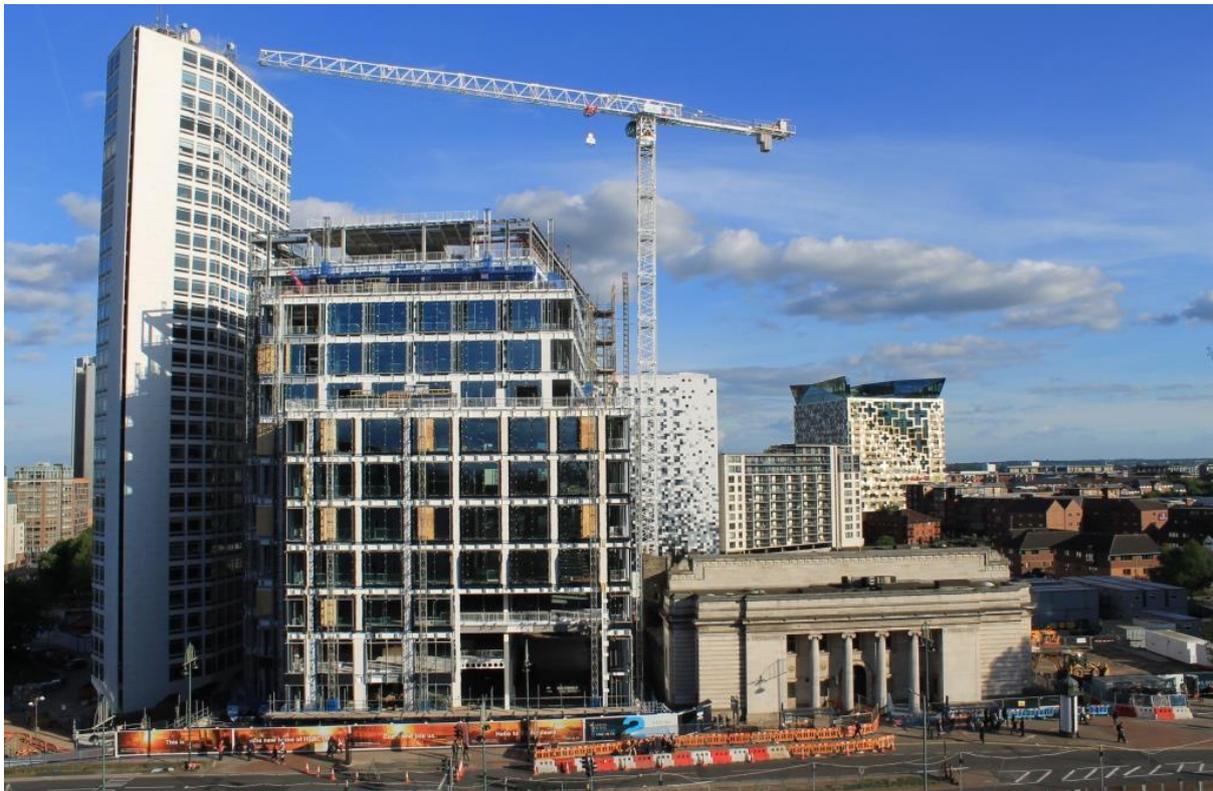


# HERITAGE IN PLANNING DECISIONS: THE NPPF AND DESIGNATED HERITAGE ASSETS



for  
**Historic England**

by  
***Green Balance***



February 2018

Acknowledgements:

Green Balance greatly appreciates the work by Helen Homard who was subcontracted to assemble the information on half the local authority cases used in the principal database for this project. We are also grateful to Historic England staff in local offices for suggesting cases worthy of study and to Tim Brennan who oversaw the project for most of its duration.

Historic England reference number:

Project 7559

Cover:

Fitting in: the tower block '2 Arena Central', is shown under construction in Birmingham city centre, viewed from Birmingham Library. It is sited between the Grade II listed Alpha Tower (1970-73, by Geoff Marsh of Richard Seifert & Partners, 13.5m distant) and the Grade II listed former Birmingham Municipal Bank (1931, 3m distant). Birmingham City Council decided in April 2015 that the new development would cause less than substantial harm to the setting of the listed buildings, and that the public benefits of the scheme outweighed that harm. (See Case Study 2.)

Historic England and English Heritage: this report refers to these two bodies as appropriate according to the date on which they responded to planning consultations reviewed by this project. English Heritage was the relevant body until April 2015 when it was split: English Heritage remained the historic property managing organisation, while Historic England was created to be responsible for policy, designations, consultations and other issues.

Green Balance is a planning and environmental consultancy with extensive experience of research into planning policy and practice at the local level. The firm was commissioned by Historic England to undertake analysis of the National Planning Policy Framework and its application in relation to the historic environment and planning decisions. All views expressed in this report are those of the authors.

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## SUMMARY

S1 This project reviews planning decisions to determine whether or not the heritage policies of the National Planning Policy Framework are being implemented and whether the decisions are having the desired effect of protecting and enhancing the historic environment. It covers the designated heritage assets of listed buildings, scheduled monuments, registered parks and gardens, registered battlefields, and the settings of all of these. Plan-making is excluded. Detailed information was collected from a sample of 318 planning applications where heritage assets were likely to be worthy of examination, with one application taken from each of almost every district, borough, and unitary authority in England. Applicants for planning permission, local authority specialist heritage advisers, planning case officers and councillors are each expected to implement some of the NPPF heritage policies. These policies were identified and the performance of each group assessed against those relevant to them.

S2. All cases sampled were decided by councillors, avoiding delegated decisions. Information was obtained from local authority websites, including documents from planning application files, committee reports and committee minutes, and checked against other sources such as the statutory Heritage List and occasionally authority staff. This was supplemented by information from case studies of 25 planning applications chosen to represent a wide range of application sizes and types spread reasonably evenly around England. They provide more detail, insight and context for the topics raised by the 318 sampled applications. In addition, 10 planning appeal decisions were also reviewed, providing case studies of the Planning Inspectorate's approach to NPPF heritage policy. The report is also informed by a review of rulings from the Courts on how the relevant legislation should be applied.

S3. Most of the information collected came from the financial year 2016-17, over four years after publication of the NPPF. The majority of information collected was intended to be as objective as possible, to enable the most detailed practicable analysis, supplemented by recording explanatory material separately. The project focused on process and did not revisit individual decisions for their heritage merit. This methodology could be repeated in future, using comparable means both of choosing which applications to sample and which information to collect about them.

S4. The implementation of statutory and internal consultations with specialist heritage interests was examined. Most authorities were consulting Historic England but about half the consultations to which The Gardens Trust was entitled were not sent. Historic England responded to all but 5 consultations (3%), but The Gardens Trust was able to respond only to 3 of 13 consultations. Consultees' advice was accepted from Historic England 76% of the time and from internal heritage advisers 81% of the time. There was also evidence that the historic environment was better protected when internal heritage advice was available to case officers than when it was not. However, the availability or otherwise of heritage advisers to local authorities, gradually cut back over the years, showed no sign of affecting whether or not authorities implemented NPPF heritage policies effectively. Even so, there was evidence from some local planning authorities of local heritage advisers not being consulted on some heritage-related planning applications.

S5. Councillors overwhelmingly followed their case officers' recommendations (92% of cases), but the reasons councillors gave for approving applications harmful to heritage contrary to recommendations were sometimes inadequate in NPPF terms.

S6. As well as examining the implementation of individual NPPF heritage policies, the project enquired into whether the historic environment was being protected and enhanced. The rate of recommendation of approval of applications was reasonably typical of applications as a whole, but

still showed that the NPPF was being applied weakly: 30% of applications were recommended for approval without any reference to harm to heritage. The evidence showed that authorities found 'no harm' to heritage assets at a surprisingly high rate, considering the sampling method was chosen to identify applications where assessment of harm was worthwhile. The balance between heritage and other public benefits was found to be a judgement easily made in favour of other benefits. Also, when Historic England and the local heritage adviser made different recommendations, case officers would most often follow the advice of the consultee who took the less robust approach to heritage conservation.

S7. Many local planning authorities could also take bolder action to protect heritage assets to achieve NPPF objectives. This includes insisting that applicants provide all appropriate information about the impacts on heritage assets affected by their proposals, achieved by taking a more robust approach before validating submitted applications. Also, to avoid or minimise conflict between heritage assets' conservation and any aspect of a proposal, local planning authorities should more vigorously consider the wider alternatives to the submitted scheme: this is supported in case law and could helpfully be reiterated in national policy.

S8. Difficulties for heritage conservation were identified arising from previous permissions and from land allocations in adopted development plans. Both of these inhibited the careful implementation of NPPF heritage policies when new planning applications were submitted. All the pressures therefore seemed to be making heritage conservation more challenging rather than easier to achieve, despite the support for heritage in the NPPF. This is largely a problem with the practical application of the NPPF rather than the NPPF itself, but the Government does need to clarify that the potential consequences for heritage should be fully examined in the process of allocating land for development in all development plans, so that any necessary limitations on development can be established at this time.

S9. The report identifies significant shortcomings in the implementation of NPPF policies for the appropriate protection of designated heritage assets. Standards need to be raised amongst all parties through a promotional programme based on a checklist of the actions which each party is expected to take. Casework is dominated by the impact of development proposals on the settings of designated heritage assets, rather than direct physical impacts. The report found that identifying the degree to which a setting would be affected by a proposal was a distinct area of weakness in planning practice. Local planning authorities particularly need training in the proper application of policy on the settings of heritage assets, so that NPPF heritage policies can be applied effectively.

## KEY FINDINGS FROM THE SURVEY OF PLANNING APPLICATIONS

1. The take-up of NPPF policies in heritage-related planning applications across the country as a whole is patchy, and certainly less than might reasonably have been expected well after the NPPF was issued. The overall picture of the protection of designated heritage is disappointing. None of the main groups of participants – applicants, local authority heritage advisers and planning case officers – performed obviously well. The broad pattern of implementation is indicated in Table S1.

Table S1 Implementation of heritage-related policies in the NPPF (318 applications)

Participants in NPPF process	Proportion fulfilling all relevant NPPF tasks*	Proportion fulfilling no relevant NPPF tasks*
Applicants (315 applications)	43%	25%
LPA heritage advisers	minimum 12%	minimum 7%
LPA case officers	minimum 14%	minimum 15%

\* Relevant NPPF tasks are those which can be found in paragraphs 128, 129, 132, 133 and 134. The project identified six for applicants, four that were always or usually relevant for applicants, and four (excluding identifying relevant heritage assets) for case officers.

2. Only 68% of applicants correctly identified designated heritage assets where those assets could be affected, and only 56% identified the significance of those assets and the potential impact of their proposals on that significance.

3. Just 63% of applicants appeared to meet the NPPF’s minimum requirement of consulting the Historic Environment Record, and 63% were also assisted by appropriate heritage expertise.

4. Specialist heritage advisers to local authorities are known to have identified the significance of heritage assets in just 29% of cases, in accordance with NPPF paragraph 129, though advisers in 21% of authorities definitely did not provide this. 37% of heritage advisers definitely identified and assessed impact on heritage significance (though in some cases the impacts were only loosely tied to the assets’ ‘significance’), while this is known not to have been done in 15% of authorities. Specialist heritage advisers also identified whether applications would cause ‘no harm’, ‘less than substantial harm’ or ‘substantial harm’ to heritage assets in 38% of cases, while 17% definitely did not do so. The actual figures for positively implementing the NPPF may be higher, but it is doubtful that there is a large pool of heritage advisers who did this but were missed by our survey.

5. 86% of local planning authority case officers correctly identified the relevant heritage assets against which the sampled planning applications would need to be assessed, but only 35% properly identified in their reports the significance of those heritage assets. 34% then fully identified and assessed the impact of proposals on the significance of heritage assets, and 38% did so partially.

6. Case officers identified the level of harm to the significance of heritage assets in 76% of applications. Case officers who had received specialist heritage advice were discernibly more likely to provide an assessment of the level of harm to heritage than those who had not.

7. Just 24% of case officers were assessed as having given ‘great weight’ to heritage assets in their assessments of sampled planning applications. Case officers were also assessed to have provided ‘clear and convincing justification’ for approvals to proposals harmful to heritage in 73% of the 111 cases where this NPPF policy applied.

8. Designated heritage assets benefitted discernibly from mitigation efforts by local authorities, with 34% of cases less affected by planning applications as a result.

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## CHAPTER 1

### THE PROJECT

#### Aims

1.1 The broad aims of the project were:

- To review planning decisions to determine whether or not historic environment law and policy is effective when planning decisions are made.
- Using the results of the review, to obtain an understanding of whether the decisions are having the desired effect of protecting and enhancing the historic environment.
- To develop a methodology that can be repeated on a regular basis.

#### Objectives

1.2 Historic England's focus for this project was on the impact of the National Planning Policy Framework (NPPF), issued in March 2012 and unchanged to date, which set out national planning policy on heritage and all other matters. The heritage policies replaced those which had previously been expressed in Planning Policy Statement 5 *Planning for the Historic Environment*.

1.3 The project was confined to designated heritage assets, leaving aside undesignated ones. The coverage of this project therefore extends to listed buildings, scheduled monuments (SMs), registered parks and gardens (RPGs), registered battlefields, and the settings of all of these. The implementation of policy in Conservation Areas was not studied specifically; however, planning applications affecting the targeted heritage assets were included whether or not they were within Conservation Areas. Protected wreck sites and World Heritage Sites (WHS), both designated heritage assets too, are also excluded from this project, though WHS interests could arise in cases being studied primarily for their potential impact on other heritage assets.

1.4 The project is limited to land use planning issues and specifically to development management. An assessment of the extent to which heritage issues are accommodated in development plans was beyond the scope of the project. Legislation and practices specific to listed buildings and scheduled monuments remained unaltered when the NPPF came into effect and are outside the scope of this project. In particular, the consultation arrangements which accompany applications for listed building consent and scheduled monument consent are different from those accompanying applications for planning permission, with the focus of this project being limited to practice in the latter case (see Boxes 2 and 3 in Appendix 1). This means that the scope of this project does not extend to examining the views of those national amenity societies which are only consulted on certain applications for listed building consent (Council for British Archaeology, Ancient Monuments Society, Society for the Protection of Ancient Buildings, Georgian Group, Victorian Society and Twentieth Century Society). This differs from The Gardens Trust, whose views are sought on planning applications affecting registered parks and gardens. Listed building consent applications often accompany the consideration of planning issues in the cases reviewed for this project, and, like conservation areas, this is acknowledged but listed building consent practices are not examined.

1.5 The primary consideration in the determination of planning applications is the policies in the adopted Local Plan. Nonetheless, it was not an objective of this project to review local plan policies

and their application. However, in our view, this did not greatly affect the study required: the weight which can be given to local plan heritage policies depends on the degree of their conformity with the NPPF, so in individual cases there was either little to choose between the NPPF and a conforming local plan, or, alternatively, an out-of-date local plan would attract less weight and attention would move instead to the NPPF. Either way the heritage policies of the NPPF would remain important considerations in deciding planning applications with a heritage interest.

1.6 Historic England wished to establish so far as practicable the impact on the outcome of heritage-related planning applications where specific parties were involved:

- Conservation Officers (especially any discernible differences when they were or were not used to advise local planning authorities);
- Historic England local advisers (who should particularly be consulted on applications relating to Grades I and II\* listed buildings but not Grade II listed buildings); and
- Planning Inspectors (who decide – or make recommendations to the Secretary of State upon – planning appeals and called-in planning applications).

1.7 Historic England required an in-depth analysis of policy implementation. This project therefore concentrates on planning applications decided and it reports on practice from the sample of cases we were able to study. The project was devised on the basis of examining the maximum possible number of cases for the budget available. The information collected was closely tied to the terms of NPPF heritage policies. This project has considered outcomes for heritage largely in terms of degree of compliance with the NPPF. We have not sought to impose on the process a view on what should have been the ‘best result’ for heritage. In any event, we lack the local and detailed knowledge of the planning applications studied and were not involved in any of them.

1.8 The significance of a heritage asset can be affected not only by development which has a direct effect upon it, such as physical changes to a listed building, but also by development which affects its setting. Many more applications have the potential to affect the setting of a heritage asset than have direct impacts, so an important part of this project has been to enquire into the effectiveness of policies for the protection of heritage settings (for example, see the case outlined on page 9, with Photos 1 and 2).

1.9 The main limitation on the types of development proposal covered by the project which might affect heritage assets was the exclusion of minerals and waste cases. The project did not sample cases from county planning authorities, for whom minerals and waste cases are the principal area of planning activity. All other types of development could be included, such as housing, commercial, retailing, domestic or infrastructure. No limitation was imposed on who the applicants might be, so cases in which the local planning authority itself was the applicant or had an interest were included. However, only full or outline planning applications were included: minor cases potentially affecting designated heritage assets through prior notification or permitted development rights were omitted. Applications for temporary permission were also excluded.

### **Report structure**

1.10 The legislative and national policy basis for heritage planning are summarised in Appendix 1. Other NPPF heritage-related policies are also noted there, together with advice in the Planning Practice Guidance note 18a *Conserving and enhancing the historic environment*. Some key themes from cases decided by the Courts are also introduced, with a fuller review of relevant legal cases in Appendix 3.

1.11 The research methods for the project are outlined in Appendix 2. There were three principal information-gathering arms to the project. Part One collected extensive information on a single application potentially affecting heritage assets from all but 7 of the 325 local planning authorities in England (excluding county planning authorities and National Park Authorities). A methodology was chosen for information gathering which would enable repeated assessments in future, using comparable means both of choosing which applications to sample and which information to collect about them. Part Two presented 25 case studies of decisions taken by local planning authorities, collecting the same basic information as for Part One but including more extensive analysis and presenting the findings on a single page using a standard template. The intention was to gather information in as objective a manner as possible for Parts One and Two, to allow the most detailed practicable analysis. Part Three studied 10 appeal decisions by Inspectors and the Secretary of State where heritage was a key issue. The case studies in Parts Two and Three were chosen to illustrate the kinds of issues which can arise, indicating the potential for both good and poor practice. In that respect, the purpose of the project was not to revisit individual decisions for their heritage merit, for example by a detailed professional review of the evidence in each case, but to establish whether the procedures in the NPPF were properly applied.

1.12 Chapter 2 reports the main findings from the heritage-related planning applications sampled from 318 local planning authorities in Part One of the project. Information was collected so far as practicable to answer 27 questions about the implementation of the NPPF heritage policies by the key parties involved: applicants, specialist heritage advisers to local authorities, planning case officers and councillors. Questions were included about procedural aspects of the NPPF on statutory consultations and the local authority responses to those. All the questions raised are listed in Appendix 4. Most of the information collected was in the form of a limited range of options for each question, but in addition, to accommodate matters of judgement, records were taken of the statements and comments made by the parties involved. These amplified the data and are used as appropriate to add depth to the numerical analysis. Some findings from sampled authorities are used to illustrate the kinds of issues which can arise. Other applications are explored in more depth from amongst the 25 case studies prepared for the project (provided in full in Appendix 5).

1.13 Chapter 3 analyses issues in combination, adding to the information on individual aspects of applying the NPPF reported in Chapter 2. In particular the performance of applicants, local heritage advisers and case officers are reported across a combination of all the NPPF policies relevant to each of them in turn. In addition, information from Chapter 2 is used to show how some issues are treated at different stages of the application process. They help to answer some key questions about implementing the NPPF heritage policies. Chapter 3 too makes extensive reference to the 25 detailed case studies of local planning authority decisions in Part Two of the project.

1.14 Chapter 4 introduces the 10 Appeal Case Studies from Part Three of the project. The heritage aspects of these are summarised on one page each using a standard template, which are presented in Appendix 6. The chapter briefly reviews some main themes on implementation of the NPPF emerging from the selection.

