

Your Ref
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Dear Sir/Madam,

EAST DEVON DRAFT LOCAL PLAN 2020-2040 DRAFT LOCAL PLAN CONSULTATION

Introduction

Thank you for the opportunity to comment on the emerging review of the current Development Plan (DP) – in particular the Regulation 18 Consultation Draft Plan (dated November 2022).

Whilst we support the basic strategic vision of the plan (policy S1), we do have some comments/objection points that relate to the detail of that strategy that we set out in this letter. For ease of presentation we have grouped the comments into generic comments, and site specific comments.

Generic

Western Side

To understand the policy the 'Western Side' needs to be defined on a map.

What is the difference between 'West End' (a term used in the existing Development Plan [DP]) and 'Western side'? To adopt the policy without such clarity would be contrary to the important principle of providing certainty in plan making and decision taking. Clearly the view is taken that significant development in the 'Western Side' of the district is sustainable. That rather begs the question about what is therefore the status of countryside policies in this part of the district (should it be the same as in the rest of the district?), and how important are the site boundaries? We consider that there should be some flexibility in the areas that adjoin, or are well related to existing settlement boundaries on the 'Western Side' of the district (such as adjacent to Cranbrook) to allow for growth that is plainly sustainable.

This is particularly true since no provision is made for growth at Cranbrook beyond 2031 (the end date of the recently adopted Cranbrook DPD). We

therefore consider that Policy S2 is presented in a confusing manner since it includes development provision at Cranbrook up to, but not beyond, 2031.

It appears that the preference is to commence development upon a second new town. However, experience demonstrates that any new town that is proposed now will not deliver before 2040 (Cranbrook was first allocated in February 1999. It then took circa 20 years to achieve occupations, post allocation). Thus, whilst not objecting to the principle of a second new town, per se, we do consider that it should be considered little more than a 'direction of travel' only and that the 2,500 units proposed should be revised down to 500 (at most).

Principal Settlement

We are pleased to see that the plan review recognises that 'Exmouth is by some way the largest town in East Devon and it contains the greatest number and range of services and facilities.' It is therefore correct, as the plan proposes, to identify the settlement as a principal centre.

Inadequate Level of Growth for Exmouth?

However, bearing that in mind, and the importance of meeting housing needs where they arise (i.e. that it is existing communities that grow, and the larger the existing community the greater the level of commensurate growth - assuming consistent birth and death rates across settlements and discounting migration) the level of proposed development makes little sense – it is too low and it fails to include any significant growth for the extended plan period.

The existing DP covers the period 2013 to 2031 (and was adopted in 2016) and provides for a minimum of 17,100 new homes. Of those, the plan provides for 1,229 new homes at Exmouth (some 7% - and that figure was arguably too low for the settlement). Of those 727 were already built, or under construction and 502 were not yet permitted (so were sites for allocation).

The lack of delivery of new homes at Exmouth has eroded social cohesion with many family groups being splintered and being forced to move to Cranbrook in order to access affordable housing.

We therefore consider that the planned level of provision for Exmouth is too low.

The Council/plan points towards environmental designations as being constraining but stops short of explaining/demonstrating how any of the proposed allocations actually produces a negative effect on those designations. We consider that a number of identified sites produce little/no negative impact on those designations and that there are no real environmental constraints that limit the level of growth at Exmouth to 7%. The plan should be amended to increase the level of provision at Exmouth to circa 10% of plan provision in order

that the Town can meet a greater proportion of housing need where it arises and certainly to include both the 1st and 2nd choice sites in order to achieve this.

By contrast, Axminster, which is in an inherently less sustainable location (since it is not linked by rail or effective bus link to the sub regional centre of Exeter or any other major existing centre) is proposed to receive a similar level of growth to Exmouth despite being some 6 times smaller than Exmouth.

Strategic Policy 5 – Mix of uses

The proposed policy is misconceived. There is no good basis upon which it makes any sense to try and set 'hard and fast' thresholds for the provision on residential led sites.

