

## WYVERN HERITAGE AND LANDSCAPE

2 FONTHILL COTTAGES  
HINDON LANE  
TISBURY, WILTSHIRE  
SP3 6QD



Planning Application Review for North Dairy Farm Solar Park -  
P/FUL/2021/01018

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## Heritage Submission on behalf of 'Save Hardy's Vale' Community Group

**In respect of:**

**Install ground-mounted solar panel photovoltaic solar arrays, substation, inverter stations, transformer stations, security fencing, gates and CCTV; form vehicular access, internal access track, landscaping and other ancillary infrastructure**

**Prepared by  
Emma Rouse MCifA MA BA Hons**

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## **1. Introduction**

1.1. This planning application review and heritage assessment was undertaken by Emma Rouse, Consultancy Principal. My academic qualifications are:

- Bachelor of Arts (Hons) Archaeology at Cambridge University 2003
- Master of Arts (Hons) Archaeological Surveying at Durham University 2005

1.2. I am the principal at Wyvern Heritage and Landscape Consultancy which is a Registered Organisation with the Chartered Institute of Archaeologists and specialises in the preparation of heritage statements, the preparation of heritage management and action plans, historical and archaeological research, historic landscape analysis and historic characterisation.

1.3. I have considerable experience of interpreting historic landscape character and the assessment of the impacts of development on heritage assets and heritage interest, and an expert understanding of the later landscape history of southern England.

1.4. I am a Member of the Chartered Institute for Archaeologists, the highest corporate grade of membership.

1.5. Wyvern Heritage and Landscape Consultancy has been appointed by 'Save Hardy's Vale' to undertake an appraisal of heritage matters in relation to a planning application for a solar park on land at North Dairy Farm (P/FUL/2021/01018).

1.6. I have had no previous involvement with the scheme.

1.7. 'Save Hardy's Vale' have serious concerns that the archaeological impacts and heritage impacts on the setting of heritage assets in the vicinity of the site have not been properly considered.

## **2. The site and its context**

2.1. The development site consists of a 77 hectare area of land in the Blackmore Vale, part of the Stour Valley. It consists of a number of fields situated to the east of North Dairy Farm and 800 metres west of the Hazelbury Bryan Conservation Area.

2.2. There are no designated heritage assets within the site boundary.

2.3. The Heritage Assessment produced by Cotswold Archaeology (2020) identifies the heritage assets of potential relevance in the vicinity of the site as including the Hazelbury Bryan Conservation Area.

### 3. Planning Policy Context

3.1. I set out the relevant principal cultural heritage assessment requirements of the Planning (Listed Building and Conservation Areas) Act 1990, National Planning Policy Framework and related High Court decisions in Appendix B to my proof.

3.2. The relevant Local Plan Heritage Policies in the North Dorset Local Plan is Policy 5 (North Dorset Local Plan 2016).

### 4. Potential for Archaeological Impact

4.1. Paragraph 189 of the National Planning Policy Framework states “..... *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.*”. The heritage assessment prepared by Cotswold Archaeology (2020) states that due to the lack of previous investigation archaeological remains should not be discounted. It has also identified the presence of Medieval ridge and furrow earthworks across the site. We do not agree however that these would have little heritage significance as they would provide evidence of the earlier development of this important historic farmed landscape. We would contend that currently without further archaeological investigation the local authority would not have discharged its duty in regard to paragraph 189. We strongly recommend a programme of archaeological geophysics supported by targeted trial trenching is undertaken before the application is determined.

### 5. Impact of the proposed development on the setting of Heritage Assets - Methodology

5.1. The method used for this assessment is to consider the particular significance of the heritage asset(s) which may be affected by the proposal and the impact of the proposal on that significance

by undertaking a staged approach<sup>1</sup> recommended by Historic England which is outlined in my Appendix C.

5.2. Regarding setting, the significance of a heritage asset derives not only from its physical presence and fabric but also its setting. The National Planning Policy Framework defines the setting of a heritage asset as *“the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”*.

5.3. Historic England has produced a guidance document Historic Environment Good Practice Note 3 ‘The Setting of Heritage Assets’ (revised 2017). This advocates a five-stage approach to assessment.

5.4. These stages have been followed in my Heritage Assessment in Section 6 below.

5.5. The guidance also provides useful (non-exhaustive) checklists for the potential attributes of setting (page 11) . The attributes of setting include factors such as definition, scale and grain of surrounding landscape, enclosure, functional relationships and communications, degree of change over time, surrounding landscape character and views from, towards, through, across and including the asset.