1.15 Conclusions from the project are provided in Chapter 5. This identifies separately the effectiveness of the NPPF's approach to planning for designated heritage assets and also the degree to which heritage assets are protected and enhanced.

1.16 Chapter 6 provides our recommendations. The principal feature is an easy-to-use checklist for applicants and local planning authorities on how to apply the NPPF effectively for the benefit of designated heritage assets.



Photo 1 The Sun Hotel, North Street, Gainsborough, West Lindsey. The main body of the hotel is unlisted but incorporates 37 Market Street, also painted cream, to the left which is listed Grade II. The proposal involved the demolition of the hotel, including 37 Market Street, which would cause substantial harm, and its replacement by a modern hotel. The case officer recommended refusal.



Photo 2 The four-storey hotel proposed to replace the Sun Hotel was described by the local heritage adviser as having “a monolithic design which cannot be perceived as taking into account the established grain and scale of Market Street in particular.” The case officer considered this would cause substantial harm to the setting of the Grade II\* Courthouse opposite: “The positioning and scale of the Sun Hotel is of particular note as it draws the eye along its façade to the Court House building and the combination of perspective, detailing, orientation and scale clearly provide the setting of prominence of the Courthouse. The Sun Hotel is not plain... but its scale and detailing do not compete with the Courthouse. The legibility of the history of this end of Market Street is also clear with each building being an architectural embodiment of its age.” Case Study 22.

## CHAPTER 2

### EVIDENCE ON THE HANDLING OF PLANNING APPLICATIONS

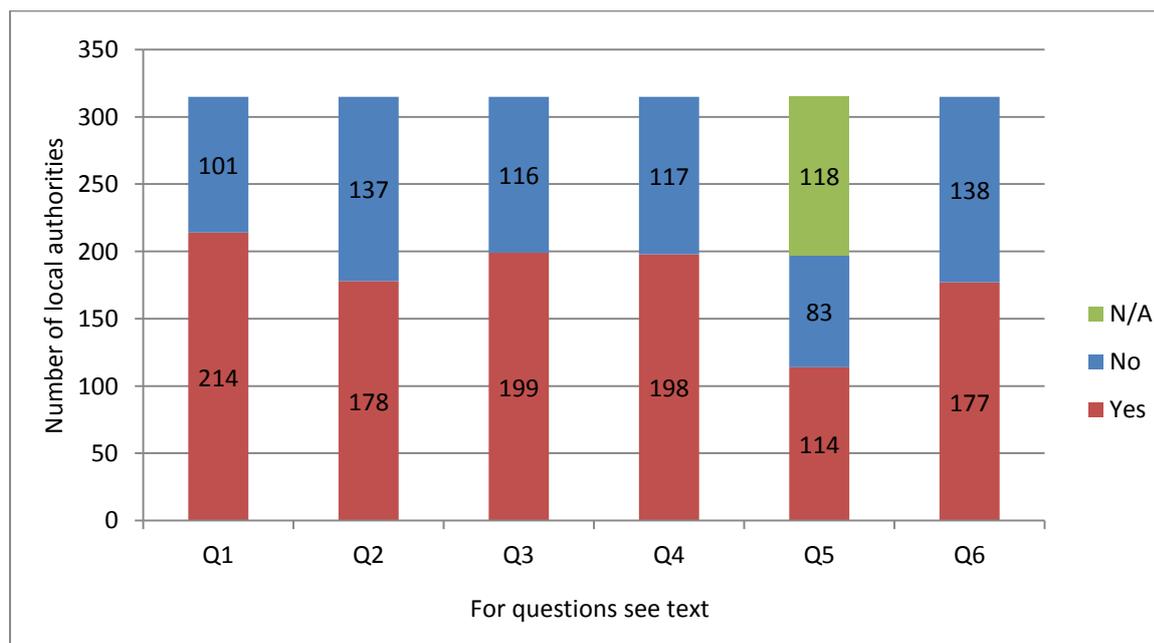
2.1 This chapter reports the findings from a survey of the treatment of designated heritage assets in one application in each of 318 local planning authorities. The questions asked are set out in Appendix 4. The chapter includes an initial review of the findings. This covers both issues arising from the nature of the data collected and commentary on the implications of the findings for the application of NPPF policy. Graphics present all the main individual findings nationally. Case Studies from Part Two of the research amplify some of the findings (see Appendix 2 paragraphs A2.15-17 and Appendix 5).

#### Consideration of heritage assets by applicants for planning permission

2.2 The NPPF sets out in paragraph 128 its policy expectations of applicants for planning permission in cases where designated heritage assets are involved, as follows:

“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.”

2.3 From these policies the project derived six questions for assessment. All had either ‘yes’ or ‘no’ answers (apart from one question on archaeology which was ‘not applicable’ if there were no archaeological heritage assets potentially involved). The questions did not draw a distinction



**Figure 1** Did applicants take the six actions identified in NPPF paragraph 128?

between information volunteered by applicants in the first instance and information only supplied when requested to do so by local planning authorities. Information was obtained from all authorities but three regarding the consideration of heritage assets in planning applications (one each in the East Midlands, London and North West regions). The experience of applications in 315 local authorities was therefore assessed. The results are shown in Figure 1.

#### Identifying the correct heritage assets

2.4 Applicants are expected to identify the significance of any heritage assets affected, which requires identifying those heritage assets first. Q1 was 'Did the application documents identify the correct heritage assets for evaluation?' Correctly recording the answer to this question sometimes involved an assessment first of the advice subsequently supplied by the local authority heritage adviser, case officer or other heritage interests in consultation responses.

2.5 The finding was a substantial shortfall in the identification of designated heritage assets where this assessment was likely to be required. Figure 1 shows that of the 315 authorities for which there is information, applicants in 214 cases (68%) correctly identified the heritage assets involved whereas 101 did not. One possible reason for 32% of applicants failing to identify heritage assets might be because the likely impact of the proposal on their significance did not merit their identification and assessment. The level of detail supplied with a planning application should be proportional to the asset's importance. However, in 20 of these 101 cases the local authority heritage adviser identified that the proposal would cause 'less than substantial harm' to heritage assets and 'substantial harm' in 2 further cases. There would be 'no harm' in just 13 cases. (In the other 66 of the 101 cases the heritage adviser was not consulted, did not identify the level of harm to heritage assets or their view is not known.) This suggests that 'proportionality' in the application documentation is not a sufficient explanation for applicants failing to identify the heritage assets affected.

#### Identifying the significance of heritage assets

2.6 Q2 was 'Did the application identify the significance of these heritage assets (including setting) proportional to their importance?' The national Planning Practice Guidance recognises that the statutory heritage list does not always adequately describe a designated heritage asset's significance (paragraph 008, reference ID 18a-008-20140306) and advocates using professional advice (paragraph 010). The second of Historic England's notes on Good Practice Advice in Planning<sup>1</sup> is devoted entirely to 'significance' and includes advice on pages 2-4 on how to assess it to meet NPPF requirements (including by reference to other advisory documents as well as to source materials). The project inevitably found different levels of attention to significance by applicants, so judgements were made on the adequacy of this. This included assessing whether the 'significance' identified was 'proportionate' in the circumstances: in a few cases a commentary in a Design and Access Statement was accepted as sufficient, for example.

2.7 The results show that the large majority of planning applications which correctly identified the designated heritage assets affected also identified their significance proportional to their importance. Figure 2 shows that of the 214 planning applications identifying heritage assets in Figure 1, 178 (83%) also specified their significance. However, this still means that of the full sample of applications in 315 authorities, 137 (43%) did not identify the significance of the heritage assets affected.

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<sup>1</sup> *Managing significance in decision-taking in the historic environment*, March 2015, Historic England

### Using the Historic Environment Record

2.8 The NPPF sets out two criteria which should be met ‘as a minimum’ to help identify the significance of heritage assets and the potential impact of planning applications upon that significance. The first is to have consulted the Historic Environment Record (HER). Q3 therefore asked ‘Did the application make use of the Historic Environment Record?’ By no means all of the applications which were accompanied by thorough heritage information stated that they had actually consulted the HER, even though they appeared to have done so. The project therefore took the view that the criterion was met either if the applicant reported having consulted the HER or if relevant information was presented which was of the kind which could be obtained from that source.

2.9 The results show that less than two thirds of applicants met the minimum requirement of consulting the HER when heritage assets were potentially affected. 199 applicants (63%) had made use of the HER (or appeared to have done so), though this was slightly more than the 178 the project assessed as having identified the significance of these assets.

### Using appropriate heritage expertise

2.10 The NPPF’s second criterion to help identify the significance of heritage assets and the potential impact of planning applications upon that significance is to use appropriate expertise. Q4 therefore asked ‘Did the application use appropriate heritage expertise?’ In practice this required heritage advisers directly employed by the applicant or, much more usually, consultants with heritage expertise contracted for the purpose. There were a small number of cases where the parties used for this purpose clearly did not meet the criterion of possessing ‘appropriate expertise’. The assessment recognises that there is proportionality in the level of heritage expertise required: in cases where the designated heritage assets were remote from the application site and unlikely to be significantly affected, the project accepted that a planning consultant without special heritage expertise might have been sufficient to satisfy the NPPF. However, the number of cases where a modest level of heritage expertise was acceptable for this project was very small. This was because applications unlikely to be worthy of assessment for their impact on heritage assets should have been filtered out from the cases sampled (see paragraph A2.11 in Appendix 2).

2.11 The findings were very similar to the number of applications which had made use of the Historic Environment Record: 198 applicants (63%) had been assisted by appropriate heritage expertise.

### Providing an archaeological assessment

2.12 The NPPF policy in paragraph 128 is that “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.” Paragraph 129 additionally requires that the effect of proposals on the setting of a heritage asset is also taken into account by the local planning authority, so the normal practice is for applicants to consider how their proposals affect the particular significance of any archaeological asset not only on the application site but elsewhere if its setting could be affected. Q5 therefore asked a slightly broader question than implied by NPPF paragraph 128: ‘Where archaeological assets may be present, was a desk-based assessment submitted or a field evaluation made?’

2.13 Desk-based assessments or field evaluations were found to have been undertaken in 114 cases (36% of all applications). The impression we gained from studying applications was that archaeological assessments were usually undertaken when they were appropriate in policy terms. Applications were sometimes accompanied by archaeological assessments but not by specialist assessments of other heritage assets, even when designated heritage assets were present but Scheduled Monuments were not. Our efforts to distinguish when such work was definitely not required ('not applicable' to 118 applications) from when it might have been required but was not undertaken ('no' in 83 cases) did not produce reliable results. There is a possibility that archaeological assessments were not actually required in some of the cases where we recorded that 'no', they were not supplied. Attention should therefore focus on the applications where information was provided, not where it was not.

#### Identifying the impact on heritage significance

2.14 The key purpose in seeking a positive answer to the first five questions about heritage assets (identifying the correct heritage assets to assess (Q1), assessing their significance (Q2), using the HER (Q3) and heritage expertise (Q4), and carrying out an archaeological assessment if needed (Q5)) is in the words of the NPPF "to understand the potential impact of the proposal on their significance". Q6 was therefore 'Did the application identify the potential impact of the proposal on the significance of the heritage assets?'

2.15 The project found that little more than half of all applications sampled did assess impacts on the significance of designated heritage assets likely to be affected: just 177 planning applications (56%) did so. This is a surprisingly low figure:

- all the cases sampled by the project were considered to be applications where impact on the significance of heritage assets was worthy of assessment (see paragraph A2.11 in Appendix 2);
- the number of planning applications complying with the NPPF in this respect is distinctly lower than those in which heritage assets were identified (214), the Historic Environment Record consulted (199) and appropriate heritage specialists used (198).

The applications complying with policy are similar in number to the 178 applications which had identified the significance of heritage assets (161 of which were the same applications in both cases). The implication is that some applicants are reluctant to take the final steps to assess the significance of heritage assets and then identify an application's impacts on that significance.

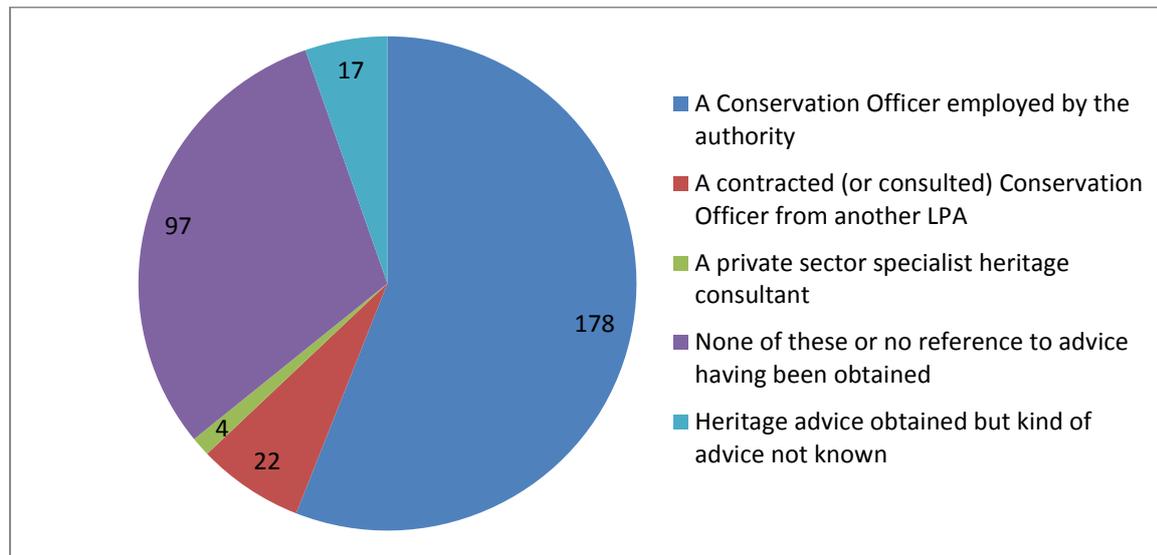
#### **Consideration of planning applications by local authority heritage advisers**

##### Local authority use of heritage specialists

2.16 The first sentence of NPPF paragraph 129 states "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". The reference to 'any necessary expertise' is a policy expectation that local planning authorities will obtain the services of heritage specialists to advise them in development management cases. The project aimed to establish not only whether such expertise was applied to the sampled application in each authority but also the form of the employment. Q7 was therefore: 'Was the LPA consideration assisted by appropriate expertise from:

- |          |  |
|----------|--|
| Option 1 | A Conservation Officer employed by the authority?                        |
| Option 2 | A contracted (or consulted) Conservation Officer from another authority? |
| Option 3 | A private sector specialist heritage consultant?                         |
| Option 4 | None of these or no reference to advice having been obtained?            |
| Option 5 | Heritage advice obtained but kind of advice not known?                   |

2.17 The source of heritage advice obtained by planning officers was not always clear. This advice might (or might not) be summarised later in the case officer’s report, without clarity on who supplied it (or whether the entirety of the advice was being repeated). A few authorities treated their heritage adviser’s report seamlessly with other contributors, with various internal consultees’ inputs being made direct into the case officer’s report. In some cases local authority websites were less reliable in including responses from internal consultees (compared with external responses) amongst the documents posted. The fourth and fifth options above were therefore needed. Figure 2 presents the findings.



**Figure 2 Appropriate expertise to assist the LPA consideration of applications (No. of LPAs)**

2.18 Where information was available, the project found that local authorities relied overwhelmingly on their own conservation staff. Figure 7 shows that authorities took advice from their own conservation staff in 178 cases, contracted this from another local authority in 22 cases, and used independent heritage consultants in just 4 cases. Heritage advice was obtained in at least a further 17 cases, but not differentiated by type of adviser. 221 authorities were therefore assisted by specialist advisers in the application evaluation process in our sample. However, there were 97 cases in which conservation advice was not available, or not sought or no reference was made in the documents to it having been obtained.

2.19 Additional assessment was made of the number of local authorities which did not have specialist heritage advisers<sup>2</sup> available to them at all. Project findings were compared with information obtained by Historic England on the number of heritage conservation staff in each local planning authority (using information from its *Heritage Counts* local authority profiles 2016). The latter data were collected in a period which broadly equates with the sampled planning applications scrutinised. That survey had found that 17 authorities had no such advice. 8 of those 17 were found by the project to have obtained advice for the sampled planning applications: 5 of them now employed conservation officers (Bolsover, Central Bedfordshire, Darlington, Hertsmere and Woking), 2 had contracted specialists from other authorities (St Edmundsbury and Selby), and Slough had employed a private heritage consultant. What is not clear is whether the provision of

<sup>2</sup> This project uses the term ‘specialist heritage adviser’ as a more generalised term than ‘conservation officer’: conservation officers are generally understood to refer to local authority employees expert in heritage, but a few authorities instead employ consultants who would be unlikely to be known by this term. Additionally, outside of heritage interests, ‘conservation officer’ can mean ‘nature conservation officer’, so the term is omitted as far as practicable to avoid confusion.

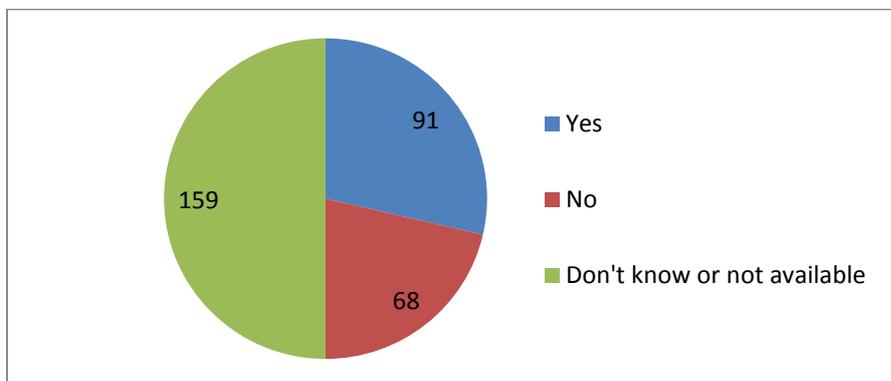
specialist advice improved after the Historic England survey in 2016 or deteriorated after the planning applications studied here (though at least in Darlington the position seems to be an improvement, as the sampled case there was decided in early 2017, after the Historic England survey).

2.20 Of the 17 authorities found by *Heritage Counts* not to have conservation staff, 9 were also found by our survey not to have one, or no reference was made to advice being obtained. If 9 of the 97 authorities appearing under Option 4 had no specialist heritage advisers available, why did the other 88 authorities appear in this category? According to the Historic England survey, of these 88 authorities, 3 employed a conservation officer for less than one day per week, 29 authorities employed a conservation officer for between one and four days per week, and the remaining 56 employed between 1 and 6.6 full time equivalent conservation staff. The implication of these figures is that, in principle, most local planning authorities had conservation staff available to them to consider the sampled planning applications if asked to do so. In these circumstances, possible explanations for the presence of 88 extra authorities in Option 4 include:

- (i) Internal consultations may have taken place and responses been provided, but there is no immediately apparent record of that.
- (ii) Many case officer reports included advice on heritage issues, but there was no clarity whether this had been provided by the case officer personally or as a result of an internal communication from a heritage adviser.
- (iii) Heritage advice was available to the local authority but not requested by the case officer, for example in Case Studies 3 (Bolton), 16 (Salford) and 25 (Worthing); while in Case Study 2 (Birmingham) the heritage adviser was not consulted because Historic England had provided such a comprehensive response.
- (iv) Limited specialist advice is known to have been provided, but there is uncertainty about any more: for example, archaeological advice was provided but there was no record of conservation advice having been obtained regarding other heritage assets.
- (v) Advice was taken from a 'Conservation Advisory Panel' or equivalent rather than from a specialist heritage adviser individually (even though such an adviser may possibly have attended the advisory panel).