Employment land provision needs to be opportunity/lack of constraint led i.e. well related to communication networks, able to accommodate buildings of scale in the landscape etc. The vast majority of sites that are proposed in this plan perform well from a residential perspective – that does not mean that they perform well from an employment perspective (and many that will be affected by this policy do not). Instead of being a way of delivering employment land is much more likely that the employment requirement will either:

- prevent the delivery of the site (thereby detrimentally affecting residential delivery) and/or;
- prevent the delivery of any reasonable quantum of affordable housing (due to the cost associated with providing for employment provision in the face of weak demand)

The policy will not work as a 'general rule' and should be deleted from the plan.

If there are specific sites that perform well in terms of both residential and employment use criteria then they should be specifically allocated as mixed use sites (but that is not the vast majority of sites that will be afflicted by this policy).

Perhaps a better way to try to address the issue is via the encouragement of home working (i.e. the inclusion of a study/hobby room/area(s). This would mean a greater likelihood of the workers and the residents being one in the same.

Policy 40 - Affordable Housing

Whether the level of affordable housing sought, at 35%, is reasonable needs to be justified and, to date, no viability evidence has been produced to support this position. Accordingly, it should be expressed as a target rather than a minimum figure. Dependent upon site circumstances (abnormal costs) there will be reasons that figure cannot be provided in all circumstances.

The differential % requirements proposed demonstrate the viability problems with delivering the 2nd new town during this plan period. Cranbrook was only deliverable due to the injection of considerable amounts of Government grant (to the gas fired energy centre, and via affordable housing funding and the Help to buy scheme).

Since meeting social needs is a key element of sustainability this demonstrates the ineffectiveness of a new settlement as a way of meeting identified housing needs i.e. it will deliver a lesser quantum (20%) of affordable housing than if sites were allocated elsewhere (via urban extensions to existing settlements).

It also has the effect of displacing those in housing need and placing a strain on family ties (e.g. meeting housing needs arising in Exmouth at Cranbrook).

We are also concerned that changing the mix of affordable housing to seek more social rent and less affordable rent etc will have a detrimental effect upon viability at the same time as the % target is increased. This emphasises the viability concerns in relation to the realism of the increased target.

Policy 43 – Housing Mix

This policy is flawed. It is based on out of date information. It fails to consider the needs of providing for home working, and it fails to consider that there a plethora of reasons why people may need space in their homes.

It also fails to consider that it's simply not possible to apply a blanket mix. For example some sites will be flatted only – how will those sites deliver 4 bed houses?

Policy 44 – Self Build

Providing self build on medium/large sites is a flawed concept. Those seeking such sites aren't looking for an 'estate' location. Perhaps a better approach is to allocate some small sites for that function?

Policy 87 – Biodiversity Net Gain

There is no justification for pursuing a target figure in excess of the national standard (10%). The national policy will have a significant detrimental impact on delivery, and will produce little in the way of substantive ecological benefits that would not occur anyway. Please don't exacerbate these problems in East Devon.

Site Comments

Exmouth Sites

We support the principle centre designation for Exmouth and a commensurate allocation of growth at the town. In our opinion it is possible to make provision for suitable growth provision for the town, and avoid conflict with any major constraints (such as the AONB) and the relevant Government policy on the matter.

We have the following comments to make about the specific site allocations proposed.

Lymp_14

In relation to the proposed allocations on the north-eastern side of Exmouth whilst there may be some sense in master planning this area but we object to an approach that seeks to link the delivery of these sites. They are in differing ownerships and some are affected by delivery constraints, whilst others are not. In particular Lymp_14 is an unconstrained site that can be released early once services have been provided through the existing Goodmore's Farm development. We have no objection to some masterplanning work being undertaken collaboratively, so long as that does not inhibit the opportunity to delivery Lymp_14 in expedient fashion.

