

A C GOATHAM & SON

PINS APPEAL REFERENCE: APP/A2280/W/20/3259868

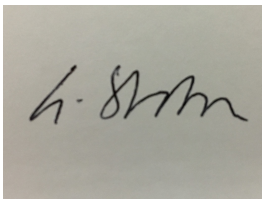
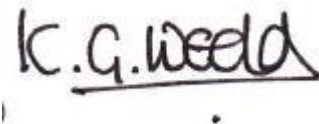
DATE OF INQUIRY: FROM 15 FEBRUARY 2021

SITE ADDRESS: LAND OFF PUMP LANE, RAINHAM, KENT

DESCRIPTION OF THE DEVELOPMENT:

OUTLINE PLANNING APPLICATION WITH SOME MATTERS RESERVED (APPEARANCE, LANDSCAPING, LAYOUT AND SCALE) FOR REDEVELOPMENT OF LAND OFF PUMP LANE TO INCLUDE RESIDENTIAL DEVELOPMENT COMPRISING OF UP TO 1,250 RESIDENTIAL UNITS, A LOCAL CENTRE, A VILLAGE GREEN, A TWO FORM ENTRY PRIMARY SCHOOL, A 60 BED EXTRA CARE FACILITY, AN 80 BED CARE HOME AND ASSOCIATED ACCESS (VEHICULAR, PEDESTRIAN, CYCLE).

STATEMENT OF COMMON GROUND: HERITAGE

Signed 	Signed 
Gail Stoten On behalf of the Appellant	Kit Wedd On behalf of the LPA

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1 INTRODUCTION

- 1.1 This Statement of Common Ground (SoCG) has been prepared jointly by the Appellant, A C Goatham and Medway Council, the local planning authority (LPA) in respect of an appeal made against the LPA's refusal to grant planning permission. The aim of this SoCG is to set out the agreed factual information about the appeal proposal, the relevant assessment methodology and policy context, with the aim of shortening proofs of evidence and in turn saving time at the Inquiry.
- 1.2 In accordance with the Pre-Inquiry Conference Call, a SoCG was requested for Heritage matters. This SoCG should be read in conjunction with all other SoCGs.

2 AGREED LEGISLATION AND PLANNING POLICY

- 2.1 Both parties consider that the following legislation, planning policies and guidance are relevant to the appeal.

Legislation

- 2.2 Legislation relating to the historic environment is primarily set out within the Planning (Listed Buildings and Conservation Areas) Act 1990 which provides statutory protection for Listed Buildings and Conservation Areas.

- 2.3 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”.

- 2.4 In the Court of Appeal judgment in *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council & Ors* [2014] EWCA Civ 137. (*“Barnwell Manor”*) Sullivan LJ held:

“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.” (at [24])

- 2.5 In *Barnwell Manor* the Court found that the planning inspector had erred in law by treating a finding of “less than substantial harm” to the listed building (for the purposes of the NPPF), as a ‘less than substantial objection’ (at [29])

- 2.6 Further judgments, including *Jones v Mordue* [2015] EWCA Civ 1243 and *Pagham Parish Council v Arun District Council* [2019] EWHC 1721 have clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular paragraphs 193 to 202 of the revised NPPF) this is in keeping with the 1990 Act.

- 2.7 With regards to development within Conservation Areas, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

“In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”

- 2.8 Unlike Section 66(1), Section 72(1) of the Act does not make reference to the setting of a Conservation Area: for the purposes of section 72(1) the character and appearance of

designated Conservation Areas is the focus of special attention.

- 2.9 Nonetheless, although falling outside the ambit of section 72(1), it is agreed that changes to the setting of any heritage asset are capable of impacting on the significance of that asset, including in relation to Conservation Areas.

National Planning Policy Framework (February 2019)

- 2.10 The National Planning Policy Framework (NPPF) was published in February 2019 and replaced the former NPPF (July 2018) which in turn superseded the former NPPF (March 2012). Policy relating to the historic environment is contained in Chapter 16 *Conserving and enhancing the historic environment*.

- 2.11 Paragraphs relevant to this appeal include:

- Para. 184 recognises that heritage assets are an irreplaceable resource, which “*should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations.*”
- Para. 189 explains how an applicant should describe the significance of any heritage assets affected by proposed development, 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.*”
- Para. 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.*”
- Para. 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. [...]*”
- Para. 196. Concerns designated heritage assets, stating 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.*”
- Para. 197 deals with non-designated heritage assets, stating that: “*The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.*”
- Annex 2 sets out a number of relevant definitions including:
 - *Designated heritage asset: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered*

Battlefield or Conservation Area designated under the relevant legislation.