5.6. It also identifies the potential attributes of development which may affect that setting (page 13) including location and siting; form and appearance; the wider effects of the development; and permanence. In relation to the wider effects of the development cumulative changes are identified as potential factors (page 13).

5.7. Historic England guidance is also clear in relation to views that these are only one potential component of a heritage assets setting.

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<sup>1</sup> As per page 2 of Historic England Good Practice Advice 2. Managing Significance in Decision Making (2015) Core Document CD7.12

5.8. A site visit was undertaken to assess the relationship(s) between the development and any heritage assets, and the potential impact on the significance of heritage assets.

5.9. For this assessment a series of descriptive thresholds have been used to describe the effect of the proposed development. These can be found in Appendix B to this proof.

5.10. In determining the effect of the proposed development on the significance of heritage assets, the heritage assessor needs to provide justifications as to the level of impact identified and how this relates to the relevant Statutory and Policy tests.

5.11. This approach is particularly useful in cases relating to “less than substantial” as it can be used to help identify how much weight should be given to each impact identified and the cumulative effect of any material harm to each heritage asset or groups of heritage assets.

## **6. Impact of the proposed development on the setting of Hazelbury Bryan Conservation Area.**

### ***Identifying the significance of the heritage assets affected***

6.1. This statement focuses on Hazelbury Bryan Conservation Area. This has not been the subject of a Conservation Area Appraisal. Following a desk based study and site visit some of the key characteristics which contribute to its special interest are [those elements of particular importance to the appeal site are underlined]:

- Pre 1750 settlement plan orientated north south either side of a lane with wider three way junctions at either end. Note the church serving the village is in an isolated position 1 km adjacent to a former Manor Farm suggesting a shift in settlement focus during the Medieval period.
- Location on a ridge top position c 100 m OSD with land dropping away into the Vale to the west and south.
- Sub area surrounding three ways with extension north, including Grade II Clover Cottage.
- Middle of the village including a small cluster of Grade II cottages on the eastern side of the lane.
- Cluster of Grade II Listed buildings to the south around a wider three way junction including larger former farmhouses and smaller cottages.

- The Conservation Area boundary deliberately includes the whole core of the village.
- Inclusion on the western side of the village of the area known as the Orchard – new build houses which have been built in a style in keeping with the village
- Use of brick and coursed rubble in buildings with whitewashing; thatch, slate and tile roofs

6.2. The western setting of the Conservation Area is of relevance to the application scheme. The Conservation Area, as mentioned, lies on a ridge of land running north- south which drops sharply downhill to the west. This land comprises a series of paddocks. There is a public right of way which curves around the top ridge line from The Orchard providing local eastwards views into the backs of the houses and gardens within the Conservation Area as well as extensive views west across the vale. This path re-joins the village at Pleck Hill. Another public right of way goes directly west from 'The Orchard' down the slope. Note there are views across the vale from the Conservation Area boundary at the north western and south western corner of the area of houses known as 'The Orchard'.

6.3. The land at the base of the ridge line consists of a stream and area of pre 1750 meadows. These are connected to the village by the lane running westwards from the Conservation Area from Pleck Hill which then takes a sharp bend after crossing the stream at Plecks Bridge to run southwards. West of the lane is Boywood Farm with the distinctive pattern of pre 1750 historic medium to small scale fields with irregular hedged boundaries and ditches beyond. This type of pattern is very characteristic of the Blackmore Vale as a whole.

6.4. This area to the west of the lane includes the proposed development site. The recent landscape history of the site is described in the submission prepared by the Landscape Practice. This describes how *“comparing 1947 aerial photographs with the current situation reveals approximately 2.4kms (2,415m) of hedgerow field boundaries and a small woodland of approximately 0.68Ha (6,767m<sup>2</sup>) have been removed from within the Site creating generally larger fields than those generally typical of the area. Residual hedgerow oaks remain stranded within arable fields. A large part of Humber Wood (approximately 6.58Ha/65,803m<sup>2</sup>) just outside the Site boundary has also been removed. “*

6.5. Despite this more recent change a comparison between the modern fieldscapes and the 25inch Ordnance Survey map and the three relevant tithe maps shows that the pre 1750 post-medieval field patterns are still highly legible within the site. See Appendix A Map 2 ND 3. Despite some internal boundary removals the historic character of this part of the setting of the Conservation Area can still be understood and appreciated. There are also views from the site across to the Conservation Area. The Cotswold Archaeology Heritage Assessment 2020 Photograph 4 identifies that there are views from the site towards

the modern development at the edge of the Conservation Area, but it is important to note that these houses are within the Conservation Area boundary and in keeping with its character.

