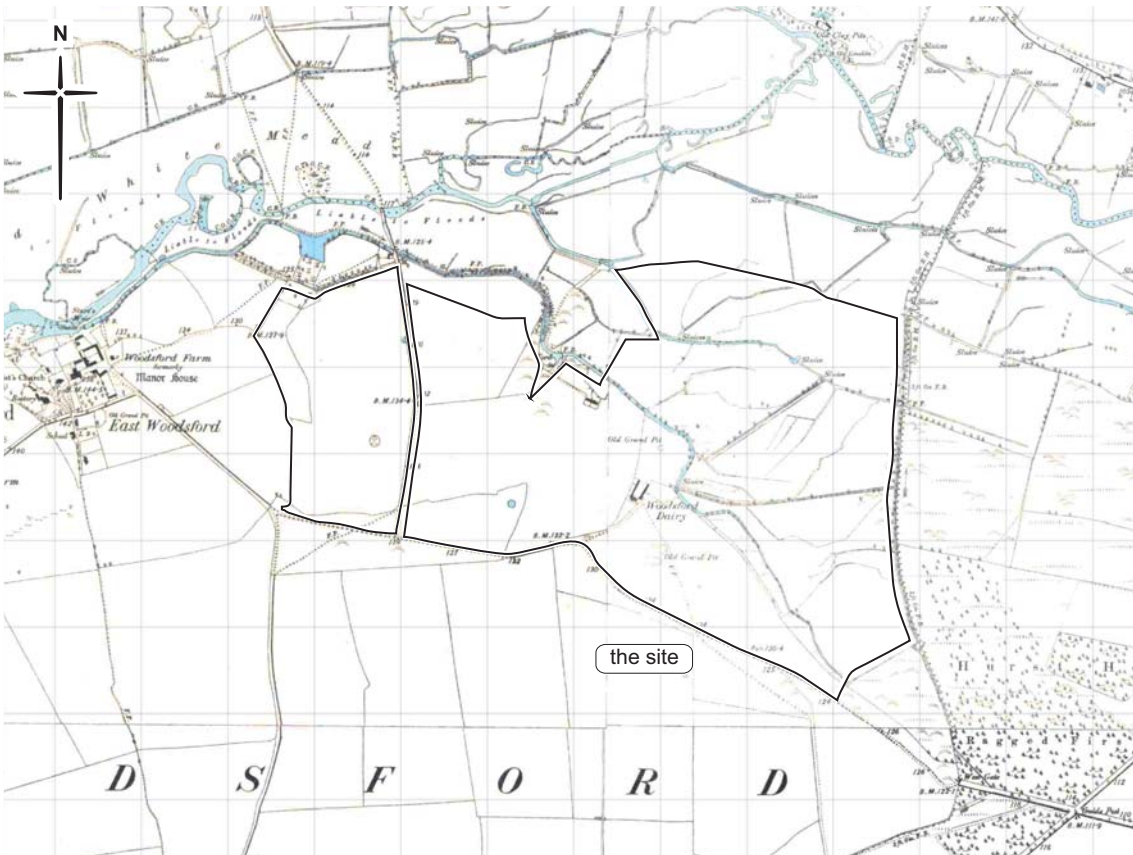


Fig 6 Ordnance Survey 1st edition 6": mile map of 1886-7 (not to scale)

Appendix 2

CVs of Dr Chris Miele and Ms Lucy Markham

Chris Miele PhD MRTPI IHBC FRHistS



Position

Senior Partner

At Montagu Evans since
2005

Date & Place of Birth

6th November 1961, Washington DC

Main Areas of Expertise

Historic Environment, Townscape and Visual Impact,
Expert Witness work, Enforcement Resolution

Professional Affiliation

Member, Royal Town Planning Institute
Member, Institute of Historic Buildings Conservation
Fellow, Royal Historical Society
Fellow, Society of Antiquaries, London

Key Public Clients

Trustees of the British Museum, Leicester University, Durham University, St George's Mental Health Care Trust, Barts and Royal London Trust, the Trustees of the Design Museum, Sheffield City Council, Dean and Chapter of Westminster Abbey, City of Westminster, Trustees of the South Bank Centre, Cabinet Office, The Royal Horticultural Society, The Royal Gardens at Kew, University of Sheffield, University of Durham, Trustees of the National Gallery, the US State Department.

Key Private Clients

CiT, CEG, Hallam Land, City and Country, Yoo Capital, Kier, National Grid Property, the Grosvenor Estate, Southern Gas Network, Taylor Wimpey, Berkeley Group, Barrett's, Delancey, City and Commercial, Hammerson, Auriens, Westfield, Iend Lease.

Key Projects

- The British Museum Extension and other projects
- The South Bank Centre
- Elizabeth House
- One Nine Elms
- South Bank Tower
- Admiralty Arch
- Woolwich Arsenal
- Bramshill Park
- Holocaust Memorial, Westminster
- Illuminated River (relighting all London's bridges)

Professional Experience Includes:

- 2004-2005, Senior Planning Director, RPS Planning. Experience included major infrastructure projects, expert evidence at complex planning inquiries, and other development projects of a significant scale, for a range of private and some public clients.

- 1998- 2004 Director, Alan Baxter & Associates, Advising on planning and related urban design matters affecting the historic environment, to inform emerging design proposals; masterplanning, conservation plans and urban design studies; drafting planning policy guidance for historic sites
- 1991-1998 Historic Buildings Advisor, English Heritage. Experience included providing advice on listing and in support of English Heritage's statutory role in relation to listed building and conservation area consents and planning applications. Advice to local authorities on conservation area designations.

Areas of Expertise

All aspects of PLANNING'S interactions with the HISTORIC ENVIRONMENT, EXISTING ENVIRONMENTS, SENSITIVE LAND AND DESIGN. In addition to ENFORCEMENT RESOLUTION and EXPERT WITNESS WORK.

- Listed building consents, including for major alterations and extensions
- New development in conservation areas
- Charitable and public projects, with an emphasis on museums, galleries and educational projects
- Masterplanning in the historic environment
- Mixed use central London
- Tall buildings
- Enabling Development
- Authorities with particular expertise and experience, including City of Westminster and other central London authorities (RBKC, Camden, Islington, Southwark, Lambeth, Tower Hamlets, Hackney).
- Historic landscape characterization
- Urban extensions and visual impact
- Hotel

Chris Miele PhD MRTPI IHBC FRHistS

Published Works

- 'The Mystery of Ashpittel's Notebook, *Georgian Group Journal*, 2016.
- 'E A Freeman and the Culture of Gothic Revival' in Bremner and Conlin, *Making History* (OUP, 2016)
- 'Scenes of Clerical Life: the Young Scott', in G G Scott RA, ed by P Barnwell (Shaun Tyas, forthcoming).
- 'Community Heritage' and other Victorian Myths: Reflections on the English Experience', ed. Melanie Hall, *The History of Preservation: International Perspectives* (Ashurst, 2013).
- *Forgotten, Lost and Restored*, joint author (Hackney Society, 2012)
- 'Gothic Sign. Gothic Realia: Reflections on the Holy Sepulchre', in *Architectural History*, 2010.
- 'Architectural Representation', *Celebrating a Century of the Victorian Society: 2010*.
- *The Anatomy of Georgian Villa, Danson House*, author (English Heritage 2009)
- *The Supreme Court of the United Kingdom: History, Art, Architecture* (Hardcover) , editor and contributor (2010)
- *From William Morris: Conservation and the Arts and Crafts Cult of Authenticity*, editor and contributor (2005)
- "English Antiquity: Saxonism and the Construction of National Architectural Identities". In *Architecture and Englishness, Con. Proceedings Society of Architectural Historians*. (2005),ed. I. Dungavell and D. Crellin.
- *Designing the World: Engineering, Architecture and the Royal Navy*", *Architectural History* (Jrof the Society of Architectural Historians, UK),vol. 49, 2006.
- "Conservation", in *The Oxford Dictionary of Architecture*, 2005.
- "Conservation and the Development Process", *Journal of Architectural Conservation*, July 2005.
- "Danson House Restored", *Country Life*, 24March 2005.
- "The Value of Conservation Plans?", *IHBC Yearbook*, 2005.
- "Love, Marriage and the Painted Georgian Interior", *English Heritage Collections Review*, (2001).
- "Re-presenting the Church Militant. The Camden Society and the Round Church", in *A Church As It Should Be*, ed C Webster and J Elliott(Stamford, 2000), pp 257-294.
- "Victorian Internationalism", in *The Gothic Revival. Religion, Architecture and Style in Western Europe, 1815-1914*, ed J de Maeyer and L Verpoest (Leuven/Louvain, Belgium, 2000), pp. 209-220.
- *London Suburbs*, gen ed. C Miele, technical ed. Kit Wedd, introduced by A Saint. Also contributor to first chapter: 'From Aristocratic Ideal to Middle-Class Idyll', (*English Heritage*, 1999), pp. 31-60.
- 'Icon of Victorian Modernity' in *Country Life*, vol. 193, 2, 1999.
- "The Battle for Westminster Hall", *Architectural History* (British Society of Architectural Historians) vol. 41 (1998), pp. 220-244.
- 'Robert Adam, Marlborough House and Mrs Fitzherbert: "The First Architect of the World in Brighton"', *Sussex Archaeological Collections*, vol. 136 (1998), pp. 149-175.
- "Real Antiquity and the Ancient Object", in *The Study of the Past in the Victorian Age*, ed. V Brand, intro. By Chris Brooks, *Oxbow Monographs* no. 73 (1998), pp. 103-125.
- *Morris on Architecture*, ed by C Miele (Sheffield, 1997). A collection of William Morris' lectures on building and architecture, with a critical introduction and annotations.
- "The First Conservation Militants", in *Preserving the Past*, ed M Hunter (Stroud, Gloucs., 1996), pp. 17-37.
- "Art or Craft? Morris & Co Revisited", *The Victorian Society Annual*, 1996, pp. 15-21.
- "The Conservationist", in *William Morris*, ed by Linda Parry(Victoria & Albert Museum, Exhibition Catalogue, 1996), pp. 72-90.
- "Their Interest and Habit. Professionalism and the Restoration of Medieval Churches", in A Saint and C Brooks (Manchester, 1995), pp 151-171.
- "A Small Knot of Cultivated People: The Ideologies of Protection", *The Art Journal* (American College Art Association: special issue on Conservation and Art History), vol. 54 (Summer 1995), pp. 73-80.
- "The Restoration of the West Front of Rochester Cathedral: Antiquarianism, Historicism and the Restoration of Medieval Buildings", *The Archaeological Journal*,vol. 151 (1994), pp. 400-419.
- *Hoxton* (Hackney Society Publication, London,1993)

Chris Miele *PhD MRTPI IHBC FRHistS*

Accepted but not published

- 'Morris Architectural Vision', in The William Morris Reader, ed.F.Bovs (Ashgate, 2019)

Submitted for Publication Review

- 'Between Architecture and Archaeology: the Scott-Freeman Debate'
- 'GG Scott, Gottfried, Semper and the Hamburg Nikolaikirche'
- 'The Great Architectural "Awakening": Glibert Scott and Pugin'
- 'Towards a History of Vernacular Revival' from the Journal of the Vernacular Architecture Group (ex. plenary session paper)
- 'The London "City Model": Technology and Planning in a Historic World City 2017 Conference Paper, Glasgow.'

Lucy Markham MA(Oxon), MSc, PGCert, IHBC, MRTPI



Position

Associate
Planning Department, London (West End) Office

Main Areas of Expertise

All aspects of Planning and the Historic Environment, with particular expertise in:

- Strategic and planning advice on development affecting listed buildings and conservation areas
- Representations regarding potential statutory listing
- Townscape and visual analysis, including Environmental Impact Assessment
- Characterisation studies and conservation area appraisals
- Conservation management planning
- Tall buildings and views policy

Professional Qualifications

- MA Modern History, University of Oxford
- MSc Historic Conservation
- PG Diploma Spatial Planning
- PG Cert Urban Design
- Member of the Institute for Historic Building Conservation
- Member of the Royal Town Planning Institute

Selected Project Experience

Glasshill Street, Southwark

Represented the client at an informal hearing for an appeal against the refusal of planning permission for the demolition of some C19 industrial buildings in a conservation area. The appeal was upheld.

Land off Shilton Road, Burford, W. Oxon

Prepared evidence on heritage matters for s78 appeal, including drafting the Proof, for Hallam Land, to compare potential heritage impacts of alternative housing sites considered by West Oxon SHLAA, which concluded the appeal site had less impact on heritage. The appeal was upheld.

Land North of Pound Lane, Semington, Wiltshire

Prepared evidence on heritage matters on behalf of Richborough Estates for co-joined s78 appeals for housing developments outside the settlement boundary, which concluded that our client's site was less impactful. Prepared the Proof of Evidence, rebuttal information, cross-examination notes and attended cons. Decision pending.

Tottenham Town Hall, Haringey

Advised Newlon Housing Association on a scheme to redevelop Tottenham Town Hall as a business centre, involving the demolition of the rear portion, an extension and new build social housing on the former Council Depot to the rear, which was granted consent

Somerset House, Westminster

Led pre-application discussions and production of heritage submissions for proposals to convert the grade I listed East Wing of Somerset House into academic use for King's College London, which granted consent.

London Hippodrome, Westminster

Advised on the conversion of a grade II listed Frank Matcham theatre into a casino, including preparation of several Heritage Statements. Advised on historic features discovered during strip out and discharge of planning conditions.

Queen's Gate Place, Royal Borough of Kensington and Chelsea

Prepared Proof of Evidence and attended cons for listed building enforcement appeal relating to internal alteration and decoration. Assisted Counsel at the Inquiry, including preparation of cross-examination notes. Appeal upheld.

Stone House Hospital, Dartford

Advised the Homes & Communities Agency on the conversion of this former mental asylum to residential use. Successfully negotiated 'in principle' consent for the demolition of the less significant parts of the grade II listed building. Provided conservation input to the Development Framework, adopted by Dartford Borough Council.

20 Grosvenor Square, Westminster

Advised Richard Caring on a substantial extension of this building in the Mayfair Conservation Area, which granted consent.

Tate Britain, Westminster

Advised on the conservation aspects of Transforming Tate Britain, including production of a Conservation Management Plan. Secured support of Westminster CC and English Heritage for substantial alterations to the original phase of the gallery, which is grade II*. The project has won numerous awards including a RIBA National Award.

Appendix 3

Williams Court of Appeal Decision, [2017] EWCA Civ 427

Neutral Citation Number: [2017] EWCA Civ 427

Case No: C1/2016/1419

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT PLANNING COURT
MR C.M.G. OCKELTON (SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)
[2016] EWHC 480 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 9 June 2017

Before:

Lord Justice Lindblom
and
Lord Justice Irwin

Between:

R. (on the application of Graham Williams)	<u>Appellant</u>
- and -	
Powys County Council	<u>Respondent</u>
- and -	
Colin Bagley	<u>Interested Party</u>

Mr Richard Harwood Q.C. (instructed by **Harrison Grant Solicitors**) for the **Appellant**
Ms Clare Parry (instructed by **Powys County Council Legal Services**) for the **Respondent**
Mr James Corbet Burcher (instructed by **Margraves Solicitors**) for the **Interested Party**

Hearing date: 9 March 2017

**Judgment Approved by the court for handing down (subject to
editorial corrections)**

Lord Justice Lindblom:

Introduction

1. Did a local planning authority, when granting planning permission for a wind turbine, fall into error by failing to consult the Welsh Ministers upon the likely effects of that development on the settings of two scheduled monuments? And did it err in failing to consider the likely effects on the setting of a grade II* listed church? The judge in the court below saw no such error. We must decide whether he was right.
2. By a claim for judicial review the appellant, Mr Graham Williams, challenged the decision of the first respondent, Powys County Council, on 21 May 2015, to grant planning permission for the erection of a wind turbine on the farm of the interested party, Mr Colin Bagley, at Upper Pengarth, Llandeilo Graban. The site is in the Radnor Hills, about 10 kilometres to the south-east of Builth Wells. Mr Bagley was the applicant for planning permission, Mr Williams a local resident who had objected to the proposal. Mr Williams' claim for judicial review was issued on 2 July 2015. It was dismissed by Mr C.M.G. Ockelton, Vice President of the Upper Tribunal (Immigration and Asylum Chamber), sitting as a deputy judge of the High Court, on 11 March 2016. I granted permission to appeal on 15 August 2016.
3. The wind turbine was erected in July and August 2016. It stands on the side of a hill called "The Garth", on a site of 0.2 hectares. It is 30.1 metres in height to the hub, 41.8 metres to the blade tip. The electricity it produces is used by Mr Bagley on his farm, the excess transmitted to the grid. On the other side of the hill, about 1.5 kilometres from the wind turbine, is Llanbedr Church, a grade II* listed building. There are also several scheduled monuments in the surrounding area, the nearest two being Llandeilo Graban Motte (also known as Castle Mound), which is 1.4 kilometres to the south-west, and Llanbedr Hill Platform House, 1.9 kilometres to the north-east.