Exmo_20

We support the proposed allocation of Land at St Johns (Exmo 20), subject to the caveat about our comments on the inclusion of employment use on this site. It is not particularly well suited to provide for employment use (but is well located in relation to the adjacent Salterton Road employment area) but it is well suited to residential use, and possibly some recreation use. The site is not located in the AONB, which is a significant constraint to development and does not give rise to any heritage concerns.

Exmo_47

We object to the non-allocation of Exmo_47. This is a site well suited to residential development and that has incorrectly been included in a Register Park and Garden. In fact there is no relationship between the site and the heritage assets and it appears that the inclusion in the designation has been made in error. The owner is currently resolving this matter. The heritage concerns are raised in error and should not be considered overriding in the search for suitable land in a sustainable location (see attached report). This site if allocated will assist the council in making appropriate provision for small sites.

Kind regards,


David Seaton, BA (Hons) MRTPI
For PCL Planning Ltd

Heritage Appraisal – Draft

Project name: Land West of Hulham Road, Exmouth
Date: 11th January 2023
Project number: P23

1. Introduction

- 1.1. Pegasus Group have been commissioned by Eagle Investments (SW) to prepare a Heritage Appraisal of proposals for the allocation of land west of Hulham Road, Exmouth for residential development.
- 1.2. The site comprises one field bounded by hedgerows (Plate 1).



Plate 1: South-west-facing view from the north-east corner of the site.

2. Methodology, Legislation and Planning Policy

- 2.1. The full methodology utilised in the preparation of this Heritage Assessment is presented at **Appendix 1**. The note has been informed by a site visit in January 2023.
- 2.2. Details of the heritage legislation and planning policies that are considered relevant to the following assessment works are presented at **Appendix 2**.

3. Built Heritage

- 3.1. Consideration was given to whether any built heritage assets were potentially sensitive to the level of residential development for which the site is proposed for allocation.
- 3.2. The site lies within the Grade II Registered Park and Garden of A La Ronde and The Point-in-View, on its eastern side. Within this area, although beyond the site, are three Grade I Listed buildings of A La Ronde, Point-in-View and The Manse at Point-in-View, the closest of which is The Manse, which lies approximately 70m to the north-west of the site. Hence, these assets will be considered below.
- 3.3. Site visits were carried out to both the proposed allocation site and the Point-in-View and surrounds. A La Ronde was closed to the public at the time of the site visit, although the building and its grounds have been visited previously.
- 3.4. Reference has also been made to historic maps, including those which give some evidence of historic land ownership patterns, specifically the Tithe Map of Withycombe Raleigh of 1838.
- 3.5. Reference has also been made to how the assets are experienced and understood in the modern landscape.

4. The Registered Park and Garden

- 4.1. Whilst the site lies within the Registered Park and Garden of A La Ronde and The Point-in-View, no evidence has been identified to suggest that the intrinsic character of the site contributes today or indeed did historically to the heritage significance of the Park and Garden. Matters of setting are considered later on in this appraisal.
- 4.2. The Park and Garden is made up of two connected elements of historic significance, the gardens and grounds of A La Ronde and the surrounds of Point in View, which also have a designed element to their form.
- 4.3. The first element comprises the gardens and Grounds of A La Ronde, which were laid out at the end of the 18th century and beginning of 19th century by Jane Parminter and her cousin. By her death in 1911, the gardens are described as:

'full of bowers, arbours, three obelisks... fountains, glass-houses and rare tropical plants, orangeries... also two milch cows and eighteen sheep grazing' (Registration Description).
- 4.4. The Registration Description also states that the layout of the grounds was depicted on the Tithe Map of 1838:

'the house stood in a square enclosure at the centre of a group of four bell-shaped paddocks and orchards, with a boundary walk and kitchen garden to the west'.



