

Proof of Evidence: Heritage

Evidence of Gail Stoten BA (Hons) MIfA FSA

In Respect of Section 78 Appeal: Land at Tollgate Road, Colney Heath.

Outline application (access sought) – Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and self-build and custom-build dwellings together with all ancillary works

On behalf of Vistry Group Strategic Land.

Date: 22 August 2023 | Pegasus Ref: P23-0990

LPA Ref: 5/2022/1988

Author: Gail Stoten BA(Hons) MCI fA FSA



Contents

1. Author's Background	3
2. Introduction.....	5
3. Historic Background and Assessment of Significance, Setting and Impact.....	11
4. Responses to Consultee Comments made during the Application Process.....	12
5. Conclusions	14

Appendices

Appendix 1: Legislation and Planning Policy

Appendix 2: Methodology

Appendix 3: Figure



1. Author's Background

- 1.1. My name is Gail Stoten. I am a Heritage Executive Director at Pegasus Planning Group, where I lead the Heritage Team, which comprises 15 specialist consultants.
- 1.2. I have been a heritage professional for over 23 years, including 14 years working for Cotswold Archaeology and eight years at Pegasus Group.
- 1.3. I am a Member of the Chartered Institute for Archaeologists (MCIfA). I have been elected a Fellow of the Society of Antiquaries of London. I have a First Class Honours degree in Archaeology.
- 1.4. I am a Trustee of Painswick Rococo Gardens, and have been a member of the board of the charity for seven years.
- 1.5. I have acted as a heritage consultant on numerous large-scale developments in England and Wales, on behalf of developers, local planning authorities, and third parties.
- 1.6. I provide expert advice to clients on heritage assessment and also manage survey work (including built heritage assessments and archaeological works) carried out by our company and sub-contractors.
- 1.7. My role necessitates close liaison with heritage stakeholders such as Historic England, Local Authority heritage officers, and Amenity Group Representatives.
- 1.8. The assessment of the setting of heritage assets is an area in which I have significant expertise, and I have over twenty years' experience in completing setting assessments. I have made assessments of the setting of a wide variety of heritage assets, including Listed buildings, Conservation Areas, Registered Parks and Gardens, Scheduled Monuments, Battlefields and World Heritage Sites. I have assessed the impact of many different types of development including residential, commercial and energy developments, including tall structures.
- 1.9. Projects I have been professionally instructed on relating to the setting of heritage assets, have included:
 - Land at 'Perrybrook' to the north of Brockworth and south of the A417, Brockworth, Gloucestershire. Secretary of State decision (concurring with Inspector's recommendation) allowing the construction of up to 1500 dwellings in the wider vicinity of Listed Buildings;
 - Land west of Knights Hill Village, Grimston Road, South Wotton, Norfolk. Secretary of State decision (concurring with Inspector's recommendation) allowing the construction of up to 600 dwellings and associated works in the wider vicinity of Castle Rising Castle Listed building, Scheduled Monument and Conservation Area;
 - Land south of Gallows Hill/West of Europa Way, Heathcote, Warwick. Secretary of State Decision (concurring with Inspector's recommendation) allowing the construction of up to 450 residences, in the wider vicinity of Listed buildings, Scheduled Monument the Conservation Area and Registered Park and Garden associated with Warwick Castle and the town of Warwick;



- Land at Bocking Church Street, Braintree, Essex, where up to 265 residences and associated works were consented close to a Grade II Listed farmhouse;
- Land at Pope's Lane, Sturry, Kent, Inspector's Decision, not allowing the residential development of the site for 140 dwellings on transport grounds, but concurring with my assessment of less than substantial harm at the lower end of the spectrum for an adjacent Listed farmhouse complex.
- Land at Langford Devon, Inspector's decision, consenting a solar farm in the surrounds of a Grade II* Listed building.
- Land at Tenterden, Kent, Inspector's Decision, contenting residential development in proximity to a Conservation Area and Listed buildings.

1.10. The evidence which I have prepared and provided for this appeal in this Statement is true and has been prepared and given in accordance with the guidance of my professional institution. I confirm that the opinions expressed are my true professional opinions.