The issues in the appeal

4. Mr Williams has permission to appeal on two grounds. The issue in the first is whether, contrary to the judge's conclusion, the county council failed to comply with the requirement under the Town and Country Planning (Development Management Procedure) (Wales) Order 2012 ("the Development Management Procedure Order 2012") to consult the Welsh Ministers on applications for planning permission for "[development] likely to affect the site of a scheduled monument", because that requirement applied to development likely to affect the setting of, or "otherwise have a visual impact on the site of", a scheduled monument. The issue in the second ground is whether the county council erred in failing to perform the duty in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") – to have special regard to the desirability of preserving the setting of a listed building. And if it did, is it "highly likely" that the outcome would not otherwise have been "substantially different"?
5. In a respondent's notice the county council maintains that if we were to conclude on the first ground of appeal that the Welsh Ministers ought to have been consulted, it is highly likely that the decision would now be the same – in particular, because under the provisions for consultation in the Development Management Procedure Order 2012, as now amended, the need to consult would not arise.

The Planning, Design & Access Statement

6. In December 2013 the county council had granted planning permission for a wind turbine on the same site. Mr Williams successfully challenged that decision – on grounds different from

those with which we are concerned here – and the planning permission was quashed, by consent, on 2 April 2014. The application for planning permission with which these proceedings are concerned was submitted to the county council on 9 September 2014.

7. In the Planning, Design & Access Statement, prepared by Urban Wind, which accompanied the application, the section dealing with “Cultural Heritage Constraints” said this:

“In order to ensure that potential impact upon Cultural Heritage elements in the local area are [sic] limited to an acceptable level the original development was specifically sited so as to ensure that it is not set within a clear visual context of the following: –

- World Heritage Sites
- Scheduled Ancient Monuments
- Listed Buildings
- Conservation Areas

Prior to progressing this submission, a desktop review of all previously submitted information and a further assessment of the sensitivity of any nearby designations has been undertaken using online resources and Local Planning Authority data.

Using Cadw it was possible to ascertain that there are a number of scheduled ancient monuments and a Grade II [sic] Listed Building within 2km of the site. There are no conservation areas or Grade I Listed Buildings within the locale.

Whilst the ZTV [i.e. zone of theoretical visibility] production associated with the subject proposal highlights that all the identified historical assets listed below may be afforded views of the blade tip and at times the nacelle of the proposed turbine potential impacts are likely to be minor at most. It should be noted that ZTV maps tend to over-estimate the extent of visibility and does not take account of natural or built features.

Due to the level of screening, the undulating topography, the distance that the majority of listed assets are located from the proposed turbine location, and in light of the limited scale of the turbine itself, the effect on views and setting of the listed structures and monuments is considered to be slight. No further mitigation is therefore considered to be necessary.

We would also take this opportunity to reiterate that the LPA have previously agreed with this analysis in issuing their initial consent. Given that the principle of the proposal remains the same we would expect a similar verdict in the consideration of this application.”

Following that text, Figure 12 listed four “Cultural Heritage Assets”. We are not concerned with the first, which was Llewetrog Field Boundary. As for the second, the scheduled monument known as Llandeilo Graban Motte (or Castle Mound), the “Orientation” was given as “1.4km to SSW of site”, the “Receptor Sensitivity” was said to be “Low”, the “Magnitude of Change” was assessed as “Slight”, and the “Effect” as “Minor”. For the third, the scheduled monument known as “Llanbedr Hill Platform House”, the “Orientation” was given as “1.9km to NE of site”, the “Receptor Sensitivity” was said to be “Low”, the “Magnitude of Change” was assessed as “Negligible” and the “Effect” as “Minor/Negligible”. And for the fourth, “Llanbedr Church” – the grade II* listed Church of St Peter at Llanbedr, wrongly described here as a grade II listed building – the “Orientation” was given as “1.5km to E of site”, the “Receptor Sensitivity” was said to be “Low/Medium”, the “Magnitude of Change” assessed as “Negligible”, and the “Effect” as “Minor/Negligible”.

The planning officer's reports to committee

8. The application was considered by the county council's Planning, Taxi Licensing and Rights of Way Committee: first on 9 April 2015, and then, after further ecological information had emerged, on 21 May 2015.
9. In her report to the committee for its meeting on 9 April 2015, the county council's planning officer, Ms Gemma Bufton, recommended "conditional approval".
10. The officer recorded that "No response ..." to consultation had been received from "PCC – Built Heritage". Clwyd-Powys Archaeological Trust ("CPAT") had responded "to confirm that there are no archaeological implications for the proposed single turbine development at this location". The consultees to which the officer referred did not include the Welsh Government's historic environment service, Cadw. 45 letters of objection had been received. In her summary of those objections the officer did not refer to any concerns about the likely effects of the development on heritage assets.
11. In a lengthy list of relevant national and development plan policies she included Planning Policy Wales (2014), Policy ENV14 – Listed Buildings, and Policy ENV17 – Ancient Monuments and Archaeological Sites of the Powys Unitary Development Plan (2010) ("the UDP"), Welsh Office Circular 60/96 – Planning and the Historic Environment: Archaeology, and Welsh Office Circular 61/96 – Planning and the Historic Environment, Historic Buildings and Conservation Areas.
12. As for the "Principle of Development", the officer's advice, in the light of the policies in Planning Policy Wales and the UDP which "promote proposals for renewable energy developments where appropriate", was that "the proposed development is broadly supported by both national and local planning policy and guidance and therefore is considered to be fundamentally acceptable in principle".
13. Under the heading "Cultural Heritage", she said this:

"The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application. Where nationally important archaeological remains and their setting are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ.

The site of development is located within approximately 2km of two Scheduled Ancient Monuments (SAMs), the closest being Castle Mound (RD071) which is located approximately 1.4km from the proposed turbine site (south) and Llanbedr Hill Platform House (RD181) which is located approximately 1.9km of the proposed turbine (north). Photomontages accompanying the application indicate that despite the noted distance, intervening topography and vegetation, the proposed turbine will be clearly visible from the identified SAMs.

UDP policy ENV17 states that developments which would unacceptably adversely affect the site or setting of a Scheduled Ancient Monument will not be permitted. Given the noted distance, intervening topography and vegetation, it is considered that the proposed turbine would not have unacceptably adversely impact [sic] on the aforementioned Scheduled Ancient Monuments."

14. At the committee meeting on 9 April 2015 Mr Williams and Mr Bagley both addressed the members, Mr Williams contending that wind turbines were harming tourism. The committee

resolved that planning permission be granted. When the application came back to the committee on 21 May 2015, the officer presented the members with updates to her report, in which she said nothing more about the likely effects of the development on “Cultural Heritage”, and again recommended approval. She appended a letter of objection to the previous proposal, dated 13 May 2014, from Mr Dainis Ozols, in which he had expressed concern about – among other things – “[damage] to heritage assets and their setting”, contending that “[the] construction of such a tall, industrial structure will permanently deface a landscape that has remained largely unchanged since the Norman Conquest ...”. The committee again resolved that planning permission be granted. The minutes record no discussion at either meeting on the likely effects of the development on heritage assets.

Correspondence after the grant of planning permission

15. In a letter to the county council dated 2 June 2015 the solicitors then acting for Mr Williams said he was “considering a Judicial Review challenge” to the county council’s decision. They pointed out that there was no reference to the listed Llanbedr Church in the planning officer’s report to committee, and asserted that the officer had misunderstood the provisions of section 66(1) requiring a local planning authority to have “special regard to the desirability of preserving the [listed] building or its setting ...”. They complained that the decision to grant planning permission was flawed by a failure to consult Cadw on the possible effects of the development on scheduled monuments, and also that the “wrong test” had been “applied by the officer in her report with regard to the impact on SAMs and listed buildings”. In response, in a letter dated 8 June 2015, the county council’s Principal Solicitor, Mr Colin Edwards, acknowledged that Cadw had not been consulted. He added that CPAT had been consulted and had said there would be “no significant visual impact upon RD181” – Llanbedr Hill Platform House, the nearest scheduled monument to the application site. He also attached to his letter two “wireline diagrams”, which showed, he said, that the wind turbine “is not visible from the Grade II* listed church (Llanbedr Church)”. These diagrams had been provided to the county council by Urban Wind on 4 June 2014.
16. In an e-mail to the county council’s planning officer on 27 July 2015, Mr Mark Walters, the Development Control Archaeologist for CPAT, explained that “for this small-medium sized turbine we searched the Historic Environment Record for all sites within 1km of the turbine which numbered 20 in all”, and that this “search looked at designated as well as non-designated sites and included listed buildings, scheduled monuments, registered historic landscapes, registered parks and gardens and battlefields”. There were, he said, “no significant visual effects upon the Llan Bach Howey (Grade II) or Llanbedr Church (Grade II*) listed buildings which are screened by the intervening hill slopes of The Garth and the woodland on its south and east sides”, and he confirmed that “[given] the low overall impact on cultural heritage [CPAT has] no objections to this proposal”.
17. In correspondence not put before the judge, Mr Edwards sought Cadw’s understanding of the requirements for consultation of the Welsh Ministers under the Development Management Procedure Order 2012. On 27 July 2015 in an e-mail to Ms Suzanne Whiting, a Casework Manager at Cadw, he observed that CPAT, when consulted on the application, had said the proposal had “no archaeological implications”, and asked Ms Whiting to confirm that in the circumstances “[Cadw] would neither expect nor require to be consulted”. Ms Whiting’s response, on 30 July 2015, apparently in the light of what she had been told by Cadw’s Senior Archaeological Planning Officer, was this:

“ ...

In practice, the requirement to consult the Welsh Ministers is routinely interpreted by local planning authorities and Cadw to include development likely to affect the setting of a scheduled monument. This is supported by national policy and guidance

which explains that the desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or not. Furthermore, it explains that where nationally important archaeological remains, whether scheduled or not, and their settings are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ. Paragraph 17 of Circular 60/96, Planning and the Historic Environment: Archaeology, elaborates by explaining that this means a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible remains.

We note that the applicant's agent has identified that the proposed development would have an impact on the settings of two scheduled monuments and, as such, we would have expected the local planning authority to consult Cadw.

...”

Cadw maintained that position in subsequent e-mail exchanges on the same day, despite being told what CPAT's Development Control Archaeologist had said in his e-mail of 27 July 2015, and despite Mr Edwards pointing out that “the regulations ... governing referral to [Cadw] ... do not refer to “setting” but rather the “site” ... of SAMs”. They did not say what their response might have been if they had been consulted, or even that they would have responded.

18. In a memorandum dated 30 July 2015, prepared in the light of Mr Williams' claim for judicial review, the county council's Built Heritage Officer, Ms Debra Lewis, considered the likely effect of the wind turbine on the setting of the grade II* listed Church of St Peter at Llanbedr. She said:

“ ...

The rural location of the church and the churchyard contribute greatly to the setting of the church, and the proximity of the proposed wind turbine to this listed building is noted, as is the fact that a turbine in such close proximity has the theoretical potential to affect the setting of this grade II* building, and to have a detrimental effect on the visitors to the graveyard.

However, I acknowledge the location of the church and the churchyard nestled under Coed y Garth and the escarpment to the east of the woodland. The difference in heights between the site of the proposed turbine and the listed church is illustrated by Viewpoint 8 – Llanbedr Hill, which does not contain the church however Coed y Garth is on the photograph.

Viewpoint 2 is taken [from] the footpath on the top of The Garth and also illustrates clearly the difference in the height of the top of The Garth and the location of the turbine, and that the hub and the entire length of a blade would be visible from that point.

Considering the evidence submitted with the application and visiting the site, I would not consider that the turbine would be visible from St Peters or the Churchyard. I would not consider that the setting of [sic] the short term views of the Church would be affected.

As a result of the topography, it is not possible to afford a view of both ... the church and turbine in the same view and as such I would not consider that the medium range views of the Church are affected by the turbine.

Longer range views such as from The Begwyns would enable the church and the proposed turbine to be viewed together, and the rural character of the church in its landscape is duly noted. I would refer to Viewpoint 11 which illustrates the location of the turbine in the landscape. Given the distance, topography and vegetation between the proposed turbine and the church, and the trees surrounding the churchyard[,] I would not consider that the long range setting of the listed building would be affected by the proposal.

...”

As for the suggestion that the development might affect the settings of scheduled monuments, she did not disagree with the findings of CPAT.

Did the Development Management Procedure Order 2012 require the county council to consult the Welsh Ministers?

19. At the time of the county council’s grant of planning permission for Mr Bagley’s development, and so far as is relevant here, article 14 of the Development Management Procedure Order 2012, “Consultations before the grant of permission”, provided:

“(1) Before granting planning permission for development which, in their opinion, falls within a category set out in the Table in Schedule 4, a local planning authority must consult the authority, body or person mentioned in relation to that category ...”.

Article 14(4) provided that where a local planning authority was required to consult any person or body before granting planning permission, it must give notice of the application to the consultee and must not determine the application until 14 days after either it or the applicant had given such notice to the consultee, whichever was the earlier. Article 14(5) stated that “[the] local planning authority must in determining the application take into account any representations received from a consultee”. The “Description of Development” for the category of development in paragraph (k) in the table in Schedule 4 was this:

“Development likely to affect the site of a scheduled monument”.

The “Consultee” was stated to be “The Welsh Ministers”. The requirement to consult the Welsh Ministers would be discharged by consultation with Cadw. The interpretation provisions in Schedule 4 confirmed that, in the table, “scheduled monument” had the same meaning as in section 1(11) of the Ancient Monuments and Archaeological Areas Act 1979.

20. Section 1(11) of the 1979 Act defines a “scheduled monument” as “any monument which is for the time being included in the Schedule”. Under section 2, “Control of works affecting scheduled monuments”, it is an offence to carry out works to which the section applies “unless the works are authorised under this Part of this Act or by development consent” (subsection (1)). The section applies to “(a) any works resulting in the demolition or destruction of or any damage to a scheduled monument”, “(b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto”, and “(c) any flooding or tipping operations on land in, on or under which there is a scheduled monument” (subsection (2)).

21. Section 61 of the 1979 Act, “Interpretation”, provides:

“

...
(7) “Monument” means ...

(a) any building, structure or work, whether above or below the surface of the

- land ... ;
- (b) any site comprising the remains of any such building, structure or work ... ;
- ...
- (d) any site in Wales (other than one falling within paragraph (b) or (c) above) comprising any thing, or group of things, that evidences previous human activity;
- ...

(9) For the purposes of this Act, the site of a monument includes not only the land in or on which it is situated but also any land comprising or adjoining it which appears to the Secretary of State or the Commission or a local authority, in the exercise in relation to that monument of any of their functions under this Act, to be essential for the monument's support and preservation.