Plate 2 Extract from the Tithe Map of 1838 (House of A La Ronde, red arrow, Point-in-View, yellow arrow)

- 4.5. The Registration description also notes:

'A path through meadows connected the house to the chapel and Manse (built 1829) to the north-east. The single structure comprising chapel, school and almshouse known as The Point in View was built c 300m north-east of the house during the summer of 1811.'

- 4.6. This area around the Point-in-View also appears to have had a designed layout comprising the chapel (and almshouses) sitting in the middle of a square enclosure once defined by lattice fencing and comprising gardens for the almshouses. This enclosure sat within a field of approximately square shape, with The Manse located on the eastern side, with a tree-belt on the eastern edge.



Plate 3 Looking south to Point-in-View Chapel

4.7. In addition to the designed elements, grazing is also known to have been associated with A La Ronde, including grazing sheep and cattle in the paddocks said in the Registration Description to be visible in lithographs of 1845. In order to understand the extent of these possible areas, the ownership extent as depicted on the Tithe Map of 1838 is relevant (Plate 4).



Plate 4 Extract from the Tithe Map showing areas either owned or occupied by Mary Parminter, occupier of A La Ronde outlined in orange

- 4.8. This area of land ownership shown above includes both the areas of designed layout, and the associated areas. The rationale for the inclusion of other areas of the site within the Registered Park and Garden is unclear.
- 4.9. Most importantly, these other areas comprise areas of pasture for which there is no evidence of aesthetic treatment historically or since. These areas contrast with the areas of design intent including the designed landscape grounds of A La Ronde, which have artistic and historic illustrative interest, and to a lesser degree the square communal gardens area of Point-in-View.
- 4.10. Furthermore, no evidence has been seen to suggest that additional fields, which include the site, were part of the A La Ronde wider estate in the late 18th or early 19th century. No evidence of later association has been seen.
- 4.11. The registration description provides no evidence for their rationale for the inclusion of the additional areas of pasture within the bounds of the Registered Park and Garden.
- 4.12. It makes the following references to the other areas:
- 'OTHER LAND The early C19 landscape extended to the north-east of the surviving pleasure grounds with a path linking the house to The Point in View c 300m north-east. This land remains in agricultural use with the exception of the immediate grounds of the chapel and Manse, and the gardens of Three Acres, a house on Summer Lane built in 1930.'*
- 4.13. This makes no reference to this area (other than the land immediately associated with the Chapel and Manse) as having any intrinsic heritage significance. The path linking A La Ronde to Point-in-View does not cross the site.
- 4.14. The Registration Description also states:
- 'The 10ha site comprises c 3.5ha of formal and informal gardens, a pleasure ground and orchard around the house, and a further area of c 6.5ha of meadow to the east and north-east which includes the land associated with The Point in View and the Manse. Boundaries to the north, east and south are formed by mixed hedges with many mature oaks and other trees following public roads or footpaths, while those to the south-east and south-west adjoin gardens of C20 houses.'*
- 4.15. Again, this does not provide any suggestion that the meadow beyond the area associated with the chapel and manse has any intrinsic heritage significance through heritage interests which contributes to the significance of the Park and Garden.
- 4.16. Taking this into account (and aside from matters of setting), the development of the site for residential purposes would cause no harm to the heritage significance of the park and garden through change in intrinsic character.

5. Setting

- 5.1. Potentially relevant matters relating to setting comprise the setting of the Grade I Listed buildings, and also the setting of those elements of the Park and Garden which do indeed contribute to its heritage significance, i.e, if the boundaries of the Registered Park and

Garden were to be revised so that only those areas of intrinsic heritage significance were covered, would the significance of those areas be affected?