- *Heritage asset: 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).*
- *Historic environment: All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora*
- *Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*
- *Significance (for heritage policy): 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.*

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National Planning Guidance

- 2.12 The then Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government (MHCLG) launched the planning practice web-based resource in March 2014, accompanied by a ministerial statement which confirmed that a number of previous planning practice guidance documents were cancelled.
- 2.13 This also introduced the National Planning Practice Guidance (PPG) which comprises a full and consolidated review of planning practice guidance documents, to be read alongside the NPPF.
- 2.14 The PPG includes a section on 'Conserving and enhancing the historic environment' which at paragraph 007 (ID: 18a-007-20190723 revision date 23.07.2019) confirms that consideration of 'significance' in decision-taking 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."*
- 2.15 In terms of assessment of substantial harm, paragraph 018 (ID: 18a-017-20190723 revision

date 23.07.2019) confirms that whether a proposal causes substantial harm will be a judgment 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.”

Development Plan: Local Planning Policy

- 2.16 Local planning policy is contained within the Medway Council’s Local Plan (adopted May 2003). This document contains:
- ***Policy BNE12: Conservation Areas and***
 - ***Policy BNE18: Setting of Listed Buildings***

Emerging Development Plan Policy

- 2.17 Medway Council is preparing a new Local Plan 2019 to 2037. A Development Options consultation document has been produced which contains the draft policy approach to Heritage.

3 AGREED METHODOLOGY

Assessment of significance

- 3.1 Heritage significance is defined by the NPPF 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.”

Assessing Value

- 3.2 Planning Note 2¹ 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. In order to do this, Planning Note 2 also advocates considering the four types of heritage value an asset may hold (as identified in Conservation Principles²; aesthetic, communal, historic and evidential). These essentially cover the heritage ‘interests’ given in the glossary of the NPPF and online Planning Practice Guidance, which comprise archaeological, architectural, artistic and historic interest. The most-recently issued guidance on assessing heritage significance, Historic England’s Statements of Heritage Significance (October 2019)³, advises using the terminology of the NPPF and Planning Practice Guidance.
- 3.3 The PPG provides further information on the heritage values⁴. It identifies:

Archaeological interest: 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 symbolize wider

¹ Historic England, 2015, *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*

² English Heritage 2008 *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment*

³ Historic England 2019 *Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12*

⁴ Online *Planning Practice Guidance on the Historic Environment*, Paragraph: 006 Reference ID: 18a-006-20190723

values such as faith and cultural identity.

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

3.5 Listed Buildings are designated for their special architectural and historic interest.

Setting and Significance

3.6 As defined in the NPPF:

3.7 “Significance derives not only from a heritage asset’s physical presence, but also from its setting.” (NPPF Annex 2).

3.8 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 contribute to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.” (Annex 2)

3.9 Setting is not, in itself a heritage asset. Rather, setting can contribute to or affect an appreciation of significance or be neutral with regards to heritage values. The importance of the setting is as a component of the significance of the heritage asset.

Assessing Change through Alteration to Setting

3.10 How setting might contribute to these values has been assessed with reference to GPA Note 3: The Setting of Heritage Assets⁵, particularly the checklist given on page 11. The Setting of Heritage Assets advocates the clear articulation of ‘what matters and why’. This approach is endorsed by Historic England’s most recent guidance on Statements of Significance⁶.

3.11 In *The Setting of Heritage Assets*⁷, 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 ‘the degree to which these settings and views make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated’. Four primary considerations are listed, comprising: the asset’s physical surrounds; the asset’s intangible associations and patterns of use; the contribution made by noises and smells; and the ways views allow the significance of an asset to be appreciated. The guidance includes a (non-exhaustive) check-list of elements of the potential attributes of a setting that may help elucidate its contribution to significance, among other things: topography, aspect, other heritage assets, green space, formal design, functional relationships, and degree of change over time. It also lists points associated with the

⁵ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets*

⁶ *Historic England 2019 Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12*

⁷ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3(Second Edition): The Setting of Heritage Assets*

experience of the asset which might be considered, including: surrounding landscape/townscape character, views, intentional inter-visibility, dominance, tranquility, sense of enclosure, accessibility, rarity and cultural associations.

Step 3 is to assess the effect of the proposed development, whether beneficial or harmful, on the significance or on the ability to appreciate it.

Step 4 is 'Explore ways to maximise enhancement and avoid or minimise harm'.

Step 5 is 'Make and document the decision and monitor outcomes'.