(10) References in this Act to a monument include references –

- (a) to the site of the monument in question; ...

...

(11) References in this Act to the site of a monument –

- (a) are references to the monument itself where it consists of a site; and
- (b) in any other case include references to the monument itself.

... .”

22. As amended by the Town and Country Planning (Development Management Procedure) (Wales) (Amendment) Order 2016, with effect from 16 March 2016, Schedule 4 to the Development Management Procedure Order 2012 no longer contains a category of development described as “Development likely to affect the site of a scheduled monument”. Instead, it contains in its paragraph (1) a category for which the “Description of Development” is this:

“(i) Development which has a direct physical impact on a scheduled monument.

(ii) Development likely to be visible from a scheduled monument and which meets one of the following criteria –

- a) it is within a distance of 0.5 kilometres from any point of the perimeter of a scheduled monument;
- b) it is within a distance of 1 kilometre from the perimeter of a scheduled monument and is 15 metres or more in height, or has an area of 0.2 hectares or more;
- c) it is within a distance of 2 kilometres from the perimeter of a scheduled monument and is 50 metres or more in height, or has an area of 0.5 hectares or more;
- d) it is within a distance of 3 kilometres from the perimeter of a scheduled monument and is 75 metres or more in height, or has an area of 1 hectare or more, or
- e) it is within a distance of 5 kilometres from the perimeter of a scheduled monument and is 100 metres or more in height, or has an area of 1 hectare or more.

(iii) Development likely to affect the site of a registered historic park or garden or its setting;

(iv) Development within a registered historic landscape that requires an Environmental Impact Assessment; or

(v) Development likely to have an impact on the outstanding value of a World Heritage Site”.

23. In Chapter 6 of Planning Policy Wales, Edition 7, published by the Welsh Government in July

2014 and current at the time of the county council's decision, paragraphs 6.5.1 and 6.5.6 stated, under the heading "Archaeological Remains":

"6.5.1 The desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application, whether that monument is scheduled or unscheduled. Where nationally important archaeological remains, whether scheduled or not, and their settings are likely to be affected by proposed development, there should be a presumption in favour of their physical preservation in situ. ...

...

6.5.6 Local planning authorities are required to consult the Welsh Government on any development proposal that is likely to affect the site of a scheduled ancient monument. Scheduled monument consent must be sought from the Welsh Government for any proposed works to a scheduled ancient monument."

24. Paragraph 6.5.9 of the current edition of Planning Policy Wales – Edition 9, published in November 2016 – states:

"6.5.9 Local planning authorities are required to consult the Welsh Ministers on any development proposal that is likely to affect the site of a scheduled monument, or where development is likely to be visible from a scheduled monument and meets certain criteria. [Here there is a footnote – footnote 23 – which refers to article 14 of, and paragraph (1)(i) and (ii) of the amended table in Schedule 4 to, the Development Management Procedure Order 2012.] The local planning authority should inform applicants of the need to obtain scheduled monument consent for any works they propose which would have a direct impact upon the designated area."

25. Welsh Office Circular 60/96, "Planning and the Historic Environment: Archaeology" states in paragraph 10, under the heading "Planning Applications", that "[the] desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application whether that monument is scheduled or unscheduled" (see *R. (on the application of Plant) v Pembrokeshire County Council* [2014] EWHC 1040 (Admin)). Paragraph 15, under the heading "... Consultations by Planning Authorities", states:

"15. ... Planning authorities should be fully informed about the nature and importance of the archaeological site and its setting. They should therefore seek archaeological advice. In the case of a development proposal that is likely to affect the site of a scheduled ancient monument, local planning authorities are required to consult the Secretary of State (Cadw)."

and in paragraph 17, under the heading "... Preservation of Archaeological Remains in- situ":

"17. Where nationally important archaeological remains, whether scheduled or not, and their settings, are affected by proposed development there should be a presumption in favour of their physical preservation in situ i.e., a presumption against proposals which would involve significant alteration or cause damage, or which would have a significant impact on the setting of visible remains."

26. There is no relevant statutory definition of the "setting" of a scheduled monument. In "Conservation Principles for the sustainable management of the historic environment in Wales", a document published by Cadw in March 2011, contains this definition of the "Setting" of an "historic asset":

"The surroundings in which an historic asset is experienced, its local context,

embracing present and past relationships to the adjacent landscape.”

An “historic asset” is defined as an “identifiable component of the historic environment”, which “may consist or be a combination of an archaeological site, an historic building, or a parcel of historic landscape”. In terms similar to the definition of “Setting” in the Cadw document, the definition of the “Setting of a heritage asset” in national planning policy for England in the National Planning Policy Framework (“the NPPF”) is this:

“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.”

27. The county council did not consult the Welsh Ministers – or Cadw – before determining Mr Bagley’s application for planning permission. As the judge said (in paragraph 26 of his judgment), the only question here is “whether in the circumstances of this case it had an obligation to do so”. That question, as he acknowledged, “depends solely on the true interpretation of the legislative provisions”. Did the requirement to consult on “[development] likely to affect the site of a scheduled monument” apply only to development likely to have some direct physical effect on the monument? Or did it apply also to development likely to have other effects relevant to a decision on an application for planning permission, namely visual effects – in particular, effects on the setting of the monument?
28. The judge understood the concept of the “site” of a scheduled monument in section 61 of the 1979 Act as having to do with “the protection of the monument itself” – not with its “importance or appreciation” but, as subsection (9) makes clear, its “support and preservation” (paragraph 38 of the judgment). Although, in Wales, development directly affecting scheduled monuments fell within the control of the Welsh Ministers, he observed that “the scheme of statutory control does not extend to all works that may affect the monument, particularly where the possible effect is an unintended one”. And, he said, “[the] requirement of consultation fills a noticeable gap even if the phrase in the Table is given a narrow meaning” (paragraph 40). He observed that “[the] the purpose of the creation of the notion of a monument and its site is preservation, not amenity; and it follows that action will ‘affect the site of a scheduled monument’ if it goes to its preservation but not if it affects only its amenity” (paragraph 41). Thus “[for] the purposes of the [Development Management Procedure Order 2012,] a development will affect the site of a scheduled monument if and only if it has an impact on the monument or its site in the [section] 61(9) sense, that either is direct or will prevent any land comprised within the monument by [section] 61(9) from continuing to provide necessary protection”. It followed that “[impacts] on amenity, including visual amenity, are not for the purposes of the [Development Management Procedure Order 2012] effects on the site of the monument” (paragraph 42). In this case, it had not been said that the effect of the development on any scheduled monument would be “other than visual”, and “[there] was accordingly no duty under the [Development Management Procedure Order 2012] to consult [Cadw] ...” (paragraph 43).
29. On behalf of Mr Williams, Mr Richard Harwood Q.C. attacked that analysis. He made four main submissions. First, the effect of development on the setting of a scheduled monument is a relevant consideration in a planning decision. The provisions of the Development Management Procedure Order 2012 for consultation on development likely to affect the site of a scheduled monument ought to be interpreted in that light. They relate to the making of a decision on an application for planning permission, not a decision under the 1979 Act. And in any event the provisions for the protection of scheduled monuments in the 1979 Act are concerned not merely with their physical preservation, but also with “public access and amenity”. Secondly, the reference to the “site of a scheduled monument” in paragraph (k) in the table in Schedule 4 was, in effect, a reference to the monument itself. Development likely to affect the setting of the monument, and hence the monument itself, would qualify as development likely to affect

the “site of a scheduled monument”. Under article 14 the Welsh Ministers therefore had to be consulted on proposals for development likely to affect the monument’s setting. Not all of the categories of development in the table in Schedule 4 related to effects on the application site itself. A similar approach is adopted in “other environmental legislation”. Thirdly, the judge was wrong to conclude that the statutory requirement to consult the Welsh Ministers, even if narrowly construed, would fill a “noticeable gap”. Many works to a scheduled monument would require scheduled monument consent but not planning permission. The schemes on which Cadw could most usefully be consulted were those for “off-site” development that would affect the setting of a scheduled monument. And fourthly, Mr Harwood submitted, the new paragraph (l) in the table in Schedule 4 did not introduce, for the first time, a requirement to consult the Welsh Ministers on development likely to affect the setting of a scheduled monument. It simply provides a graduated series of sub-categories of development within the setting of a monument, each of which requires consultation according to the specified distance, height and area.

30. I cannot accept those submissions. In my view, as was submitted by Ms Clare Parry for the county council and Mr James Corbet Burcher for Mr Bagley, the judge’s construction of the relevant provisions of the Development Management Procedure Order 2012 was correct, essentially for the reasons he gave. That construction emerges from a straightforward application of the principles of statutory interpretation to the words of paragraph (k) in the table in Schedule 4. It is also consistent with their statutory context. Like the judge, I see no need to look to other statutory schemes in seeking their meaning.
31. On a straightforward reading of the words of paragraph (k), leaving aside their statutory context, I would not accept the interpretation for which Mr Harwood contends. The concept in paragraph (k) – development “likely to affect the site of a scheduled monument” – would not naturally be understood as meaning development “likely to affect the site or the setting of a scheduled monument”. In the ordinary use of language, the “site” of a scheduled monument and its “setting” are not the same thing. The word “site” is apt to describe the area of land on which the monument is physically located: the physical entity comprised in the monument and the ground on which it stands. It would not normally equate to the “setting” of the monument, which encompasses the surroundings within which the monument may be experienced by the eye. And development “likely to affect the site” of a monument would not normally be understood as including development likely to affect its setting – in the sense of having some visible impact upon the monument’s surroundings but without any physical effect on the monument itself or the area of ground on which it stands.
32. Nor can I see any justification for reading into paragraph (k) an additional phrase – “or setting” – so that it would state: “Development likely to affect the site or setting of a scheduled monument”. This enlargement of the words used by the draftsman is not necessary to make sense of this provision, whose meaning seems perfectly clear as it is. On the contrary, it would only distort the true meaning. If the intention had been to require the Welsh Ministers to be consulted on development likely to affect the setting of a scheduled monument, this could have been done in express terms. And it was not.
33. The relevant statutory context only reinforces the literal interpretation. The statutory scheme is entirely coherent. The concept of a “scheduled monument” in paragraph (k) was the same as in section 1(11) of the 1979 Act. And the provisions for consultation in article 14 and Schedule 4 were aligned with the substantive provisions for conservation in the 1979 Act. This remains so after the amendments which removed paragraph (k) in the table in Schedule 4 and replaced it with the new paragraph (l).
34. The definition of a “scheduled monument” in section 1(11) does not go beyond the monument itself. It does not include the monument’s setting. The same may also be said of the definition of a “monument” in section 61(7). This too is confined to the monument itself and its “site”. The provisions in section 61(9), (10) and (11) confirm that the “site” of a monument is not

necessarily the same thing as the monument itself. And subsection (9), in particular, makes plain that the “site” of the monument” is not the same thing as its setting. It extends beyond the “land in or on which [the monument itself] is situated”, but not to embrace the surroundings of the monument in which it is experienced. In my view, the concept of “the site of a monument” as a relatively small area of land around the monument, essential for its physical “support and preservation”, puts beyond doubt the meaning of the concept of “the site of a scheduled monument” in paragraph (k). Neither expression means the setting of the scheduled monument, as opposed to its site. And again, if Parliament had intended to include the setting of a scheduled monument as well as its site within this part of the statutory scheme, it would have done so. It did that in respect of listed buildings, in sections 66 and 67 of the Listed Buildings Act, which refer specifically to development that would affect the “setting” of a listed building – though it is to be noted that, in Wales, there is no statutory requirement on local planning authorities to consult the Welsh Ministers or Cadw on proposals for such development.

35. The literal interpretation of paragraph (k) is not at odds with other provisions in Schedule 4 in which the verb “affect” has been used in describing a category of development to which the consultation requirements apply. Where this is done, the meaning of the word depends on its particular context: development “likely to affect land in the area of another local planning authority” (paragraph (a)), development “in or likely to affect a site of special scientific interest” (paragraph (q)(i)), development “likely to affect” an inland waterway or another watercourse within the category, as defined (previously paragraph (w), now paragraph (v)). Those provisions do not suggest the need to depart from a literal interpretation of paragraph (k).
36. The new paragraph (l) is in quite different terms from the provision in paragraph (k), which it has replaced. Where it concerns scheduled monuments, it identifies two categories of proposals on which the Welsh Ministers are to be consulted, neither of them defined with the use of the words “likely to affect”. The first is development which has a “direct physical impact” on a scheduled monument (paragraph (l)(i)). The second, entirely new, is development “likely to be visible from” a scheduled monument, which also meets one of the specified criteria of distance, height and area (paragraph (l)(ii)). I do not accept that the drafting of these provisions goes against the literal interpretation of the previous paragraph (k). Indeed, I think that interpretation gains some support in the provision relating to registered historic parks and gardens (paragraph (l)(iii)). That provision does use the words “likely to affect”. It distinguishes between development likely to affect “the site” of a registered historic park or garden and development likely to affect “its setting”. If “site” had meant both “site” and “setting”, there would have been no need to do that.
37. I see nothing in the contention that paragraph (k), if interpreted to exclude a requirement to consult the Welsh Ministers on proposals for development likely to affect the setting of a scheduled monument, would have been largely devoid of purpose, because the requirement for scheduled monument consent under section 2 of the 1979 Act is so broad. It is not necessary to consider how wide is the “noticeable gap” to which the judge referred. As Mr Harwood conceded, there is obvious benefit in the Welsh Ministers having the opportunity to comment on relevant applications for planning permission even if the development will also require scheduled monument consent.
38. The fact that national planning policy in Wales – and also policy ENV17 of the UDP – has emphasized the importance of preserving both scheduled monuments and their settings as a material consideration in decisions on applications for planning permission does not bear on the exercise of construing the statutory provisions for consultation. And, as one would expect, national planning policy reflects those statutory provisions. The first sentence of paragraph 6.5.6 of Planning Policy Wales, Edition 7, and the third sentence of paragraph 15 of Welsh Office Circular 60/96 paraphrase the previous paragraph (k) of the table in Schedule 4 of the Development Management Procedure Order 2012. The first sentence of paragraph 6.5.9 of Planning Policy Wales, Edition 7, with its footnote, simply draws attention to the provisions of

the new paragraph (l)(i) and (ii).

39. Finally, I do not accept that the county council's correspondence with Cadw in July 2015 indicates that the literal interpretation of paragraph (k) is wrong. The fact, if it is a fact, that local planning authorities "routinely" took the requirement to consult the Welsh Ministers as including proposals for development likely to affect the setting of a scheduled monument, and that Cadw "would have expected" to be consulted on this proposal, does not mean that authorities were obliged to consult Cadw under paragraph (k) – though, of course, there was nothing to prevent them from doing so. As Mr Harwood accepted in his supplementary skeleton argument (at paragraph 11), Cadw's e-mails are "not ... an authoritative interpretation of the legislation ...". And to be fair to Cadw, they did not suggest that themselves.
40. In my view, therefore, this ground of appeal must fail.
41. I should add that under the new paragraph (l), had it been in force at the time of the decision under challenge, the Welsh Ministers would not have had to be consulted on Mr Bagley's application for planning permission, and they would not now have to be consulted if the matter were remitted for re-determination – because the proposal is, as a matter of fact, outside the scope of the criteria in paragraph (l)(ii) b) and c).

Did the county council fail to perform the duty under section 66(1) of the Listed Buildings Act?