2. Introduction

- 2.1. This Proof of Evidence has been prepared on behalf of Vistry Group Strategic Land ('The Appellant') and relates to a planning appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990, concerning land to the rear of Tollgate Road, Colney Heath, St Albans ('The Appeal Site').

Application

- 2.2. An application was made to St Albans City & District Council ("The LPA") for outline planning permission (LPA ref: 5/2022/1988) ("The Planning Application") for a Proposed Development comprising the following:

"Outline application (access sought) – Demolition of existing house and stables and the construction of up to 150 dwellings including affordable and custom-build dwellings together with all ancillary works"

- 2.3. The planning application was validated by the Council on 23rd August 2022.
- 2.4. The Application was accompanied by an Archaeological and Heritage Statement produced by CSA Environment, dated June 2022 (CD 4.5) , and a Geophysical Survey Report (Magnitude Surveys) dated June 2022.
- 2.5. The Archaeological and Heritage Statement identified negligible, less than substantial harm at the lowermost end of the spectrum, at most, to Colney Heath Farmhouse, and negligible harm, at most, to North Mymms Park House.
- 2.6. Matters relating to archaeology were not the basis for a reason for refusal and the LPA accept that they can be dealt with by condition.

Consultation Responses

- 2.7. A summary of the various consultation responses on heritage matters is given below, although specific points raised are addressed in detail in the assessment sections of this proof.
- A consultation response from Historic England dated 26th September 2022 identified less than substantial harm, low on the scale, to the significance of the grade I listed North Mymms House and the non-designated North Mymms Park. Assessment of the impact upon the setting of the Grade II* listed St Mary's Church was requested.
 - A consultation response from The Gardens Trust dated 12th October identified harm to the heritage significance of North Mymms Park, on the basis on intervisibility with the proposed development.
 - A consultation response from Historic England dated 1st November 2022 requested the analysis and photographic documentation of views from North Mymms House.
 - A Heritage Setting Addendum was produced by CSA Environmental dated December 2022 (CD 5.4), which considered the non-designated park, the Grade II* Listed

Church of St Mary and provided further assessment of the impact on North Mymms House. This concluded that the level of harm to North Mymms House was as assessed previously, negligible less than substantial harm at the lowermost end of the spectrum, and that no harm would occur to the heritage significance of the Grade II* Listed church or the non-designated parkland. It should be noted that the photomontages included in this report have since been updated.

- A subsequent response from the LPA Design and Conservation Consultee, dated 8th February 2023, identified harm to the Grade I Listed North Mymms House, with the potential for this to be mitigated by design.
- A response from Historic England dated 9th February 2023 identified harm to North Mymms House and the non-designated Tollgate Farm and non-registered park and garden.
- The parameters plans were updated, to reduce the height of buildings in the area visible from North Mymms House.
- A subsequent response from Historic England dated 27th March 2023 assessed a moderate degree of less than substantial harm to North Mymms House (and possibly other assets, although the wording of the response is not clear).
- A response on conservation from Place Services dated 3rd April 2023 identifies less than substantial harm at the low end of the spectrum to North Mymms House and also a low level of harm to the non-designated heritage assets of Tollgate Farm and North Mymms Parkland.
- A response from the LPA Design and Heritage consultee dated 25th April 2023 states that the changes to the parameters have reduced the impact to North Mymms House, but does not give an explicit level of harm.
- A consultation response from Historic England following the production of updated photomontages (CD 5.27) states that they do not alter their view in relation to harm.

Committee Report

2.8. Impacts on heritage assets were considered in paragraphs 8.11.1 to 8.11.35 of the Committee Report (CD 6.1). This identified the following levels of harm:

- North Mymms House – Less than substantial harm and moderate on that spectrum.
- Colney Heath Farmhouse and Adjacent Barn – Less than substantial harm and at the lower end of the spectrum.
- Tollgate Farm – Less than substantial harm at the lower end of the spectrum.
- Unregistered North Mymms Parkland – Less than substantial harm at the lower end of the spectrum.