- 3.12 A Court of Appeal judgment⁸ confirmed that whilst issues of visibility are important when assessing setting, other factors should also be considered, with Lindblom LJ stating at paragraphs 25 and 26 of the judgment (referring to an earlier Court of Appeal judgment):

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

- 3.13 In accordance with the levels of significance articulated in the NPPF, four levels of significance are identified:
- Designated heritage assets of the highest significance, as identified in paragraph 194 of the NPPF comprising Grade I and II* Listed buildings; Grade I and II* Registered Parks and Gardens; Scheduled Monuments; Protected Wreck Sites and Registered Battlefields (and also including some Conservation Areas);
 - Designated heritage assets of less than the highest significance, as identified in paragraph 194 of the NPPF, comprising Grade II Listed buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);

⁸ *Catesby Estates Ltd v. Steer*, EWCA Civ 1697, 2018

- Non-designated heritage assets;
- Sites, buildings or areas of no heritage significance.

Assessment of Harm

- 3.14 In order to relate to key policies, the following levels of harm may potentially be identified:
- Substantial harm or total loss - It has been clarified in a High Court Judgement of 2013⁹ 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’;
 - Less than substantial harm - Harm of a lesser level than that defined above. The online Planning Practice Guide stipulates that the extent of the harm within this category should be clearly articulated¹⁰; and
 - No harm (preservation) - The principle that preserving means doing no harm was clearly articulated by the House of Lords in 1992¹¹, as well as a High Court Judgement of 2014¹² which 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’.
- 3.15 With regard to an evaluation of (any) harm to significance through changes to setting, the assessment should follow the methodology provided in ‘The Setting of Heritage Assets’, as described above.
- 3.16 Fundamental to the methodology set out in this document is assessing ‘what matters and why’.
- 3.17 Of particular relevance is the checklist given on page 13 of GPA Note 3: The Setting of Heritage Assets (Second Edition). This document states that:
- “...setting is not itself a heritage asset, nor a heritage designation”*
- 3.18 Accordingly, any impacts are described in terms of how they affect the significance of the heritage asset, and heritage values that contribute to this significance, through changes to setting.

⁹ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council, Core Document

¹⁰ Planning Practice Guidance on the Historic Environment, Paragraph 018, reference ID Reference ID: 18a-018-20190723

¹¹ South Lakeland District Council Appellants v Secretary of State for the Environment and Another Respondents, [1992] 2 A.C. 14

¹² EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L’Isle

4 LPA REASON FOR REFUSAL 2

4.1 The following matters relevant to the LPA's second reason for refusal are agreed between the Appellant and the LPA:

- a) No harm will be caused by the proposed development to the heritage significance of the Grade II Listed 497-501 Lower Rainham Road;
- b) No harm will be caused by the proposed development to the heritage significance of the Grade II Listed The Old House; and
- c) Any harm that may be caused by the proposed development to one or more heritage assets will be "less than substantial" (for the purposes of the NPPF).

5 TABLE OF AREAS OF AGREEMENT/DISAGREEMENT

Heritage asset	Pegasus	Spurstone
York Farmhouse (GII)	No harm	Less than substantial harm at the low end of that range
Pump Farmhouse (GII)	Less than substantial harm at the low end of the spectrum	Less than substantial harm in the middle of that range
Chapel House (GII)	Less than substantial harm at the low end of the spectrum	Less than substantial harm in the middle of that range
Nos. 497—501 Lower Rainham Road (GII)	No harm	No harm
Old House (GII)	No harm	No harm
Bloors Place (GII*)	Less than substantial harm at the lowermost end of the spectrum	Less than substantial harm in the middle of that range
Range of outbuildings including cartlodge and granary west of Bloors Place (GII)	No harm	Less than substantial harm at the low end of that range
Garden walls to south and east of Bloors Place (GII)	No harm	Less than substantial harm at the low end of that range
Lower Rainham Conservation Area	Less than substantial harm at the lowermost end of the spectrum	Less than substantial harm in the middle of that range
Lower Twydall Conservation Area	Less than substantial harm at the lowermost end of the spectrum	Less than substantial harm in the middle of that range
Bloors Oasts	Very minor harm, at most.	Non-designated heritage assets; part of setting of listed Bloors Place complex; less than substantial harm at lowest end of that range
The historic landscape	Not considered to be a heritage asset. The development of the landscape has been considered as	A non-designated heritage asset, and the setting for a constellation of designated heritage assets; less

Heritage asset	Pegasus	Spurstone
	part of the evaluation of setting of assets.	than substantial harm at the upper end of that range
N-S landscape character sequence (river-suburban residential)	Not considered to be a heritage asset.	Harm (as part of historic landscape)
Historic routes (Pump Lane and bridleway)	Not considered to be heritage assets.	Harm (as part of historic landscape)
Intangible qualities of setting (tranquillity, historic relationship between places, seasonal activity, night-time darkness ...)	Considered as part of the evaluation of the setting of assets, where relevant	Harm (as part of historic landscape)
Cumulative impact on designated heritage assets	No cumulative harm	Less than substantial harm in the middle of that range
Cumulative impact of the proposals on all the heritage assets affected	No cumulative harm	Less than substantial harm at the upper end of that range