#### Assessing the significance of heritage assets affected

2.21 NPPF paragraph 129 opens with the policy "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)". Q8 therefore asked 'Did the LPA heritage adviser identify the significance of the heritage assets? Identifying significance should be an important building block in the local authority's assessment of impacts on heritage assets. The results are indicated in Figure 3.



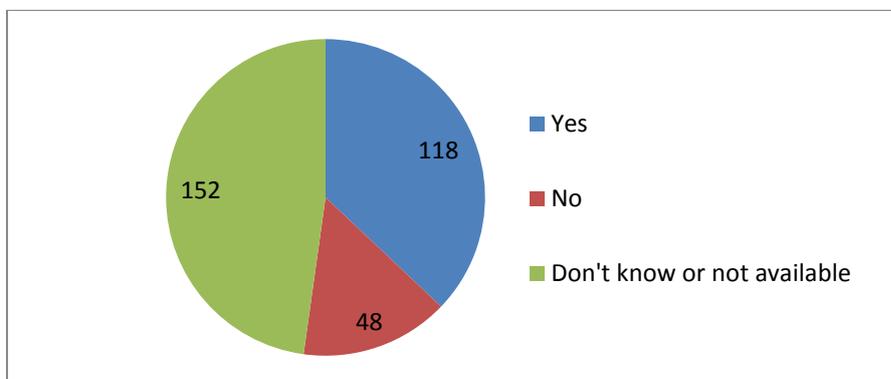
**Figure 3** Did the LPA heritage adviser identify the significance of the heritage assets? (No. of LPAs)

2.22 The findings show a low level of compliance with policy. Specialist heritage advisers are known to have identified the significance of heritage assets in just 91 of the 318 authorities (29%) in accordance with NPPF paragraph 129. Figure 3 also shows that in 68 authorities (21%) the advisers definitely did not provide this, and this figure particularly was probably substantially higher. These findings contrast with the information provided by applicants: Figure 1 showed that 178 planning applications identified the significance of affected assets proportional to their importance.

2.23 Some caution should be exercised in interpreting Figure 8. Clear information on specialist heritage advisers who definitely did or did not identify significance sum to 159, exactly half the whole sample. There was a significant shortfall in the information expected, as the ‘Don’t know’ and ‘Not applicable’ responses came from the other 159 authorities. All 97 of the authorities reported in Q7 as either not having a specialist heritage adviser or there being no record of any advice received inevitably contributed to the authorities here with ‘Don’t know’ and ‘Not applicable’ records<sup>3</sup>. The high incidence of case officer reports lacking such advice is likely to indicate that this information was not provided to them by specialist heritage advisers. Our estimation from studying the case officer reports available is that, had there been better information from the ‘don’t know & not available’ category taking up half the sample, the ‘no’ results would have been swelled much more than the ‘yes’ results. We are doubtful that there is a large pool of heritage advisers who did identify the significance of heritage assets but were missed by our survey.

Assessing impacts of proposals on heritage assets

2.24 Paragraph 129 of the NPPF states that local planning authorities “should take this assessment [of the significance of a heritage asset] into account when considering the impact of a proposal on a heritage asset”. To find out to what extent this had been done, in the first instance by specialist heritage advisers, Q9 asked ‘Did the LPA heritage adviser identify and assess the proposal’s likely impact on the assets’ significance (including settings)’. The findings are shown in Figure 4.



**Figure 4 Did the LPA heritage adviser identify and assess the proposal’s likely impact on the assets’ significance (including settings)? (No. of LPAs)**

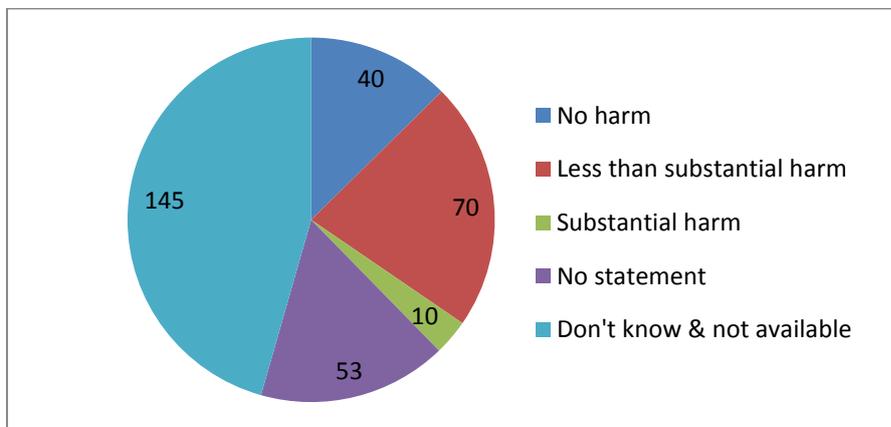
2.25 The results indicate a small improvement on the numbers of specialist heritage advisers identifying the significance of heritage assets, though compliance with the NPPF is still weak. Figure 4 shows that 118 local authorities (37%) definitely identified and assessed impact on heritage significance. In some cases the impacts they identified were only loosely tied to the assets’ ‘significance’. The assessment is known not to have been made at all in 48 authorities. ‘Don’t know and not available’ was still the largest category at 152. That category is again likely to be hiding

<sup>3</sup> Note that in view of the difficulty of distinguishing cases where there was no heritage adviser from those where the advice from the heritage adviser was not known, Q8 and subsequent questions affecting specialist heritage advisers combined the figures for ‘not applicable’ and ‘don’t know’ responses (Qs 9, 11, 12 and 13).

contributions to both the ‘yes’ and ‘no’ categories, especially the latter. The number of specialist heritage advisers identifying significance was still well below the 177 applicants who did so (Figure 1). Figure 2 showed that at least 221 authorities are known to have used specialist heritage advisers, so by no means all of these advisers provided the expected assessment of impacts.

Identifying the level of harm to heritage assets

2.26 A critical task for local authorities in responding to planning applications is to identify whether the proposal would cause ‘no harm’, ‘less than substantial harm’ or ‘substantial harm’ to designated heritage assets. This is a distinction required in order to apply NPPF policy in paragraphs 132 and 134. It is for this purpose that information on the significance of heritage assets and the impact of proposals upon them has been gathered. Q11 therefore asked ‘Did the LPA heritage adviser identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets?’ Figure 5 sets out the results.



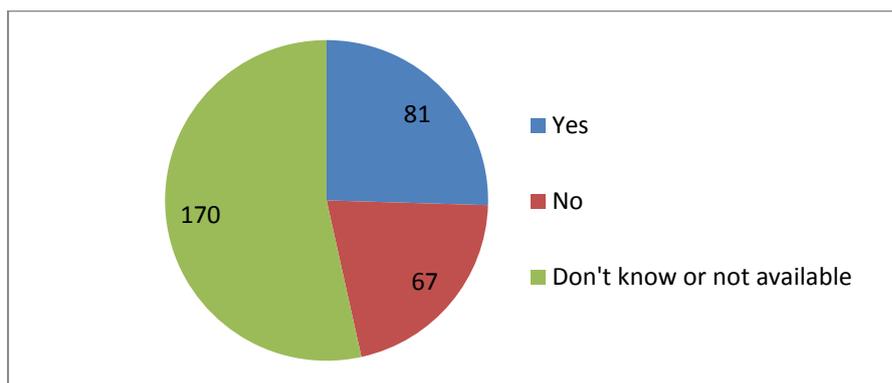
**Figure 5 The level of harm applications would cause to the significance of the heritage assets, identified by LPA heritage advisers (No. of LPAs)**

2.27 Local authority specialist heritage advisers had very similar response rates to identifying harm as to identifying impact on heritage assets’ significance, which is still modest. There is again clear evidence that by no means all advisers are assessing harm levels in the terms expected by the NPPF. Figure 5 shows that 120 (38%) did identify harm levels (40 identified ‘no harm’, 70 ‘less than substantial harm’ and 10 ‘substantial harm’), while 53 (17%) definitely did not provide advice on this. The number of cases in the ‘Don’t know and not available’ category remained dominant, though fractionally reduced from 152 in Figure 9 to 145 authorities.

2.28 The division of responses by harm level is noteworthy. The project attempted to focus the sample on applications where there was merit in the level of harm being properly assessed (see paragraph A2.11 in Appendix 2). Although this would have left open the option to find ‘no harm’ in many cases, one third in this category seems somewhat high. For the other categories there is an expectation that developments causing ‘less than substantial harm’ to designated heritage assets will be much more numerous than those causing ‘substantial harm’. The Planning Practice Guidance *Conserving and enhancing the historic environment* states that “In general terms, substantial harm is a high test, so it may not arise in many cases” (paragraph 17, Reference ID: 18a-017-20140306). On this basis the division of 70 ‘less than substantial harm’ cases and 10 ‘substantial harm’ cases is not unexpected.

## Mitigating the impacts of proposals on heritage

2.29 Paragraph 129 of the NPPF requires that local planning authorities should aim “to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal” when considering planning applications. The Planning Practice Guidance *Conserving and enhancing the historic environment* offers brief advice on this in paragraph 19 (Reference ID: 18a-019-20140306). The project examined the responses by the specialist heritage adviser to see if mitigation steps had been proposed. Typical proposals could include requests for conditions on planning permissions for specific materials, or for archaeologists to monitor groundworks, or for additional screening. Suggestions were often made to break up the mass of proposed structures into smaller elements, or to limit their height or proximity. More complex adjustments could involve a request for specific revisions to the proposals, for withdrawal of part of the proposal, for an improved Heritage Statement, or for further discussions with the applicant. With outline planning applications there is greater scope for adjusting the proposals either at that stage by condition or at a later date by indicating broadly what will be required. In other cases there may be no need for further attempts at avoidance or mitigation of harm, because the applicant has already undertaken that, especially in cases where Environmental Impact Assessment has been carried out (where this is a requirement). Q12 asked ‘Did the LPA heritage adviser consider means of avoiding or minimising conflict through mitigation (between the heritage assets’ conservation and any aspect of the proposal)?’ and the findings are summarised in Figure 6.



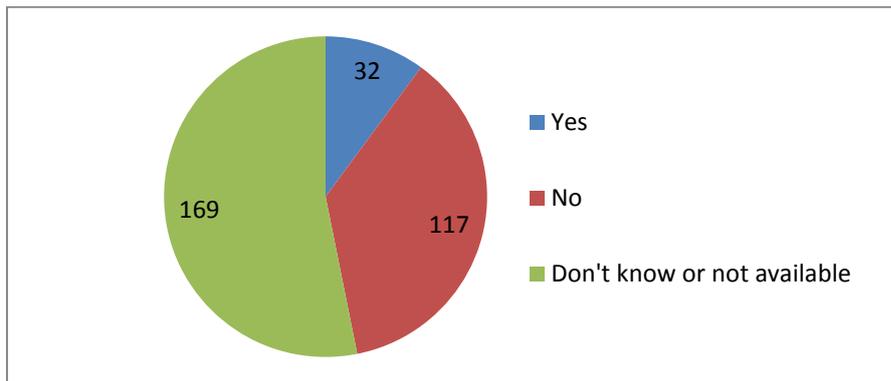
**Figure 6** Consideration of mitigation to avoid or minimise conflict between the heritage assets’ conservation and any aspect of the proposal, by the LPA heritage adviser? (No. of LPAs)

2.30 Efforts to mitigate the impact of planning applications on designated heritage assets will be appropriate in some cases but not others, so reports of activity on this are not necessarily a measure of good or bad practice by heritage advisers. In all cases where mitigation was proposed, we recorded the advice of the heritage adviser. This showed that advisers sometimes go to considerable lengths to find ways of resolving heritage problems, and they negotiate and welcome changes as a result, whilst on other occasions they struggle to suggest mitigation that would be sufficient to overcome their concerns or they find that a process of negotiation stalls. Figure 6 shows that 81 specialist heritage advisers proposed means of avoiding or minimising conflict and that 67 definitely did not. However, there was no clear information from 170 authorities (53% of cases). If significant mitigation had been proposed by heritage advisers, there is some prospect that it would have been discussed in the case officer’s report, so in many cases the absence of information may well indicate an absence of significant mitigation proposals.

## Weighing heritage impacts against public benefits

2.31 Paragraphs 133 and 134 of the NPPF require the impacts of proposals on designated heritage assets to be weighed against the ‘public benefits’ of the proposal (with different weights

according to whether the harm to the heritage assets would be ‘substantial’ or ‘less than substantial’). Q13 therefore asked ‘Did the LPA heritage adviser advise on weight to give to heritage in relation to the benefits?’ Figure 7 shows the responses. The need to weigh heritage against competing interests does not arise when a development would cause ‘no harm’ to heritage, and Figure 5 showed that as a minimum 40 applications were found to cause no harm. Heritage advisers who did not weigh harm in those cases would not be failing to apply the NPPF. Furthermore, some heritage advisers may consider themselves not to be in a position to weigh the heritage issues on which they are expert against the competing interests they are less familiar with, and prefer to leave the judgement to the case officer at a later stage. Nonetheless, specialist heritage advisers can provide a helpful steer to case officers by stating the degree of harm involved (especially if within the range ‘less than substantial’) and advising on the seriousness with which heritage interests need to be considered in particular cases.



**Figure 7 Did the LPA heritage adviser advise on weight to give to heritage in relation to the benefits? (No. of LPAs)**

2.32 The evidence shows that few specialist heritage advisers offered advice on the weight to give to heritage in the planning applications which the project sampled. Figure 7 shows that such advice was identified specifically in just 32 cases (10% of the whole sample). Such advice is known not to have been offered in 117 authorities (37%), and information was not available from a further 169 authorities. If heritage advisers had reviewed planning applications in sufficient detail to be able to recommend a course of action on the balance between heritage and other public benefits, there is some prospect that this would have been raised in the case officer’s report. The likelihood is that few heritage advisers commented on this matter from amongst the 169 authorities for which information is unavailable. The evidence suggests strongly that, for specialist heritage advisers, commenting on the weight to be given to heritage in relation to other public benefits of planning applications was a low priority. This is supported by the evidence that significantly fewer advisers provided advice on this matter than on any of the other topics studied.

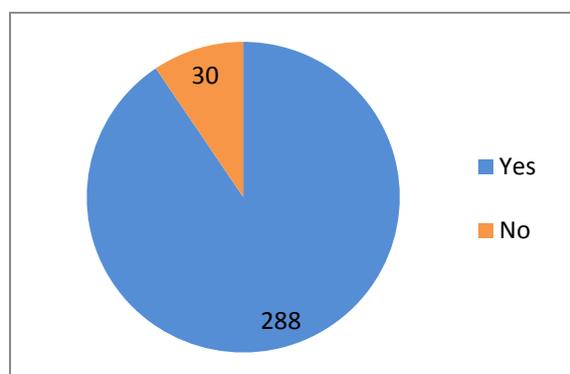
### **Heritage-related statutory consultations by local planning authorities**

2.33 There are statutory consultation requirements on planning applications where these affect heritage assets in particular ways (see Boxes 2 and 3 in Appendix 1 setting out the duties to consult Historic England and The Gardens Trust respectively). The project aimed to establish whether these duties were complied with and also the take-up of the opportunities to respond by the consultees. Case officer reports to committee usually (but not always) indicate who was consulted and their responses. For this section of the project only, the assumption was made that statutory consultation had been undertaken unless there was evidence to suggest otherwise. This was because there would have been disproportionate effort for the benefit gained by attempting to identify whether Historic England had, quite correctly, not been consulted in certain cases (e.g. there is no need to consult where only Grade II listed buildings are affected). There would also have

been a need to separate out consultations with Historic England on listed building consent applications (which are not of interest to this project) rather than on planning applications. Where no statutory consultations were required and not carried out, local authorities were recorded as having correctly followed procedures. Attention should therefore focus on cases where consultation was found to be deficient.

### Carrying out statutory consultations

2.34 The consultation requirements are expressed in terms of ‘development likely to affect’ heritage assets or where it ‘would affect’ them. This is not a precise obligation. Whereas there might be an expectation that local planning authorities would ‘over-consult’, to err in favour of being certain to apply the law, this was found not necessarily to be the case (e.g. applications sharing a boundary with a Scheduled Monument might not be consulted on). Particularly regarding impacts on the setting of heritage assets, which comprised a large fraction of the sampled cases, there did need to be some exercise of judgement by both the planning authorities and ourselves regarding whether consultation ‘should’ have taken place. Q14 asked simply ‘Did the LPA carry out the correct statutory heritage consultations?’ and the results are presented in Figure 8.



**Figure 8** Did the LPA carry out the correct statutory heritage consultations? (No. of LPAs)

2.35 The evidence shows that most local planning authorities carry out statutory consultations satisfactorily. However, Figure 13 indicates 30 authorities which fell short of the requirements (some without question, some in our judgment). There were 19 occasions on which Historic England should have been consulted and 14 on which The Gardens Trust should have been consulted (including three when both should have been consulted). The missed consultations with Historic England comprised:

- 3 developments directly affecting Grade I or Grade II\* listed buildings<sup>4</sup>;
- 15 developments affecting the settings of Grade I and/or Grade II\* listed buildings;
- 1 development within a Grade II\* registered park and garden;
- 1 development within the setting of a Grade II\* registered park and garden.

The missed consultations with The Gardens Trust comprised:

- 1 development within a Grade I or Grade II\* registered park and garden;
- 5 developments within a Grade II registered park and garden;
- 8 developments within the setting of a Grade I or Grade II\* registered park and garden.

A notable feature of the last of these omissions is that in 7 of the 8 cases Historic England was consulted even though The Gardens Trust was not.

<sup>4</sup> In one of these cases Historic England was technically consulted, but the Committee decided the application four days after the consultation and before Historic England had been able to respond.

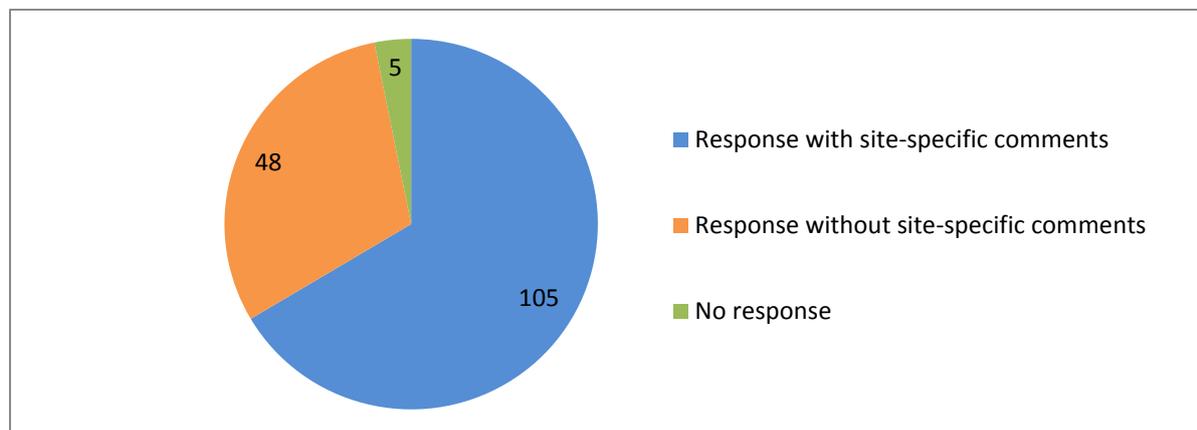
2.36 The pattern of missed consultations with Historic England does not suggest that there is necessarily a propensity for local planning authorities to fail to consult particularly on applications which affect registered parks and gardens rather than listed buildings<sup>5</sup>. The experience of missed consultations with The Gardens Trust, however, does suggest that there is a notable lack of awareness of the need to consult The Gardens Trust specifically, given that Historic England was properly consulted on so many of the same applications. This is despite The Gardens Trust circulating a leaflet to all local planning authorities in 2016 lucidly setting out the consultation requirements. The 30 authorities which missed statutory consultations appear to represent 9% of all 318 authorities sampled. However, statutory consultations were not required on a significant (but unknown) number of applications, so 30 failures to consult would have been a much higher proportion of applications on which there should have been consultations.