6.6. These fields are also a significant component of the views from the western edge of the Conservation Area. See Landscape Practice Viewpoint 8, included in Appendix A for ease of reference. As noted in the text accompanying this viewpoint this proposed development site is more visible just a little further along this footpath. These more expansive views includes further views from the Conservation Area boundary (see Figure One below).



Figure One: View westwards from the north west corner of 'The Orchard' at the Conservation area boundary. The proposed solar park will be visible across the middle ground of the photograph.

***Assessing whether, how and to what degree setting makes a contribution to the significance of the heritage assets(s)***

6.7. The most significant aspects of the setting of the Conservation Area will be those that relate to its historic interest and architectural interest. In particular on the western side of the village elements which contribute to the understanding on how the postmedieval landscape of the Vale relate to the village will be particularly important. As a whole the meadows and fieldscapes to the west of the village present a legible postmedieval farmed landscape with related dispersed farms. These are intimately related and historically tied to the historic ridge top village of Hazelbury Bryan.

6.8. Views of importance which allow this relationship to be appreciated, includes the views from the edge of the Conservation Area accessed from the two public footpaths, and views from within the site itself.

### ***Assessing the indirect effect of the proposed development on the significance of the asset(s)***

6.9. The proposed development is for a large scale 'industrial sized' solar farm with associated infrastructure. Map one, included in Appendix A, shows how the scale of the proposed farm dwarfs that of the Conservation Area and will become a dominant feature in terms of historic character within the western setting of the Conservation Area. The scale of the proposals is the major issue in that it dwarfs the intimate pre 1750 post-medieval landscape and related scattered dwelling. This impact occurs across an area over four times the size of the Conservation Area. It also includes major impact on unsplit views from the Conservation Area boundary across the area of the proposed development looking west from which this timdepth and relationship can be appreciated.

6.10. There would be adverse **major effect** on significant elements of the setting of the Conservation Area which relate to its significance. This includes the historic rural character of the fieldscapes within the development site which represent a surviving pre 1800 landscape with earlier Medieval time depth which is intimately related to the character and special interest of the village of Hazelbury Bryan and views out from and towards the Conservation Area which allow this relationship to be appreciated.

### ***Explore ways to maximise enhancement and minimise harm – the allocation policy and mitigation***

6.11. The current proposed mitigation is not sufficient to reduce this effect due to the scale of the proposed solar farm.

## **7. Policy and Statutory Implications of the Heritage Assessment**

7.1. My heritage assessment, looked at the impact caused by the proposed development on the setting of Hazelbury Bryan Conservation Area.

7.2. It concluded that there would be adverse **major effect** on significant elements of the setting of the Conservation Area which relate to its significance. This includes a major impact on the historic rural character of the fieldscapes within the development site which represent a surviving pre 1800 landscape with earlier Medieval time depth which is intimately related to the character and special interest of the village of Hazelbury Bryan. It also includes major impact on unspoilt views from and towards the Conservation Area boundary from which this time depth and relationship can be appreciated.

7.3. The current proposed mitigation is not sufficient to reduce this effect due to the scale of the proposed solar farm.

7.4. In terms of the NPPF, I consider the harm identified to the designated heritage assets of the Hazelbury Bryan Conservation Area to be “less than substantial”, within the meaning of paragraph 196. This would be at the upper end of the spectrum covering “less than substantial”, and a much greater impact than identified by the original heritage statement produced in support of the application.

7.5. The separate test in Section 72 of the 1990 Planning (Listed Buildings and Conservation Areas) Act requires that “Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area”. The proposed changes would fail in this duty of regard.

7.6. We would contend that currently without further archaeological investigation the local authority would not have discharged its duty in regard to the National Planning Policy Framework paragraph 189. We strongly recommend a programme of archaeological geophysics supported by targeted trial trenching is undertaken before the application is determined.