42. At the time of the county council's decision, section 66(1) of the Listed Buildings Act, headed "General duty as respects listed buildings in exercise of planning functions", provided:
- “(1) 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.”
- There is no statutory definition of "setting" for these purposes. However, the definition in the Cadw guidance is also relevant here (see paragraph 26 above).
43. The requirements of the section 66(1) duty have been the subject of much authority, some of it recent authority in this court (see in particular, the judgment of Sullivan L.J., with whom Maurice Kay and Rafferty L.J.J. agreed, in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2015] 1 W.L.R. 45, at paragraphs 16 to 29; and the judgment of Sales L.J., with whom Stephen Richards and Floyd L.J.J. agreed, in *Mordue v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1243, at paragraphs 26 to 29).
44. In *East Northamptonshire District Council* the local planning authority had refused the developer's application for planning permission to erect wind turbines in a location where they would harm the setting of listed buildings. An inspector allowed the developer's appeal. His decision was upheld in the High Court. This court dismissed the subsequent appeal. It endorsed the judge's conclusion that section 66(1) requires the decision-maker to give "the desirability of preserving the building or its setting" not merely careful consideration in deciding whether there would be harm to the building or its setting, but "considerable importance and weight" when balancing the advantages of the proposed development against any such harm (see paragraphs 22 to 24 and 29 of Sullivan L.J.'s judgment). Sullivan L.J. observed that the inspector appeared "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" (paragraph 29). The inspector had referred to the duty, but, said Sullivan L.J., "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 was a “fatal flaw” in his decision.

45. The section 66(1) duty is often reflected in development plan policy. That was so here. Policy ENV14 of the UDP states that “[proposals] for development unacceptably adversely affecting a listed building or its setting will be refused” and sets out specific considerations to be taken into account “[in] considering proposals for development affecting a listed building and its setting”, including “1. The desirability of preserving the listed building and its setting”, “2. The importance of the building, its intrinsic architectural and historic interest and rarity”, “4. The building’s contribution to the local scene and its role as part of an architectural composition”, and “7. The need for proposals to be compatible with the character of the building and its surroundings and to be of high quality design, using materials in keeping with the existing building”. Paragraph 4.5.21 states that “[when] considering proposals for development the presumption will be in favour of the preservation of listed buildings and their settings and permission will only be granted where a strong case can be made for doing so”.
46. Welsh Office Circular 61/96 also emphasizes, in paragraph 11, under the heading “The Setting of Listed Buildings”, the importance of the section 66(1) duty, stating that the setting of a listed building “is often an essential part of [the] building’s character ...”. Planning Policy Wales, Edition 7, stated, in paragraph 6.5.9, that “[where] a development proposal affects a listed building or its setting, the primary material consideration is the statutory requirement to have special regard to the desirability of preserving the building, or its setting, or any features of special architectural or historical interest which it possesses”.
47. As the judge acknowledged, neither the officer’s reports to committee nor the county council’s decision notice indicated that the county council had in fact performed the duty in section 66(1). And, as he accepted, if it could be shown that the duty ought to have been performed but was not, an error of law would have been demonstrated (paragraph 18 of the judgment). He also accepted that the section 66(1) duty “arises from the existence of the listed building, not from what anybody says about it”. So the absence of any objection about the effect of the development on the setting of the grade II* listed church at Llanbedr was not in itself decisive (paragraph 19). It might, however, be relevant – in three ways. First, after a lengthy process such as had occurred in this case, it might be more reasonable to conclude that if there had been “a point to be raised” it would have been. Secondly, the decision-maker might then be better able to defend a challenge, “on the ground that the alleged harm is insignificant”. And thirdly, it might be more likely that a “post-decision confirmation” is “genuinely an explanation of a decision lawfully taken, and not an attempt to conceal a material deficiency in the decision-making process” (paragraph 20).
48. The judge did not accept that the existence of a view in which one could see both the church and the turbine was in itself enough to engage the section 66(1) duty (paragraph 21). It would have to be shown that “the part of the view containing the turbine was to be regarded as the setting of the [listed] building” (see the judgment of Hickinbottom J., as he then was, in *R. (on the application of Miller) v North Yorkshire County Council* [2009] EWHC 2172 (Admin), at paragraph 89, citing *Revival Properties Ltd. v Secretary of State for the Environment* [1996] J.P.L. B86) (ibid.).
49. The judge observed that although there had been “no express process of assessment and balance under [section] 66(1)” when the decision to grant planning permission was made, there had at that stage been “no suggestion of damage to the setting of the church”. And “[despite] the silence of its own Built Heritage Officer, [the county council] was entitled to conclude that it had sufficient material to conclude in the exercise of its planning judgment that the issue was not one that arose from the proposal, and that being so it had no need to refer any further to the matter”. Nothing in the material produced after the decision supported a different conclusion. The “evidence of intervisibility” between the church and the turbine was, said the judge, “not

persuasive”. The view from “The Begwyns” did “not show that [section] 66(1) ought to have been taken into account”. There were, he said, “no significant visual effects on the church and its setting is not affected” (paragraph 22). He found “the post-decision statements by the [county council’s] Built Heritage Officer and by CPAT ... entirely consistent with the way that matters unfolded and with the evidence both at the time of the decision and even subsequently”. And in his view it was “clear that ... the decision would have been the same with or without the asserted error” (paragraph 25).

50. Mr Harwood said it was now common ground, and the judge had accepted, that the church and the wind turbine would both be “visible in a view from [The Begwyns], a well-known beauty spot about 2km from the church” (paragraph 9 of the judgment). The duty under section 66(1) did not depend on a possible effect on the setting of the listed building being brought to the county council’s attention as a material consideration (see the judgment of Lewis J. in *Cotswold District Council v Secretary of State for Communities and Local Government* [2013] EWHC 3719 (Admin), at paragraphs 55 to 59). But in this case the Planning, Design & Access Statement had, in fact, done that. It effectively acknowledged that the proposed development would, or might, have some effect on the setting of the listed church. In these circumstances the county council had to consider whether there would be such an effect, and, if so, whether it would be harmful – in which case it would have had to make its decision consistently with the approach confirmed by this court in *East Northamptonshire District Council*. But there was nothing to show that it did this. It was only after the decision was made, and the claim for judicial review had been launched, that this question was considered. The court should always be wary of an assessment produced only after proceedings have been begun (see the judgment of Pill L.J. in *R. (on the application of Carlton-Conway) v Harrow London Borough Council* [2002] EWCA Civ 927, at paragraphs 12 to 17, and 26 to 28).
51. Ms Parry and Mr Corbet Burcher defended the judge’s conclusions. They stressed the fact – confirmed, they said, by the ZTV produced before the county council’s committee considered the proposal, and also by the wireframe (or “wireline”) images produced after planning permission was granted – that the wind turbine was not going to be visible from the listed church. In the Planning, Design & Access Statement it had been suggested that the blade tip of the turbine might be seen from the church – a suggestion disproved even by the ZTV produced at the same time. And there was no mention of longer range views from “The Begwyns” or “The Roundabout” – locations to the south in which both the turbine and the listed building might both be seen. In the circumstances it was not necessary for the county council to perform the section 66(1) duty – or irrational not to do so. In the light of the ZTV – which ignored intervening buildings and vegetation – the description of the “Effect” on the listed building in Figure 12 of the Planning, Design & Access Statement as “Minor/Negligible” should be read as meaning no impact. Even when planning permission was granted, it was plain that there would be no harm to the setting of the listed building. And now, with the wind turbine in place, it is plain that there has been no such harm. The judge was right to conclude that there was no need for the county council to refer to the section 66(1) duty in the course of making its decision, and that even if it had performed the duty, its decision could not have been different. Mr Corbet Burcher described the judge’s approach as both “pragmatic” and “clearly correct in law, rooted in the existing authorities” (paragraph 26 of his skeleton argument).
52. In my view, there is force in Mr Harwood’s submissions on this issue.
53. As the case law shows, the circumstances in which the section 66(1) duty has to be performed where the setting of a listed building is concerned will vary considerably, and with a number of factors. What are those factors? Typically, I think, they will include the nature, scale and siting of the development proposed, its proximity and likely visual relationship to the listed building, the architectural and historic characteristics of the listed building itself, local topography, and the presence of other features – both natural and man-made – in the surrounding landscape or townscape. There may be other considerations too. Ultimately, the question of whether the section 66(1) duty is engaged will always depend on the particular facts and circumstances of

the case in hand.

54. Even in cases in which the courts have had to consider decisions of local planning authorities or inspectors to grant planning permission for the erection of wind turbines within the settings of listed buildings, the circumstances have varied widely (see, for example, *Mordue, Howell v Secretary of State for Communities and Local Government* [2015] EWCA Civ 1189, *R. (on the application of Higham) v Cornwall Council* [2015] EWHC 2191 (Admin), *East Northamptonshire District Council, R. (on the application of Friends of Hethel Ltd.) v South Norfolk District Council* [2010] EWCA Civ 894, and *Miller*).

55. In *Friends of Hethel Ltd.*, Sullivan L.J. (with whom Sedley and Lloyd L.J.J. agreed) observed (in paragraph 32 of his judgment) that “the question whether a proposed development affects, or would affect the setting of a listed building is very much a matter of planning judgment for the local planning authority ...”. In a somewhat different context – the setting of an ancient monument – Hickinbottom J. said in *Miller* (at paragraph 89 of his judgment):

“89. There is no definition of “setting” in this context, but it was common ground before me that it is a matter of judgment to be determined in visual terms, with regard being had to (i) the view from the monument towards the development (ii) the view from the development towards the monument and (iii) any other relevant view which includes both the monument and the development (an approach adopted in [*Revival Properties*]). In other words, the setting of a monument has to be considered “in-the-round”.”

56. The setting of a listed building is not a concept that lends itself to an exact definition, applicable in every case. This is apparent, I think, from the deliberately broad definitions of the setting of an historic – or heritage – asset in Cadw’s document and in the NPPF (see paragraphs 26 and 42 above). I would not wish to lay down some universal principle for ascertaining the extent of the setting of a listed building. And in my view it would be impossible to do so. Clearly, however, 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. This will often require the site of the proposed development and the listed building to be reasonably close to each other, but that will not be so in every case. Physical proximity is not always essential. This case illustrates the possible relevance of mutual visibility – or “intervisibility”, as the judge described it – and also of more distant views from places in which the listed building and the proposed development can be seen together – “co-visibility”, as it was described in submissions before us. But this does not mean that the mere possibility of seeing both listed building and development at the same time establishes that the development will affect the setting of the listed building.

57. An illuminating discussion of this question is to be found in Charles Mynors’ “Listed Buildings, Conservation Areas and Monuments” (fourth edition), in sections 13.5.8, 13.5.9 and 14.6.1. I would draw attention, in particular, to these observations in section 14.6.1, which seem pertinent in a case such as this:

“The extent of the “setting” of a listed building ... may mean something wider than just its curtilage, or just the land that can be seen from it. In practice, the question is not – as it is with “curtilage” – what is the boundary of the setting, but rather does a particular proposed development affect the setting of a listed building in the vicinity. The answer to this is likely to depend on the nature of the proposal as much as on that of the listed building. Thus the erection of a tall radio mast may affect the setting of a number of listed buildings, some a considerable distance from it; whereas the erection of a small shed in the garden of a listed house is likely to affect its setting only if it is reasonably close.”

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 (see, for example, *R. v South Herefordshire District Council, ex parte Felton* [1989] 3 P.L.R. 81 and [1991] J.P.L. 633, *R. v Bolsover District Council, ex parte Paterson* [2001] J.P.L. 211, *Ryan v Secretary of State* [2001] EWHC Admin 722, and *British Telecommunications Plc v Gloucester City Council* [2002] J.P.L. 993). Sometimes a consultee or an objector may have raised a 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 recognized, 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 local 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.
59. Was the county council's decision in this case flawed in that way? I think it was. In my view the section 66(1) duty ought to have been performed, and was not.
60. The particular circumstances here may be unusual, I accept. There were, it is true, no objections on the grounds of likely harm to the setting of the grade II* listed church by the erection of a wind turbine, some 42 metres in height to the blade tip, on the application site. An objection had been made to the previous proposal, partly on such grounds and in quite general terms, not specifically alleging harm to the setting of the listed building or to any other particular feature of the historic environment. None of the consultees who might have been expected to assess the potential effects of the wind turbine on the setting of the listed building had done so. The county council's Built Heritage Officer had not responded to consultation (see paragraphs 8 to 14 above). But the relevance of the effect the development might have on the setting of the listed church had been recognized on behalf of Mr Bagley, as applicant for planning permission, in the Planning, Design & Access Statement (see paragraph 7 above). It was squarely raised as a matter worthy of consideration in the section of that document dealing with "Cultural Heritage Constraints", together with the likely effect of the development on the "views and setting" of the scheduled monuments within a distance of 2 kilometres of the site.
61. The salient conclusion in the text of the Planning, Design & Access Statement was that "the effect on views and setting of the listed structures and monuments is considered to be slight", and that "[no] further mitigation" – meaning, presumably, no "mitigation" beyond the careful siting of the proposed turbine – was "considered to be necessary". That conclusion had been formed with the benefit of the "ZTV production". The four considerations on which it depended were said to be: first, "the level of screening", second, "the undulating topography", third, "the distance that the majority of listed assets are located from the proposed turbine location", and fourth "the limited scale of the turbine itself". It was a general conclusion, which did not distinguish between the "Cultural Heritage Assets" considered in the "ZTV production": the listed building and the two scheduled monuments. The results of the "ZTV production", recorded in Figure 12, showed a range of potential impacts, described in the language of the relevant methodology according to an analysis of "Receptor Sensitivity", "Magnitude of Change" and "Effect". The "Effect" on the listed Llanbedr Church – apparently on the understanding that it was listed merely at grade II, not at grade II*, and that its "Receptor Sensitivity" was "Low/Medium" – was stated to be "Minor/Negligible". As for the two scheduled monuments, the "Effect" on Llandeilo Graban Motte (or Castle Mound) was stated as "Minor", and that on Llanbedr Hill Platform "Minor/Negligible". No mention was

made of the duty in section 66(1) of the Listed Buildings Act, or relevant national or local policy.

62. In view of that assessment in the Planning, Design & Access Statement, and although no relevant concern had been expressed by consultees or in objections, the planning officer found it necessary to deal in her report with the possible effects of the proposed development on the settings of the two scheduled monuments (see paragraph 13 above). She did so on the basis that “[the] desirability of preserving an ancient monument and its setting is a material consideration in determining a planning application”, and that policy ENV17 of the UDP “states that developments which would unacceptably adversely affect the site or setting of a Scheduled Ancient Monument will not be permitted”. Her advice, reflecting the view expressed in CPAT’s consultation response and consistent with the conclusion in the Planning, Design & Access Statement, was that there would not be an unacceptable adverse effect on the setting of either of the scheduled monuments. The members had the benefit of that advice when they made their decision. And they clearly accepted it.
63. There was, however, no parallel consideration of the possible effect of the proposed development on the setting of the grade II* listed church, having regard to the statutory duty in section 66(1), the corresponding provisions of the development plan in policy ENV14 of the UDP, and national planning policy in Welsh Office Circular 61/96 and Planning Policy Wales – and no advice was provided to the committee on that question. The members therefore made their decision in the absence of any such advice – by contrast, for example, with the situation in *R. (on the application of Carnegie, on behalf of the Oaks Action Group) v Ealing London Borough Council* [2014] EWHC 3807 (Admin) (see the judgment of Patterson J., at paragraph 58), and *Miller* (see the judgment of Hickinbottom J., at paragraphs 93 to 100). Nor, it seems, was there any discussion of this matter on either occasion when the committee considered the proposal.
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. The members were not advised how – or even whether – the section 66(1) duty should be discharged in this case. They were given no guidance on the conclusion they should reach if they followed the approach to the performance of that duty confirmed by the Court of Appeal in *East Northamptonshire District Council*. Nor did they have the benefit of any expert view from consultees on this question, such as emerged from CPAT and the county council’s Built Heritage Officer after planning permission had been granted and the claim for judicial review issued (see paragraphs 16 and 18 above).
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 – the concept of “co-visibility” – and not merely views from the listed building towards the turbine and from the turbine towards it – the concept of “intervisibility”. They were not invited to consider the impact of the development on the “surroundings in which [the listed building] was experienced ...” – to use the words of the definition of “Setting” in Cadw’s guidance document (see paragraph 26 above). The assessment set out under the heading “Cultural Heritage” in the officer’s report was confined to the possible effect of the development on the settings of scheduled monuments. And there is no evidence before the court that, in preparing her report, she had considered the possibility that the development might affect the setting of the listed building, or had discounted any such effect as immaterial, or that any of her colleagues had done so. Her own witness statement dated 4 August 2015 does not suggest that she, or they, had done that.
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. The section 66(1) duty was, I think, clearly engaged. The Planning, Design & Access Statement did not say there would be no effect on the setting of the grade II* listed church. It acknowledged that there would or could be such an effect – as also there would on the settings of scheduled monuments within a comparable distance of the application site – but said the effect would only be “slight”. Given the potential significance of an effect, even a less than substantial effect, on the setting of a listed building, as this court’s decisions in *East Northamptonshire District Council* and *Mordue* have confirmed, I think that the possible impact of the proposed wind turbine on the setting of the listed church was sufficiently put in issue by the Planning, Design & Access Statement to call for explicit treatment in the officer’s report. I do not think this can simply be inferred. This is not to require more than may reasonably be expected of a local planning authority in these circumstances if it is to comply with the duty in section 66(1). I have in mind the observations of Sales L.J. in *Mordue* (especially at paragraphs 27 and 28) – which are relevant here even though they were made in the specific context of criticisms of an inspector’s decision letter, not an officer’s report to committee.