2.9. The committee report made the following conclusion:

“In conclusion, the scheme causes a moderate level of less than substantial harm cumulatively across all identified heritage assets, which should be given considerable weight and importance. As a result, the proposal conflicts with Local Plan Policy 86.”

- 2.10. Putative reasons for refusal were issued by the LPA on 25th May 2023 (CD 6.2). The Decision Notice gave the following Reason for Refusal where relevant to heritage:

“1. The site is within the Metropolitan Green Belt and the proposed development represents inappropriate development within the Green Belt, as set out in the National Planning Policy Framework 2021. In addition to the in-principle harm to the Green Belt by reason of inappropriateness, other harm is identified as a result of the proposed development in terms of: its detrimental impact on the openness of the Green Belt, harm to Green Belt purposes and harm to landscape character and appearance. Harm is also identified to the significance of the Grade I listed North Mymms Park house, Grade II listed Colney Heath Farmhouse and adjacent Grade II listed barn and the non-designated heritage assets of North Mymms Park and Tollgate Farm. Harm is also identified as insufficient information has been provided to demonstrate that the site has suitable access to sustainable transport modes. The benefits of the proposed development comprise the provision of up to 150 dwellings, including 40% affordable housing and up to 9 self-build units at the site which could contribute significantly towards meeting an identified housing need in the District, and the provision of public open space and delivery of 10% biodiversity net gain (through on-site and offsite provision). The potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is not clearly outweighed by other considerations; and as a result the very special circumstances required to allow for approval of inappropriate development in the Green Belt do not exist in this case. The proposal is therefore contrary to Policy 1 of the St Albans District Local Plan Review 1994 and the National Planning Policy Framework 2021.

Statements of Case and Common Ground

- 2.11. Subsequent to the Appeal of the refusal, Statements of Case from the Council and Rule 6 Party have been received.

The Council

- 2.12. The Statement of Case of the LPA (CD 7.2) states that:

“Review of the documentation presented as part of the application suggests that there is the possibility of an element of harm to the setting of these assets [North Mymms House and Colney Heath Farmhouse and Barn]. In the case of the designated heritage assets, judged to be less than substantial at the lower end of the spectrum, when considered with regard to paragraph 202 of the NPPF.

With regards the non-designated heritage assets [Tollgate Farm and the unregistered North Mymms Farmhouse], this harm is also regarded as less than substantial at the lower end of the spectrum, but considered in the context of paragraph 203 of the NPPF.”



The Rule 6 Party- Colney Heath Parish Council

- 2.13. The Statement of Case of the Rule 6 Party (CD 7.3) states:
- 2.14. *“The proposed development would negatively impact on the visual setting and character of Mymms House, which is grade 1 listed park and gardens and the Colney Heath Farm which is grade 2 listed.”*

Statements of Common Ground

- 2.15. The agreed Overarching Statement of Common Ground with the LPA (CD 8.3) states with regards to heritage:

“On the 31st August 2022 the Councils Principal Historic Environment Consultant confirmed that the Appeal Scheme is considered acceptable in terms of archaeological matters subject to the imposition of conditions.

It is agreed that the Appeal Scheme is acceptable in terms of archaeological matters, subject to the imposition of conditions.

There are three designated heritage assets in the vicinity, in which the Appeal Site forms part of their setting. These designated heritage assets are the Grade I listed North Mymms Park House, the Grade II listed Colney Heath Farmhouse and the Grade II listed barn on the north side of Colney Heath Farm. It is agreed that less than substantial harm will occur upon the significance of Colney Heath Farmhouse, Grade II listed barn and North Mymms Park House, and whilst the extent of harm is not agreed, it is agreed to be less than substantial and at the lower end of that spectrum.

It is agreed that as less than substantial harm is identified to the designated heritage assets, paragraph 202 of the NPPF states that this harm should be weighed against the public benefits of the Appeal Scheme.

The parties agree that the public benefits outweigh the harm to designated heritage assets.

The appeal site also falls within the setting of two non-designated heritage assets, Tollgate Farmhouse and the landscape at North Mymms Park. It is agreed that the impact on their setting should be taken into account in determining the appeal.”