Consultation responses by Historic England

2.37 The project examined the extent and broad scope of responses to consultations by Historic England and The Gardens Trust. Historic England prioritises its consultation responses to make most efficient use of its resources. This will reflect matters such as the significance of the heritage asset affected and the level of harm that would be caused. The length and detail of any submission made will also reflect matters such as the level of concern and the scope for avoiding or mitigating harm. To respond to cases which Historic England does not prioritise, a standard letter is returned to local planning authorities advising them to take into account the advice of their own specialist heritage advisers. To distinguish the last of these from all other responses where substantive comments are offered, Q15 asked ‘Did Historic England when consulted:

- Option 1 Respond with site-specific comments?
- Option 2 Respond without site-specific comments?
- Option 3 Not respond?
- Option 4 Not applicable if Historic England not consulted (or should not have been)?

The survey results are presented in Figure 9, omitting the 160 authorities not making consultations.



**Figure 9 Historic England responses to consultation (No. of LPAs)**

2.38 Figure 9 shows that statutory consultations were undertaken on 158 occasions, so the 19 failures to consult (paragraph 2.35 above) represents 11% of the applications on which there should have been consultations (19/[158 + 19]). There was a high level of response to consultations by

<sup>5</sup> In 2016 about 8% of the 376,577 listed buildings were Grades I or II\* and there were 1,693 registered parks and gardens, a ratio of 18 Grades I and II\* listed buildings for every RPG. Although not a fair measure of likely levels of consultation, not least due to their different sizes, planning applications can be expected to affect many more listed buildings than RPGs. The missed consultations with Historic England at 18 applications affecting listed buildings and 2 affecting RPGs, a ratio of 9:1, is therefore not surprising.

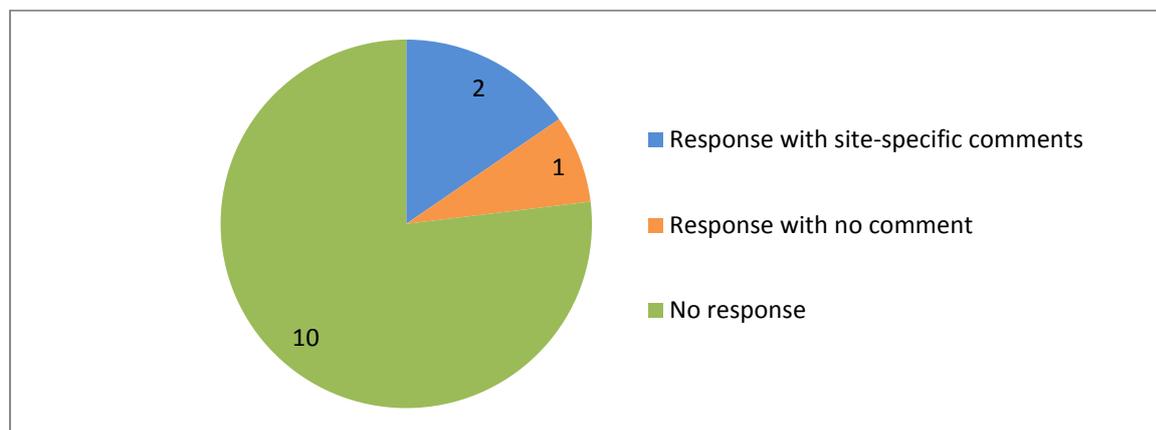
Historic England. Figure 9 shows that responses were missed in only 5 cases (3% of consultations). The balance between the 105 cases meriting site-specific responses (66%) and the 48 cases meriting non site-specific responses (30%) would have reflected the nature of the applications which happened to be sampled by the project.

### Consultation responses by The Gardens Trust

2.39 A similar exercise was carried out for consultations with The Gardens Trust. Q16 asked ‘Did The Gardens Trust when consulted:

- Option 1 Respond with site-specific comments?
- Option 2 Respond without site-specific comments?
- Option 3 Not respond?
- Option 4 Not applicable if The Gardens Trust not consulted (or should not have been)’

So far as we are aware, The Gardens Trust has no policy comparable to Historic England’s to offer generalised responses to lower priority consultations. However, the Gardens Trust has recently adopted a policy of returning ‘no comment’ responses where appropriate, and one of these was identified (on a case in Redcar & Cleveland). The results are presented in Figure 10, with the ‘not applicable’ cases again omitted.



**Figure 10 The Gardens Trust responses to consultation (No. of LPAs)**

2.40 There are two key findings from the evidence. First, The Gardens Trust was only consulted on about half the occasions to which it was statutorily entitled. Figure 10 shows that statutory consultations were undertaken on 13 occasions. Consultations therefore numbered just 13 out of 27 occasions on which they should have taken place (as paragraph 2.35 above recorded 14 failures to consult). This 52% non-consultation rate is substantially greater than the 11% rate experienced by Historic England using the same calculation method (paragraph 2.38 above), reinforcing the impression that the obligation to consult The Gardens Trust is substantially less well understood by local government as a statutory consultee than it is with Historic England.

2.41 Second, there was a significant scale of non-response by The Gardens Trust to consultations, albeit based on a very small number of cases. Figure 10 shows that The Gardens Trust responded with site specific comments on two occasions, with ‘no comment’ on another, and is recorded as not responding to the other 10 consultations. The Trust therefore did not make the most of the large majority of the consultations it did receive in this small sample. This probably reflects its very limited resources as a voluntary organisation (not least compared with Historic England as a statutory one). (The project also noted at least one other case in which a non-statutory consultation was undertaken concerning an unregistered park and garden, to which the Trust did respond: this has been omitted from consideration.) There is a possibility that County Gardens Trusts occasionally

responded on behalf of The Gardens Trust either without making clear that theirs was a response to a statutory consultation, or this was not logged as a statutory response (by the authority or by this project). Non-responses may therefore have been overstated. However, under-recording is unlikely to account for the scale of non-response identified. (Probably outside the scope of this assessment is the case of the Oxfordshire Gardens Trust – which is not a statutory consultee – responding to an application sampled in the City of Oxford. Here the case officer report listed this response (correctly) under ‘third parties’ and did not list The Gardens Trust under the ‘public bodies’ consulted.)

2.42 It is clear that consultations with The Gardens Trust and responses by the Trust are not working as well as they should overall. This is inhibiting fully effective implementation of the NPPF in this respect. The Gardens Trust, Historic England and representatives of local government should work together to find ways of resolving this problem.

### **Consideration of planning applications by local authority case officers**

2.43 The report on a planning application for consideration by a Committee of councillors, prepared by a local authority case officer, is a key document in the process of deciding a planning application. This describes: the scheme proposed, the policies against which it should be assessed, the responses by consultees from inside and outside the authority, other submissions and any other relevant issues. It then contains an analysis of the proposals and makes recommendations (including on conditions where permission is supported). The case officer report is the key point in the planning process where the authority’s handling of the NPPF in relation to heritage is specified. Although the final decision is taken by councillors, in instances where their decision follows the recommendation made by the case officer, the councillors are held to have agreed with the reasoning in the report and to be lawfully accountable for it. There can be no hiding from the material which is included or excluded. Equally, the Courts have ruled that case officer reports do not need to go to excessive lengths to demonstrate how they have applied policies: there is some latitude in the reports recognising that they are not to be read as legal documents and that familiarity of councillors with local issues can be assumed. This section summarises the relevant findings collectively from the case officer reports on the 318 applications sampled by the project.

2.44 Many of the questions asked of case officers are parallel to those previously asked of specialist heritage advisers. This facilitates an assessment of new inputs by case officers as well as showing the extent to which heritage advisers’ suggestions are eventually accommodated. Most importantly, it is the case officer’s interpretation of the NPPF which attracts weight as the authority’s implementation of national policy (unless not accepted by councillors). For this reason the case officer reports are examined in detail for their response to and compliance with the NPPF heritage policies. The case officer must consider a potentially wide range of issues, often competing with each other, and not just heritage alone: heritage interests must be weighed against others, and the NPPF sets down policy on how this should be done. The scope of the questions about case officers’ reports therefore extends beyond those appropriate for heritage advisers.

2.45 The first five questions address issues familiar from earlier stages in the application process. Did the case officer’s report:

- list the relevant heritage assets (Q17a)?
- identify their significance (Q17b)?
- identify and assess the impact of the scheme on the significance of those assets (Q18)?
- identify the level of harm to the significance of those assets (Q19)?
- seek to avoid or minimise conflict between the scheme and the heritage assets (Q20)?

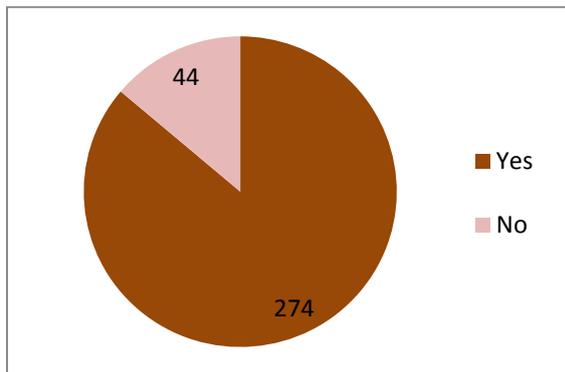
Five subsections present the survey findings in Figures 11 to 15 with a short commentary on each.

Four further subsections address topics specific to case officers. Did the case officer's report:

- give great weight to conserving heritage assets (Q21)?
- follow the recommendations of heritage consultees (Qs 22-24)?
- provide clear and convincing justification for any heritage harm (Q25)?
- make recommendations on heritage grounds (Q26)?

#### Identifying the correct heritage assets

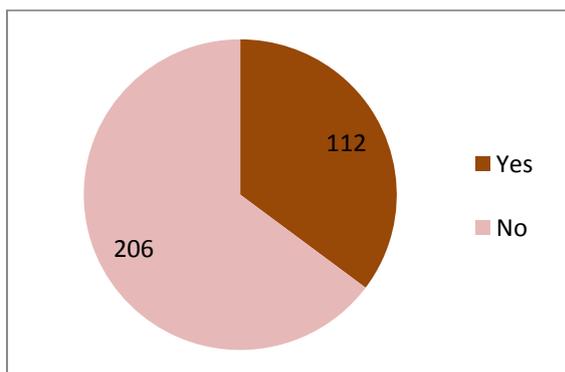
2.46 Figure 11 shows that 274 of the 318 authorities (86%) correctly identified the relevant heritage assets against which the planning application would need to be assessed. However, 44 (14%) failed to do this.



**Figure 11** Did the case officer's report list the relevant heritage assets? (No. of LPAs)

#### Identifying the significance of heritage assets

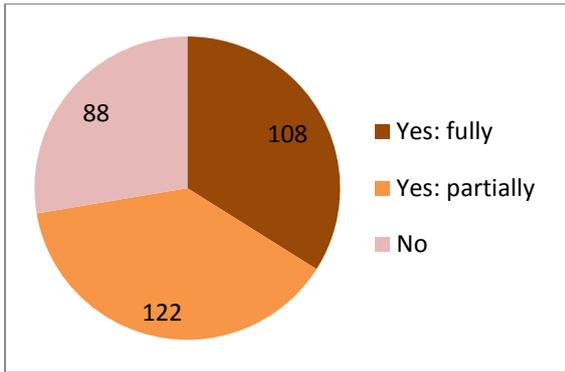
2.47 Figure 12 shows that only 112 case officers (35%) properly identified in their reports the significance of the heritage assets affected by planning applications.



**Figure 12** Did the case officer's report identify the significance of the heritage assets? (No. of LPAs)

#### Assessing impacts of proposals on heritage assets

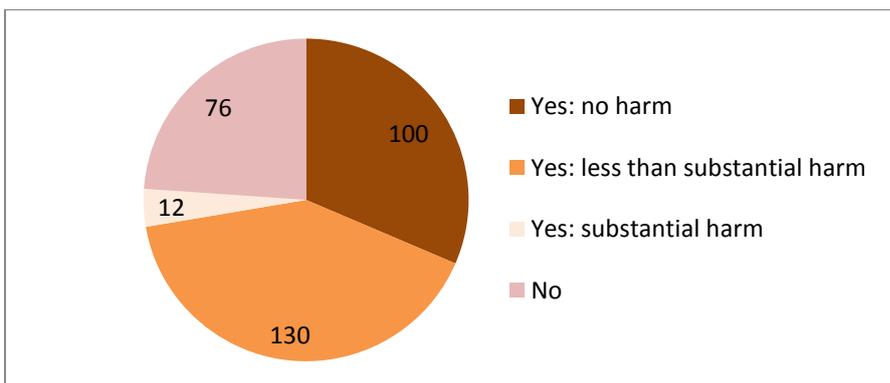
2.48 Nearly three quarters of case officer reports provided at least some assessment of the impact of planning applications on designated heritage assets. Figure 13 shows that 34% of case officers (108) fully identified and assessed the impact of proposals on the significance of heritage assets. A further 122 case officers (38%) partially identified the impact on significance and the remainder (28%) did not. This is comparable to the finding in Figure 12 which showed that just 35% of case officers correctly identified the significance of those assets.



**Figure 13 Did the case officer identify and assess the proposal's likely impact on the assets' significance (including settings)? (No. of LPAs)**

Identifying the level of harm to heritage assets

2.49 The identification of harm level is essential to the policy approach set out in NPPF paragraph 132, as this affects the way in which heritage interests are subsequently assessed against other interests (paragraphs 132 and 134). Q19 asked 'Did the case officer identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets?' However, the project identified large numbers of case officers who did not refer directly to 'harm' to heritage assets, as they were not following the NPPF policy approach punctiliously. For those applications where case officers had clearly got to grips with the heritage issues but used different language, we considered it helpful to impute a finding of the appropriate level of harm (as the alternative could appear unfair). However, this needed to be backed up by a demonstrable statement to this effect (recorded verbatim separately from the answer to Q19). This created its own problem at the margin of allocating a case officer's assessment either to a level of harm or to harm not being identified. Furthermore, even when reference was made to 'harm' this was not always specified in NPPF terms. Case officers might state that a proposal would 'not result in significant harm' or that it could proceed 'without substantial harm or loss of significance', for example. In these cases we took this to mean there would be 'less than substantial harm', though one statement that a proposal would 'not result in demonstrable harm' was clearly intended in its context to mean 'no harm'. The results are shown in Figure 14.



**Figure 14 Did the case officer identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets? (No. of LPAs)**

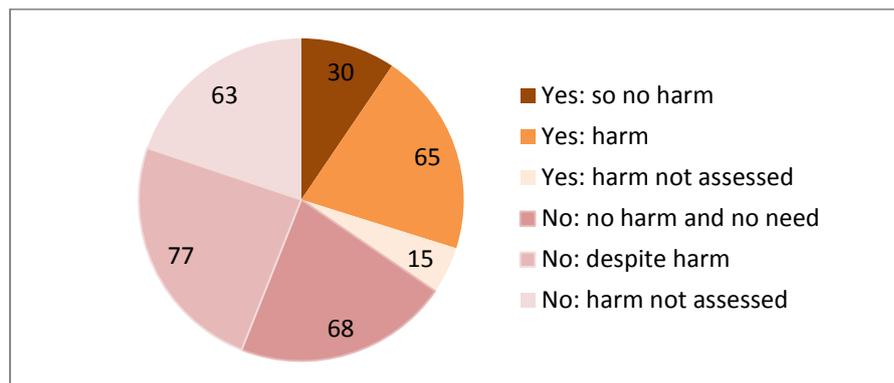
2.50 The results from Figure 14 are significant in two respects. First, the number of applications in which case officers found that developments would cause 'no harm' to heritage assets was large (100 cases, 31%). This was despite the process of case selection being arranged to constrain this number (see paragraphs A2.11-12 in Appendix 2). 'Less than substantial harm' was identified in 130

cases (41%) and ‘substantial harm’ in 12 cases (4%), which is a reasonable balance between these two categories (see paragraph 2.28). Second the number of case officers who failed to identify whether or not there was any level of harm to designated heritage assets was also large. Even on the generous basis for allocating statements to harm levels as noted in the previous paragraph, Figure 14 still shows that 76 case officers in the 318 local planning authorities did not identify a harm level (24%).

2.51 The project collected the reasons given in case officer reports when each level of harm was specified. The reasons given for considering that developments would cause ‘no harm’ provide some explanation for the large number of decisions in this category. Amongst cases having direct impacts on listed buildings, in 18 cases the proposed changes affecting the listed building were considered to be well-designed, and in 15 cases the proposed developments were considered positively to enhance existing heritage assets (sometimes controversially<sup>6</sup>). 3 cases involved changes of use having negligible consequences. In the larger category of impacts on the settings of heritage assets (predominantly listed buildings), in 50 applications the case officer considered that the development would cause no material change to the setting, with a wide variation in the explanation for this conclusion. In 6 cases the impact of a proposed development on the setting of a listed building was considered insignificant by virtue of the separation distance. These cases included one each where changes to the setting had already been approved and where the setting had already been eroded.

Mitigating the impacts of proposals on heritage

2.52 The intention of NPPF paragraph 129 is that local authorities should try “to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal”. Q20 enquired about this and the results on the attention given to this by case officers are shown in Figure 15. This records whether or not mitigation was tackled by case officers, but further refined according to the case officers’ assessment of harm. Where mitigation was proposed (‘yes’), the data are broken down between occasions when mitigation helped to ensure there was no harm (‘so no harm’), when there was still substantial or less than substantial harm after mitigation (‘harm’) and



**Figure 15 Did the case officer seek to avoid or minimise conflict (between the heritage assets’ conservation and any aspect of the proposal)? (No. of LPAs)**  
(Options explained in paragraph 2.52)

<sup>6</sup> In one sampled case the committee report stated “Contrary to the view of the Victorian Society, who consider that the demolition of the Edwardian block and single-storey range would be harmful to the setting of the principal Listed Building, your officers consider that the removal of the untidy relationship between the two buildings will improve the setting of the main building.... The proposed building is considered to be acceptable in terms of its scale, design and appearance. It would preserve the setting of the Listed Building and the statutory requirement to pay special attention to such matters is considered to be met.”

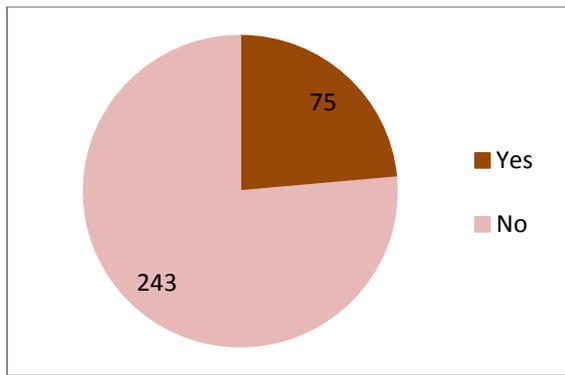
when no assessment had been made of whether there was harm or not ('harm not assessed'). Where no mitigation was proposed ('no'), the data distinguish occasions when no mitigation was needed as there was no harm in any event ('no harm and no need'), when no action was taken even though there was substantial or less than substantial harm ('despite harm') and when no assessment had been made of whether there was harm or not ('harm not assessed').