67. The first question for the county council, inherent in section 66(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. If it had been confronted, the answer might have been that there would be no effect, or no harmful effect, on the setting of the listed building. I accept that. But it is quite possible too that the opposite conclusion would have been reached, as it was in Planning, Design & Access Statement – that there would be some effect. It might also have been concluded, as a matter of planning judgment, that the effect would be a harmful one. The conclusion might then have been that, when the planning balance was struck, this harm was not such as to justify a refusal of planning permission even though “considerable importance and weight” was given to the desirability of preserving the setting of the listed building. I accept this too. But again, the opposite conclusion might have been 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 its 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) duty, and failed also to have regard to relevant development plan and national planning policy as material considerations.
68. The county council would of course have been lawfully entitled to conclude that there would be no harmful effect on the setting of the listed building, or that, even if harmful, the effect would not be significantly or decisively so. These are classically questions of fact and planning – or aesthetic – judgment for a decision-maker. And the court will not interfere with such an exercise of judgment except on public law grounds (see, for example, the first instance judgment in *R. (on the application of Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), at paragraphs 49, 50 and 54). To that extent I can agree with the judge’s conclusions on this ground of Mr Williams’ claim (see paragraphs 45 to 47 above). Crucially however, in this case I think it was incumbent on the county council to apply its planning or aesthetic judgment, on the facts, to the relevant questions pertaining to the duty in section 66(1). If it did not do so, its decision would be flawed. Where I part company from the judge is that, in the absence of some clear indication that the county council’s committee did in fact undertake the necessary exercise of planning or aesthetic judgment in the course of making its decision, I cannot accept that it came to grips, as in my view it was obliged to do in this case, with the duty under section 66(1).
69. Finally here, I acknowledge that the previous proposal had not been found unacceptable for any likely effects on the historic environment, including any effect on the setting of the listed building. But the officer’s advice to the members in her report on this application for planning

permission was put forward as a free-standing and complete assessment of the new proposal on its own planning merits, and it should, in my view, have tackled the section 66(1) duty explicitly. The members, for their part, ought to have discharged that duty in determining the application for planning permission now before them. As I have said, I do not think they did so.

70. This ground of appeal is therefore, in my view, made good.

Discretion

71. Both Ms Parry and Mr Corbet Burcher submitted that, if we were to find an error of law on the ground relating to the duty in section 66(1), we ought nevertheless to withhold a remedy. The basis for this submission is that, in the light of the views expressed on behalf of CPAT by Mr Walters in his e-mail of 27 July 2015 and by the county council's Built Heritage Officer in her memorandum of 30 July 2015 (see paragraphs 16 and 18 above), and all the relevant material now before the court, including the ZTV assessment, the wireframe images and the photographs of the turbine in the surrounding landscape, the county council's decision on Mr Bagley's application for planning permission would have been highly likely to have been the same had those views and all that material been before the committee when it considered the proposal, and would be highly likely to be the same now if the application were considered afresh. But Ms Parry and Mr Corbet Burcher's argument on discretion went beyond section 31(2A) of the Supreme Court Act 1981. They contended that the court could not realistically envisage a different outcome on re-determination (see the judgment of Lord Carnwath in *R. (on the application of Champion) v North Norfolk District Council* [2015] 1 W.L.R. 3710, at paragraphs 62 to 66, and the judgment of Sales L.J. in *R. (on the application of Gerber) v Wiltshire County Council* [2016] 1 W.L.R. 2593, at paragraphs 59, 60 and 66). Mr Corbet Burcher also submitted that substantial prejudice would be caused to Mr Bagley if the planning permission, which he had now implemented by erecting the wind turbine, were to be quashed – prejudice “considerably more acute”, said Mr Corbet Burcher, than in *R. (on the application of Holder) v Gedling Borough Council* [2014] EWCA Civ 599.

72. I do not accept those submissions. It seems to me that in this case the interests of a lawfully taken decision must prevail, as normally they should, and that the planning permission must therefore be quashed so that the county council can take the decision again, properly directing itself on the duty under section 66(1). Of course, it is quite possible that when this is done the outcome will be the same, and Mr Williams should not be surprised if it is. But in exercising its discretion in a case where the critical issue involves matters not merely of fact and planning judgment but of aesthetic judgment as well, in the performance of a duty imposed by statute, the court should be very careful to avoid trespassing into the domain of the decision-maker – here the county council as local planning authority. With this in mind, I do not think it is possible for us to conclude that the county council's decision in this case should be allowed to stand, even on the more generous basis of section 31(2A) of the 1981 Act.

73. I have a good deal of sympathy for Mr Bagley, because Mr Williams' complaint about the county council's consideration – or lack of consideration – of the effect of the development on the setting of the listed building emerged very late. However, just as this court was unmoved in somewhat different circumstances by the contention of substantial prejudice in *Holder* – another case in which planning permission had been unlawfully granted for a single wind turbine and the turbine had been put up after proceedings had been begun – Mr Corbet Burcher's submission to similar effect here does not persuade me that relief should be withheld. Even so, the county council should now lose no time in taking the decision again, ensuring when it does so that it performs the duty in section 66(1).

Conclusion

74. For the reasons I have given, I would allow this appeal.

Lord Justice Irwin

75. I agree.

Appendix 4

Catesby Court of Appeal Decision, [2018] EWCA Civ 1697



Neutral Citation Number: [2018] EWCA Civ 1697

Case Nos: C1/2017/1840 and C1/2017/1934

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MRS JUSTICE LANG DBE
[2017] EWHC 1456 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 July 2018

Before:

Lord Justice McFarlane
Lord Justice Lindblom
and
Lady Justice Asplin

Between:

C1/2017/1840

Catesby Estates Ltd.

Appellant

- and -

Peter Steer

Respondent

- and -

Historic England

Intervener

Mr Rupert Warren Q.C. (instructed by **Eversheds Sutherland (International) LLP**) for the **Appellant**
Ms Nina Pindham (instructed by **Richard Buxton Environmental & Public Law**) for the **Respondent**
Ms Emma Dring (instructed by **Sharpe Pritchard LLP**) for the **Intervener**

And between:

C1/2017/1934

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

Appellant

- and -

Peter Steer

Respondent

- and -

Historic England

Interested Party

Ms Jacqueline Lean (instructed by **the Government Legal Department**) for the **Appellant**
Ms Nina Pindham (instructed by **Richard Buxton Environmental & Public Law**) for the **Respondent**
Ms Emma Dring (instructed by **Sharpe Pritchard LLP**) for the **Interested Party**

Hearing date: 17 April 2018

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. Did an inspector deciding an appeal against the refusal of planning permission err in law in his understanding of the concept of the “setting” of a grade I listed building? That is the main question in these two appeals.
2. The appellant in the first appeal is Catesby Estates Ltd.. The appellant in the second appeal is the Secretary of State for Communities and Local Government. The appeals are against the order of Lang J., dated 22 June 2017, upholding an application by the respondent, Mr Peter Steer, under section 288 of the Town and Country Planning Act 1990. Mr Steer’s challenge was to the decision of an inspector appointed by the Secretary of State, in a decision letter dated 22 August 2016, allowing two appeals by Catesby Estates under section 78 of the 1990 Act, after an inquiry held in July 2016. The first of those appeals was against the refusal by Amber Valley Borough Council of an application for planning permission for a development of housing – up to 400 dwellings and a convenience store – on a site of about 17 hectares on land at Kedleston Road and Memorial Road, Allestree in Derbyshire. The second was against the council’s failure to determine another application for a development of up to 195 dwellings on about 7 hectares in the southern part of the same site. Mr Steer was an objector to the proposals, and a member of a group called Kedleston Voice, which also opposed the development. Historic England objected, and has taken part in the proceedings too.
3. The site is farmland, about 1.7 kilometres to the south-east of Kedleston Hall, which is a grade I listed building, and about 550 metres from the grade I listed Kedleston Hall registered park and garden and the Kedleston Conservation Area, whose boundary on its south-eastern side extends to the edge of the park. About 1.5 kilometres to the north of the site are the grade II* listed Kedleston Hotel and the Quarndon Conservation Area. The site itself was part of the manorial land owned by Sir Nathaniel Curzon, the first Lord Scarsdale, when, in 1761, he set about reconstructing his house and laying out the park. The land was beside the main road from Derby, by which most visitors to Kedleston Hall would arrive. From it one could see the park. And from the park there were views of the house. There were also views from the park towards Derby. In the 1960’s, however, as the city expanded to the north-west, a screen of trees – the “Derby Screen” – was planted to block them. The Hall is widely acknowledged to be of exceptional historic and architectural interest. It is described by Pevsner as “one of the most magnificent apartments of the C18 in England” and “the most splendid Georgian house in Derbyshire, in extensive grounds”. The park was largely the creation of the architect Robert Adam. Both the Hall and the park are now managed by the National Trust, and attract many visitors – about 120,000 in 2013.
4. Several objectors, including Historic England, maintained that the appeal site lay within the settings of both Kedleston Hall and Kedleston Park, largely because of the historic connections between the Hall and park and the farmland within the surrounding estate. In refusing planning permission for the larger scheme, the council asserted that the proposed development would harm the settings and significance of several heritage assets, including Kedleston Hall as a grade I listed building, contrary to government policy in paragraphs 132 and 134 of the

National Planning Policy Framework (“the NPPF”). It opposed the second scheme for the same reason.

The issue in the appeal

5. The single issue in the appeal is whether the inspector erred in law in his approach to the effects of the development on the setting of Kedleston Hall, thus failing to discharge the duty in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”).

Section 66(1)

6. Section 66(1) of the Listed Buildings Act 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.”

Government policy and guidance

7. In the “Glossary” to the NPPF a “Heritage asset” is defined 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 ...”. The “Setting of a heritage asset” is defined in this way:

“... 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.”

The definition of “Significance (for heritage policy)” is:

“... 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”.

8. Paragraph 128 of the NPPF says that “[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”. Paragraph 132 states:

“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.”

Paragraph 133 says that “[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 four specified considerations apply. Paragraph 134 says that “[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”.

9. The definition of the “Setting of a heritage asset” in the “Glossary” to the NPPF is explained in paragraph 18a-013-20140306 of the Planning Policy Guidance (“the PPG”), under the heading “What is the setting of a heritage asset and how should it be taken into account?”:

“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.

...”.

Historic England's guidance

10. In July 2015 Historic England published a revision of the first edition of a guidance document entitled “The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning: 3” (“GPA3”). The second edition was published in December 2017. We are concerned only with the first edition, current at the time of the inspector’s decision in this case. The “Introduction” to GPA3 made clear that its purpose was “to provide information on good practice”, and it did “not constitute a statement of Government policy” (paragraph 1).
11. Under the heading “The extent of setting”, it adopted the definition of the “Setting of a heritage asset” in the NPPF. It acknowledged that “[while] setting can be mapped in the context of an individual application or proposal, it does not have a fixed boundary and 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 because what comprises a heritage asset’s setting may change as the asset and its surroundings evolve or as the asset becomes better understood or due to the varying impacts of different proposals”. It also recognized that “[a] conservation area will include the settings of listed buildings and have its own setting, as will the village or urban area in which it is situated ...” (paragraph 4). On “Views and setting”, it said that “[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, including a variety of views of, across, or including that asset, and views of the surroundings from or through the asset, and may intersect with, and incorporate the settings of numerous heritage assets” (paragraph 5). Under the heading “Setting and the significance of heritage assets”, it emphasized that the contribution made by the setting of a heritage asset to its significance “depends on a wide range of physical elements within, as well as perceptual and associational attributes pertaining to, the heritage asset’s surroundings” (paragraph 9). On “Designed settings”, it said (*ibid.*):

“Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create experiences of drama or surprise and these designed settings may also be regarded as heritage assets in their own right. 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 design are included in the evaluation of the setting of a designed landscape[.]”

12. “A Staged Approach to Proportionate Decision-Taking” was suggested, in five steps (paragraphs 10 to 31). On “Step 1: identifying the heritage assets affected and their settings” the guidance was that “... if the development is capable of affecting the contribution of a heritage asset’s setting to its significance or the appreciation of its significance, it can be considered as falling within the asset’s setting” (paragraph 13). This apparently circular proposition did not appear in the second edition of GPA3. “Step 2: Assessing whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s)” would be to consider, first, “the physical surroundings of the asset, including its relationship with other heritage assets”; second, “the way the asset is appreciated”; and third, “the asset’s associations

and patterns of use” (paragraph 18). For “Step 3: Assessing the effect of the proposed development on the significance of the asset(s)”, the “(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” included several “effects” that were not visual (paragraph 25).

Evidence at the inquiry

13. At the inquiry, as Lang J. said (in paragraph 51 of her judgment), there was “a significant body of evidence, from [Historic England], the National Trust, the Gardens Trust, the Development Control Archaeologist at Derbyshire County Council, and the experts called on behalf of the local community, Kedleston Voice, that the appeal site was part of the setting of both the Grade I listed Hall and the park, as well as the conservation area, even though the proposal would not intrude upon views to and from the Hall”. The thrust of that evidence, said the judge, was that “the appeal site was part of the setting of the Hall because it had formed part of the estate, managed historically as an economic and social entity, and it remained in its historic agricultural use, with hedges and mature trees characterising the field boundaries”. From the Hall and the park, “the surrounding rural context was important in preserving a sense of a parkland landscape at the centre of a managed rural estate, rather than in a suburban context”. The site was on “the primary visitor route to the Hall and Park and so visitors would experience the historical narrative, and the concentric influence of the Hall on its landscape, as they traversed the agricultural estate, then entered the enclosed, designed park and gardens, enjoying the drama of anticipation as a great English country house was revealed to them”.

The inspector’s decision letter

14. The inspector described the “main issue” in both appeals as “the impact either proposal would have on the landscape character of the area and on the heritage assets of Kedleston Hall, Kedleston Hall Registered Park and Garden and Kedleston Conservation Area, Kedleston Hotel and Quarndon Conservation Area” (paragraph 4 of the decision letter). And “the matters to be covered” included “... landscape impact both in itself and also bearing in mind the historic connection with the Kedleston Hall estate, the statutory and policy background against which impacts on the heritage assets should be considered and, in the event of harm to any of those assets, the nature of the planning balance to be undertaken” (paragraph 6).
15. Under the heading “Landscape impact”, the inspector found it “difficult to dissociate landscape impact from heritage impact”. It was “not unreasonable to look at landscape quality and impact in purely physical or visual terms and to consider historical value and significance separately, in the context of the impact on the Hall and Park” (paragraph 17). He concluded that “setting aside for the moment the historical association with the Hall and Park, the appeal site exhibits no features that could qualify it as a valued landscape in the terms of paragraph 109 of the Framework” (paragraph 21). There was, he said, “no reason why, in physical or visual terms, harm to the landscape should compel dismissal of the appeals”, and “[the] question of its historical value may be addressed in relation to the settings of Kedleston Hall and its registered Park and Garden” (paragraph 30).