- 5.2. With regards to A La Ronde Grade I Listed building, clearly those areas which make the greatest contribution to heritage significance are the designed grounds, and the related Point-in-View chapel, almshouses and Manse, as well as views west to the estuary and rising land beyond. The associated landholding which was contemporary with the key period of occupation and laying out of the grounds may also contribute. This does not appear to have included the site. The site is not readily experienced in conjunction with A La Ronde. It should be noted that several residences of later date lie in the surrounds of A La Ronde, to the south, but also on Summers Lane, including within the Registered Park and Garden. Overall, the site is not considered to contribute to the significance of the Grade I Listed building, and the residential development of the site would cause no harm to its significance through setting.

- 5.3. With regards to the Point-in-View Chapel, the elements of its setting its setting which contribute to its significance comprise its immediate surrounds comprising the former gardens, the wider square enclosure of meadow, A La Ronde (the owner of which commissioned it), and the Grade I Listed Manse (the minister’s accommodation), as well as the path connecting the two areas also contribute. Views over the estuary and rising land beyond also contribute to some degree. The site has no functional or other recorded historic links which have been seen. The site has some separation from the asset and its surrounds, and due to the topography, the building does not appear to have clear intervisibility with the site. Again, the modern houses in the vicinity of the asset are noted. The emerging masterplan (Plate 5) shows that the line of proposed residential development would not extend to the northernmost extent of the site. This means that the development could be delivered without built form being an intrusive overbearing element in the experience of Point in View from its immediate surrounds. As such, the residential development of the site could occur without harm to the heritage significance of the Point-in-View through setting.



Plate 5 Extract from the draft masterplan for the residential development of the allocation

- 5.4. With regards to The Manse, the elements of the setting of this asset which make the greatest contribution to its significance through setting are the Point-in-View chapel and almshouses, which the minister who occupied the manse was associated. Indirectly, it was related to A La Ronde and its occupants. Later almshouses are also present in its vicinity, as are other modern residences. In addition, the field to the east of the Manse has a direct and clear visual relationship with The Manse and has some very minor historic illustrative value in terms of the current sense of separation from significant area of built form, although the tree belt previously present may have reduced the relationship between the two areas historically.



Plate 6 Looking east to The Manse, with Pont-in-View Chapel on the right

- 5.5. The site does not have a clear visual relationship with The Manse (only the upper elements of the structure are visible from the area), but the construction of built form in its northern area may be visible and co-visible with the asset in a way that would reduce the perceived separation of the asset from significant built form (acknowledging the modern built form in its immediate vicinity). As such, the central and southern parts of the site have the capacity to absorb development without harming the heritage significance of the asset.



Plate 7 looking north-east across the site to the roof and chimneys of The Manse

- 5.6. With regards to those elements of the park and garden where the heritage significance of asset is embodied, on current evidence, the only part of the Registered Park and Garden considered to be of intrinsic significance, which might be potentially sensitive to development within the site through changes in setting are the square enclosure around Point-in-View. As with The Manse, the construction of built form in the northern area of the site may be visible and co-visible from the enclosure around Point-in-View in a way that would reduce the perceived separation of the area from significant built form (acknowledging the modern built form in its immediate vicinity). As such, the central and southern parts of the site have the capacity to absorb development without harming the heritage significance of those areas from which the significance of the Park and Garden are derived.

6. Conclusions

- 6.1. Matters relating to built heritage are not considered to be a constraint to the deliverability of the site for residential development at the numbers proposed for allocation.

Appendix 1: Methodology

Assessment of significance

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

“The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.”¹

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

In order to do this, *GPA 2* also advocates considering the four types of heritage value an asset may hold, as identified in English Heritage's *Conservation Principles*.³ These essentially cover the heritage 'interests' given in the glossaries of the *NPPF* and the *PPG* which are archaeological, architectural and artistic, and historic.⁴

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

- ***Archaeological interest:*** As defined in the *Glossary to the National Planning Policy Framework*, there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.
- ***Architectural and artistic interest:*** These are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skills, like sculpture.
- ***Historic interest:*** An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity.⁵

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

¹ DLUHC, *NPPF*, pp. 71–72.

² Historic England, *GPA:2*.