7.7. The impacts identified above also contravene Local Plan Policy 5 (North Dorset Local Plan 2016).



## Appendix B National Planning Policy Context

### **Statutory Provisions: Section 66 and Section 72 of the Planning (Listed Building and Conservation Areas) Act 1990.**

1. The term “*special regard*” is a key concept in Section 66 of the Planning (Listed Building and Conservation Areas) Act 1990 “*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*”. Similarly, Section 72 of the same act uses the term “*special attention*” where it states “*special attention shall be paid to the desirability of preserving or enhancing the character or appearance of Conservation Areas*”

### **National Planning Policy**

2. One of the overarching objectives of the National Planning Policy Framework (NPPF) is the environment ‘... *to contribute to protecting and enhancing our natural, built and historic environment; including making effective use of land ...*’ More details of national policy in relation to the historic environment are set out in Section 16 of the Framework and paragraph 189 indicates that applicants should provide a description of the significance of any heritage assets and their setting affected by their proposals (which is one of the purposes of this Statement). The same paragraph states that “*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*”.

1. Paragraph 193 and 194 of the Framework states that “*193 When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance..... 194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.*”

2. When considering the impact of a proposed development the National Planning Policy Framework refers to “less than substantial harm” (paragraph 196) and “substantial harm” (paragraph

195) to heritage assets and their settings together with the planning consequences of any such findings. The Planning Practice Guidance (last updated July 2019) states that *“whether a proposal causes substantial harm will be a judgement for the decision taker, having regard to the circumstance of the case and the policy in the National Planning Policy Framework”*, but that in general terms *“substantial harm”* is a *“high test”*. It is therefore the role of the heritage assessor to give reasoned arguments as to why the effects found should fall into one of these categories and thereby which paragraph of the NPPF applies. In the analysis of the impacts of the proposed development below a clear structure is set out on how this assessment of impact is undertaken. I also set out a clear framework for how I have undertaken the assessment of the degree of harm present, and also identified degrees of harm which are *“less than substantial”* [Section 6].

3. ‘Significance’ in terms of heritage-related planning policy is defined in the Glossary of the National Planning Policy Framework as the value of a heritage asset to this and future generations because of its heritage interest. Significance derives not only from a heritage asset’s physical presence, but also from its setting.

4. An Historic Asset is *“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. Heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).”* (Framework Annex 2: Glossary)

5. The significance of an asset *“(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.”* (Framework Annex 2: Glossary). In my evidence below I use the term *“heritage interest”* and its constituent components of archaeological, architectural, artistic, and historic interest.

6. The National Planning Policy Framework defines archaeological, architectural, artistic and historic interest. These are summarised in my Figure 1.

Figure 1: Definitions of types of heritage interest drawn from National Planning Policy Framework (Rouse 2019)

Type of Heritage Interest	Definition
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.
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.
Architectural Interest 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 skill, like sculpture.

7. As well as direct impacts there is the possibility of a development causing indirect (setting) impacts. Planning Policy states that the significance of a heritage asset derives not just from the physical fabric of a building but from its setting. The setting of an asset comprises *“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”* (Framework Annex 2: Glossary). Paragraph 193 of the framework states that *harm or loss to the significance of designated heritage assets can occur from “its alteration or destruction” or from “development within its setting.”*

8. Useful National Guidance which has been referred to includes Historic England guidance Historic Environment Good Practice Advice in Planning “Note 3 The Setting of Heritage Assets (revised 2017)” and “Note 2 Managing Significance in Decision-Taking in the Historic Environment” (2015). Reference is also made to the published CLG Planning Practice Guidance to the National Planning Policy Framework (2014; Historic Environment section last updated July 2019).

9. The method of assessment followed is to consider every relevant heritage asset and its setting within the vicinity of the development site and where an impact is identified undertake a detailed 5 part assessment of the impact on the character and/or setting of that asset following the Historic England Good Practice Advice note 2 and note 3. Where an impact is not present a shorter summary is provided for each heritage asset. Where a heritage asset is part of a group of assets these are considered together and the cumulative impact on the individual settings of the assets is also discussed.

10. Paragraph 132 of the framework states that *“When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. 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.”*

11. Paragraph 200 of the NPPF requires that *“Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.”* My heritage assessment [section 6] discusses where the development makes a positive contribution to the Heritage Assets or better reveals their significance.