- 2.16. A separate Statement of Common Ground on Heritage (CD 8.4) was agreed subsequently between the LPA and the Appellant. This has reached agreement on the levels of harm to each asset, and on the historic background to the assessments, as well as there being much agreement reached on the significance and setting of the assets.
- 2.17. The harm to heritage assets has been agreed as follows:
- With regards to North Mymms Park Grade I Listed House, the Grade II Listed Colney Heath Farmhouse and Grade II Listed Barn less than substantial harm would be caused which would be within the lowermost end of the spectrum.

- With regards to North Mymms Parkland non-designated heritage asset, the harm would be very minor.
- With regards to Tollgate Farm, it is agreed that this holds minimal heritage significance, at most.
- The harm to the heritage significance of Tollgate Farm would be minimal.
- The significance of no other heritage assets would be harmed by the proposed development.

2.18. **Following the agreement of the Heritage Statement of Common Ground, no significant areas of dispute remain between the LPA and the Appellant.**

Matters Considered in this Proof

2.19. The background historical information relating to each asset, and assessments of their significance, setting and impact are presented in the Heritage Statement of Common Ground and are not presented again here.

2.20. Rather this proof has been submitted to provide my Background and declaration of truth (which also applies to the Statement of Common Ground), some comment on consultation responses for each asset, and appendices on Legislation and Planning Policy.

Legislation and Planning Policy

2.21. Details of the heritage legislation and planning policies which are considered relevant to this Appeal are provided at **Appendix 1**.

Methodology

2.22. The full methodology utilised in the preparation of the assessments which are set out within this Proof of Evidence is provided at **Appendix 2**.

2.23. The key documents that have been used in the preparation of this Proof of Evidence comprise:

- Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment (henceforth referred to as 'GPA 2'⁴);

⁴ Core Document CD 11.1



- Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition)¹¹, the key guidance of assessing setting (henceforth referred to as 'GPA 3'⁵);
- Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12⁶; and
- Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment (henceforth referred to as 'Conservation Principles'⁷).

⁵ Core Document CD 11.2

⁶ Core Document CD 11.3

⁷ Core Document CD 11.4

3. Historic Background and Assessment of Significance, Setting and Impact

- 3.1. As requested by the Inspector, the assessment of significance, setting and impact for each asset is set out in the agreed Heritage Statement of Common Ground (CD 8.4). This also sets out the historic background to each asset, which is also agreed.

4. Responses to Consultee Comments made during the Application Process

Colney Heath Farmhouse and Barn

- 4.1. Impacts to Colney Heath Farm were asserted by the Design and Conservation Officer, through the alleged diminishing of the wider agricultural character of the setting, closing off of views, and removal of the visual link between Tollgate Farm.
- 4.2. Whilst it is accepted that the site contributes to some degree to the significance of the asset through setting, when the whole of significance and setting is considered, the contribution can only be considered to be very minor.
- 4.3. The development would lie to the south of the complex, and would extend views of built form to a greater proportion of views south from the complex but part of this view has an existing backdrop of built form. It would not close off views, with views from the primary façade north to common unchanged, and views from the side elevation to the river corridor and paddock to the south-west also unchanged. Views south and south-east will remain primarily over pasture, but with built form beyond.
- 4.4. Views to the older buildings of Tollgate Farm are very largely screened by existing vegetation and modern silos and barns, and there is no evidence to suggest that such views were historically important.
- 4.5. The level of harm to these assets is now agreed with the LPA to be less than substantial and at the lowermost end of the spectrum.

