Land off Bullens Green Lane, Colney Heath

Proof of Evidence of:
Andrew Crutchley
BA (Hons), PG Dip (Oxon), MCIfA

In respect of:
Heritage Matters

On behalf of:
Canton Ltd

PINS REFs:
APP/B1930/W/20/3265925
APP/C1950/W/20/3265926

LPA REFs:
5/2020/1992/LSM
6/2020/2248/OUTLINE

Volume II:
APPENDIX, IMAGES AND PLANS

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Contents

Volume I: Main Text (bound separately)

Section 1 Preamble 1

Section 2 Appointment and Scope of Evidence 3

Section 3 Assessment of Effects 7

Section 4 Policy Review and Conclusions 18

Volume II: Appendix, Images and Plans

Appendix

Appendix AC 1 Legislative and Planning Policy Context

Images

Proof Images AC 1–16

Plans

Proof Plan AC 1 The Appeal Site in Relation to 68 Roestock Lane (edp6550_d004a 26 March 2021 MH/AC)

Proof Plan AC 2 Extract from the 1839 Tithe Map (edp6550_d005a 26 March 2021 MH/AC)

Proof Plan AC 3 Extract from the 1879-80 First Edition 25" OS Map (edp6550_d006a 26 March 2021 MH/AC)

Proof Plan AC 4 Extract from the 1898 Second Edition 25" OS Map (edp6550_d007a 26 March 2021 MH/AC)

Proof Plan AC 5 Extract from the 1937 Edition 25" OS Map (edp6550_d008a 26 March 2021 MH/AC)

Proof Plan AC 6 Extract from 1971 Edition 25" OS Map (edp6550_d009a 10 March 2021 MH/AC)

Volume III: Summary of Proof of Evidence (bound separately)

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Appendix AC 1

Legislative and Planning Policy Context

AC1.1 This appendix to my Proof summarises the legislative and planning policy framework of relevance to the case.

Primary Legislation

AC1.2 Section 66(1) of the 1990 Act [**CD 9.22**] sets out the duty of the local planning authority in respect of listed buildings within the planning process. It states that:

"…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".

AC1.3 This "*special regard"* duty has been tested in the Court of Appeal and confirmed to require that "*considerable importance and weight"* should be afforded by the decision maker to the desirability of preserving a listed building along with its setting. The relevant Court judgement is referenced as *Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage and National Trust [2014] EWCA Civ 137* [**CD 12.07**].

AC1.4 The concept of *preserve* has previously been established by the Courts in *South Lakeland DC v Secretary of State for the Environment, [1992] 2 WLR 204*. This identifies that proposed development which does not detract from the character or appearance of a conservation area is deemed to be in accordance with the legislation. In other words, there is no statutory requirement to 'enhance' [**CD 12.08**].

AC1.5 However, it must be recognised that s66(1) of the 1990 Act **does not** identify that the local authority or the Secretary of State *must* preserve a listed building or its setting. Neither do the two illustrate that a development that does not '*preserve*' is unacceptable and should therefore be refused. It is a matter for the decision maker to evaluate and then determine.

AC1.6 The judgement in respect of *R (Forge Field Society) v Sevenoaks District Council [2014] EWHC 1895 (Admin)* [**CD 12.09**] also makes this clear at Paragraph 49 when it states the following:

"This does not mean that an authority's assessment of likely harm to the setting of a listed building or to [the character or appearance of] a conservation area is other than a matter for its own planning judgement. 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 recognise, as the Court of Appeal emphasised in Barnwell, that a finding of harm to the setting of a listed building or to [the character or appearance] of a conservation area gives rises to a strong presumption against planning permission being granted. The presumption is a statutory one. It is not irrebuttable. It can be 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."