2.53 Designated heritage assets benefitted discernibly from mitigation efforts, with over one third of cases less affected by planning applications as a result. In more detail, the evidence in Figure 20 suggests that in 30 cases (9%) mitigation efforts were responsible at least in part for ensuring that the development caused 'no harm' to heritage assets. In a further 65 (20%) efforts at mitigation were made but there was still substantial or less than substantial harm despite this. Mitigation was not proposed in 68 cases (21%) because the absence of harm made this unnecessary, while in a further 77 cases (24%) mitigation was not proposed even though the development would cause substantial or less than substantial harm. There were a further 78 cases where there had been a failure to assess the level of harm, and in these mitigation was proposed in 15 cases (5%) but not in the other 63 cases (20%).

2.54 The reasons why authorities did not attempt to mitigate the substantial or less than substantial harm to heritage in most of the 77 cases where harm had been identified is not known. However, a few did explain. In one case, the case officer reported simply: "It is not considered that the mitigation measures proposed [by the applicant] can overcome the significant and demonstrable harm caused". In another the conservation officer was reported as not having requested mitigation, and in a third mitigation would be handled at the 'reserved matters' stage of the permission. Amongst applications used as case studies in this report, in Chichester, the case officer argued "the site has been allocated for housing and associated development as part of the Chichester Strategic Development Location and in this context it is not possible to meet the SDL allocation objectives without using the south-east corner of this site and the Madgwick Lane frontage. It is therefore not possible to retain the settings of the listed buildings close to the site undisturbed" which the conservation officer had sought (see Case Study 18). In South Northamptonshire the case officer view was that "due to the mitigation measures incorporated into the proposed development, it is considered that on balance, the proposal will lead to less than substantial harm to the heritage significance of these assets", the implication being that this was sufficient (Case Study 6).

#### Giving 'great weight' to conserving heritage assets

2.55 The Courts have ruled that, rather than being a stand-alone policy, giving 'great weight' to designated heritage assets must be read alongside the whole of paragraphs 126-134 (see Appendix 3 paragraphs A3.11-12). In policy, NPPF paragraph 132 begins with the statement: "When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be." For example, the 'great weight' policy can be put into effect when applying paragraph 134 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 securing its optimum viable use". We enquired whether case officers had given attention to the 'great weight' policy and, if so, how. Q21 asked 'Did the case officer's report give great weight to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets' importance)?' The results are shown in Figure 16. In addition, statements made about this in case officer reports were recorded separately.



**Figure 16 Did the case officer’s report give great weight to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets’ importance)? (No. of LPAs)**

2.56 Barely a quarter of case officers clearly gave ‘great weight’ to heritage assets in their assessments of planning applications sampled for this project. Figure 16 shows that just 75 did so (24%) and the remainder (243) did not. Specific evidence of local authorities giving great weight to heritage assets was infrequent, with only a few case officers going beyond making reference to the policy in NPPF paragraph 132 (see a selection in Box 1), though others referred to the legal requirements (see particularly paragraph A1.4 in Appendix 1) or other heritage policies in the NPPF. On this basis councillors could not claim to be unaware of the obligation, though mention of a policy is not the same as evidence of its implementation. The assessment of case officers’ reports took a

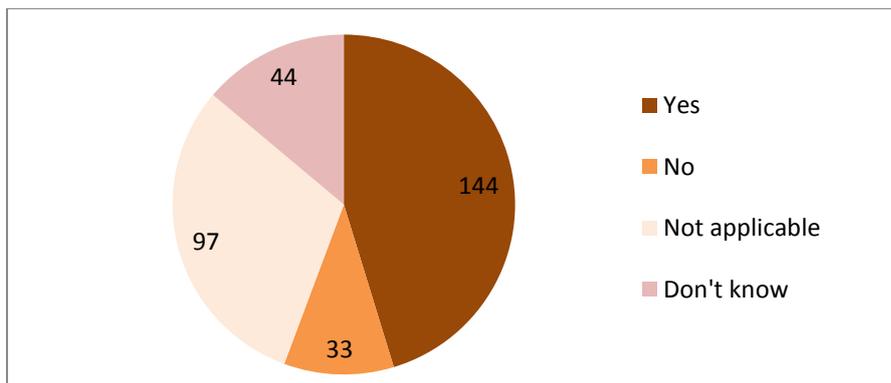
**Box 1 Examples of local authority case officers giving ‘great weight’ to heritage assets**

- “Whilst there is an impact on the setting of the building which does cause some harm above the level of negligible, this harm needs to be given special weight in any consideration when deciding to grant consent or not” (South Derbyshire);
- “In short, there is a requirement that the impact of the proposal on the heritage assets be very carefully considered, that is to say that any harm or benefit needs to be assessed individually in order to assess and come to a conclusion on the overall heritage position. If the overall heritage assessment concludes that the proposal is harmful then that should be given ‘considerable importance and weight’ in the final balancing exercise having regard to other material considerations which would need to carry greater weight in order to prevail” (Haringey);
- “even though the harm may be at the lower end of the possible range of impacts it must nevertheless be given substantial weight in the balance of consideration” (Bolsover);
- “officers have given considerable importance and weight to the desirability of preserving the setting of the Grade II Listed St Antony’s Church” (Newham);
- “Despite the fact that the development would result in less than substantial harm, considerable weight was still given to the resulting harm in the assessment of the application to ensure that the setting of the listed buildings and structures was preserved” (Tower Hamlets);
- “The church of St Mary, Sevington is a grade-I listed building and is therefore of the highest order of significance. It therefore demands that the greatest weight should be given to its conservation when determining this application” (Ashford);
- “Whilst harm to the adjacent heritage assets is assessed as being minor, such harm has been afforded considerable importance and weight in the overall planning balance” (Calderdale);
- “[as] harm is largely limited to one side of the bridge and the significant majority of the bridge would remain unaltered, it is not considered that the harm is substantial. However less than substantial harm is identified and there is a consequent strong presumption against the development. The harm identified must be given considerable weight” (Selby).

generous view of evidence which could be counted as giving heritage ‘great weight’, which puts into perspective the 76% of case officer reports which could not be recorded as demonstrating implementation of this policy. As overt commitment to giving ‘great weight’ to heritage is so thin, evidence must be sought across a wider range of arguments used by case officers. In particular there is further evidence on implementation of policy to protect heritage reviewed in paragraphs 2.62-65 and Figure 19 below regarding the obligation on case officers to give ‘clear and convincing justification’ for any harm to or loss of a heritage asset.

Responding to heritage consultees

2.57 The case officer must assemble the arguments presented by different parties to a planning application and provide an analysis of them. So far as implementing the NPPF heritage policies is concerned, advice is provided from potentially three different sources: the local authority’s own specialist heritage adviser and from two statutory consultees: Historic England and The Gardens Trust. The project examined the impact on the case officer’s report of contributions from each of these. The principal advice on heritage should come from the local authority’s specialist heritage adviser. Q22 therefore asked ‘Did the case officer’s report follow any recommendations made by heritage adviser?’ The results are provided in Figure 17. In addition to positive and negative answers, a distinction is made between cases that were not applicable (if there was no heritage adviser or no recommendation from the heritage adviser) and information that was not known (e.g. there was known to be heritage advice but it was not readily available and not clearly reported in the case officer report).

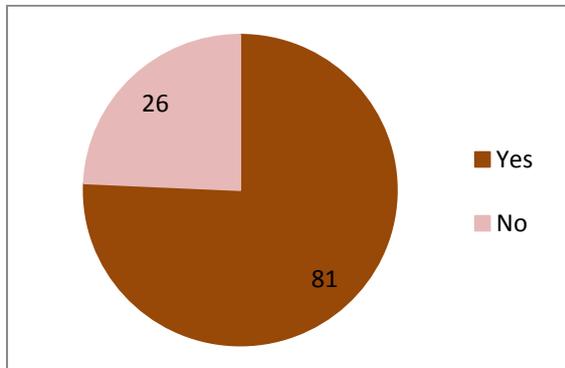


**Figure 17 Did the case officer’s report follow any recommendations made by heritage adviser?**  
(No. of LPAs)

2.58 The principal finding is that the case officer followed the recommendations made in the large majority of cases where the views of the specialist heritage adviser are known. Figure 17 shows that recommendations were followed in 144 cases (45% of all authorities and 81% of cases where the heritage adviser’s recommendations are known). There were 33 cases where heritage advisers’ recommendations were not accepted (10% of all authorities and 19% of cases where the heritage adviser’s recommendations are known). The reasons why case officers did not accept heritage advisers’ recommendations are outlined in paragraph 3.23. There was no information for the other 141 authorities (44%), with 97 of them (31% of all authorities) not being applicable for want of heritage adviser advice. The consequence for heritage outcomes when heritage advice is not available, compared with when it is available, is reviewed briefly in paragraphs 3.19-21.

2.59 The project aimed to establish how much impact statutory consultees had on local authority decisions, principally in persuading case officers of the actions needed in the interests of designated heritage assets. Q23 and Q24 were ‘Did the case officer’s report follow any recommendations made by Historic England?’ and ‘Did the case officer’s report follow any recommendations made by The

Gardens Trust?’ Statutory consultees are only consulted in relevant cases, not all the 318 planning applications studied. In the context of incomplete consultation with statutory consultees (paragraphs 2.35-36, 2.38 and 2.40 above), Figures 9 and 10 showed that Historic England and The Gardens Trust responded to 153 and 3 consultations respectively. 105 of Historic England’s responses were site-specific. An assessment was made in 107 authorities on whether Historic England’s recommendations had been taken forward<sup>7</sup>. The results are shown in Figure 18.



**Figure 18 Did the case officer’s report follow any recommendations made by Historic England?**  
(No. of LPAs where Historic England made recommendations)

2.60 Historic England’s advice was followed on about three quarters of the occasions when it made site specific recommendations. Although a reasonably large proportion this was slightly less than the 81% acceptance of local authority specialist heritage advice on the same basis (see paragraph 2.58). Figure 18 shows that Historic England recommendations to local authorities were followed by case officers on 81 occasions (76%) but not taken forward on 26 occasions (24%). The Gardens Trust made recommendations in two consultation responses. Both of these were followed by the case officer, one each in Amber Valley and Knowsley. Examples from our case studies when case officers disagreed in whole or part with the recommendations from Historic England are Case Studies 1 (Bedford), 2 (Birmingham), 5 (Camden), 8 (King’s Lynn & West Norfolk), 14 (Middlesbrough) and 24 (Worcester). In each case Historic England had proposed a more robust defence of heritage interests than had the local heritage adviser, and to that extent outcomes were not as satisfactory for heritage as they might have been.

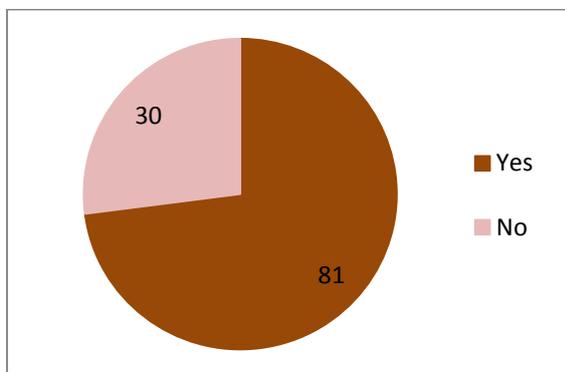
2.61 Case officers’ reports were studied in an attempt to identify why Historic England’s recommendations had not been accepted in a quarter of applications sampled. The main reasons grouped themselves between cases where the case officer did not accept the advice of Historic England in heritage terms and cases where other interests were held to outweigh the accepted heritage drawbacks. There were various levels of non-acceptance of Historic England’s heritage advice. At least four case officers simply felt that in heritage terms a different course of action (approval of the application) would produce a superior heritage outcome. In other applications case officers preferred the view of their own conservation officer or the applicant, in each case placing less weight on heritage protection than Historic England. The degree of engagement with heritage issues varied, from those case officers who made a point by point assessment and rebuttal of Historic England’s advice (notably Westminster (Case Study 23)) to six who paid little or no apparent attention to it, all of whom recommended approval of their applications. In one case the Historic England advice was misreported as causing no harm (King’s Lynn & West Norfolk, [see Case Study

<sup>7</sup> This was not exactly the same authorities as those 105 authorities in which Historic England had made site-specific recommendations: a few of these were omitted because the advice was not in recommendation form, whereas a few others were included where non-site specific recommendations were considered capable of being assessed.

8]). In at least five applications the case officer accepted the generality of Historic England’s concerns for heritage but came to the conclusion that development interests carried greater weight (including Salford [see Case Study 16] and Chichester [see Case Study 6 and paragraph 2.54]). In a few cases the Historic England advice was proposed to be taken forward by different means from those recommended (e.g. at ‘reserved matters’ stage or by controls on a parallel Listed Building Consent application). Some of these cases and others also involved Historic England advising authorities to follow particular advice it highlighted from the NPPF, with such advice not in practice being followed carefully.

#### Providing clear and convincing justification for any heritage harm

2.62 The NPPF provides clear guidance on the approach which local planning authorities should take when considering approving applications which would cause ‘substantial’ or ‘less than substantial’ harm to the significance of heritage assets. Paragraph 132 states: “As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification”. This is to be read alongside the injunction in the same paragraph that “When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation”. Even more than the issue of giving great weight (reviewed in paragraphs 2.55-56 above), the claim of providing ‘clear and convincing justification’ is best measured in the actuality rather than in a statement about doing so. This was a matter of judgement, especially at the margin, rather than an objective task for this project. Q25 asked ‘If recommending that the benefits of a proposal outweigh the heritage interest (whether harm would be substantial or less than substantial), did the case officer’s report provide clear and convincing justification for any harm to or loss of a heritage asset (proportionate to the proposal’s impact on its significance)?’ This was supplemented by recording the statements given by case officers when we judged the answer to be ‘yes’. The results are shown in Figure 19.



**Figure 19** If recommending that the benefits of a proposal outweigh the heritage interest (whether harm would be substantial or less than substantial), did the case officer’s report provide clear and convincing justification for any harm to or loss of a heritage asset (proportionate to the proposal’s impact on its significance)? (No. of LPAs where benefits outweighed harm)

2.63 The main finding was that local authority case officers were assessed to have provided clear and convincing justification for approvals to proposals harmful to heritage in nearly three quarters of cases where the policy applied. The pool of relevant applications from the sample of 318 authorities was greatly reduced by 207 applications to which Q25 was inapplicable. This was because all cases were excluded where: (i) there was said to be ‘no harm’ to heritage assets; or (ii) the level of harm was not assessed at all; or (iii) proposals causing ‘substantial harm’ or ‘less than substantial harm’ were refused. Of the remaining 111 applications, case officers were assessed to have provided clear and convincing justification for approvals to harmful proposals in 81 cases (73%) but not in the other 30 cases (27%).

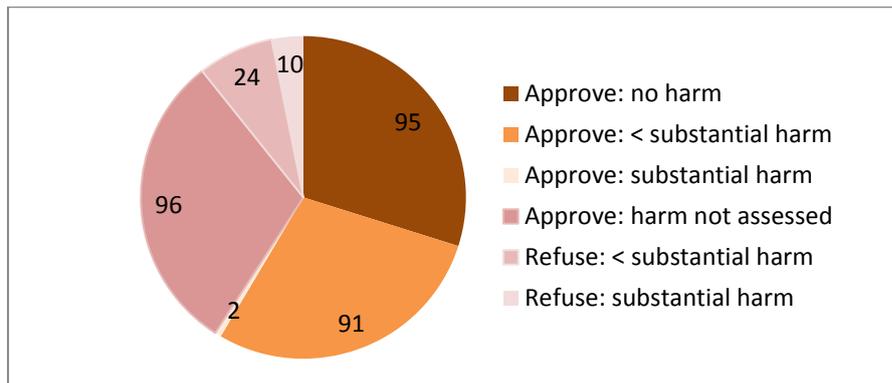
2.64 The project reviewed the clear and convincing justifications given by case officers for recommending approval of planning applications assessed to cause harm to heritage assets. Public benefits outweighing heritage interests was the dominant explanation. Our starting point was that, given the local knowledge of the case officers, the project erred on the side of accepting arguments for agreeing to heritage harm, even though some of the propositions did appear somewhat casual towards heritage: locally they could have seemed clear and convincing. Some case officers gave more than one reason for justifying harmful development (so there is a little overlap in the figures below).

- The overwhelming reason for allowing developments harmful to heritage was the outweighing public benefits: at least 40 case officers emphasised this.
- 15 case officers identified the public benefit of housing provision specifically. Public benefits were therefore crucial to the case officers' judgements in two thirds of the cases where harm would be caused.
- Securing a future for important heritage (whilst acknowledging that there would be some harm from the development) was another important reason, given by 11 case officers.
- 3 case officers added that listed buildings would benefit, on balance, from works proposed to them.
- 2 case officers accepted road-related developments as the least harmful options for heritage having considered alternatives.
- 1 case officer argued that an alternative option preferred in heritage terms was not viable.
- 3 more case officers considered that development in the setting of listed buildings would enhance rather than detract from these (despite other accepted harm).
- 12 case officers considered that the limited level of harm to heritage assets was insufficient to resist the applications, usually as a result of good design proposals or other mitigation (including separation by distance or planting).

2.65 There was evidence that case officers provided 'clear and convincing justification' for heritage damage that was proportional to the harm to be caused. The project sampled many cases where the level of harm to heritage assets was on the lower end of 'less than substantial', so the requirement for powerful justification to grant permission for beneficial schemes was reduced in these cases. This may explain why in some cases the level of benefit offered seemed low. At the other end of the scale, there were two cases where the case officer had identified 'substantial harm' to heritage but nevertheless considered there was clear and convincing justification for approval. One of these was in Salford (see Case Study 16). The other involved the demolition of non-designated former loom-making factory buildings (later a pallet works), though not the principal listed office building and clock tower. This would be followed by the development of a school in their place adjacent to and incorporating the main building. On the demolition application the case officer concluded: "Officers recommend that the demolition application should be approved as the planning benefits to the area that are a consequence of the demolition and subsequent redevelopment of the site amount to substantial public benefits that outweigh the strong legislative presumption against the demolition of the factory buildings and subsequent harm to the setting and context of the Grade II listed office building". On the school application the case officer advised "In this unique instance, the significant benefits that delivering a new, fit for purpose school and the shortage of alternative sites to develop a new school on, amount to substantial public benefits that outweigh the normal presumption against a scheme affecting the setting of a listed building. The proposed development therefore complies with paragraph 133 of the NPPF. Policy therefore indicates that the scheme should be approved in these circumstances."

## Recommendations in heritage-related cases

2.66 How heritage fared in case officer's recommendations was explored in Q26 'What was the case officer's recommendation on heritage grounds?' Recommendations by case officers were logged against seven options for approval or refusal against various kinds of harm to heritage. However, one of them was not invoked once in the 318 cases sampled, namely the option from the NPPF to 'Approve where there was substantial harm to the heritage which was outweighed by all four criteria in paragraph 133.' This was dropped from all further assessments. The results are shown in Figure 20.