³ Historic England, *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (London, April 2008). These heritage values are identified as being 'aesthetic', 'communal', 'historical' and 'evidential', see *idem* pp. 28–32.

⁴ DLUHC, *NPPF*, p. 71; DLUHC, *PPG*, Annex 2.

⁵ DLUHC, *PPG*, paragraph 006, reference ID: 18a-006-20190723.

The most-recently issued Historic England guidance on assessing heritage significance, *HEAN:12*, advises using the terminology of the *NPPF* and *PPG*, and thus it is that terminology which is used in this Report.⁶

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

Setting and significance

As defined in the *NPPF*:

“Significance derives not only from a heritage asset’s physical presence, but also from its setting.”⁷

Setting is defined as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”⁸

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

Assessing change through alteration to setting

How setting might contribute to these values has been assessed within this Report with reference to *GPA:3*, particularly the checklist given on page 11. This advocates the clear articulation of “*what matters and why*”.⁹

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

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

A Court of Appeal judgement has confirmed that whilst issues of visibility are important when assessing setting, visibility does not necessarily confer a contribution to significance and factors other than

⁶ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets*, *Historic England Advice Note 12* (Swindon, October 2019).

⁷ DLUHC, *NPPF*, p. 72.

⁸ DLUHC, *NPPF*, p. 71.

⁹ Historic England, *GPA:3*, pp. 8, 11.

visibility should also be considered, with Lindblom LJ stating at paragraphs 25 and 26 of the judgement (referring to an earlier Court of Appeal judgement):

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

Paragraph 26 – “This does not mean, however, that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building’s setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in Williams (see also, for example, the first instance judgment in R. (on the application of Miller) v North Yorkshire County Council [2009] EWHC 2172 (Admin), at paragraph 89). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in paragraph 18a-013-20140306 of the PPG, that the Government recognizes the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, “the historic relationship between places”. Historic England’s advice in GPA3 was broadly to the same effect.”¹⁰

Levels of significance

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

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

- **Designated heritage assets of the highest significance**, as identified in paragraph 200 of the NPPF, comprising Grade I and II* Listed buildings, Grade I and II* Registered Parks and Gardens, Scheduled Monuments, Protected Wreck Sites, World Heritage Sites and Registered Battlefields (and also including some Conservation Areas) and non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments, as identified in footnote 68 of the NPPF;¹¹
- **Designated heritage assets of less than the highest significance**, as identified in paragraph 200 of the NPPF, comprising Grade II Listed buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);¹² and
- **Non-designated heritage assets.** Non-designated heritage assets are defined within the PPG as “buildings, monuments, sites, places, areas or landscapes identified by plan-

¹⁰ Catesby Estates Ltd. V. Steer [2018] EWCA Civ 1697, paras. 25 and 26.

¹¹ DLUHC, NPPF, para. 200 and fn. 68.

¹² DLUHC, NPPF, para. 200.

*making bodies as having a degree of significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets”.*¹³

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

Assessment of harm

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

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

- **Substantial harm or total loss.** It has been clarified in a High Court Judgement of 2013 that this would be harm that would *“have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced”*;¹⁴ and
- **Less than substantial harm.** Harm of a lesser level than that defined above.

With regards to these two categories, the *PPG* states:

“Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.”¹⁵

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

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

It is also possible that development proposals will cause no harm or preserve the significance of heritage assets. Here, a High Court Judgement of 2014 is relevant. This concluded that with regard to preserving the setting of a Listed building or preserving the character and appearance of a Conservation Area, *“preserving”* means doing *“no harm”*.¹⁶

Preservation does not mean no change, it specifically means no harm. *GPA:2* states that *“Change to heritage assets is inevitable but it is only harmful when significance is damaged”*.¹⁷ Thus, change is

¹³ DLUHC, *PPG*, paragraph 039, reference ID: 18a-039-20190723.