AC1.7 This key point is also made in Paragraph 54 of *Forest of Dean DC v Secretary of State for Communities and Local Government [2013] EWHC 4052 (Admin)* [**CD 12.10**]; i.e.:

"*...Section 66 (1) did not oblige the inspector to reject the proposal because he found it would cause some harm to the setting of the listed buildings. The duty is directed to 'the desirability of preserving' the setting of listed buildings. One sees there the basic purpose of the 'special regard' duty. It does not rule out acceptable change. It gives the decision-maker an extra task to perform, which is to judge whether the change proposed is acceptable. But it does not prescribe the outcome. It does not dictate the refusal of planning permission if the proposed development is found likely to alter or even to harm the setting of a listed building.*"

AC1.8 In other words, it is up to the decision maker (such as a local authority) to assess whether the proposal which is before them would result in '*acceptable change*'.

National Planning Policy

AC1.9 Relevant national planning guidance for England is outlined in the National Planning Policy Framework (NPPF, MHCLG 2019), where *Section 16 Conserving and Enhancing the Historic Environment* sets out national planning guidance [**CD 9.30**].

AC1.10 In terms of planning applications, Paragraph 189 states:

"*In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation*".

AC1.11 NPPF Paragraph 192 is relevant when it states that:

"*In determining 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."

AC1.12 Paragraph 193 states:

"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".

AC1.13 Paragraph 194 then adds that:

"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; and

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."*

AC1.14 Paragraph 196 then states the following in respect of the identification of 'harm' which is assessed to be "*less than substantial*" harm [**CD 9.30**]:

"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."

AC1.15 Under the specific heading *Conserving and Enhancing the Historic Environment*, the Government's *Planning Practice Guidance* [**CD 9.23**] highlights the following information in respect of the identification of 'substantial harm' in planning matters:

"Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. 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."

AC1.16 Paragraphs 24 and 25 of the High Court judgement in respect of *Bedford BC v Secretary of State for Communities and Local Government [2013] EWHC 2847* [**CD 12.11**] also highlight the high threshold required for a development proposal to constitute substantial harm, and also serve to emphasise the very broad spectrum of "*less than substantial harm"* in terms of proposed development:

"What the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away. Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced."

AC1.17 Therefore, for the 'harm' to be 'substantial' – and require consideration against the more stringent requirements of Paragraph 195 of the NPPF compared with Paragraph 196; the proposal being considered would need to result in the heritage asset's significance either being "*vitiated altogether* [i.e. destroyed] *or very much reduced"*.

AC1.18 As far as this Proposal is concerned, it further highlights that "*less than substantial harm*" must by implication span the full breadth of developmental effects that would not result in an asset's significance being either "*vitiated altogether or very much reduced"*.

AC1.19 There is no suggestion, from either of the Councils party to this Inquiry, that the proposed development would give rise to 'substantial' harm in respect of the significance of the

listed building adjacent to the boundary and so therefore this matter is not considered further in my evidence on heritage matters.

Local Planning Policy

AC1.20 Paragraph 5.30 of the Councils' joint Statement of Case [**CD 13.03**] states that the appeal proposals conflict with the Local Plan policies summarised here.

St Albans City and District Council

AC1.21 The current adopted Local Plan for St Albans City and District Council is the *District Local Plan Review* 1994, which is intended to be replaced by the New Local Plan when it is ready and adopted [**CD 5.02**].

AC1.22 The Local Plan is now out of date, but specific policies have been saved and taken forward as current policy:

Policy 86 – Buildings of Special Architectural or Historic Interest

In considering any application for listed building consent for the demolition, alteration or extension of a listed building (and also any application for planning permission for a development which affects a listed building or its setting), the Council will have special regard to the desirability of preserving the building or its setting or any features of architectural or historic interest which it possesses.

AC1.23 Insofar as development affecting a listed building is concerned, Policy 86 reproduces the s66(1) statutory duty and likewise does not dictate that development which does not *preserve* is unacceptable and to be refused.

Welwyn and Hatfield Borough Council

AC1.24 The current adopted Plan for Welwyn Hatfield Borough Council is the *District Plan* that was adopted in 2005 [**CD 5.01**]. It includes *Policy R26 covering alternative uses for listed buildings,* but there is no specific policy covering development within the setting of a listed

building and this policy does not apply in terms of this appeal.