North Mymms Park and Associated Parkland

- 4.6. Historic England's consultation responses are difficult to understand, increasing their assessment of impact from low to moderate, whilst the scheme has got less visible as the design and screening have been refined.
- 4.7. Their most recent responses have identified harm to the heritage significance of the house through glimpses of buildings and light spillage, but there is no acknowledgement of the existing backdrop of built form and associated lighting.
- 4.8. Historic England also assert that there will be a wider impact resulting from the change of character of the site having a severing effect and that the development would affect the ability to understand the wider productive hinterland associated with the house. However, the former association between the site and the house is weak, being part of a tenancy rather than wider agricultural land held in hand; apparently short lived (being in separate ownership by 1844); and is in no way legible in the landscape today (where associations are sometimes legible elsewhere through consistent estate architecture, etc). It is unclear what Historic England assert the assets would be severed from.
- 4.9. It has also been suggested that agricultural land of the site was designed to be visible possibly from the house and 'certainly from the park', but I have seen no evidence for this, and would suggest that land that was tenanted in 1819 and then sold out of the estate by



1844 is highly unlikely to have been part of the design intent of the parkland as it evolved in the 19th century.

- 4.10. The Design and Conservation Officer raised concerns about potential felling of intervening trees. However, the trees are part of the aesthetic landscape, partly on the basis of which the complex is marketed for weddings and film location. The removal of trees or even the poor maintenance of the existing wooded areas would serve to increase the visibility of existing development, and is extremely unlikely to be sought by owners present or future. Furthermore, even if intervening tree loss were to occur, screening planting is proposed on the edge of the site.
- 4.11. It is now agreed common ground with the LPA that the level of harm to North Mymms Park House is less than substantial and at the lowermost end of the spectrum, and that the harm to the non-designated North Mymms Park is very minor.

Tollgate Farm

- 4.12. No clear articulation of what the extant heritage significance of Tollgate Farm is or how this might be harmed by the proposed development has been given by the heritage consultees. Rather, harm has been asserted through development '*adding to the 1930s ribbon development*'. Development should be considered on its own merits, rather than in aggregate with previous development, unless causing cumulative harm such as through the extinguishing of a specific aspect of setting.
- 4.13. It is agreed common ground with the LPA that the significance of the asset is minimal and the harm would be very minor, at most.

5. Conclusions

- 5.1. The significance and setting heritage of assets in the vicinity of the site has been considered, with these comprising the Grade II Listed Colney Heath Farmhouse, Grade II Listed Barn, the Grade I Listed Mymms Park House and non-designated parkland, and the non-designated Tollgate Farm. This analysis is presented in the Heritage Statement of Common Ground.
- 5.2. With regards to Colney Heath Farmhouse and Barn, following the proposed development, all elements of the setting of the assets which principally contribute to their significance will remain, comprising the other buildings of the complex, curtilages, settlement and key areas of adjacent pasture most visible in views from, to and with the assets. As such, the harm is considered to be less than substantial and at the lowermost end of the spectrum.
- 5.3. With regards to North Mymms Park House, the principal element of setting which contributes to the significance of the asset is the parkland and features within it. Consideration has been made of the evolution of the parkland, and no designed views or areas of 'borrowed' wider landscape have been identified. There may once have been views north-west to a lake and island, but the Tithe Map on which these features are first shown suggests they had a backdrop of plantation planting. Earlier views in this direction, down the valley, appear to have been defined by a now-removed hedge flanked road, and later views were enclosed by tree belts. As such, the wider surrounds of the parkland make a minimal contribution to the significance of the house and the parkland itself.
- 5.4. The anticipated visibility of the proposed scheme from the house can only be described as minimal on point of construction and in a section of the view which has an existing backdrop of built form (see photomontages). This minimal initial visibility appears only to be the result of incidental tree loss around the boundaries, and there do not appear to have been designed views in this direction historically. At year 15, the development will be screened by vegetation, and the minimal visual impact will be resolved.
- 5.5. The small reduction in separation between the parkland and Colney Heath will be little perceived from the house and parkland, and intervening pastoral land will remain open in character.
- 5.6. Overall, the impact to the Grade I Listed house is considered to be less than substantial and at the lowermost end of the spectrum. The impact to the heritage significance of the parkland is considered to be very minor.
- 5.7. With regards to Tollgate Farm, whilst it is recorded on the HER although I do not consider that this necessarily engenders a level of significance to the asset. The farm is recorded on early and mid 19th-century map sources, but the farm buildings within the complex appear undistinguished and the farmhouse appears rebuilt. It is considered to have minimal heritage value. The site is largely screened from the core of the farm by modern silos and barns, and intervening vegetation. Any contribution of the site to heritage significance would be very minor. The proposed development would result in very minor harm, at most.
- 5.8. All levels of harm to heritage assets are now agreed with the LPA and no substantive areas of dispute remain.
- 5.9. It is agreed common ground with the LPA that the public benefits of the scheme outweigh the heritage harm it would cause.