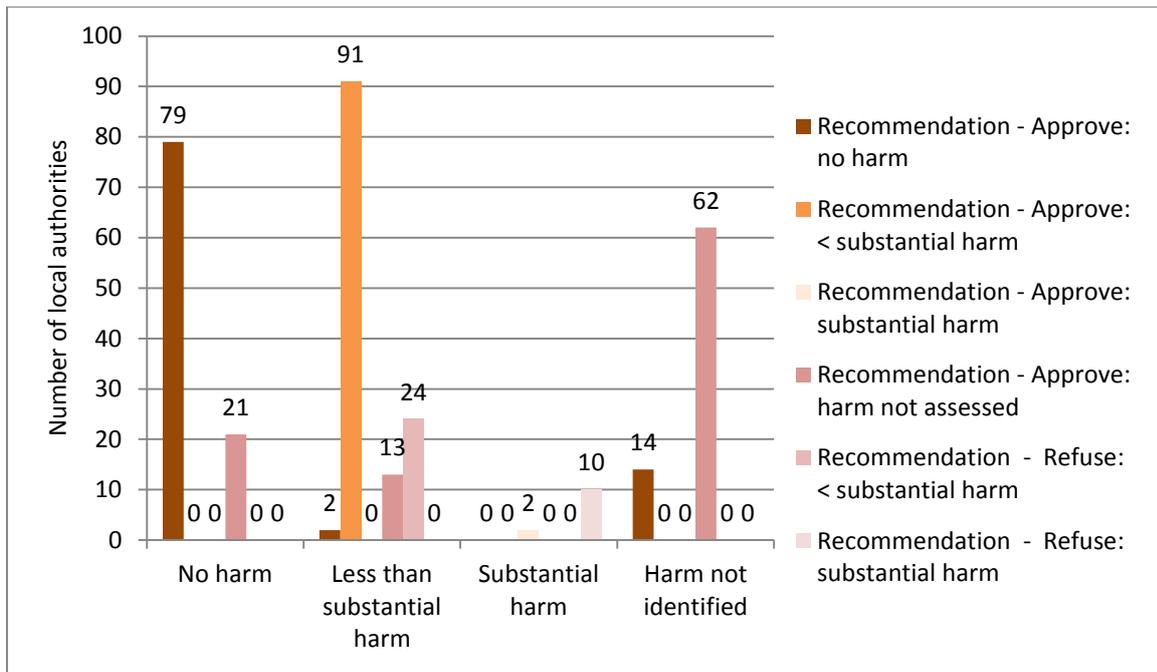


**Figure 20 Case officers' recommendations on heritage grounds by region (No. of LPAs)**

2.67 A key finding from local authorities is that case officers' approval recommendations dominated the sample of applications (89%). Figure 20 shows that the bulk of these recommendations were fairly evenly spread across three of the categories: 'Approve as no harm to heritage assets' (95 cases [30%]), 'Approve where there was less than substantial harm to the heritage which was outweighed by the public benefits of the proposal (including securing optimum viable use of the heritage assets)' (91 cases [29%]), and 'Approve without reference to harm or without reference to heritage assets' (96 cases [30%]). With just 2 cases where officers recommended approval despite substantial harm to heritage assets (see paragraph 2.65) the total number of approval recommendations was 284. Of the remaining 34 cases in which refusal was recommended, there were 24 cases of 'Refuse due to less than substantial harm to the heritage' (8%) and 10 cases of 'Refuse due to substantial harm to the heritage' (3%).

2.68 The sample data by region can also be broken down according to the assessment of harm levels which case officers had previously made (recorded in Figure 19 above). This is presented in Figure 21.

2.69 Figure 21 provides a different perspective on case officers' approach to heritage harm. The key feature is that information about case officers' recommendations broadly follows the level of harm to heritage they had previously identified, which is to be expected. Nonetheless, Figure 21 shows an anomaly which sheds light on how planning practice can take a confusing approach to heritage. There are two cases where the project recorded that applications would cause less than substantial harm to heritage, but case officers recommended approval on the basis of no harm: that ought not to be an allowable outcome. Case officers in both authorities made similar errors in that they applied their own assessments to the applications rather than follow the step-by-step approach expected by the NPPF. In Lancaster (Case Study 10), the case officer clearly accepted there would

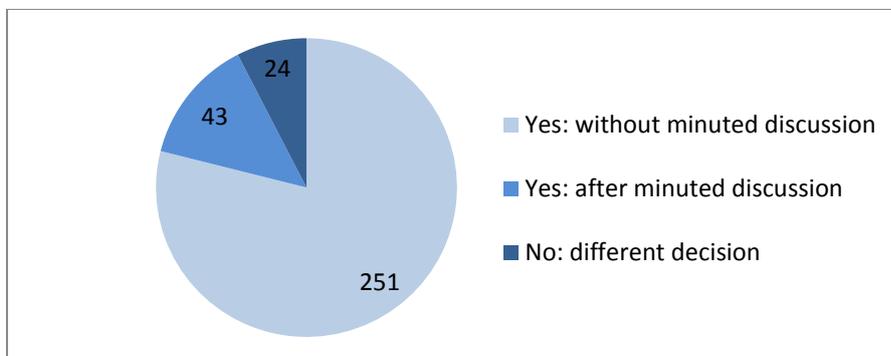


**Figure 21 Case officers' recommendations on heritage grounds by level of harm (No. of LPAs)**

be less than substantial harm to the heritage asset (though without using that terminology). After considering the benefits of the scheme and some amendments to it the conclusion was reached that there would not be an adverse effect on the setting of listed buildings, again without using the NPPF procedures. Similar problems arose with a small development in another authority: aspects of harm were identified but after making various allowances the case officer recommended approval on the basis of no harm. Had the NPPF approach been used there would have been less than substantial harm (at the lower end) and a need to show that the mitigating circumstances were clear and convincing justification for the scheme to be allowed (i.e. sufficient or, alternatively, the proposal needed further attention).

### **Councillors' decisions**

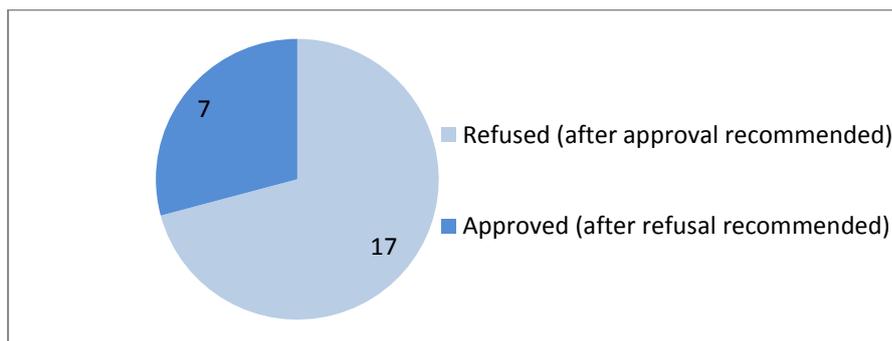
2.70 The final stage in the development management process at the local authority level is the decision by the authority, which was by a committee of councillors in all cases sampled for the project. Q27 asked 'Did councillors implement the case officer advice on heritage specifically?' The results are shown in Figure 22.



**Figure 22 Did councillors implement the case officer advice on heritage specifically? (No. of LPAs)**

2.71 The evidence is clear: councillors overwhelmingly agreed with the recommendations of their officers. Figure 27 shows that this happened on 296 occasions with disagreement on just 24 (8%).

There were also cases in the sampled applications where officers' recommendations were overturned for reasons other than heritage (on at least 9 occasions), but these are not taken into account in this graphic. The cases of agreement are divided between those in which the committee minutes do and do not record discussion involving heritage issues. Heritage was clearly either an important or a controversial issue in the 43 cases where discussion was recorded. However, caution should be exercised in interpreting the figure of 251 cases where no heritage discussion was recorded: many local authorities in practice generally only report the decisions reached or offer only an extremely brief summary of discussions, so absence of mention of heritage may not necessarily indicate absence of discussion of it. Combined with the evidence presented in Figure 20, data can be separated between occasions when councillors refused applications they were recommended to approve and approved applications they were recommended to refuse. This is shown in Figure 23.



**Figure 23 Councillors' decisions overturning case officers' recommendations** (No. of LPAs)

2.72 Figure 23 shows that councillors approved 7 applications they were recommended to refuse and refused 17 applications they were recommended to approve, on heritage grounds. Of the 7 applications approved, officers had identified 'substantial harm' to heritage assets in two cases and 'less than substantial harm' in 5 cases. One of these, where 'less than substantial harm' was identified, is reported in Case Study 7 (Forest of Dean). Of the cases refused, officers had identified harm to heritage assets in 5 cases (all 'less than substantial'), with the remaining cases having 'no harm' (5) or where harm to heritage was not mentioned at all (7). Case Study 24 (Worcester) reports a planning application where councillors were initially minded to refuse on heritage grounds, against officer advice, (but 10 months later did approve the application).

2.73 Information was additionally obtained from committee minutes on the reasons given by councillors on those occasions they departed from their officers' recommendations (sometimes for more than one reason). In the cases with identified 'substantial harm' to heritage which were approved, no reasons at all were given in the committee minutes in one case, while public benefits outweighing the heritage harm was the reason given in another. Public benefit outweighing heritage interests was also the main reason for approving three other schemes, while in at least two applications the councillors did not consider there would be substantial harm to heritage, and in another the proposal would secure a viable use for two listed buildings. Sometimes the reasons given lacked full clarity, while some of the public benefits claimed were flimsy (e.g. one development was approved because it designed for the applicant's elderly parents – which is in any event more of a private benefit than a public one).

2.74 The reasons for refusals against recommendation centred on impact on the settings of nearby listed buildings (10 cases) and the design quality of the proposals (6 cases). Adverse impacts from design changes to listed buildings were cited in 3 cases and the unacceptable loss of a decaying listed barn in another. In five of the 17 cases refused the case officer had recommended approval on the basis of no harm to heritage assets. However, this sometimes contributed to the decision, as councillors gave greater weight to the advice given by the heritage adviser who had objected to the proposal (notably in Sevenoaks).

## CHAPTER 3

### **ASSESSMENT OF PLANNING APPLICATION FINDINGS**

3.1 The wealth of information from 318 planning applications in different authorities around England provides an insight into how well the heritage policies of the NPPF are being applied in practice. This chapter draws out some of the main findings, looking at the implications of the evidence both on specific topical issues and combined from a number of topics. Further reference is made as appropriate to the 25 case studies prepared under Part Two of the project which illustrate issues raised here. The chapter is divided into sections on the main stages corresponding to the main parties charged with implementing NPPF heritage policies: applicants for planning permission, local authority specialist heritage advisers and local authority case officers. Reference is made to the research questions, which are listed in Appendix 4.

#### **Applicants for planning permission**

##### Adherence to the NPPF policy approach

3.2 Information from applications to answer the first six questions for the project can usefully be examined in aggregate at the national level. This gives an overall impression of the adequacy of heritage information accompanying planning applications where heritage assets might well be affected. First, a review of the data shows that 81 applicants (26%) satisfied all the policies in paragraph 128 of the NPPF (Qs 1-6). This rises to 135 (43%) if cases where archaeological information was 'not applicable' are also accepted as not changing the pattern of success. To this extent, the expectations of the NPPF are being met by applicants. Well over half of all applicants are falling short in applying relevant NPPF heritage policies fully.

3.3 Second, at the opposite end of the spectrum, there is a large group of applicants barely applying the NPPF heritage policies at all. 48 applicants (15%) were inadequately supported in that negative responses were given to all six questions. This rises to 80 applicants (25%) if cases where archaeological information was 'not applicable' are also accepted as not changing the pattern of inadequacy. A further 23 applicants (7%) took only one of the six actions expected by the NPPF (12 of which were the correct identification of heritage assets to assess, in Q1). These 103 applications were especially inadequate.

3.4 Mitigating circumstances for the worst-case findings have been considered:

- (i) There is a possibility in some cases that a negative response to questions reflects an absence of evidence available to the project rather than actual omission. These are likely to have been very few, but the figures given can be treated as 'worst cases'.
- (ii) A lower level of information may have been acceptable if this was 'proportionate' to the importance of the heritage assets affected (NPPF paragraph 128 allows). However, the NPPF also states that 'as a minimum' the Historic Environment Record should have been consulted and appropriate heritage expertise used 'where necessary'. These were not done in the cases above.
- (iii) Some applications may not have merited attention to heritage assets at all. This is not the case, given that the sampling method aimed to avoid de minimis impacts on heritage.

None of these arguments can explain the performance of the worst applicants. Overall, therefore, 32% of applicants appear to have provided wholly insufficient information about heritage assets to inform a judgement about the impacts of their proposals on heritage. This also puts designated heritage assets at risk: in 26 of the 80 cases where no information was provided, either the local authority's specialist heritage adviser or the case officer (or both) identified that the applications

would cause harm to heritage assets (in one case substantial harm). In those cases especially there can be no justification for the absence of supporting heritage information with the application.

3.5 Third, the data show that there were still significant failings amongst applicants in addition to the 80 inadequately supported applications noted above. Out of the remaining 238 cases, therefore, one or more of the following applied to individual applications, in addition to those 80 cases:

- 20 applicants failed to identify the heritage assets affected (31% overall);
- 56 applicants failed to identify the significance of relevant heritage assets (43% overall);
- 35 applicants failed to consult the Historic Environment Record (36% overall);
- 36 applicants failed to avail themselves of heritage expertise (37% overall);
- 57 applicants failed to identify the impact on heritage significance (43% overall).

Even allowing for data limitations and ‘proportionality’ as described above, the finding is that persistently more than 30% of all applicants fail to satisfy at least one of the few policies applicable to applicants where heritage assets would be affected. In particular 43% of applicants did not address the key issue of the proposal’s impact on the significance of designated heritage assets. The NPPF is clearly not being applied properly when such a large minority of applications were not accompanied by adequate information on heritage.

#### The adequacy of heritage statements

3.6 The analysis in this subsection shows that:

- (i) heritage statements are not always reliable, notably in identifying the impacts of planning applications on heritage assets, and should not be treated unquestioningly;
- (ii) applicants can reasonably be asked to provide additional heritage information if needed;
- (iii) there is no evidence that applicants systematically submit poorer standard heritage statements to authorities unlikely to have available heritage experts to scrutinise them; and
- (iv) more can be done both by applicants and local planning authorities to raise the standards of weaker heritage statements.

3.7 Heritage statements support their accompanying planning applications. Those who write them must blend objectivity with trying to help applicants to obtain planning permission. Often there need be no difference between the two. However, the project identified about two dozen cases where deficiencies in heritage statements had been the subject of adverse comment by Historic England or the heritage adviser to the local authority. There is some evidence that heritage statements are better at identifying heritage assets and explaining their significance than they are at helping to understand the potential impact of the application on that significance (see paragraph 2.15). This was the case in Case Studies 2 (Birmingham), 5 (Camden), 6 (Chichester) and 21 (Tower Hamlets), for example. Specialist heritage advisers and case officers in local planning authorities must be alert to deficiencies in the arguments put forward rather than assume that heritage statements are wholly reliable. This can include suggestions that the significance of historic buildings lies in their architecture and history rather than their setting (as happened in Case Study 6 in Chichester). Heritage advisers need not accept the findings of heritage statements, which was the position for example in Case Studies 1 (Bedford), 6 (Chichester), 9 (Knowsley) and 17 (South Gloucestershire). On the other hand, in a number of applications case officers took the risk of treating the assessment in a heritage statement as superior to the advice from heritage advisers or Historic England (see for example Cases Studies 2 (Birmingham) and 8 (King’s Lynn & West Norfolk)). At 17 Wellington Street, Leeds (Case Study 11) the heritage statement properly identified the significance of the listed building and recognised that the proposed partial demolition and new building would ‘have a major impact’ on it. This was a view shared by Historic England and broadly supported by councillors; in contrast the Conservation Officer and Case Officer expressed much less concern about the building or the design of its replacement and only applied the NPPF weakly.

3.8 Data were not collected on a systematic basis about the number of occasions on which there were sufficient deficiencies in heritage statements for local planning authorities to oblige applicants to submit updated information to achieve compliance with the NPPF. Rather, the project’s assessment took the ‘final’ position in respect of information provided, so cases in which local authorities required more information from applicants have already been taken into account in the positive recording of outcomes from Question 1-6. Nonetheless, various cases were noted where further information was requested. For example, concerns expressed by Historic England led to further work being undertaken by the heritage consultants for developments in Case Studies 5 (Camden), 6 (King’s Lynn & West Norfolk) and 12 (the former Majestic Cinema, Leeds).

3.9 There is a possibility that heritage statements submitted with planning applications may be less satisfactory in planning authorities which are less inclined to scrutinise heritage issues. The project was unable to isolate accurately those authorities which did not have specialist heritage advisers available to them (see paragraphs 2.19-20) but did identify when heritage advice was not obtained (which could include when there was no adviser). That information is reported primarily in Figure 7 (and is also included within the results in Figures 8 and 10). This can be used with the results from Qs 1-6 to show whether applications affecting heritage are weaker in authorities which are less likely to use specialist heritage advice.

	LPA heritage advice obtained (221 cases)	LPA heritage advice not obtained (97 cases)
Applicant Qs 1-6 all ‘no’*	34%	27%
Applicant Qs 1-6 all ‘yes’*	44%	39%

**Table 1 Heritage assessment in applications in relation to LPA conservation advice**

\* Includes where answer to Q5 is ‘not applicable’

3.10 The results are shown in Table 1. This compares heritage-related applications which met all the procedural policies of the NPPF (bottom row) with those which met none of them (top row), in the two kinds of authorities (which our evidence shows did and did not use heritage advice to scrutinise applications). Table 1 shows that there was no significant difference between applicant behaviour in the two types of authority. The bottom row shows that there were proportionately slightly more high-standard applications in authorities where heritage is scrutinised effectively than where it is not. However, crucially, the top row shows that there were also more low-standard applications in these authorities too – there would have been fewer if applicants put less effort into applications to authorities without heritage advice. Although the figures are not greatly different between the two types of authority, they do not suggest any systematic dropping of standards by applicants in authorities which take a weaker approach to scrutinising heritage-related applications.

3.11 Many heritage statements are entirely satisfactory, but there is a significant minority which are not. At the very least there were 26 applications (8%) submitted without any adequate heritage information which were found by local authority officers to be harmful to designated heritage. On some other measures, the deficiency level rose to 43% (paragraph 3.5). This suggests that there is distinct room for improvement by applicants in their attention to the NPPF paragraph 128 when heritage might well be affected.

3.12 While this is primarily a matter which applicants need to address, local authorities can help them to do this – and create a climate with higher expectations of applicants – by taking a more demanding approach to the fulfilment of the NPPF. Local planning authorities could more vigorously refuse to register or process planning applications which fail to satisfy the information requirements of NPPF paragraph 128 until this information is provided. The NPPF is inherently sympathetic to local authorities taking an assertive approach to the provision of information: twice in paragraph 128 the policy presses that “local planning authorities should require” applicants to

submit the information expected. Previous national policy in Planning Policy Statement 5 addressed this at paragraph HE6.3 “*Local planning authorities should not validate applications where the extent of the impact of the proposal on the significance of any heritage assets affected cannot adequately be understood from the application and supporting documents.*”

### **Local authority specialist heritage advisers**

3.13 This section reviews a selection of topics which measure the performance of local heritage specialists in relation to NPPF policy:

- (i) responses across the sample of planning applications in aggregate to questions asked of these advisers;
- (ii) the impact of cutbacks in heritage staff on applying the NPPF;
- (iii) the effect on applying the NPPF of whether or not specialist heritage advice was provided;
- (iv) the acceptance or otherwise of specialist heritage advice by case officers.

### **Adherence to the NPPF policy approach**

3.14 Figures 3, 4 and 5, particularly, in Chapter 2 indicated the rather low level of take-up of the NPPF policy approach on individual issues in the practices of local authority specialist heritage advisers. Their performance in assessing planning applications likely to affect heritage assets can also be examined in aggregate at the national level across five questions asked for the project. Although six questions were asked about these advisers, Question 7 concerned their availability to the local authority rather than their actions and can be omitted. Questions 8, 9, 11, 12 and 13 tested broad compliance of heritage advisers with NPPF policies. Non-compliance was easier to assess than compliance: non-compliance arose in (at least) all authorities with negative answers to these questions. There were 13 of them, including South Northamptonshire (see Case Study 18) and Southampton (Case Study 19). There was also non-compliance in the Leicester Case Study (13). Compliance with NPPF policies could clearly be achieved in authorities where answers were positive to all five questions, and there were 16 of these. (As previously noted in Chapter 2, there were large numbers of authorities where usable information was not available to answer questions on heritage advisers’ activities, so these numbers should not be set against the full sample size of 318 authorities.)