AC1.25 Policy D1 covering 'quality of design' is the only policy in the adopted District Plan (2005) cited as being contravened by the development proposals.

Policy D1 - Quality of Design

The Council will require the standard of design in all new development to be of a high quality. The design of new development should incorporate the design principles and policies in the Plan and the guidance contained in the Supplementary Design Guidance.

AC1.26 The New Local Plan [**CD 6.01**] will replace the saved policies of the adopted District Plan when it has been examined and formally adopted. This includes the following:

Policy SADM 15 – Heritage

Proposals which affect designated heritage assets and the wider historic environment should consider the following:

- *The potential to sustain and enhance the heritage asset and historic environment in a manner appropriate to its function and significance;*
- *Successive small scale changes that lead to a cumulative loss or harm to the significance of the asset or historic environment should be avoided;*
- *Proposals should respect the character, appearance and setting of the asset and historic environment in terms of design, scale, materials and impact on key views;*
- *Architectural or historic features which are important to the character and appearance of the asset (including internal features) should be retained unaltered;*
- *The historic form and structural integrity of the asset are retained; and*
- *Appropriate recording of the fabric or features that are to be lost or compromised takes place and is deposited into the Historic Environment Record.*

A Heritage Statement, Heritage Impact Assessment and/or Archaeological Assessment will be required if the scale and nature of the proposal are likely to have an impact on the significance of all or part of the asset.

Permission for proposals that result in substantial harm to the significance of a designated heritage asset, including Conservation Areas, will be exceptional or wholly exceptional in accordance with national policy and guidance.

Proposals that result in less than substantial harm to the significance of a designated heritage asset will also be refused unless the need for, and benefits of, the development in that location significantly outweigh that harm and the desirability of preserving the asset, and all feasible solutions to avoid and mitigate that harm have been fully implemented.

Proposals that result in harm to the significance of other heritage assets will be resisted unless the need for, and benefits of, the development in that location clearly outweigh that harm, taking account of the asset's significance and importance, and all feasible solutions to avoid and mitigate that harm have been fully implemented.

AC1.27 The application of this and other national and local policies to the appeal proposals before this Inquiry will be detailed in **Section 4** of my Proof of Evidence.

Images

Proof Image AC 1: Typical view of 68 Roestock Lane from the public realm to the north and here looking down the public footpath leading south to the site (taken in June 2020).

Proof Image AC 2: View of 68 Roestock Lane looking south-east and showing it within its garden enclosure and set back from the frontage of this minor road (taken in June 2020).

Proof Image AC 3: Typical view of 68 Roestock Lane looking north-west across the site from the roadside at the south-east corner (taken in June 2020).

Proof Image AC 4: View of 68 Roestock Lane from inside the eastern boundary of the site and highlighting its relatively limited prominence in comparison with the mid-20th century detached houses located adjacent (taken in June 2020).

Proof Image AC 5: Close-up of 68 Roestock Lane from the north-western corner of the site, here looking north-west and illustrating the screening effect of the garden trees for what is a relatively modest residential dwelling (taken in June 2020).

Proof Image AC 6: Typical view of the rear of 68 Roestock Lane looking north from the point where the public footpath enters the north-western corner of the site from the recreation ground. The screening effect of the garden trees and vegetation is obvious (taken in June 2020).

Proof Image AC 7: Typical view of the rear of 68 Roestock Lane looking north from the public footpath crossing the site's north-western corner (taken in June 2020).

Proof Image AC 8: Typical view of the rear of 68 Roestock Lane looking north-west from the public footpath where it meets the south-west corner of the adjacent residential housing estate and the experience of the listed building is entirely screened out (taken in June 2020).

Proof Image AC 9: Close-up of the rear elevation of 68 Roestock Road taken from the north end of the site and looking north (taken in February 2021).

Proof Image AC 10: Typical view of 68 Roestock Lane from the public realm to the north and here looking down the public footpath leading south to the site. (taken in February 2021).

Proof Image AC 11: View of 68 Roestock Lane looking south-east and showing it within its garden enclosure and set back from the frontage of this minor road (taken in February 2021).