Appendix 1: 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*,⁸ which provides statutory protection for Listed Buildings and Conservation Areas.

Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 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.”⁹

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.”¹⁰

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 draft of the NPPF, the requirements of which are now given in paragraph 196 of the revised NPPF, see below), this is in keeping with the requirements of the 1990 Act.¹¹

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

⁸ UK Public General Acts, *Planning (Listed Buildings and Conservation Areas) Act 1990*

⁹ *Planning (Listed Buildings and Conservation Areas) Act 1990*, Section 66(1)

¹⁰ *Barnwell Manor Wind Energy Ltd v (1) East Northamptonshire DC & Others* [2014] EWCA Civ 137. para. 24, Core Doc CD 11.5

¹¹ *Jones v Mordue* [2015] EWCA Civ 1243 Core Document CD 11.6

that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.

Heritage Assets are defined in Annex 2 of 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).”¹²

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.”¹³

Section 16 of the NPPF relates to ‘Conserving and enhancing the historic environment’.

Paragraph 195 states that Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal.

Paragraph 197 states that, in determining planning applications, local authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets by putting them to viable uses consistent with their conservation; and the desirability of new development making a positive contribution to local character and distinctiveness.

Paragraph 202 states that where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.

Paragraph 203 confirms that the effect of an application on the significance of a non-designated heritage asset should be taken into account, with a balanced judgement undertaken which has regard to the scale of harm or loss and the overall significance of the asset.

¹² DLUHC, NPPF, p. 67.

¹³ DLUHC, NPPF, pp. 71–72.



National Planning Practice Guidance

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

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

The PPG has a discrete section on the subject of the Historic Environment,¹⁴ 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.”¹⁵

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.”¹⁶ (my emphasis)

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

¹⁵ DLUHC, *PPG*, paragraph 007, reference ID: 18a-007-20190723

¹⁶ DLUHC *PPG*, paragraph 018, reference ID: 18a-018-20190723

Appendix 2: Methodology

Key Documents

The key documents that have been used in the preparation of this Heritage Statement of Case comprise:

- *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*¹⁷ (henceforth referred to as 'GPA 2');
- *Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition)*¹⁸, the key guidance of assessing setting (henceforth referred to as 'GPA 3');
- *Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12*¹⁹;
- *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment*²⁰ (henceforth referred to as 'Conservation Principles'); and

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.”²¹

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

¹⁷ Historic England, *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2* (2nd edition, Swindon, July 2015) – Core Document CD 11.1

¹⁸ Historic England, *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* (2nd edition, Swindon, December 2017) – Core Document CD 11.2

¹⁹ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (Swindon, October 2019) – Core Document CD 11.3

²⁰ English Heritage, *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (London, April 2008) – Core Document CD 11.4

²¹ DLUHC, *NPPF*, p. 71-72.

In order to do this, *GPA 2* also advocates considering the four types of heritage value an asset may hold, as identified in *Conservation Principles*.²² These essentially cover the heritage ‘interests’ given in the glossary of the NPPF²³ and the PPG which are **archaeological, architectural and artistic** and **historic**.

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.”²⁴*

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

The most-recently issued guidance on assessing heritage significance, Historic England’s *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12*,²⁵ advises using the terminology of the NPPF and PPG, and thus it is that terminology which is used in this Proof of Evidence.

²² English Heritage, *Conservation Principles – Core Document CD-NPP9* These heritage values are identified as being ‘aesthetic’, ‘communal’, ‘historical’ and ‘evidential’, see *idem* pp. 28–32. Core Document CD 11.4

²³ DLUHC, *NPPF*, p. 71.

²⁴ DLUHC, *PPG*, paragraph 006, reference ID: 18a-006-20190723.