3.15 Any measure of performance across all authorities by specialist heritage advisers should more suitably be confined to Questions 8, 9, 11 and 12. This is because Question 13 does not always apply, so authorities should not necessarily be penalised for providing a negative response to it. Question 13, on whether advice was offered on the weight to give heritage in relation to benefits, only applies when there would be harm to heritage assets. In any event, Question 13 is not a key task for heritage advisers, though it can assist case officers (the matter is primarily one for case officers, covered in Question 25). If the need to fulfil Q13 is neglected, 19 more authorities fully comply with the NPPF by providing positive responses to Questions 8, 9, 11 and 12, making a total of 39 applications (12% of applications)<sup>8</sup>. This is a ‘worst case’ figure, though, because some of them may not have needed a positive response to Question 12 on mitigation. Nonetheless this is a still strikingly small fraction fully in compliance with NPPF heritage policies. Heritage advisers to 21 authorities are known to have not applied any of the four policies (7%). There were large numbers of authorities where the actions taken by the specialist heritage adviser were not known, depressing both figures considerably, and also no allowance has been made for those authorities which did not have specialist heritage advice available to them.

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<sup>8</sup> There is also an argument for omitting Question 12, on mitigation to avoid and minimise conflict with heritage, as this may not need to be applied in cases where an application is identified to cause ‘no harm’ to heritage assets without mitigation. However, we cannot know how many applications genuinely did not need mitigation, so the expectation of a positive response to Question 12 should remain in place.

3.16 These results give some indication of compliance with the NPPF. They do not give a satisfactory measure of attention to heritage. The project found numerous heritage advisers offering careful assessment of the heritage impacts of planning applications, but not following the procedural steps in the NPPF. In South Northamptonshire (Case Study 18) for example, considerable attention was given to the heritage impacts of the application by the specialist adviser but not in the manner the project was assessing. Large numbers of heritage advisers continued to operate with a pre-NPPF approach. We took a generous approach to recording performance where, for example, an adviser might identify the level of 'harm' to heritage assets while using different terminology, and as a result be scored positively against the relevant questions (see paragraph 2.49 on our approach to this). Including advisers who gave a satisfactory measure of attention to heritage by other means would notably raise the measure of commitment to heritage, even if not compliance with NPPF heritage policy.

#### Impact of heritage adviser availability

3.17 There have been cutbacks in heritage staff over recent years, but numbers of planning applications and numbers of heritage assets needing protection have stayed much the same (or increased slightly). The question therefore arises whether authorities most adversely affected by staff workloads are the ones who did not use heritage advice on the sampled planning applications. The annual survey of *Local Authority Staff Resources* produced by Historic England, the Association of Local Government Archaeological Officers and the Institute of Historic Building Conservation provides evidence on full-time equivalent heritage staff employed. There has been a downward trend since 2006. One possible consequence is that the shortcoming amongst specialist heritage advisers in implementing NPPF policies is really measuring a shortage of heritage staff rather than anything specific to the NPPF. Certainly Figure 7 showed that there were 97 authorities in which there were either no specialist heritage advisers available to comment on planning applications or no record of their advice having been obtained (though paragraph 2.20 explained why that number was likely to be an over-statement of difficulties). The non-availability of heritage advisers, or at least failing to seek their advice if they are available, can result in heritage interests in planning applications being overlooked or inadequately assessed (see for example Case Studies 3 (Bolton) and 25 (Worthing)).

3.18 Our investigation into this is reported in Appendix 7. It examines not just the number of heritage advisers in each local authority but also their workload. Local authorities with more planning applications to deal with each year and more listed buildings to conserve (the principal class of heritage asset) can be expected to have higher development management workloads. Adjusting for these gives a much better indication of the number of staff likely to be available in each authority rather than just the headline number of staff (though even so the results can only be indicative). A standardised availability of staff is calculated for each authority on this basis. The analysis then compares all 318 authorities in the project with those authorities where there is no reference to advice having been obtained for this project, using the standardised staff availability number for each authority. The expectation might be that there would be greater workloads per staff member in authorities which did not use heritage advice on the sampled applications. Rather, the analysis showed that there were slightly more staff available here than across the 318 authorities as a whole. Pressures of workload therefore seem highly unlikely to explain why implementation of NPPF heritage policy by specialist advisers is better in some authorities than in others.

## Impact of heritage advisers' advice

3.19 One of the objectives of the project was to identify any discernible differences to the implementation of the NPPF when specialist conservation advisers were or were not used to advise local planning authorities (paragraph 1.6). The appropriate heritage expertise available to local planning authorities is identified in Figure 7, including where there is no reference to heritage advice having been obtained. This Figure was the closest the project was able to get to finding 'when specialist conservation advisers were or were not used'. Within this category there is a possibility that in some cases heritage expertise was used but the project was unable to identify it (see paragraph 2.20). The non-use of heritage advisers may therefore be exaggerated. The performance of these 97 authorities in heritage terms can be isolated and compared with the performance of all the other 221 authorities (where advice was known to have been provided – i.e. all the other options in Figure 7). It is the case officer for each application who must address heritage issues if there is no internal heritage advice. We have therefore examined how sympathetically case officers treated heritage in NPPF terms when heritage advice was either provided to them or not provided. This was done for the following questions:

Q17a: Did the case officer's report list the relevant heritage assets?

Q17b: Did the case officer's report identify their significance?

Q18: Did the case officer identify and assess the proposal's likely impact on the assets' significance (including settings)?

Q19: Did the case officer identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets?

Q21: Did the case officer's report give great weight to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets' importance)?

The results are shown in Table 2 below, with the table entries indicating where positive answers were given to the question (indicating compliance with the NPPF)<sup>9</sup>.

Case Officer treatment	Heritage advice provided	% (of 221)*	Heritage advice not provided	% (of 97)*
Question 17a	190	86	84	87
Question 17b	87	39	25	26
Question 18	161	73	69	71
Question 19	178	81	67	69
Question 21	59	27	16	16

\* % refers to the percentage of case officers who gave a positive response out of those addressing the issue.

**Table 2 Case officer positive responses to heritage with and without heritage advice**

3.20 Table 2 suggests that case officers were distinctly more likely to apply NPPF heritage policies in response to Questions 17b, 19 and 21 if they had received heritage advice than if they had not. There are sufficient data available in theory to run tests of statistical significance to show whether case officers were more likely to provide positive heritage responses according to whether or not they received heritage advice. However, those tests have not been used because the data used in Table 2 are not sufficiently reliable. The Table should be read as providing an indication only of the effect of heritage advice being available or not available. Table 2 shows that there was negligible difference in the actions of case officers according to whether they received heritage advice in terms of listing the relevant heritage assets (Q17a) and assessing the application's likely impact on heritage

<sup>9</sup> In Questions 17a, 17b and 21 the answers were either 'yes' or 'no' and so easily distinguished. In Question 18 on assessing the impact on heritage significance, case officers who fully or partially did this were distinguished together from those who did not. In Question 19 on harm levels, case officers who identified any of the three levels of harm were distinguished as a group from those who did not identify a harm level. Question 20 on mitigation was omitted as there were too many variables for data to be meaningful.

significance (Q18). Case officers who had received specialist heritage advice were discernibly more likely to provide an assessment of the level of harm to heritage than those who had not (Q19). Case officers who had received specialist heritage advice were, according to Table 2, 50% more likely to identify the significance of heritage assets than those who had not (Q17b), though still at a low rate. Most emphatically, case officers who had received specialist heritage advice appeared twice as likely to give great weight to conserving heritage assets as those who had not, though the sample size was notably smaller (Q21).

3.21 Taken together, the information in Table 2 suggests that, in terms of applying NPPF heritage policy, case officers perform sometimes substantially better if they have received specialist heritage advice. The benefit of heritage advice is especially notable on the key issue of giving great weight in their recommendations to conserving heritage assets.

#### The acceptance of advice provided by local heritage specialists

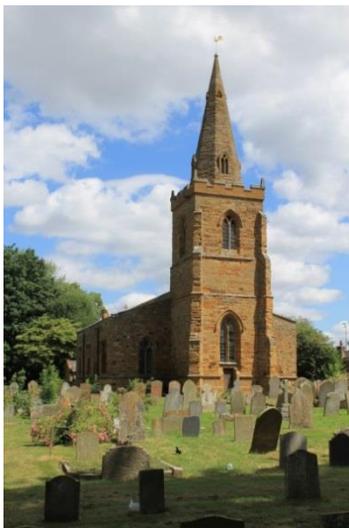
3.22 In cases where the local specialist heritage adviser does provide advice, the case officer agrees in the majority of cases. However, the occasions on which the case officer does not accept such advice provide an insight into how the NPPF is working in practice in development management. Paragraph 2.58 and Figure 17 showed that 81% of local heritage advisers' recommendations were accepted. However, as a minimum there were 33 planning applications where the case officer did not accept the advice from the specialist heritage adviser. The reasons were examined in detail.

3.23 The project found various reasons for case officer non-acceptance of local heritage recommendations, some of which merge into each other, but we have categorised them as follows:

- (i) The most frequently occurring reason was that the case officer did not accept the merit of the heritage advice (11 applications). Two of these applications are reported as Case Studies 10 (Lancaster) and 20 (Three Rivers). The case officer usually provided considered reasons for the disagreement. Case Study 13 (Leicester) also illustrates this.
- (ii) The case officer might recognise the adverse effects of a proposal on heritage but come to the conclusion that this was outweighed by the public benefits of the proposal (8 applications). Two of these applications are reported as Case Studies 6 (Chichester) and 18 (South Northamptonshire). Photographs 3 and 4 illustrate the latter on page 43. Case Study 4 (Bournemouth) also illustrates this.
- (iii) The case officer could simply appear to neglect the heritage advice given (6 cases), which tended to be on small applications.
- (iv) The case officer might conclude that the grounds for objection in heritage terms were insufficient reason to refuse planning permission (4 cases) (which should not be assumed to apply only to small developments – some of them were substantial).
- (v) The case officer preferred the advice from Historic England (3 cases, Historic England's advice being weaker than the heritage adviser's in two but more resistant to the development proposed in the third).
- (vi) Case officers have little difficulty agreeing that heritage advice on the adverse effects of development should be outweighed by public benefit arguments when the heritage adviser acknowledges this possibility (1 case)
- (vii) Case officers can misinterpret heritage advice, resulting in erosion of heritage. The heritage adviser did not clarify the level of harm from the application in line with NPPF policy, but this would have been at the lower end of 'less than substantial harm'; the case officer read the advice to mean 'no harm' (1 case). (In another authority outside the 33 cases, the Conservation Officer reported that the planning application 'would not cause significant harm', probably meaning 'less than substantial harm', but the Case Officer interpreted it to mean 'no harm'.) These cases illustrate the merit in following the NPPF policy process.

Spire of St Luke's Church,  
Kislingbury

Boundary of the proposed  
industrial park, marked  
by a hedgerow



St Luke's Church, Kislingbury, South Northamptonshire (Photo 3, left) is a mainly 14<sup>th</sup> century Grade I listed building. A 48ha industrial park was proposed east of the M1 at junction 16 in a wedge of land south of the A4500. The panorama of 150° (Photo 4, above), viewed from beside the A4500, shows on the right the boundary of the application site (which it would reach from the other side) and on the left St Luke's Church 1km further east. The planning decision is reviewed in Case Study 18 (and see also paragraphs 2.54, 3.14, 3.16, 3.23, 3.37 and 3.49). The impact of development proposals on the setting of heritage assets was agreed to be less than substantial. The case officer considered that this was outweighed by the economic benefits of the application, particularly as the application site had been allocated for the purpose in the development plan, and the councillors agreed.

3.24 The 33 cases where local heritage advice had not been accepted by case officers were also examined for the parties' assessment of harm. In four cases the heritage advice was that the applications would cause 'less than substantial harm' but the case officer concluded that there would be 'no harm'. One of these was in Three Rivers (Case Study 20). Another case was in Sevenoaks, where the planning application was subsequently refused by councillors on heritage grounds despite a recommendation for approval by the case officer. In two of these 33 cases the heritage adviser considered that there would be 'substantial harm' from the development but the case officer disagreed. One of these the case officer chose to accept English Heritage's advice rather than the heritage adviser's. English Heritage had initially objected to the application but moderated its position following mitigation proposals so that the application could be treated as of 'less than substantial harm'. In contrast the heritage adviser sustained an objection. Once accepted as of 'less than substantial harm', the case officer could more easily allow heritage interests to be outweighed by public benefits. In any event this was a site which had been allocated in the development plan for the proposed use. In the other case, the case officer presented reasons in heritage terms for his view that the impact would be of lesser significance than the heritage adviser had suggested. To some extent the case officer's view was backed by Historic England, which had pressed the heritage case less hard.

3.25 The following section examines how case officers treat heritage issues. By showing how case officers are under pressure to secure 'sustainable development', that helps to explain why case officers may be looking for reasons to play down the merit of heritage interests, contributing to the kinds of outcomes indicated above.

3.26 The assumption should not be made, however, that case officers are necessarily less sympathetic to heritage interests than are specialists, or that they are less able to judge the impacts of development proposals on heritage. The project found six applications where the case officer was assessed to have given greater weight to heritage than the specialist advice offered.

#### **Local authority case officers**

3.27 This section assesses the performance of local authority case officers in relation to NPPF policy in the following ways:

- (i) responses across the sample of planning applications in aggregate to questions asked of these officers;
- (ii) procedural problems which can complicate the fully effective application of the NPPF and making difficulties for the case officer (previous planning applications and development plan allocations on the application site);
- (iii) application of NPPF policies in ways which are formally in compliance with NPPF policy but are unsympathetic to heritage issues (in respect of the weight given to other public benefits, consideration of alternatives and consideration of the settings of heritage assets);
- (iv) some other special cases where local expedience independent of the NPPF can contribute to less than satisfactory heritage outcomes.

#### **Adherence to the NPPF policy approach**

3.28 This analysis reviews implementation of all the main aspects of NPPF heritage policy together, to see if there were some case officers who were particularly alert to (or neglectful of) NPPF policies or whether there was a more evenly mixed level of responses. Chapter 2 examined case officers' application of policies individually, which was generally found to be limited, as set out in paragraphs 2.43-69 above. This subsection extends the analysis to the consideration of responses

to all relevant questions together in aggregate. The questions applicable when assessing all heritage-related planning applications are:

- 17a. Did the case officer's report list the relevant heritage assets?
- 17b. Did the case officer's report identify their significance?
18. Did the case officer identify and assess the proposal's likely impact on the assets' significance (including settings)?
19. Did the case officer identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets?
21. Did the case officer's report give great weight to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets' importance)?

3.29 There were just 11 authorities whose case officers did not apply any of these policies. One of these forms Case Study 19 (Southampton). These were authorities where even the relevant heritage assets were not fully identified, which would be an expectation under any planning regime and not just the NPPF. Apart from that requirement (Q17a), a further 35 authorities failed to satisfy any of the other four policies. There were therefore 46 authorities in which the policies in the NPPF were not embedded in practice at all.

3.30 There were case officers in 43 authorities who met the requirements for all five policies. The selection has erred on the side of the generous by accepting those case officers who 'partially' rather than 'fully' identified the significance of heritage assets as meeting policy expectations, and also those where a harm level was imputed even if not specified using the terminology in NPPF paragraphs 132-134 (see paragraph 2.49). Case officers who specified any level of harm in response to Q19 were accepted as satisfying NPPF policy, and only those failing to specify a harm level treated as not complying with policy. One of the 43 cases identified is reviewed in Case Study 14 (Middlesbrough): this shows that there were limitations in the detail of the application of the NPPF by the authority in this case, even though in principle it was applying NPPF policies. Overall, the apparently highly satisfactory authorities in this category should therefore be viewed with some caution and as the maximum from our sample.

3.31 With just 43 authorities satisfying the NPPF heritage policies and 46 clearly failing to do so, out of potentially 318 authorities, there has clearly been weak take-up of good practice at the case officer level overall. Some assessment of the weaknesses in the process has been given in Chapter 2 and earlier in this chapter. The following subsections explore a range of other possible complications which appear to apply from time to time. They cannot, however, explain the scale of shortcomings in the overall application of the NPPF. Most of the issues highlighted become apparent in case officers' reports even if they have their origins elsewhere, such as councillors' priorities or the culture of the authority. The matters raised are therefore not necessarily a reflection on case officers alone. The opportunity has been taken to include a few points which derive from councillors' approaches to heritage.

3.32 Table 2 (at paragraph 3.19 above) showed that, for all applications where data are available, case officers identified relevant heritage assets in 86% of the planning applications sampled and provided at least some assessment of the impact of the applications on those assets in 72% of cases. However, their average rate of identifying the significance of those heritage assets was just 35%. This is a notable shortcoming, because the NPPF expects planning decision makers to consider "the impact of a proposed development on the significance of a designated heritage asset" (paragraph 132, emphasis added). Heritage Advisers were similarly poor at identifying the impact of proposals on the significance of heritage assets (paragraph 3.25 above) and applicants via their Heritage Statements not much better (paragraph 3.15 above). There is a clear implication that many

professionals who are addressing the impact of planning applications on designated heritage assets are failing to attend to effects on the significance of those assets. Assessments are often more generalised about the impact of developments on heritage. All parties would benefit from closer attention to this issue, not only to follow the NPPF more accurately but to give themselves greater confidence that policy has been correctly applied when refusals of permission are appealed. Paragraph 4.13(iii) shows that a number of Inspectors in our Planning Appeal Case Studies followed the assessment procedures properly.

#### Inhibitors to the application of NPPF heritage policies

3.33 This subsection explores two frequently-arising experiences which appeared to us to make thorough implementation of NPPF policies difficult in development management. These were instances where either there were previous planning permissions on the application site (or relevant to it), or the application was on a site already identified for a particular use in an adopted development plan.

##### *Previous permissions*

3.34 The planning history of a site can be important in shaping the development likely to be allowed there in future. Previous permissions and refusals, especially if decided on appeal, affect expectations about what will be allowed in future and therefore land values. In theory, a new national planning policy like the NPPF, changing the previous policy on which the earlier decisions were based, can cause the planning history to carry distinctly less weight now. Even when policy has changed, a relevant issue will often be whether the currently proposed application is acceptable considering the ‘fall-back’ option available to the landowner of implementing a previously granted permission. The combined effect of considerations such as these is that pragmatism carries more weight and the precise requirements of the NPPF rather less.

3.35 Previous permissions were a significant factor in the outcome of eight of our Case Studies (1 (Bedford), 2 (Birmingham), 14 (Middlesbrough), 15 (Plymouth), 16 (Salford), 20 (Three Rivers), 23 (Westminster) and 24 (Worcester)). In every one the case officer recommended approval in part because of those earlier permissions<sup>10</sup>. In the case of the development in Birmingham, at 2 Arena Central in the city centre, the application was for determination of ‘reserved matters’ with the outline permission having been granted a year earlier. Nonetheless, the siting of the office block and its height and mass remained to be decided. Historic England wanted the block set well back from the frontage and reduced in height and scale, but were unsuccessful: the construction of the 11-storey building nearing completion is illustrated on the front cover. In some of the case studies a permission had been given previously for a nearby development of a similar size which made resisting the current application more difficult. In others, an aspect of heritage interest had been compromised by development previously allowed on the site. The planning system is very weak at recovering from the effects of previous poor decisions (or decisions with unintended consequences), and in these cases heritage interests – usually the settings of listed buildings – to some extent lost out.