Proof Image AC 12: Typical view of 68 Roestock Lane looking north-west across the site from the roadside at the south-east corner (taken in February 2021).

Proof Image AC 13: Close-up of 68 Roestock Lane from the north-western corner of the site, here looking north-west and illustrating the screening effect of the garden trees for what is a relatively modest residential dwelling (taken in February 2021).

Proof Image AC 14: Typical view of the rear of 68 Roestock Lane looking north from the point where the public footpath enters the north-western corner of the site from the recreation ground. The screening effect of the garden trees and vegetation is obvious (taken in February 2021).

Proof Image AC 15: Typical view of the rear of 68 Roestock Lane looking north from the public footpath crossing the site's north-western corner (taken in February 2021).

Proof Image AC 16: Typical view of the rear of 68 Roestock Lane looking north-west from the public footpath where it meets the south-west corner of the adjacent residential housing estate and the experience of the listed building is entirely screened out (taken in February 2021).

Plans

Proof Plan AC 1	The Appeal Site in Relation to 68 Roestock Lane (edp6550_d004a 26 March 2021 MH/AC)
Proof Plan AC 2	Extract from the 1839 Tithe Map (edp6550_d005a 26 March 2021 MH/AC)
Proof Plan AC 3	Extract from the 1879-80 First Edition 25" OS Map (edp6550_d006a 26 March 2021 MH/AC)
Proof Plan AC 4	Extract from the 1898 Second Edition 25" OS Map (edp6550_d007a 26 March 2021 MH/AC)
Proof Plan AC 5	Extract from the 1937 Edition 25" OS Map (edp6550_d008a 26 March 2021 MH/AC)
Proof Plan AC 6	Extract from 1971 Edition 25" OS Map (edp6550_d009a 10 March 2021 MH/AC)

PROOF PLAN AC 1

Appeal Site Boundary

Grade II Listed Building

Locations for Images AC1 to AC16 (Approximate)

Basemap: Proposed Illustrative Layout (17981/1005 Rev F July 2020)

client

Canton Ltd

project title

Land off Bullens Green Lane, Colney Heath

drawing title

Proof Plan AC 1: The Appeal Site in Relation to 68 Roestock Lane

date	26 MARCH 2021	drawn by	EJ
drawing number	edp6550_d004a	checked	AC
scale	1:2,500 @ A3	QA	JTF

the environmental dimension partnership

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PROOF PLAN AC 2

Approximate Appeal Site Boundary

client

Canton Ltd

project title

Land off Bullens Green Lane, Colney Heath

drawing title

Proof Plan AC 2: Extract from the 1839 Tithe Map

date	**29 MARCH 2021**	drawn by	**MH**
drawing number	**edp6550_d005a**	checked	**AC**
scale	**1:2,500 @ A3**	QA	**JTF**