²⁵ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (Swindon, October 2019) – Core Document CD 11.3

Setting and Significance

As defined in the NPPF:

“Significance derives not only from a heritage asset’s physical presence, but also from its setting.”²⁶

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.”²⁷

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 Statement of Case with reference to *GPA 3* particularly the checklist given on page 11. This advocates the clear articulation of “*what matters and why*”.²⁸

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 also that factors other than 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)²⁹:

²⁶ DLUHC, *NPPF*, p. 72.

²⁷ DLUHC, *NPPF*, p. 71.

²⁸ Historic England, *GPA 3* p. 8 – Core Document CD 11.2

²⁹ *Catesby Estates Ltd. v. Steer* [2018] EWCA Civ 1697, para. 25 and 26 – Core Document CD 11.12

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.”

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;
- **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); 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-

*making bodies as having a degree of significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets”.*³⁰

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 order to relate to 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”;³¹ 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.”³²

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 of the spectrum and upper end of the less than substantial harm 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. As such, harm to such assets is articulated as a level of harm to their overall significance, with levels such as negligible, minor, moderate and major harm identified.

It is also possible that development proposals will cause **no harm or preserve** the significance of heritage assets. A High Court Judgement of 2014 is relevant to this. 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’.³³

Preservation does not mean no change; it specifically means no harm.

³⁰ DLUHC, PPG, paragraph 039, reference ID: 18a-039-20190723.

³¹ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council, para. 25 – Core Document CD 11.13

³² DLUHC, PPG, paragraph 018, reference ID: 18a-018-20190723

³³ R (Forge Field Society) v Sevenoaks District Council [2014] EWHC 1895 (Admin) – Core Document CD 11.14

GPA 2 which states that “Change to heritage assets is inevitable but it is only harmful when significance is damaged”.³⁴ Thus, change is accepted in Historic England’s guidance as part of the evolution of the landscape and environment. It is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.

As part of this, setting may be a key consideration. For an evaluation of any harm to significance through changes to setting, this assessment follows the methodology given in GPA 3, described above. Again, fundamental to the methodology set out in this document is stating “what matters and why”. Of particular relevance is the checklist given on page 13 of GPA 3.

It should be noted that this key document also states that:

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

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

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

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

Additionally, it is also important to note that, as clarified in the Court of Appeal, 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.³⁷

Benefits

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

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.

High Court judgements³⁸ have confirmed that enhancement to the historic environment should be considered as a public benefit under the provisions of Paragraphs 202.

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:

³⁴ Historic England, GPA 2, p. 9. Core Document CD 11.1

³⁵ Historic England, GPA 3, p. 4 – Core Document CD 11.2

³⁶ Historic England, GPA 3., p. 8 – Core Document CD 11.2

³⁷ *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061 – Core Document CD 11.16

³⁸ *Kay, R (on the application of) v Secretary of State for Housing Communities and Local Government & Anor* [2020] EWHC 2292 (Admin); *City & Country Bramshill Ltd v Secretary of State for Housing, Communities* [2019] EWHC 3437 (Admin).

“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 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.