16. Turning to “The settings of the heritage assets and the statutory and policy context”, he began by directing himself (in paragraph 31) on the relevant definitions and policies in the NPPF:

“31. The definition of setting in the Framework is the “surroundings in which a heritage asset is experienced”. Further, the extent of a setting “is not fixed and may change as the asset and its surroundings evolve”. Setting is not itself a heritage asset but elements of a setting “may make a positive or negative contribution to the significance of an asset”. And paragraphs 126-141 of the Framework make it clear that, in considering a development proposal, what has to be assessed is the effect there would be, not on the setting, but on the significance of the heritage asset concerned.”

He considered the setting of each heritage asset, in turn. On the setting of Kedleston Hall he said (in paragraphs 32 to 36):

“32. The Council, Kedleston Voice and English Heritage (as it was then) argue that Kedleston Hall and its Park are an integral whole and that, accordingly, their settings are the same. It was also argued that the historical, social and economic connection – the appeal site being part of the estate of which the Hall and Park were the hub – brought the appeal site within the setting of the Hall. There has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting. The appellant takes the view that the Park provides the setting for the Hall. That is not an unreasonable approach to take; for example, the Historic England guidance recognises that a conservation area will include the settings of listed buildings and will have a setting of its own. That said, there are two ways to look at the setting of Kedleston Hall.

33. The planting of the Derby Screen, around 1960, brought about a very significant change. Originally, there were views out from the Hall and Park towards Derby – and, for those approaching the Hall, there would have been a first view into the Park, with a glimpse of the Hall, across the appeal site from Kedleston Road. The Derby Screen was planted to obscure the view of Allestree, development having encroached over the horizon, and the night-time glare from the increasingly large built-up area of Derby. Its planting was a deliberate decision, based on the changing surroundings, to make the Park more enclosed and inward-looking; and the Derby Screen has since been significantly extended into the Park by the National Trust. Thus, today, the appeal site forms no part of the setting of Kedleston Hall.

34. If one takes a more historical approach, however, then there was an open view where the Derby Screen now is. Moreover, the evidence suggests it was a designed view – documentary, in the references to the vista including Derby; physical, in the ditch of a sunken fence, akin to a ha-ha, which would have kept stock out (or in) without obstructing the view. The appellant argued that the sunken fence may have been a ditch predating the laying out of the Park but that does not exclude the proposition of a designed view.

35. The view was, clearly, a wide vista. The spire of Derby Cathedral is referred to as being seen in the panorama, though it could only have been seen from relatively close to the boundary of the Park, not from the Hall. The particular view to or from Kedleston Road is only a very small segment and is, from the Hall, at its very eastern extremity. There is no evidence that the view from Kedleston Road towards the Hall and Park was also part of the design; nor is it logical to draw the inference that the view towards the Hall and Park was designed simply because the view in the other direction was.
36. However, if one holds the opinion that the view both to and from Kedleston Road was a deliberate part of the design of the Park and that the Derby Screen, or part of it, could be opened out to restore that view, then the appeal site does indeed fall within the setting of Kedleston Hall.”

He reached somewhat different conclusions on the setting of the registered park and garden and the Kedleston Conservation Area (in paragraphs 37 and 38):

- “37. The Registered Park and the Conservation Area are coterminous and the designations have similar purposes in mind. The Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire). The agricultural land around the Park certainly forms part of its setting in historical and cultural terms. In visual terms, what comes within the setting is less extensive. There were, and still are, places within the Park where the surrounding agricultural landscape contributes to views out; and there are places outside the Park which afford views in, not only of the Park but also, sometimes, of the Hall.
38. The appeal site may be considered to lie within the setting of the Park because of its relative proximity. There are clear views of the boundary of the Park, though it is debatable whether its trees and woodland, designed and laid out in a naturalistic manner, can actually be distinguished as such by anyone unfamiliar with designed parkland. The only views into the Park from or across the appeal site, or out from the Park towards it, have been obscured by the planting of the Derby Screen.”

As for the setting of Kedleston Hotel, he said this (in paragraph 39):

- “39. Kedleston Hotel stands on the site of an earlier inn but what is seen today dates from the same period as the Hall and Park and was built to cater for visitors to the Park and its Sulphur Bath. There is thus a close historic relationship between the Hotel and the Hall and Park. The appeal site lies within the setting of the Hotel in as much as it can be seen from the Hotel looking south – but the focus of views from the Hotel, in so far as there are any, is to the west and north-west, towards the Hall and Park. The Hotel is not visible, or certainly not noticeable, from the appeal site or Kedleston Road alongside it. There are views in which the Hotel and Hall can both be seen, for example from Common Hill, just west of Quarndon; from there, though, the appeal site lies in a wholly different direction, by about 90°.”

and on the setting of the Quarndon Conservation Area, this (in paragraph 40):

“40. Quarndon Conservation Area is drawn tightly round the historic core of the village. It has relatively recent development virtually all around it. There is a significant amount of that to the south of the Conservation Area, in the direction of the appeal site. Because of this, it is debatable that the appeal site actually lies within the setting of the Conservation Area. It may be thought to do so, however, to the extent that it may be seen in winter views (when the trees are bare).”

17. He then considered the “Impact on the significance of the heritage assets”, again taking each in turn.

18. As for Kedleston Hall, he began by considering the status and “significance” of the listed building itself (in paragraphs 41 to 44):

“41. There is no doubting that Kedleston Hall, a grade I listed building, is a heritage asset of the very greatest importance. Statute requires special regard to be had to the desirability of preserving not only the building but also its setting. Any harm to the significance of the Hall must be given very great weight when considering development proposals within its setting.

42. The Derby Screen is key to any impact on the significance of Kedleston Hall. At the present time, the existence of the Screen means that the proposed development would have no impact whatsoever on the setting of the Hall. The questions to be addressed, therefore, are about the prospect of the Screen being removed or opened up and, if it were, the resultant impact of the proposed development on the significance of the Hall.

43. It is not absolutely clear that the view across the appeal site between Kedleston Road and the Hall and Park was designed. ...

44. There is no debate that the Screen was planted to obscure views of Allestree and the night-time glare from the lighting of the expanding urban area of Derby. Its planting was a deliberate response to changing circumstances. It may be seen as part of the evolution of the Park. Moreover, for whatever reason, the depth of the Screen has been substantially increased by the National Trust so that it is now some 40m or more wide. To remove it now, or to open it up in some way, raises a number of issues, as well as being a substantial and costly task.”

He then (in paragraphs 45 to 51) discussed the possibility of the “Derby Screen” being removed, and the likely consequences of that, concluding (in paragraphs 49 to 51):

“49. It seemed, until late in the inquiry, that no consideration had ever been given to the removal of the Derby Screen, or to opening it up so that the Park and landscape beyond are inter-visible. The National Trust then wrote to the Council, attaching an extract from a conservation plan that had not hitherto been known to exist. However, while the letter mentions glimpses of the dome of the Hall from Kedleston Road, the extract talks only about views from the south-eastern corner of the Park and about managing and thinning the Derby Screen “to create more open woodland with permeable edges to the parkland”

– not the removal of part or all of the Derby Screen and not significantly different to what is in the 2013 Conservation Plan.

50. Thus, it is unclear that the view from Kedleston Road was a designed view, intended to give a glimpse of the Hall; it is known that the Derby Screen was planted as a response to changing circumstances; there is no firm intention to consider removal [of] the Derby Screen; even if there were, there are a number of attendant issues that would have to be resolved; such indications as there are relate only to views from the south-eastern corner of the Park and to thinning the Screen. There is nothing to suggest that a view from Kedleston Road giving a glimpse of the Hall might at some time be restored.

51. On that basis, it is entirely reasonable to conclude that the appeal site does not lie within the setting of Kedleston Hall and that section 66(1) of [the Listed Buildings Act] and policy in the Framework do not come into play.”

He also considered the impact of the development assuming the “Derby Screen” had been removed (in paragraph 52):

“52. If the issues considered above were to be resolved in favour of removing all or part of the Derby Screen to restore a view to and from Kedleston Road, a question then arises as to what would be the impact of the proposed developments. The view from Kedleston Road would be lost. It could never be more than a glimpse across open countryside, rather than a designed view through parkland, but at least it might indicate that one was nearing the Hall and Park. The view from the Hall would be little changed. The cross-section provided by Dr Hickie [one of the council’s witnesses] in his evidence suggests that the land itself would be all but invisible from the Hall, though houses upon it would be seen to bring the boundary of the urban area closer to the Park. All that would represent less than substantial harm – sufficiently little, in fact, that the effect on the significance of the Hall, standing within its designed Park, would be negligible.”

19. In his conclusions on the impact on the setting of the registered park and garden and the Conservation Area the inspector said (in paragraphs 53 to 58):

“53. There is no dispute that the Park, registered in grade I, is, like the Hall, a heritage asset of the very highest importance. There is also no dispute that the appeal site lies within the setting of the Park and the Conservation Area; and that the harm caused to the significance of both would be less than substantial. The term ‘less than substantial’ does, however, cover a wide range of harm – and the question is just how great that harm would be.

54. There are two aspects to the impact on the setting of the Park – visual and historical. The Park was carefully designed and laid out in a naturalistic manner. There are (or were) designed views into the Park, with glimpses of the Hall, most notably (in the context of these appeals) from Kedleston Road between the Hotel and the Park entrances. The farmland surrounding the Park was historically part of the estate – and still is in that, while ownership may have changed, the estate is still managed from the

Hall. The farmland acts as a visual setting for the Park; and that is more important than might be thought at first blush – because the Park was designed naturalistically, not in a more formal style which may not have had, or needed, a measure of continuity with its surroundings.

55. The appeal site is part of that setting. So too is the built-up area of Allestree, which stands on land formerly part of the estate. And, of course, the Derby Screen was planted around 1960 because of the incursion of Allestree (and night-time glare from Derby) into the previously rural views from the Park. Much of what is said above about the Derby Screen applies equally to the Park. There would, however, have been views south-eastwards from within the Park, whether intentionally designed or not, from the Backgrounds and from the Long Walk. In historical terms, that brings the appeal site more firmly within the setting of the Park than if there had never been any inter-visibility. ...

...

58. To sum up, there would be harm to the setting of the Park from development within it – but that would be mitigated to a degree by the extent of the existing built-up area, the existing vegetation and the remaining open land between the Park and the built-up area. That also applies to views out from the Park if the Derby Screen were removed or opened out; views towards the Park would, though, be less extensive and more oblique than possible at present. In terms of the significance of the Park and Conservation Area, though, the harm would be at the lower end of ‘less than substantial’.”

He concluded that there would be no “material impact” on the setting of the Kedleston Hotel if the proposed development was “[appropriately] designed and landscaped”, and “no harm to its significance as a grade II* listed building” (paragraph 60). He found there would be “no harm to the significance” of the Quarndon Conservation Area (paragraph 61).

20. That assessment was carried into the inspector’s “Conclusions on the main issue” (in paragraphs 62 to 64) and his “Overall conclusions” (in paragraphs 79 to 89). He acknowledged that “Kedleston Hall and its Park are heritage assets of the greatest importance” and that “[any] harm to their significance must carry very great weight in the balance against the public benefits of the appeal proposals required by paragraph 134 of the Framework”. There was, however, “no harm to the significance of the Hall and only very modest harm to the significance of the Park and Conservation Area”. And “[even] if the Derby Screen were removed or opened out, the harm to the significance of the Hall would be very limited indeed and the harm to the Park still no more than modest”. Against that harm there was “the very great public benefit of market and affordable housing which is much needed, especially in Amber Valley but also in Derby City”. This was, said the inspector, “more than sufficient to tip the balance in favour of the appeal proposals” (paragraph 83). Applying the policy for the “presumption in favour of sustainable development” in paragraph 14 of the NPPF, there was “no doubt that the adverse impacts of either development would not significantly and demonstrably outweigh the benefits from providing much-needed housing” (paragraph 87).

The judge's conclusions

21. Lang J. said the inspector had “rejected the evidence and submissions that the appeal site was part of the setting of the Hall, despite the historic social and economic connections” (paragraph 54 of the judgment). She concluded (in paragraph 60):

“60. In my view, the Inspector’s findings ... clearly indicate that [his] focus was upon identifying a visual connection, and assessing the proposal’s impact upon it. The historic social and economic connections were set to one side in this exercise. I therefore cannot accept the Secretary of State’s submission that the Inspector merely formed a planning judgment that the historic social and economic factors were of insufficient weight, as there was no assessment of the weight to be accorded to them in the Inspector’s decision-making process.”

In the judge’s view the inspector’s approach to the other heritage assets “confirms that he treated the physical and visual connection as determinative” (paragraph 61). Her crucial conclusion was this (in paragraph 64):

“64. In my judgment, although the Inspector set out the NPPF definition of setting ... , he adopted a narrow interpretation of setting which was inconsistent with the broad meaning given to setting in the relevant policies and guidance which were before him Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. The term setting is not defined in purely visual terms in the NPPF which refers to the “*surroundings in which a heritage asset is experienced*”. The word “*experienced*” has a broad meaning, which is capable of extending beyond the purely visual.”

The inspector’s “justification for his narrow interpretation” was, said the judge, “misplaced because the term “*surroundings*” in the NPPF definition of setting does place a geographical limitation on the extent of the setting” (paragraph 67). He had “adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative”, and “[in] adopting this approach, [he] made an error of law” (paragraph 69).

Did the inspector err in law in his understanding of the “setting” of a heritage asset?

22. Mr Rupert Warren Q.C., for Catesby Estates, and Ms Jacqueline Lean, for the Secretary of State, submitted that the inspector made no error of law when identifying the extent of the setting of Kedleston Hall and assessing the likely effect of the development on that setting. He took into account the relevant facts, did not misunderstand the relevant policy and guidance, and exercised his planning judgment reasonably when applying that policy and guidance. He did not disregard historic considerations. The suggestion that he did is based on a misreading of paragraph 32 of the decision letter. His approach there was consistent with authority, and correct. And as one can see from previous and subsequent paragraphs – in particular, paragraphs 17, 21 and 30, where he assessed the likely effects of the development on the landscape, and paragraphs 54, 55 and 57, where he assessed its likely effects on the settings of the other heritage assets, both with and without the “Derby Screen” – he had considerations

other than the visual and physical well in mind. The idea that he simply put those considerations to one side is wrong.