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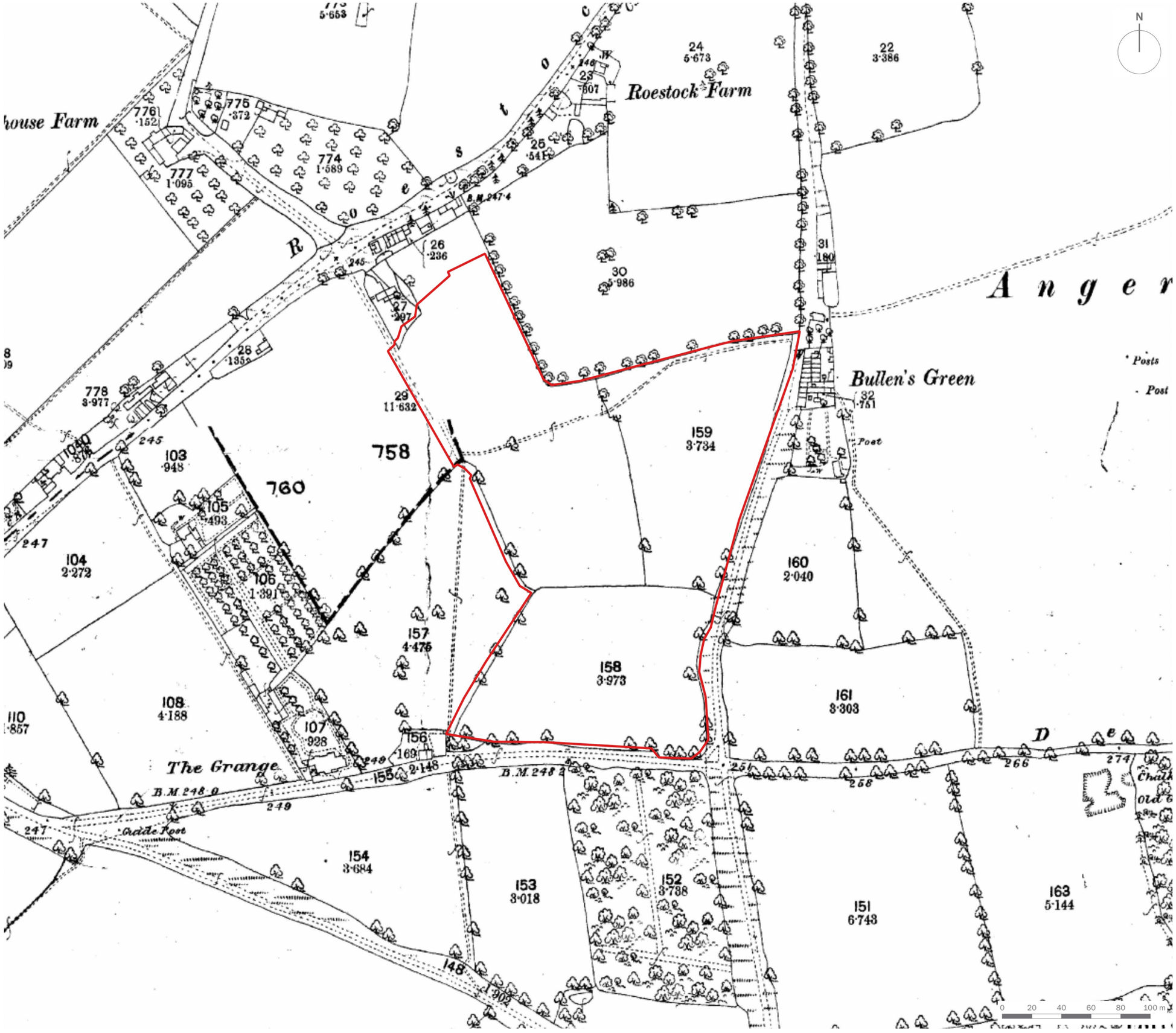
PROOF PLAN AC 3

Approximate Appeal Site Boundary



client

Canton Ltd

project title

Land off Bullens Green Lane, Colney Heath

drawing title

Proof Plan AC 3: Extract from the 1879-80 First Edition 25" OS Map

date	29 MARCH 2021	drawn by	MH
drawing number	edp6550_d006a	checked	AC
scale	1:2,500 @ A3	QA	JTF