¹⁴ Bedford Borough Council v Secretary of State for Communities and Local Government [2013] EWHC 2847 (Admin), para. 25.

¹⁵ DLUHC, *PPG*, paragraph 018, reference ID: 18a-018-20190723.

¹⁶ R (Forge Field Society) v Sevenoaks District Council [2014] EWHC 1895 (Admin).

¹⁷ Historic England, *GPA:2*, p. 9.

accepted in Historic England's guidance as part of the evolution of the landscape and environment. It is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.

As part of this, setting may be a key consideration. When evaluating any harm to significance through changes to setting, this Report follows the methodology given in *GPA:3*, described above. Fundamental to this methodology is a consideration of "what matters and why".¹⁸ Of particular relevance is the checklist given on page 13 of *GPA:3*.¹⁹

It should be noted that this key document also states:

"Setting is not itself a heritage asset, nor a heritage designation..."²⁰

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

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

"Conserving or enhancing heritage assets by taking their settings into account need not prevent change".²¹

Additionally, whilst the statutory duty requires that special regard should be paid to the desirability of not harming the setting of a Listed Building, that cannot mean that any harm, however minor, would necessarily require Planning Permission to be refused. This point has been clarified in the Court of Appeal.²²

Benefits

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

As detailed further in **Appendix 2**, the *NPPF* (at Paragraphs 201 and 202) requires harm to a designated heritage asset to be weighed against the public benefits of the development proposals.²³

Recent High Court Decisions have confirmed that enhancement to the historic environment should be considered as a public benefit under the provisions of Paragraphs 201 to 203.²⁴

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

"Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always

¹⁸ Historic England, *GPA:3*, p. 8.

¹⁹ Historic England, *GPA:3*, p. 13.

²⁰ Historic England, *GPA:3*, p. 4.

²¹ Historic England, *GPA 3*, p. 8.

²² *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061.

²³ DLUHC, *NPPF*, paras. 201 and 202.

²⁴ Including – *Kay, R (on the application of) v Secretary of State for Housing Communities and Local Government & Anor* [2020] EWHC 2292 (Admin); DLUHC, *NPPF*, paras. 201 and 203.

have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.

Examples of heritage benefits may include:

- *sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- *reducing or removing risks to a heritage asset*
- *securing the optimum viable use of a heritage asset in support of its long term conservation.*"²⁵

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

²⁵ MHCLG, PPG, paragraph O20, reference ID: 18a-O20-20190723.

Appendix 2: Legislation and Planning Policy

Legislation

Legislation relating to the built historic environment is primarily set out within the *Planning (Listed Buildings and Conservation Areas) Act 1990*, which provides statutory protection for Listed Buildings and Conservation Areas.²⁶ It does not provide statutory protection for non-designated or Locally Listed heritage assets.

Section 66(1) of the Act states that:

“In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.”²⁷

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

“Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given “considerable importance and weight” when the decision-maker carries out the balancing exercise.”²⁸

A judgement in the Court of Appeal (‘Mordue’) has clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular paragraph 134 of the 2012 version of the NPPF, the requirements of which are now given in paragraph 202 of the current, revised NPPF, see below), this is in keeping with the requirements of the 1990 Act.²⁹

In addition to the statutory obligations set out within the *Planning (Listed Buildings and Conservation Area) Act 1990*, Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that all planning applications, including those for Listed Building Consent, are determined in accordance with the Development Plan unless material considerations indicate otherwise.³⁰

The National Planning Policy Framework (July 2021)

National policy and guidance is set out in the Government’s *National Planning Policy Framework (NPPF)* published in July 2021. This replaced and updated the previous *NPPF 2019*. The *NPPF* needs to be read as a whole and is intended to promote the concept of delivering sustainable development.

The *NPPF* sets out the Government’s economic, environmental and social planning policies for England. Taken together, these policies articulate the Government’s vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The *NPPF* continues to recognise that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans,

²⁶ UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990.