23. Ms Nina Pindham, for Mr Steer, and Ms Emma Dring, for Historic England, supported the judge's analysis. They submitted that the inspector's approach was unduly narrow. In identifying the setting of Kedleston Hall and assessing the likely effects of the development on that setting, he had considered only views and the impact on views. He did not consider historical factors. When dealing with the other heritage assets, the inspector also focused on visual impacts alone. Historical factors, Ms Pindham and Ms Dring submitted, can be enough on their own to bring a site within the setting of a listed building. And that was so with Kedleston Hall. A visual connection is not necessary in every case.
24. Although the "setting" of a listed building is a concept recognized by statute, it is not statutorily defined. Nor does it lend itself to precise definition (see *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427, at paragraphs 53 to 58). Implicit in section 66 of the Listed Buildings Act, however, is that the setting of a listed building is capable of being affected in some discernible way by development, whether within the setting or outside it. Identifying the extent of the setting for the purposes of a planning decision is not a matter for the court, but will always be a matter of fact and planning judgment for the decision-maker. And as Sullivan L.J. said in *R. (on the application of The Friends of Hethel Ltd.) v South Norfolk District Council* [2011] 1 W.L.R. 1216, "the question whether a proposed development affects, or would affect the setting of a listed building is very much a matter of planning judgment for the local planning authority" (paragraph 32 of the judgment).
25. In *Williams* – where judgment on the appeal was given after the hearing in this case, and shortly before Lang J.'s judgment was handed down – the grant of planning permission for a wind turbine was challenged on the ground that the local planning authority had failed lawfully to consider the likely visual effects of the development on the settings of several heritage assets, including two scheduled monuments and a grade II* listed church. The only potential effects on the settings of the heritage assets in that case were visual. It was in this context that I distinguished between the "site" of a scheduled monument and its "setting", which, I said, "encompasses the surroundings within which the monument may be experienced by the eye" (paragraph 31). I went on to say that the circumstances in which the section 66(1) duty has to be performed for the setting of a listed building will vary with a number of factors – typically, "the nature, scale and siting of the development proposed, its proximity and likely visual relationship to the listed building, the architectural and historic characteristics of the listed building itself, local topography, and the presence of other features – both natural and man-made – in the surrounding landscape or townscape", and possibly "other considerations too", depending on "the particular facts and circumstances of the case in hand" (paragraph 53). To "lay down some universal principle for ascertaining the extent of the setting of a listed building" would be, I thought, "impossible". 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).

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.
27. It has also been accepted in this court that the effect of development on the setting of a listed building is not necessarily confined to visual or physical impact. As Lewison L.J. said in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 (in paragraph 5 of his judgment), “[although] the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell”. In that case the potential harm to the setting of the listed building was by noise and odour from four poultry broiler units.
28. Three general points emerge. First, the section 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, makes it necessary for the decision-maker to understand what that setting is – even if its extent is difficult or impossible to delineate exactly – and whether the site of the proposed development will be within it or in some way related to it. Otherwise, the decision-maker may find it hard to assess whether and how the proposed development “affects” the setting of the listed building, and to perform the statutory obligation to “have special regard to the desirability of preserving ... its setting ...”.
29. Secondly, though this is never a purely subjective exercise, none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building's setting. Nor could it. In every case where that has to be done, the decision-maker must apply planning judgment to the particular facts and circumstances, having regard to relevant policy, guidance and advice. The facts and circumstances will differ from one case to the next. It may be that the site of the proposed development, though physically close to a listed building, has no real relationship with it and falls outside its setting, while another site, much further away, nevertheless has an important relationship with the listed building and is within its setting (see the discussion in sections 14.3, 15.2 and 15.8 of Mynors and Hewitson's “Listed Buildings and Other Heritage Assets”, fifth edition). Under current national planning policy and guidance in England, in the NPPF and the PPG, the decision-maker has to concentrate on the “surroundings in which [the heritage] asset is experienced”, keeping in mind that those “surroundings” may change over time, and also that the way in which a heritage asset can be “experienced” is not limited only to the sense of sight. The “surroundings” of the heritage asset are its physical surroundings, and the relevant “experience”, whatever it is, will be of the heritage asset itself in that physical place.
30. Thirdly, the effect of a particular development on the setting of a listed building – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the “significance”

of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker, subject, of course, to the principle emphasized by this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2015] 1 W.L.R. 45 (at paragraphs 26 to 29), *Jones v Mordue* [2016] 1 W.L.R. 2682 (at paragraphs 21 to 23), and *Palmer* (at paragraph 5), that “considerable importance and weight” must be given to the desirability of preserving the setting of a heritage asset. Unless there has been some clear error of law in the decision-maker’s approach, the court should not intervene (see *Williams*, at paragraph 72). For decisions on planning appeals, this kind of case is a good test of the principle stated by Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (at paragraph 25) – that “the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly”.

31. With those three points in mind, I believe the submissions made to us by Mr Warren and Ms Lean are correct. When one reads the relevant parts of the inspector’s decision letter together and in their full context, I do not think one finds the errors contended for by Ms Pindham and Ms Dring. I cannot agree with the judge’s conclusion (in paragraph 60 of her judgment) that the inspector simply “set to one side” the historical considerations said to be relevant to the setting of Kedleston Hall. He recognized the relevance of those considerations to the setting of the listed building, to the impact of the proposed development upon that setting, and its impact on the “significance” of the listed building as a heritage asset. He did not concentrate on visual and physical factors to the exclusion of everything else. In the passages I have quoted from the decision letter one can see that he was aware of the need to take into account not merely the visual effects of the development but also its effects on the historic value of the Hall, the park, and each of the other heritage assets he had to consider.
32. I differ from the judge’s view (in paragraph 64 of her judgment) that the inspector “adopted a narrow interpretation of setting ... inconsistent with the broad meaning given to setting in the relevant policies and guidance ... before him”. In my opinion he understood the relevant policies and guidance correctly, and applied them lawfully in assessing the likely effects of the development on the setting of each heritage asset.
33. He began (in paragraph 31 of his decision letter) by directing himself on the NPPF definition of the “Setting of a heritage asset”, and the content of relevant NPPF policy. He did this accurately, and there is no suggestion that he did not.
34. He then (in paragraph 32) summarized the argument put forward by the council, Kedleston Voice and Historic England, that Kedleston Hall and its park were an integral whole, with the same setting, and, specifically, the assertion that “the historical, social and economic connection – the appeal site being part of the estate of which the Hall and park were the hub – brought the appeal site within the setting of the Hall”. It was this argument he was dealing with when he said in the next sentence that “[there] has, though, to be more of a physical or visual connection than that” – by which he clearly meant more of a physical or visual connection than the fact that the appeal site had been “part of the [Kedleston] estate ...”.
35. That sentence should not be taken in isolation, but must be read in its full context. When this is done, its true meaning is certain and clear.

36. In the circumstances here the inspector was, in my view, entitled to look for a “physical or visual connection” of some kind as a means of establishing the extent of the setting of this listed building. The crucial question, I think, is whether his conclusion on the need for “more of a physical or visual connection than that” – meaning more of a physical or visual connection than the mere fact that the appeal site had been “part of the estate of which the Hall and Park were the hub” – is to be read as if it were a statement of general principle, or simply as a planning judgment on the facts of this particular case.
37. In the course of argument before us, Ms Dring accepted that if it was the latter, the Secretary of State’s appeal must succeed. She was, in my view, right to do so.
38. As Mr Warren and Ms Lean submitted, the expression “more of a physical or visual connection than that” conveys a relative concept, not an absolute one. The inspector was not, in my view, automatically discounting the “historical, social and economic connection” as irrelevant. He was clearly aware of the potential relevance of such a connection to the question of whether the appeal site could be regarded as lying within the setting of the listed building and to the question of whether the proposed development would affect that setting. He was not saying that land could only fall within the setting of Kedleston Hall if there was a “physical or visual connection” between them. He was simply saying that in this instance the extent of the setting of the listed building could not be determined by the fact of the “historical, social and economic connection” to which he referred. There had to be something more than this connection alone if the appeal site were to be regarded as falling within the setting of the Hall.
39. As is clear when that sentence in paragraph 32 of the decision letter is read in its context, this was not, and was not intended to be, a statement of general principle. It represented the inspector’s own exercise of planning judgment in the particular circumstances of this case. And there was a simple explanation for that planning judgment, which he gave: “otherwise”, he said, “land completely remote from the Hall could be deemed within its setting”. He was not confining himself merely to visual and physical considerations, as if he thought that, in principle, he could not take other factors into account. He was not adopting a false test or a false approach. He knew, as he went on to say (in paragraph 37), that “[the] Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire)”. But the historic connection could not be the sole criterion for judging whether a site lay within the setting of the listed building. Land historically farmed within the estate as a whole, and belonging to that social and economic entity, might be so geographically detached from Kedleston Hall as to be “completely remote”. The historic connection between the farmland of which the site of the proposed development formed part was not, in the circumstances, sufficient to bring the site within the setting of the Hall.
40. In the fourth and fifth sentences of paragraph 32 the inspector endorsed the contention put forward by Catesby Estates: “that the Park provides the setting for the Hall” – in his view, “not an unreasonable approach to take”. This was, once again, a planning judgment exercised by the inspector in the particular circumstances of this case. He found support for it in “the Historic England guidance”, which, he said, “recognises that a conservation area will include the settings of listed buildings and will have a setting of its own”. Far from ignoring the advice in GPA3, he clearly had it in mind and relied on it. And it was open to him to find that the setting

of Kedleston Hall as a listed building was different from the setting of the park as a registered park and garden and from the setting of the conservation area.

41. These were all reasonable conclusions for the inspector to reach on the facts, taking into account all relevant considerations, and notwithstanding the case put forward by the council, Kedleston Voice and Historic England. They show a lawful approach to identifying the setting of Kedleston Hall, which did not neglect historical, social and economic considerations.
42. But the inspector went further. He acknowledged (at the end of paragraph 32) that there were “two ways to look at the setting of Kedleston Hall”. He then set out (in paragraphs 33 to 36) a careful description of the setting of the Hall as it has changed over time. He considered the views of the Hall originally available from across the appeal site, the evidence of a “designed view” from the Hall, and the interposition of the “Derby Screen”, which, in his judgment, now prevented the appeal site from forming part of the setting of the listed building. He also considered the relevant documentary and physical evidence on views to and from Kedleston Hall, and the interruption of those views by the “Derby Screen”. He was conscious of the relevance of historical considerations in forming his own conclusion on the extent of the setting of the listed building. This strengthens the conclusion that his approach was not restricted to visual and physical considerations alone, but was comprehensive and complete. I think his relevant conclusions are unassailable.
43. The same may be said of his conclusions on the impact of the proposed development on the setting of the Hall (in paragraphs 41 to 52). Here too he grappled with the evidence on historic views, the loss of such views, and the possible implications of the “Derby Screen” being removed – unlikely as that was. Once again, his approach cannot be faulted, and his conclusions were well within the limits of lawful planning judgment. He was entitled to conclude (in paragraph 51) that, with the “Derby Screen” in place, the appeal site did “not lie within the setting of Kedleston Hall” and that that the section 66(1) duty and corresponding guidance in the NPPF did “not come into play”; and (in paragraph 52) that even if the “Derby Screen” were to be removed, or partly removed, the effect of the development “on the significance of the Hall, standing within its designed Park, would be negligible”. Those conclusions were available to him on the evidence, and in these proceedings they are secure. They do not betray an unlawful approach, in which considerations other than the visual and physical were disregarded.
44. That the inspector grasped the concept of the setting of a listed building is demonstrated in the parts of his decision letter where he considered the settings of the other heritage assets and the likely effects of the development on each. Those passages serve to confirm the lawfulness of his approach to identifying the setting of Kedleston Hall, and of his conclusion that the potential effect of the development upon it was no more than “negligible”. His approach to identifying the setting of each heritage asset he had to consider was, in my view, consistent and sound. So were his conclusions on the likely effect of the proposed development – or its lack of effect – on the setting in question and its impact – or lack of impact – on “significance”. At no stage did he exaggerate the importance of physical and visual considerations, or unduly diminish the significance of the historical, the social and the economic.

45. For example, when considering the setting of the park and the Kedleston Conservation Area, he acknowledged (in paragraph 37) that “[the] Hall and its Park were at the centre of a large estate” and accepted that the “agricultural land around the Park certainly forms part of its setting in historical and cultural terms”, though in “visual terms” the setting was “less extensive”. This was to give both “historical and cultural” and “visual” considerations their place and due weight in establishing the extent of the setting of the park, and to recognize that the juxtaposition of designed parkland to the surrounding farmland created a different setting for that heritage asset from the setting of the Hall as a listed building. Historical considerations again played their part in the assessment, as well as views. But the decisive factor in the inspector’s conclusion (in paragraph 38), that the appeal site fell within the setting of the park – as was common ground – was their “relative proximity” to it and “clear views of the boundary of the Park”. The Hall was further away. There was a direct visual relationship between the appeal site and the park, but not between the site and the Hall. Again, however, the “Derby Screen” had largely obstructed views in both directions – from and of the park.
46. The tenor of the inspector’s conclusions on the likely impact of the development on the setting of the park and the Kedleston Conservation Area (in paragraphs 53 to 58) is similar. As he said (in paragraph 54), there were “two aspects to the impact on the setting of the Park – visual and historical”. He considered both, and he did so impeccably. He accepted (in paragraph 55) that the appeal site was “part of that setting”, as was the built-up area of Allestree, and (in paragraph 58) that “there would be harm to the setting of the Park from development within it”, but that “[in] terms of the significance of the Park and Conservation Area, ... the harm would be at the lower end of ‘less than substantial’”. Here too, there can be no complaint that either his approach or the conclusion he reached was unlawful.
47. His conclusions on the settings of the Kedleston Hotel as a listed building and of the Quarndon Conservation Area, though informed by the relevant historical considerations, depended mainly on the visual – the “views” to which he referred (in paragraphs 39 and 40). Those conclusions are not vulnerable in a legal challenge. Nor do they reveal a mistaken approach to the setting of Kedleston Hall. Here again, the circumstances were different. The fact that there was, as the inspector observed (in paragraph 39), a “close historic relationship between the Hotel and the Hall and Park” does not mean that there was any such relationship between the hotel and the farmland where the appeal site lay. The same may also be said of the Quarndon Conservation Area – “drawn tightly round the historic core of the village”, as the inspector put it (in paragraph 40). These conclusions, and his finding (in paragraphs 60 and 61) that neither the setting of the listed hotel nor that of the conservation area would be harmed by the development, reveal no error of law. They do not suggest that he misunderstood the concept of the setting of a heritage asset. What they do show is that his approach was both consistent and correct.