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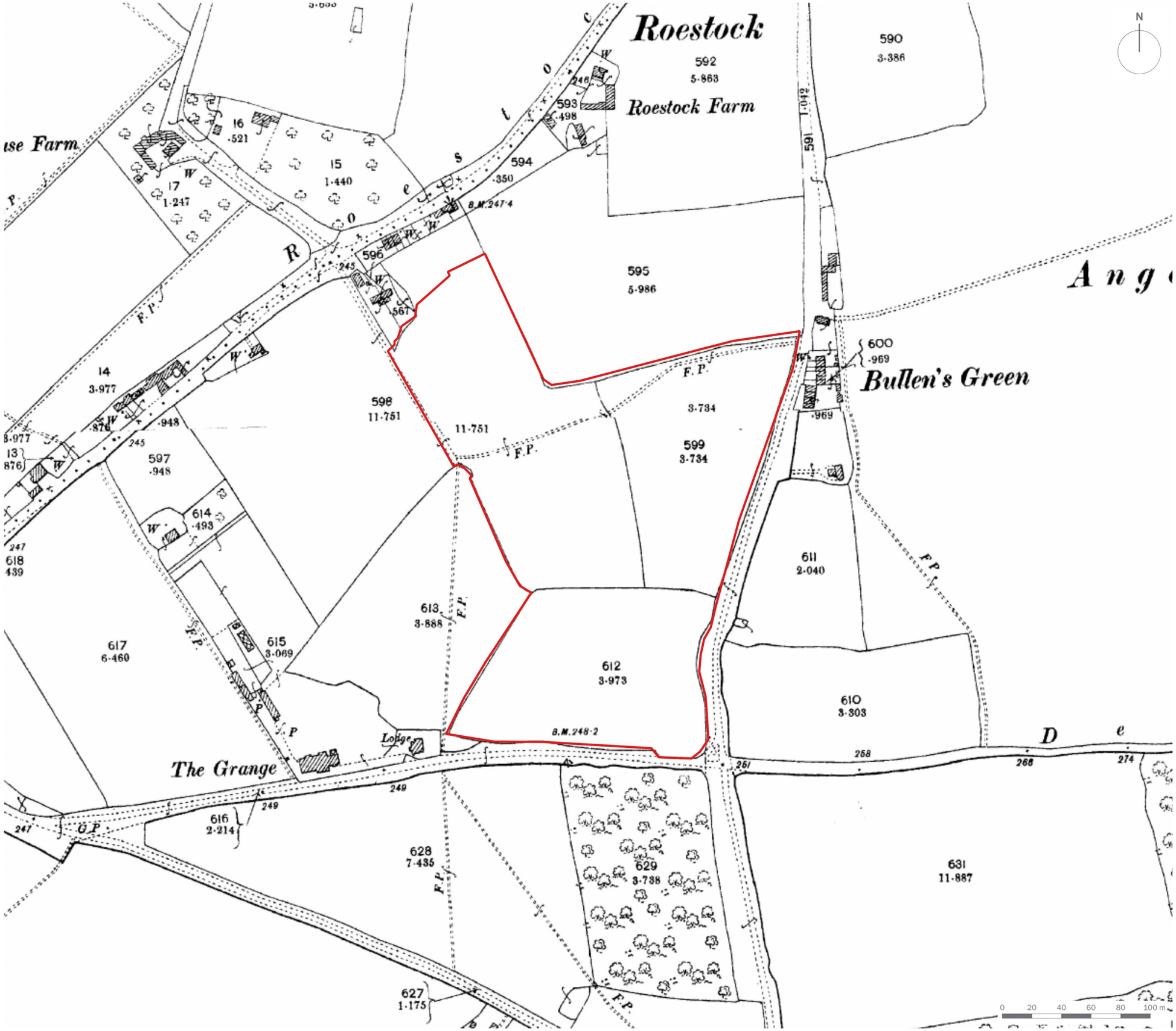
PROOF PLAN AC 4

Approximate Apeal Site Boundary



client

Canton Ltd

project title

Land off Bullens Green Lane, Colney Heath

drawing title

Proof Plan AC 4: Extract from the 1898 Second Edition 25" OS Map

date	29 MARCH 2021	drawn by	MH
drawing number	edp6550_d007a	checked	AC
scale	1:2,500 @ A3	QA	JTF