²⁷ UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990, Section 66(1).

²⁸ Barnwell Manor Wind Energy Ltd v (1) East Northamptonshire DC & Others [2014] EWCA Civ 137. para. 24.

²⁹ Jones v Mordue [2015] EWCA Civ 1243.

³⁰ UK Public General Acts, Planning and Compulsory Purchase Act 2004, Section 38(6).

where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.

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

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

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

For plan-making this means that:

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

For decision-taking this means:

- a. approving development proposals that accord with an up-to-date development plan without delay; or***
- b. where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:***
 - i. the application policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or***

- ii. **any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.**³¹

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

“The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 180) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 68); and areas at risk of flooding or coastal change.”³² (our emphasis)

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

Heritage Assets are defined in the NPPF as:

“A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing).”³³

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

“World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under relevant legislation.”³⁴

As set out above, significance is also defined as:

“The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance.”³⁵

Section 16 of the NPPF relates to ‘Conserving and enhancing the historic environment’ and states at paragraph 195 that:

“Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development

³¹ DLUHC, NPPF, para. 11.

³² DLUHC, NPPF, para. 11, fn. 7.

³³ DLUHC, NPPF, p. 67.

³⁴ DLUHC, NPPF, p. 66.

³⁵ DLUHC, NPPF, pp. 71-72.

affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset’s conservation and any aspect of the proposal.”³⁶

Paragraph 197 goes on to state that:

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

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;***
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and***
- c. the desirability of new development making a positive contribution to local character and distinctiveness.”³⁷***

With regard to the impact of proposals on the significance of a heritage asset, paragraphs 199 and 200 are relevant and read as follows:

“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.”³⁸

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

- a. grade II listed buildings, or grade II registered parks or gardens, should be exceptional;***
- b. assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”³⁹***

Section b) of paragraph 200, which describes assets of the highest significance, also includes footnote 68 of the NPPF, which states that non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments should be considered subject to the policies for designated heritage assets.

In the context of the above, it should be noted that paragraph 201 reads as follows:

³⁶ DLUHC, NPPF, para. 195.

³⁷ DLUHC, NPPF, para. 197.

³⁸ DLUHC, NPPF, para. 199.

³⁹ DLUHC, NPPF, para. 200.

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

- a. the nature of the heritage asset prevents all reasonable uses of the site; and***
- b. no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and***
- c. conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and***
- d. the harm or loss is outweighed by the benefit of bringing the site back into use.”⁴⁰***

Paragraph 202 goes on to state:

“Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.”⁴¹

With regards to non-designated heritage assets, paragraph 203 of NPPF states that:

“The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.”⁴²

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

National Planning Practice Guidance

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

⁴⁰ DLUHC, NPPF, para. 201.

⁴¹ DLUHC, NPPF, para. 202.

⁴² DLUHC, NPPF, para. 203.

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

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

"Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals."⁴³

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

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

While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm."⁴⁴ (our emphasis)

National Design Guide:

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

"When determining how a site may be developed, it is important to understand the history of how the place has evolved. The local sense of place and identity are shaped by local history, culture and heritage, and how these have influenced the built environment and wider landscape."⁴⁵

"Sensitive re-use or adaptation adds to the richness and variety of a scheme and to its diversity of activities and users. It helps to integrate heritage into proposals in an environmentally sustainable way."⁴⁶

It goes on to state that:

⁴³ DLUHC, PPG, paragraph 007, reference ID: 18a-007-20190723.

⁴⁴ DLUHC, PPG, paragraph 018, reference ID: 18a-018-20190723.

⁴⁵ DLUHC, NDG, para. 46.

⁴⁶ DLUHC, NDG, para. 47.

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

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

Today's new developments extend the history of the context. The best of them will become valued as tomorrow's heritage, representing the architecture and placemaking of the early 21st century."⁴⁷

⁴⁷ DLUHC, NDG, paras. 48-49.