### **Pertinent High Court Decisions**

12. I am aware of the 2014 Court of Appeal decision on the setting of heritage assets – the ‘Barnwell’ decision (footnote2.) Core Document CD3.22. Most notably the Court of Appeal found that Parliament’s intention in enacting Section 66(1) was that decision-makers should give *“considerable importance and weight”* to the desirability of preserving the setting of Listed buildings when carrying out the balancing exercise. Even when the harm to heritage assets is less than substantial, the balancing exercise required by national policy is subject to the statutory duty imposed by Section 66(1) and Section 72. This decision shows that:

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<sup>2</sup> Barnwell Manor Wind Energy Limited and East Northamptonshire District Council, English Heritage, National Trust and Secretary of State for Communities and Local Government [2014] Case No: C1/2013/0843

- The decision-maker needs to identify whether any harm is likely to be caused to the Heritage Asset and if so the likely nature of that harm.
- If harm is found to the setting of the Listed buildings, (or to a Conservation Area), then considerable weight needs to be given to the desirability of preserving the setting of those buildings (s.66). In such circumstances, there is a strong rebuttable presumption against the grant of planning permission.
- Less than substantial harm cannot be equated with less than substantial objection to the grant of planning permission.
- The ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset.
- The Practice Guidance nowhere suggests that the question of whether harm to setting is substantial can be answered simply by applying the ‘reasonable observer’ test adopted by the Barnwell Inspector in his decision. Such a test for deciding whether harm to the setting of a designated heritage asset was substantial would preclude virtually all cases, except where a proposal would be in the immediate vicinity of the heritage asset, from amounting to substantial harm.

13. The ‘Forge Field’ High Court decision<sup>3</sup> is also relevant. Core Document CD3.16. As set out at paragraph 48, s66 and 72 of the Listed Buildings Act 1990 do not allow a local planning authority to treat the desirability of preserving the settings of Listed Buildings and the character and appearance of Conservation Areas as mere material considerations to which it can simply attach as much weight as it sees fit. When an authority finds that a proposed development would harm the setting of a Listed Building, or the character and appearance of a Conservation Area, it must give that harm considerable importance and weight. Paragraphs 49-51 further state:

*“This does not mean that an authority's assessment of likely harm to the setting of a Listed building or to a conservation area is other than a matter for its own planning judgment. It does not mean that the weight the authority should give to harm which it considers would be limited or less than substantial must be the same as the weight it might give to harm which would be substantial. But it is to recognize, as the Court of Appeal emphasized in Barnwell, that a finding of harm to the setting of a Listed building or to a conservation area gives rise to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be*

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<sup>3</sup> R (on the application of) Forge Field Society & Others v Sevenoaks DC & Interested Parties [2014] EWHC 1895 (Admin)

*outweighed by material considerations powerful enough to do so. But an authority can only properly strike the balance between harm to a heritage asset on the one hand and planning benefits on the other if it is conscious of the statutory presumption in favour of preservation and if it demonstrably applies that presumption to the proposal it is considering...*

*.... Even if the harm would be “less than substantial”, the balancing exercise must not ignore “the overarching statutory duty imposed by section 66(1), which properly understood ... requires considerable weight to be given ... to the desirability of preserving the setting of all Listed buildings, including Grade II Listed buildings” (paragraph 28). The error made by the inspector in Barnwell was that he had not given “considerable importance and weight” to the desirability of preserving the setting of a Listed building when carrying out the balancing exercise in his decision. He had treated the less than substantial harm to the setting of the Listed building as a less than substantial objection to the grant of planning permission (paragraph 29)....”*

14. I am also aware and have taken account of the High Court Appeal decision of *North Norfolk District Council v SSCLG*<sup>4</sup> - the “North Norfolk” decision reiterates that decision-makers considering harm to heritage assets cannot simply treat “the desirability of preserving the setting of a Listed building as a mere material consideration to which they can simply attach the weight they see fit in their judgment. The statutory duty [s.66] goes beyond that and treats the preservation of the setting of a Listed building as presumptively desirable.” The Court accepted that the effect of the statutory requirement is to impose a duty on decision-makers to give “considerable importance and weight” or “high priority” to the desirability of preserving Listed buildings and their settings.

15. The decision is also important because it considers the relationship between the section 66(1) duty and paragraphs 132-134 of the NPPF, which deal with heritage assets. The Court held that the advice in those sections of the NPPF is consistent with section 66(1). However, it is not enough for decision-makers simply to carry out a straight balancing exercise between harm and public good under paragraph 134 of the NPPF. The Court held that the section 66(1) duty affects the weight to be given to the factors involved, and the decision-maker must ask “whether there is justification for overriding the presumption in favour of preservation.”