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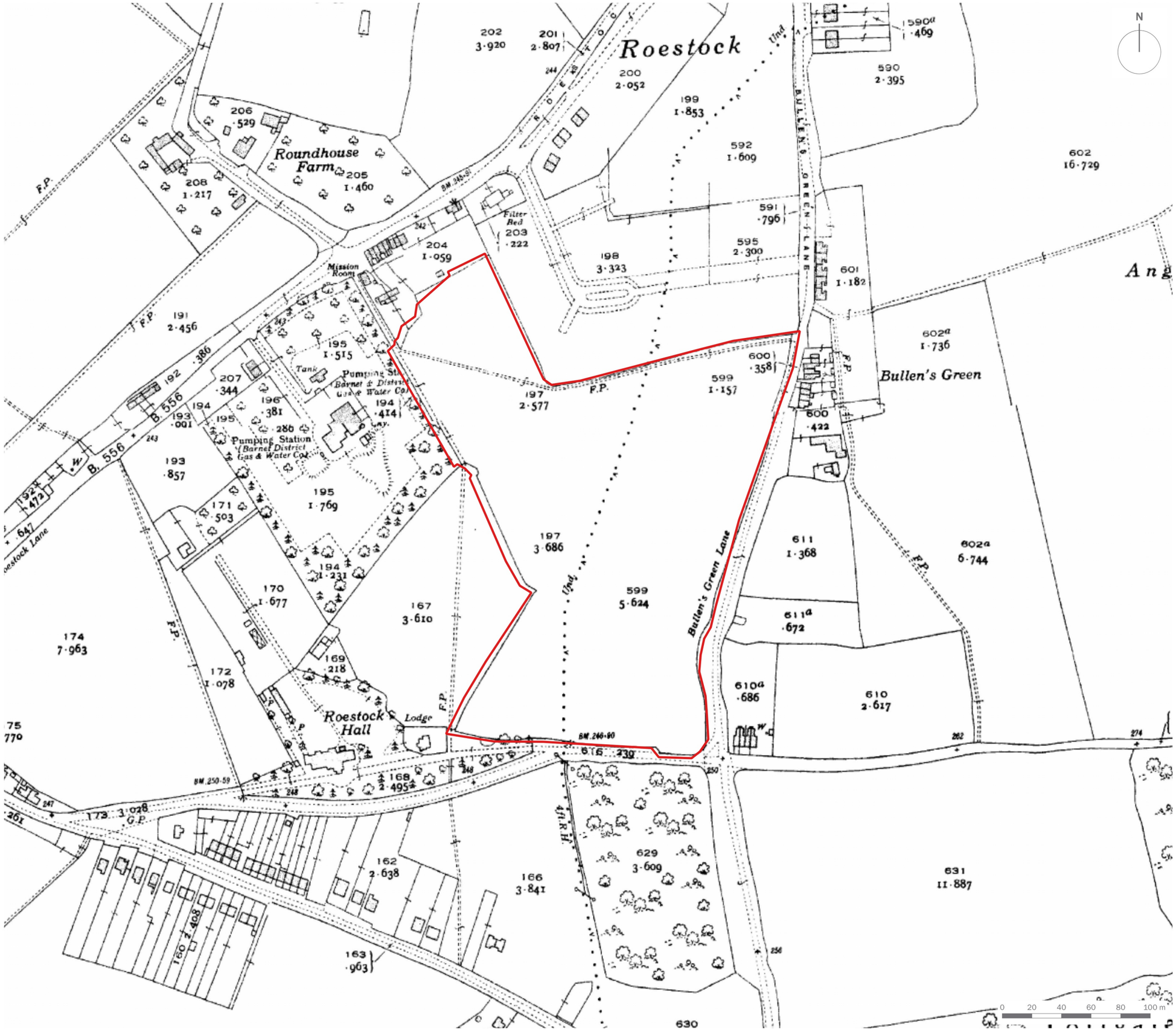
PROOF PLAN AC 5

Approximate Appeal Site Boundary



client

Canton Ltd

project title

Land off Bullens Green Lane, Colney Heath

drawing title

Proof Plan AC 5: Extract from the 1937 Edition 25" OS Map

date	29 MARCH 2021	drawn by	MH
drawing number	edp6550_d008a	checked	AC
scale	1:2,500 @ A3	QA	JTF

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PROOF PLAN AC 6

Approximate Appeal Site Boundary

client

Canton Ltd

project title

Land off Bullens Green Lane, Colney Heath

drawing title

Proof Plan AC 6: Extract from the 1971 Edition 25" OS Map

date	29 MARCH 2021	drawn by	MH
drawing number	edp6550_d009a	checked	AC
scale	1:2,500 @ A3	QA	JTF

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