Conclusion

48. For the reasons I have given, I would allow this appeal.

Lady Justice Asplin

49. I agree.

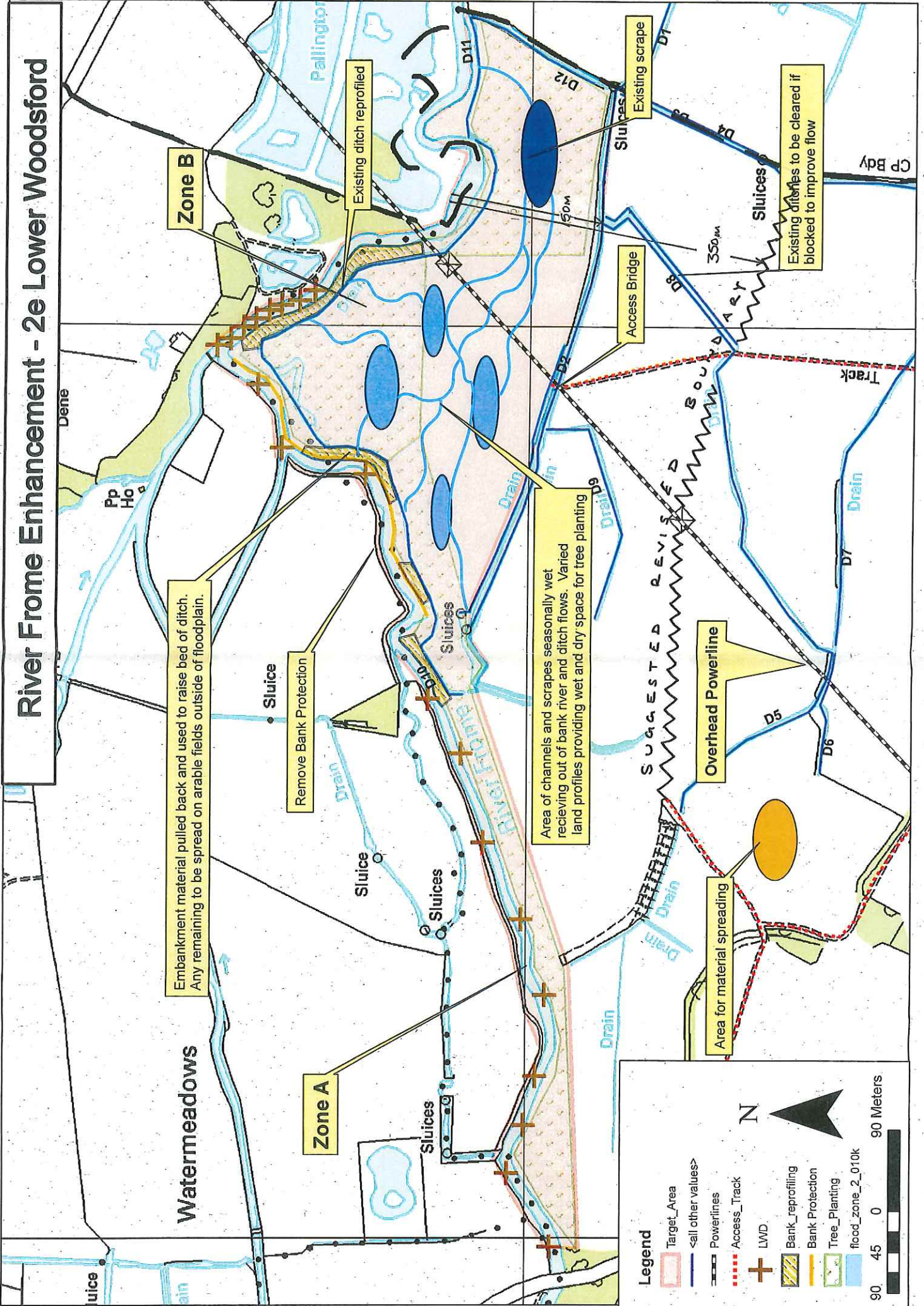
Lord Justice McFarlane

50. I also agree.

Appendix 5

River Frome enhancement works proposed by the Environment Agency

River Frome Enhancement - 2e Lower Woodsford



Appendix 6

Plan of additional wood planting by Woodland Trust as part of the MOREwoods Project, from a Legal Agreement dated 5 November 2014

Schedule 1

Agreed Works

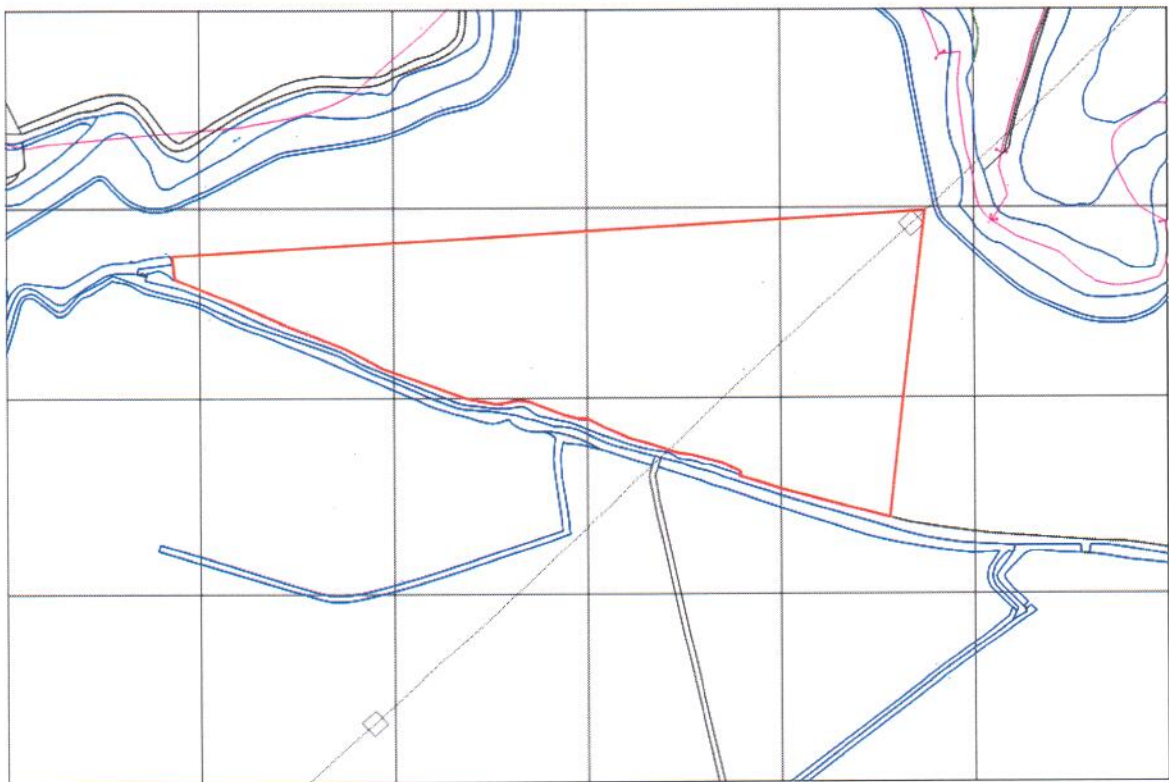
The Objective of the Agreed Works is to:

Create a new woodland at Woodsford Lower Dairy of 3.6 hectares in size comprising of native trees for the benefit of people, wildlife and landscape.

The **Agreed Works** to be carried out by the Trust comprise:

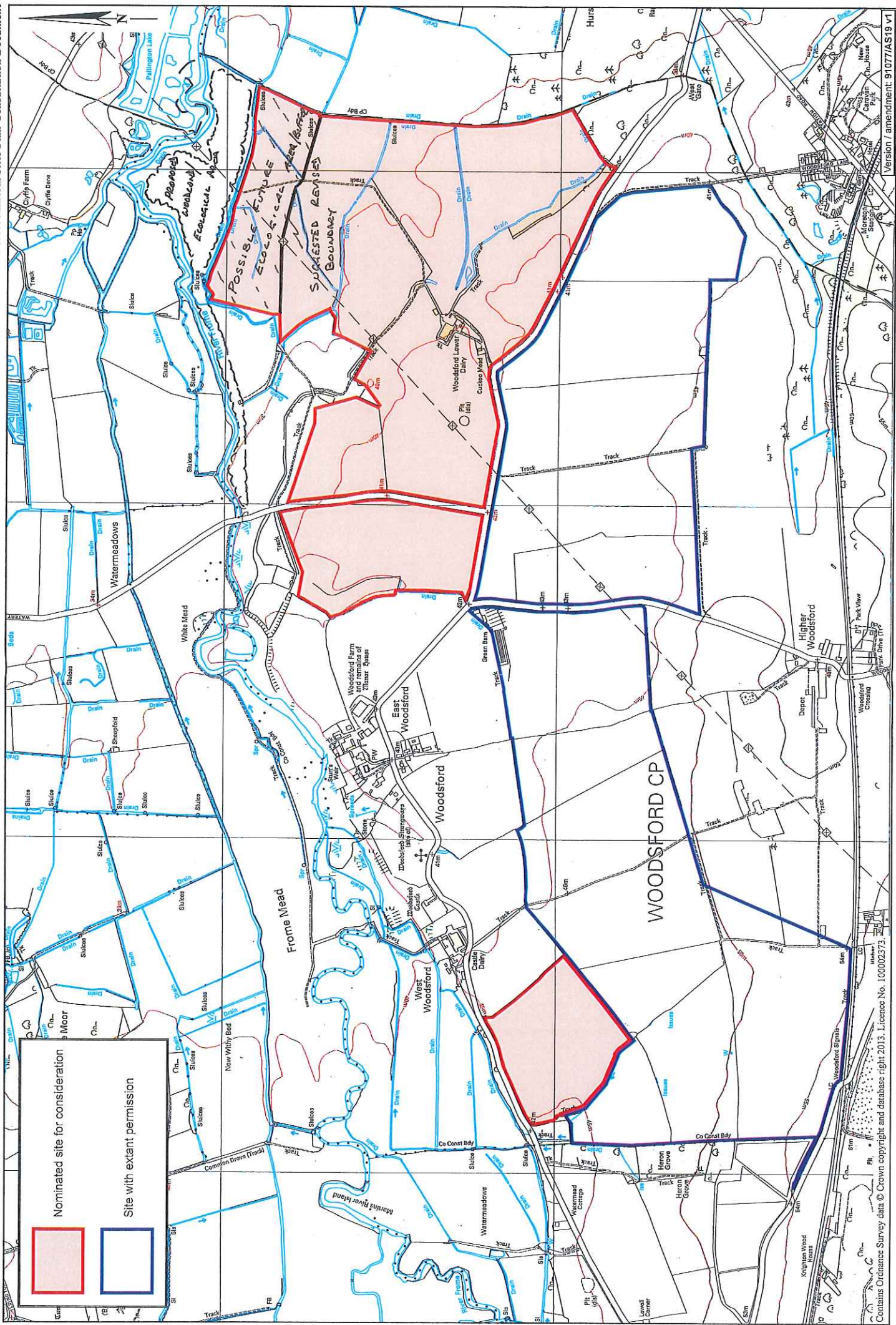
Supply 1250 canes, 1175 spirals, 2275 tubes and 2425 stakes by the end of March 2014.

The Plan



Appendix 7

**Annotated plan 91077/AS19 indicating mitigation measures
discussed with the owner of 'Sculpture by the Lakes'**



Version / amendment: 91077/AS19 v1

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Appendix 8

**Birdeye photograph indicating trees planted adjacent to
“Sculpture by the Lakes”**



Appendix 9

Historic England, The Setting of Heirtage Assets. Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), December 2017



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

Chartered Institute for Archaeologists

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 10

**Historic England consultation response on Bournemouth,
Dorset and Poole Minerals Sites Plan Pre-Submission Draft, 31
January 2018**



Historic England

Minerals and Waste Policy Team
County Hall, Dorchester, DT1 1XJ
Response by email only: mwdf@dorsetcc.gov.uk

31 January 2018

Dear Sirs,

Bournemouth, Dorset and Poole Mineral Sites Plan Pre-Submission Draft

Thank you for sharing the Pre Submission version of this important planning document. Our assessment and observations are mindful of the Government's expectation, and a key test of Soundness, that the Minerals Plan contributes to the delivery of sustainable development in accordance with the National Planning Policy Framework (NPPF)¹; one of the core dimensions being the protection and enhancement of the historic environment².

We refer to the following statutory and policy tests.

1. Plans should meet objectively assessed needs (though, for example the allocation of sites for development), unless specific NPPF policy relating to e.g. designated heritage assets, indicate development should be restricted (NPPF Paragraph 14).
2. Great weight should be given to the conservation of heritage assets (NPPF Paragraph 132);
3. Special regard must be given to desirability of preserving the setting of a listed building and special attention must be given to desirability of preserving or enhancing the character or appearance of a conservation area in the exercise of planning functions (S66 & S72, Planning (Listed Buildings and Conservation Areas) Act 1990);
4. Development will be expected to avoid or minimise conflict between any heritage asset's conservation and any aspect of the proposal (NPPF Paragraph 129);
5. Harm (significant adverse impacts) should be avoided. Only where this is not possible should mitigation be considered (NPPF Paragraph 152). Any harm and mitigation proposals need to be fully justified and evidenced to ensure they will be successful in reducing harm.

Evidence as to whether the historic environment has been appropriately considered will help determine whether the Plan has been positively prepared, is justified, effective and consistent with national policy.

¹ NPPF paragraphs 151 and 182

² NPPF paragraph 7



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It will be important for you as the local authority to be satisfied that sufficient evidence has been gathered to show that there is a clear understanding of how the historic environment and heritage assets may be affected and to what extent (the degree of harm the significance of the asset). It will then be important for you to clearly indicate that a positive approach to the historic environment has adopted and how the key statutory and national policy obligations have been applied.

Purbeck District Council Conservation Officer Assessment June 2017

We note Purbeck DC's Conservation Officer's robust assessment of the impact of the proposed allocations on the significance of affected heritage assets and helpful suggestions to mitigate or minimise harm.

As the evidence applies the appropriate legislation and national policy we consider it to be reasonable for the local authority to consider and respond to its conclusions and illustrated recommendations. Your response will help to demonstrate how you have paid sufficient regard to the need to conserve the historic environment.

We note, and appreciate, the Conservation Officer's particular concern regarding Philliol's Farm (AS-12), Woodsford Quarry (AS-19), Station Road, Moreton (AS-25), and Hurst Farm, Moreton (AS-26).

Has the local authority considered small plot phased extraction within these very large sites to reduce the impact on the landscape, and allow a more sensitive, responsive managed release of sites that can enable the conservation of, for example, ancient trees and hedgerows, important features within the historic landscape? Historic England would welcome the opportunity to discuss such potential measures, and others to reduce the level of harm to the significance of the historic environment.

In addition, Historic England has the following comments.

Policy MS-1: Production of Sand & Gravel - Great Plantation, Bere Regis

The proposed quarry would have a major impact on the settings and significance of three scheduled monuments: a Bronze Age round barrow and two sections of the Battery Bank linear earthwork. These three heritage assets are 'landscape monuments' intended by their builders to have a distinctive topographical and visual presence in the landscape. The landscape setting of the monuments is of key importance to an understanding and appreciation of these heritage assets and is a fundamental and significant component of their heritage significance and public value. The present proposals, both in the position and extent of the quarry and also in the landform created in the post-extraction restoration scheme, would bring permanent major adverse changes to the landform and landscape which provides the primary context and setting of the monuments. We consider that these proposals would result in substantial harm to the significance of these designated heritage assets.

We consider that there may be scope for extraction in the area to the north of the Battery Bank and east of the barrow, but the proposals would need significant modification in order to reduce the level of harm to the affected heritage assets to a level where it would be acceptable. The area of extraction would need to be significantly smaller than that currently proposed, and designed so as to retain sufficient historic landform around and between the monuments to maintain the integrity of their landscape setting. Similarly, the present quarry restoration scheme would need to be significantly modified so that it would reinstate ground surfaces at, or close to, the existing historic



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ground levels within the primary settings of the monuments in order to restore as far as possible their visual landscape settings.

We would welcome the opportunity to further discuss this matter with you.

Policy MS-5: Site for the provision of Ball Clay - Trigon Hill Extension, Wareham

The proposed quarry would have a major impact on the settings and significance of the scheduled Bronze Age round barrow monument on Trigon Hill. This designated heritage asset is a 'landscape monument' intended by its builders to have a distinctive topographical and visual presence in the landscape. The landscape setting of the monument is of key importance to an understanding and appreciation of the heritage assets and is a fundamental and significant component of its heritage significance and public value. The present proposals, both in the position and extent of the quarry and also in the landform created in the post-extraction restoration scheme, would bring permanent major adverse changes to the landform and landscape which provides the primary context and setting of the monument. We consider that these proposals would result in substantial harm to the significance of the designated heritage assets.

We consider that there may be scope for extraction in part of the remaining natural landscape around the barrow, but the proposals would need significant modification in order to reduce the level of harm. We would strongly suggest that the area of extraction would need to be significantly smaller than that currently proposed, and designed so as to retain sufficient historic landform around the monument to maintain the integrity of its landscape setting. Similarly, the present quarry restoration scheme would need to be significantly modified so that it would reinstate ground surfaces at, or close to, the existing historic ground levels within the primary settings of the monuments in order to restore as far as possible its visual landscape setting.

We would welcome the opportunity to further discuss this matter with you.

Policy MS-3: Swanworth Quarry Extension

Historic England (Keith Miller) in recent dialogue with the prospective applicant and their agent, have discussed, and as we understand, agreed a scheme to minimise the level of harm to the settings of two scheduled round barrows. If such arrangements/conditions are reflected in the Plan Historic England considers the allocation would be soundly based.

Policy MS-8: Puddletown Road Area Policy

It would be helpful if the local authority were to confirm why this Policy only appears to address potential issues relating to the natural environment.

We hope our comments will assist you in the preparation of a sound and robust plan and would welcome the opportunity to discuss our comments further.

Yours sincerely

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