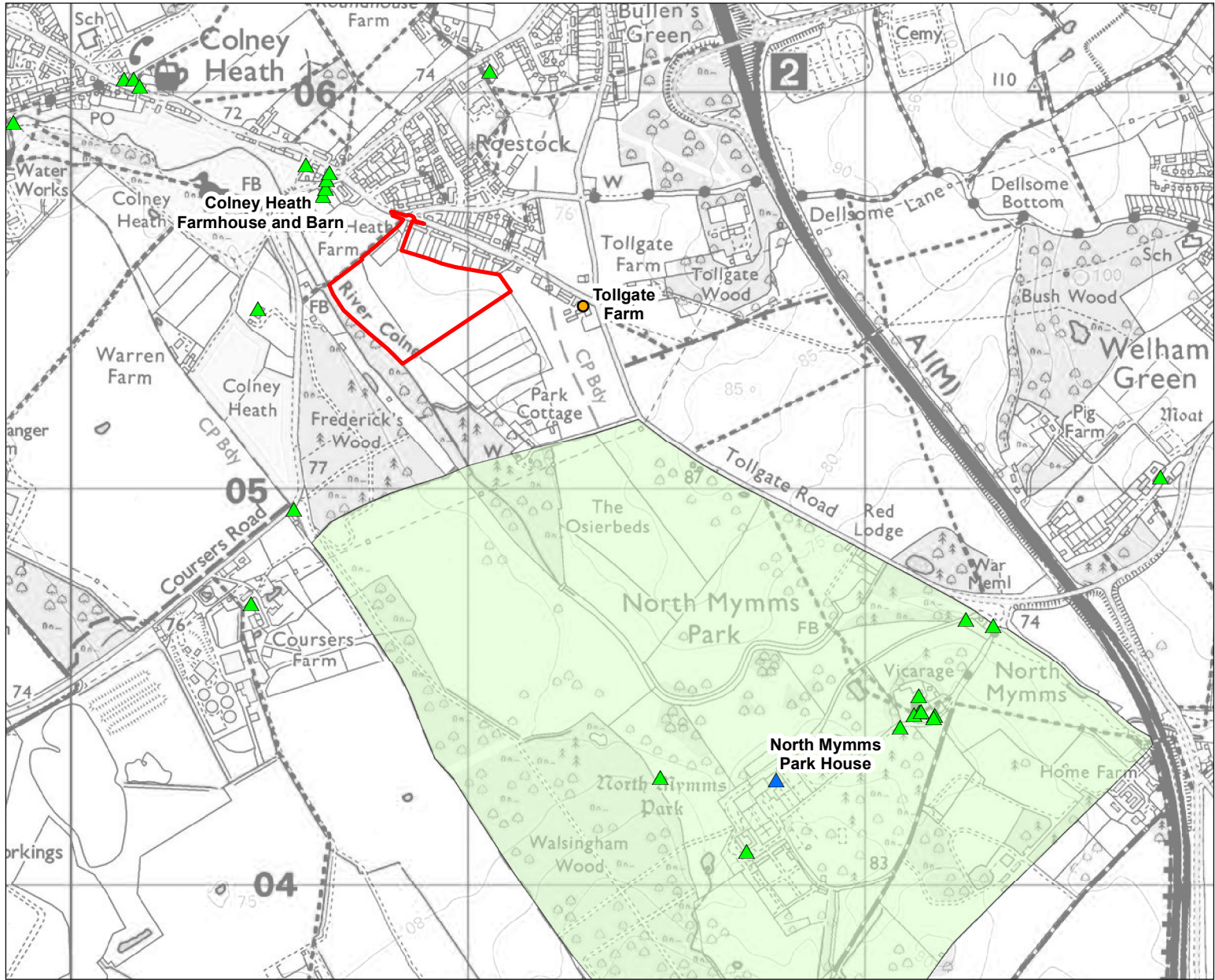
Examples of heritage benefits may include:

- ***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.”³⁹***

³⁹ DLUHC, PPG, paragraph 020, reference ID: 18a-020-20190723. CD-NPP13



Appendix 3: Figure



KEY

- Site
- ▲ Grade I Listed Building
- ▲ Grade II Listed Building
- Tollgate Farm
- North Mymms Parkland

Revisions:
First Issue- 22/08/2023 RW

Figure 1: Designated and Non-Designated Heritage Assets

Land at Tollgate Road, Colney Heath

Client: Vistry Group Strategic Land
 DRWG No: P23-0990 Sheet No: - REV:-
 Drawn by: RW Approved by: GST
 Date: 22/08/2023
 Scale: 1:15,000 @ A3

0 0.5 km



Cirencester

33 Sheep Street, Cirencester,
Gloucestershire, GL7 1RQ

T 01285 641717

E Cirencester@pegasusgroup.co.uk

Offices throughout the UK & Ireland

Expertly Done.

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



All paper sources from sustainably managed forests

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

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

We are ISO certified 9001, 14001, 45001



[Pegasus_Group](#)



[pegasusgroup](#)



[Pegasus_Group](#)

PEGASUSGROUP.CO.UK