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<sup>4</sup>*North Norfolk District Council v SSCLG and Mack* [2014] EWHC 279

16. The December 2015 'Mordue' Court of Appeal decision<sup>5</sup> Core Document CD3.17 has provided further clarification on how a decision maker needs to demonstrate that the statutory test has been applied:

*"Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs,..., which lay down an approach which corresponds with the duty in Section 66 (1). Generally, a decision maker who works through these paragraphs in accordance with their terms will have complied with the Section 66 (1) duty". When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons - the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. Working through these paragraphs, a decision-maker who had properly directed himself by reference to them would indeed have arrived at the conclusion that the case fell within paragraph 134, as the Inspector did. (Paragraph 28).*

17. In other words, where the decision-maker has referred to the relevant paragraphs of the framework (and indeed the relevant Development Plan policies), the appropriate inference is that the statutory duty has been met, unless there is some positive contrary indication.

18. In the judgment handed down in the case of Catesby Estates Ltd and SSCLG v Steer [2018] EWCA Civ 1697 Core Document CD3.18 the Court of Appeal has confirmed that the setting of heritage assets "is not necessarily confined to visual or physical impact" but that other considerations are potentially relevant.

19. This judgment resolves the tension between Lang J's approach in the High Court and comments made by Lindblom LJ in R (Williams) v Powys County Council [2017] EWCA Civ 427.

20. The Court of Appeal identified three general points which apply in setting cases:

- Section 66(1) of the Listed Buildings Act 1990 requires the decision-maker to understand what the setting of the asset 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.

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<sup>5</sup> *Jane Mordue v Secretary of State for Communities and Local Government and others* [2015] EWCA Civ 1243.

- Although the exercise is not purely subjective, there is not (and could not be) a single approach to identifying the extent of a heritage asset's setting. The decision-maker must apply planning judgment, having regard to relevant policy, guidance and advice. It is necessary 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 effect of a particular development on the setting of a heritage asset – 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 to the requirement to give considerable importance and weight 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

## Appendix C: Heritage Assessment Methodology

1. The method used for this assessment is to consider the particular significance of the heritage asset(s) which may be affected by the proposal and the impact of the proposal on that significance by undertaking a staged approach<sup>6</sup> which CD7.12:

- Understands the significance of the affected assets
- Understands the impact of the proposal on that significance
- Avoids, minimises and mitigates impact in a way that meets the objectives of the NPPF
- Looks for opportunities to better reveal or enhance significance
- Justifies any harmful impacts in terms of the sustainable development objective of conserving significance and the need for change
- Offsets negative impacts on aspects of significance by enhancing others through recording, disseminating and archiving archaeological and historical interest of the important elements of the heritage assets affected.

2. It is important to understand the nature, extent and level of significance for each heritage asset.

3. Historic England has produced a guidance document Historic Environment Good Practice Note 3 'The Setting of Heritage Assets' (revised 2017) CD 7.5. This advocates a five-stage approach to assessment. These stages are:

- Step 1: Identifying the heritage assets affected and their settings
- 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 minimise harm
- Step 5: Make and document the decision and monitor outcomes

4. A site visit was undertaken to assess the relationship(s) between the development and any heritage assets, and the potential impact of increased vehicle movements and rat running on the significance of heritage assets.

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<sup>6</sup> As per page 2 of Historic England Good Practice Advice 2. Managing Significance in Decision Making (2015)

5. **Assessment Framework for documenting the effect of the proposed development**

6. For this assessment the following descriptive thresholds have been used to describe the effect of the proposed development on the significance of a heritage asset:

<b>Effect</b>
<b>Extreme</b> – Comprehensive changes to asset or setting
<b>Major</b> – changes to most of the key significant features of an heritage asset and comprehensive change to the significant components of its setting
<b>Moderate</b> - changes to some of the key significant features of an heritage asset and considerable change to the significant components of its setting
<b>Minor</b> – slight changes to the key significant features of an heritage asset and slight change to the significant components of its setting
<b>Negligible</b> – very minor changes

7. In determining the effect of the proposed development on the significance of heritage assets, the heritage assessor needs to provide justifications as to the level of impact identified and how this relates to the relevant Statutory and Policy tests.

8. This approach is particularly useful in cases relating to “less than substantial” as it can be used to help identify how much weight should be given to each impact identified and the cumulative effect of any material harm to each heritage assets or groups of heritage assets.