##### *Land allocations*

3.36 Allocations of land for particular uses are an essential part of the forward planning process, so when a site is allocated in a development plan the principle of that kind of development is established there. Nonetheless, the NPPF heritage policies still apply when a planning application is

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<sup>10</sup> In the Worcester case the recommendation was not initially accepted and councillors minded to refuse the application on heritage grounds.

submitted. Heritage advisers may be concerned about whether the development should go ahead at all, but the planning system generally takes the view that the debate has moved on from that question. Allocations were found to be 'deliverable' at the time of allocation in the plan, so developers feel able to put pressure on planning authorities not to undermine what they see as rights in principle by invoking heritage issues which might challenge that status. Even if local authorities would like to accommodate heritage issues at the application stage, allocations (especially of housing) may be considered immutable other than in fine detail, which may not be enough to protect heritage interests. Applicants may also argue that accommodating heritage interests at the application stage would make the development no longer 'viable' (e.g. because land had been acquired at a price which did not reflect any additional modification to the scheme for heritage purposes). The argument is therefore made that matters of principle should have been decided at the plan-making stage, when heritage interests should have been taken into account. The problem, of course, is that frequently the attention given to heritage at that earlier stage is insufficient, when issues around meeting development requirements take precedence. Overtly or implicitly heritage can be viewed at the plan-making stage as a matter to be resolved at the detailed implementation stage. Heritage can fall between the cracks in the procedures and lose out.

3.37 In varying degrees these are the problems illustrated in Case Studies 4 (Bournemouth), 6 (Chichester), 10 (Lancaster), 16 (Salford) and 18 (South Northamptonshire). In Chichester the case officer worked hard to reduce the impact of the proposed development on the setting of the church on an edge of the site, but struggled to do so while adhering to the allocation of 300 houses on the development site. In the event some important decisions affecting the church still had to be postponed until the 'reserved matters' stage, when they would be just as difficult to resolve. Similar efforts in Bournemouth proved somewhat less effective at squaring the circle: the scale of development insisted upon was bound to be difficult to screen from the nearby church. In Salford the land allocation had respected heritage interests, but the case officer allowed significant departures from the terms of the allocation at the expense of heritage interests, in part because of regeneration and housing benefits which presented themselves. Planning applications are generally expected to follow (or at least start from) the detailed allocation policy, but in the Salford case this did not happen.

3.38 Efforts to promote heritage interests on allocated sites can be characterised by promoters of development as attempting to frustrate the established principle of development. However, the heritage policies of the NPPF still apply at the application stage and should be taken into account when developers decide the detail of the schemes they wish to promote. The principle of development does not take precedence over everything else. Heritage advisers may consider that if the application had addressed heritage issues sympathetically at the allocation stage, then much of the difference of opinion at the application stage would not have arisen. Local planning committees and their advisers need to be bold in asserting the importance of NPPF heritage policies when faced with applications on allocated sites which are unsympathetic to designated heritage assets. Furthermore, the consequence of land allocations can be overstated by developers and may need to be challenged by local authorities. In the Southampton case the development plan allocated the application site for retail-led mixed uses, not the 423 student flats applied for. Nonetheless the case officer found that the proposal complied with the relevant plan policies, playing down the heritage interests of the adjacent Grade II\* Registered Park and Garden.

#### Application of NPPF policies to the detriment of heritage

3.39 Correct application of the NPPF heritage policies may not result in the ideal outcome for heritage. Paragraphs 133 and 134 allow that other 'public benefits' can outweigh heritage interests, as a matter of judgment. Even when heritage interests are agreed as important in a decision they

can still be difficult to secure. This is well illustrated in Case Study 12 of the Majestic Cinema, Leeds (see Photo 5), where there were tensions between preserving the best-remaining internal features after a fire and the viability of uses which could bring the building back into use at all. In that case, following the steps in the NPPF led to the conclusion that the loss of certain heritage features was justified when finding the optimum viable use (in terms of paragraph 134).



Photo 5 The Majestic Cinema, City Square, Leeds. Renovation of this building was halted by a serious fire. A proposal to create a six-storey office building involved some further loss of internal historic features but was found after close review to be the optimum viable use despite ‘less than substantial’ but still significant harm. Case Study 12 and see also paragraphs 3.8 and 3.39.

3.40 Some cases like the Majestic Cinema involve difficult judgements, but in others the heritage interest can too easily be outweighed by other considerations if the NPPF heritage policies are not applied with sensitivity. Three topics were identified by the project which could fall into this category:

- other public benefits weighed against heritage;
- insufficient consideration of alternatives (including design);
- insufficient weight given to the setting of heritage assets.

#### *Other public benefits weighed against heritage*

3.41 The project found that other ‘public benefits’ could easily be invoked to outweigh heritage interests. Where ‘less than substantial harm’ to designated heritage assets would be caused by a planning application, NPPF paragraph 134 requires that this should be weighed against the public benefits of the proposal. Paragraph 133 states that ‘substantial public benefits’ are needed to outweigh applications involving ‘substantial harm or loss’ to heritage. The ‘public benefits’ argument is a key one in causing poor outcomes for heritage, as paragraphs 2.64 and 2.67 showed. The weighing process is obviously a matter of judgement, but a striking feature of the cases sampled

was how readily public benefits were identified to the disadvantage of heritage in some cases. This was not only to establish the principle of development proceeding but also, it seemed to us, to avoid as much consideration of alternatives, mitigation or attention to heritage. The NPPF gives considerable encouragement to meeting development needs, especially housing, so the importance of development is not in dispute: the risk is that the counterbalancing provisions of paragraphs 133 and 134 are exercised lightly and policies of the NPPF promoting development exercised enthusiastically.

3.42 The public benefit of housing weighed heavily in 7 of our Case Studies (4 (Bournemouth), 5 (Camden), 6 (Chichester), 15 (Plymouth), 16 (Salford), 19 (Southampton) and 23 (Westminster)). There is significant pressure on local planning authorities to find land for house-building, so case officers and planning committees rarely attempt to negotiate a reduced number of dwellings to mitigate impacts on heritage. Even the loss of 20 homes from a tower block, which would have eliminated the adverse effect on heritage in Camden, was deemed unacceptable (on the basis of financial viability, the argument was made that the social housing element would have to be lost if the market housing element had to be reduced, and this was considered socially unacceptable).

3.43 Redevelopment of brownfield sites in urban areas was also found to be an important public benefit weighed against heritage (Case Studies 2 (Birmingham), 16 (Salford) and 23 (Westminster)), along with the broader heading of regeneration of areas needing investment (e.g. Case Study 5, Camden). Economic development was an important public benefit in Case Studies 14 (Middlesbrough) and 18 (South Northamptonshire). Taken together, the public benefits from these planning applications were held to outweigh heritage in every one of these 10 cases and be an important contributor to the decision to approve each one.

3.44 The project has found some evidence that even in cases where local authorities identified that 'substantial harm' would be caused to heritage assets, the NPPF policy approach is not always applied correctly or sympathetically. Our sample of applications around England identified 12 cases involving 'substantial harm' (see paragraphs 2.65 and 2.67). One of these, in Salford, is reported as Case Study 16. The case officer advised that the proposal would cause substantial harm to the setting of Grade II listed buildings on The Crescent frontage. NPPF paragraph 132 states that such harm should be 'exceptional', but no argument for such exceptionality was either claimed or demonstrated. Advice was not requested from a heritage adviser to the authority on this occasion. Three other case studies review outcomes where 'substantial harm' was identified by officers. Case Study 21 (Tower Hamlets) shows the NPPF being applied correctly and the authority refusing the application in the absence of 'exceptional circumstances'. Case Study 1 (Bedford) describes the approach to a development in the setting of the Grade II\* Cardington Shed No. 1. Here the case officer considered that the refurbishment of the airship shed which the application would fund was a public benefit which provided the 'wholly exceptional circumstances' needed to justify the development proceeding (even though English Heritage had advised that the harm to the shed was neither justified nor necessary to achieve substantial public benefit). The decision in Case Study 22 (West Lindsey) was especially disappointing for heritage. The proposed redevelopment of a hotel in Gainsborough was identified by officers as causing substantial harm to heritage assets in two ways: first, a Grade II listed building incorporated into the existing hotel would be demolished, and second the replacement hotel would harm the setting of the Grade II\* Courthouse opposite. Councillors did not accept the recommendation of refusal, arguing that the setting of the Courthouse would be enhanced by the scheme. Public benefits to outweigh the loss of the Grade II building were not clearly identified.

3.45 Evidence was found occasionally but not frequently that applicants claimed private benefits rather than public benefits as reasons to outweigh heritage interests. The Planning Practice

Guidance *Conserving and enhancing the historic environment* is clear that “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 should not just be a private benefit” (Reference ID: 18a-020-20140306). In Case Study 7 (Forest of Dean), allowing farm expansion was proposed as a public benefit arising from the application to relocate the dwelling. However, this was viewed by the specialist heritage adviser as a private benefit. Some supporters of the applicant, including local councillors speaking at the committee meeting, also identified private benefits. This support may have contributed to the committee decision to approve the application, though no private benefit was given as a reason for overturning the case officer’s recommendation. A case from the sampled local authorities involving private benefits was noted in paragraph 2.73.

#### *Insufficient consideration of alternatives*

3.46 The project found that consideration of alternative proposals to those which would cause harm to heritage assets was infrequent. NPPF paragraph 132 states that “As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification”, and paragraph 129 expects local authorities “to avoid or minimise conflict between the heritage asset’s conservation and any aspect of the proposal”. Perhaps the clearest way to demonstrate the application of these policies is by the consideration of alternatives to the proposals submitted, both by applicants and local authorities. The position in law on the need to consider alternatives has been indicated in various High Court decisions, notably the *Forge Field* case, in Sevenoaks DC (see Appendix 3 paragraph A3.5).

3.47 Sometimes serious efforts are made to find alternative arrangements which would meet development objectives while reducing heritage impacts, but on other occasions there are not. In 9 of our case studies there was little or no response to recommendations by Historic England that alternative arrangements should be made (Case Studies 2 (Birmingham and see paragraph 3.35 above), 5 (Camden and see paragraph 3.42 above), 7 (Forest of Dean), 13 (Leicester), 14 (Middlesbrough), 15 (Plymouth), 21 (Tower Hamlets), 22 (West Lindsey) and 24 (Worcester)). Sometimes there was little disagreement about the principle of development, but heritage advisers considered that modifications to the proposal were needed, e.g. in terms of height (especially in Camden and Tower Hamlets), in terms of design (in West Lindsey, Middlesbrough and Plymouth) or in terms of siting (in Worcester and Birmingham). In West Lindsey the applicant specifically requested the application for a replacement hotel be put before the committee without the further design changes sought by Historic England. In Tower Hamlets the housing developer would not compromise on the height of the tallest block. Both were recommended for refusal, though the hotel in Gainsborough, West Lindsey was approved. In Leicester, English Heritage’s recommendation for refusal on design grounds was not accepted, with the Case Officer substituting his own views. Experience in selected planning appeal case studies is reported in paragraphs 4.8-9.

3.48 In view of the apparently poor take-up of alternatives and the limited effort sometimes applied, Planning Practice Guidance *Conserving and enhancing the historic environment* could be improved to make clear that real efforts should be made to find alternatives to submitted proposals in order to reduce heritage impacts. The need to ‘reveal alternative development options’ is mentioned in paragraph 19 (Reference ID: 18a-019-20140306) but would benefit from expansion and emphasis. This should include design alternatives. Consideration of alternatives is already an obligation in cases attracting Environmental Impact Assessment, and should become standard practice in heritage cases too. The effect of such an approach would not be to cause cost and delay at the decision stage, but to incentivise the consideration of alternatives much earlier in the process at the pre-application stage, before change becomes more awkward.

*Insufficient weight given to the setting of heritage assets*

3.49 In at least 9 of our case studies the land around a designated heritage asset – its setting – was a fundamental part of its significance. Most of these were imposing buildings which dominated their surroundings. Five of them were churches (Case Studies 4 (Bournemouth), 6 (Chichester), 7 (Forest of Dean), 18 (South Northamptonshire) and 24 (Worcester), and the others were a historic house (14 (Middlesbrough)), an airship shed (1 (Bedford)), 17<sup>th</sup> century almshouses (21 (Tower Hamlets)) and a scheduled monument (8 (King’s Lynn & West Norfolk)). In seven of these the case officer considered that the impact on setting was either little affected or outweighed by other interests (or both) despite heritage advice emphasising the importance of setting. In the Forest of Dean application the case officer considered that the ‘less than substantial harm’ to the setting of St Andrew’s church, Awre would not be outweighed by the benefits of the proposal to resite a permission for a farmhouse, and recommended refusal: see Photos 6 and 7. Settings were also inadequately appreciated in Leicester (Case Study 13).



Photo 6 The proposed resiting of a permission for a farmhouse at Guy Hall Farm, Awre, Forest of Dean to overlook the River Severn would be in the setting of the Grade I listed St Andrew’s church. The case officer recommended refusal because the less than substantial harm to the setting of the church would not be out outweighed by any public benefits. However, councillors approved the application on the basis that heritage assets would not be harmed by the development.



Photo 7. St. Andrew’s church, Awre from the north: built in the early 13<sup>th</sup> century with later Perpendicular additions. Case Study 7 and see also paragraphs 2.76, 3.45 and 3.49.

3.50 Where the concept of setting is poorly understood by case officers, there is a risk that this will be given little weight, that ‘no harm’ will be assumed by development in the setting of heritage assets, and that such impacts as are acknowledged will be easily outweighed by competing interests. The large majority of applications sampled from local planning authorities affected the settings of heritage assets rather than proposing direct changes to them, so attitudes to setting are crucial in affecting the way that NPPF heritage policies are implemented. Paragraph 2.50 and Figure 14 showed a surprisingly large proportion of sampled applications in which case officers registered ‘no harm’ to heritage assets, which would have been almost entirely heritage settings. The impression we gained from assessing planning applications across England was that in many authorities identifying the degree to which a setting would be affected by a proposal was a distinct area of weakness in planning practice. This is despite considerable official advice on how to take into account the setting of heritage assets in planning decisions. The Courts have explained how the settings of listed buildings should be treated in planning decisions to ensure compliance with the Listed Buildings Act section 66(1) (summarised in Appendix 3 paragraphs A3.15-23). The Planning Practice Guidance *Conserving and enhancing the historic environment* provides brief guidance at paragraph 13 (Reference ID: 18a-013-20140306) which could helpfully be expanded and Historic England has issued detail in its Good Practice Advice note 3 *The setting of heritage assets: Historic Environment* (revised edition December 2017).

3.51 The settings of heritage assets have taken a high profile in the planning sector in recent years, particularly following some rulings from the High Court and Court of Appeal, notably the Barnwell Manor case and subsequent decisions (see Appendix 3 paragraph A3.2). While the idea is acknowledged in principle there are limitations in practice in many authorities. More needs to be done to train local planning authorities in the proper application of policy so that NPPF heritage policies can be applied effectively.

#### Other influences on the outcomes for heritage

3.52 There appears to be scope for outcomes for heritage to be influenced by considerations outside the scope of NPPF heritage policy but, to some degree, cloaked in the language of the NPPF. We discuss briefly the following difficulties which have emerged from our review of cases:

- occasions when heritage advisers disagree;
- local authorities’ own developments;
- limited local authority interest in heritage.

These are, of course, possibilities which can arise irrespective of the NPPF. However, to the extent that they may be influencing heritage outcomes in ways which the NPPF did not intend, they become indicators of the difficulties in applying the NPPF.

3.53 The project found that when Historic England and local authority heritage advisers disagreed in their recommendations, the case officer adopted the less demanding request as ‘the heritage interest’ in the large majority of cases. We reviewed acceptance or otherwise of advice from heritage advisers in paragraphs 2.58-61 above and now also examine outcomes for heritage when the two groups of advisers disagree. In the three cases noted in our sample when case officers preferred the Historic England advice over that from their own internal specialist adviser (see paragraphs 3.23(v) and 3.24), the Historic England advice was less demanding of heritage protection than was that from the local authority’s own adviser in two of them. On the many more occasions when local authorities’ own advisers’ views were preferred over those of Historic England, the local advisers were almost always less demanding. There were five such occasions in our Case Studies 8 (King’s Lynn & West Norfolk), 13 (Leicester), 23 (Westminster) and 24 (Worcester). In Case Study 11 (Leeds) too – see Photo 8 below – officers were less insistent on heritage protection than Historic England. Only in Case Study 9 (Knowsley) did the local heritage adviser take a more robust

stance than Historic England, and that was also a rare case where a case officer opted to take the more robust stance to protect heritage interests.



Photo 8 17 Wellington Street, Leeds is the last remaining L-shaped former woollen warehouse in the city. It was built in the 1850s and is listed Grade II. On this frontage to Aire Street the proposal was to demolish the rear extension and also No. 49 Aire Street in the arm of the L, replacing them with a 7-storey residential-led mixed use development. English Heritage pressed for mitigation. After much revision the façade of the main rear extension was retained and further design amendments and a reduced scale of demolition secured. Case Study 11 and see paragraph 3.53.

3.54 The evidence is therefore that case officers have a general preference for following advice which is weaker in heritage protection terms. This may or may not be due to less interest in heritage amongst case officers than amongst heritage specialists. The response of playing down heritage is also a pragmatic one when the advisers disagree. Case officers may consider that the party asking for the greater protection for heritage is over-stating the case; or at least that the stronger case for heritage would be more difficult to sustain at appeal because it would be undermined by the other, weaker, advice. The result of disagreements within the heritage sector can therefore easily be that the more robust defence of the heritage interest will generally lose out. This will always be a risk when two independent advisers make their contributions on the same subject. The most appropriate course of action would appear to be for heritage interests to begin by stating their clear preference for heritage outcomes, recognising that there will be opportunities for compromise if appropriate during the evolution of a planning application.

3.55 The sample of local authorities around England identified 17 applications which had been brought before committees of councillors because they were applications by or on behalf of the local authority itself. The handling of the heritage aspects of these applications was deficient in the large majority of cases. We gained some impression from our sample – it would be very difficult to prove – that such applications were particularly likely to be approved with limited interrogation of the heritage issues in accordance with the NPPF, even though planning authorities should be demonstrating exemplary standards in the scrutiny of their own proposals. Two of our Case Studies

(4 (Bournemouth) and 5 (Camden)) were also local authorities' own schemes: in both cases, for these larger developments, the case officer reports were superior to many of those from our sample.

3.56 From the assessment of planning applications around England we gained the impression that some authorities at the case officer level appeared to play down the merit of heritage issues. In the most obvious cases there was demonstrable evidence for this, such as Case Studies 3 (Bolton) and 25 (Worthing): these had respectively no heritage statement and a very substandard one, did not consult a local heritage specialist in either case, did not apply the NPPF in either case, and did not have their decisions affected in any way by heritage issues. In less clear-cut cases the evidence for playing-down heritage interests becomes more difficult to demonstrate. This may nonetheless contribute to the overturning of heritage advisers' recommendations noted in paragraphs 3.23-24. Readers can draw their own conclusions from some of the other case studies. We also note that on occasions where case officers find 'no harm' to heritage assets from development, then there is no need to weigh heritage interests against other public benefits, and there is also no need to find 'clear and convincing justification' for any harm to a heritage asset: if no harm is the conclusion drawn, the assessment becomes much easier. There is little possibility of demonstrating that this is happening, though there is evidence of surprisingly large numbers of cases where 'no harm' to heritage assets is claimed.

## CHAPTER 4

### **PLANNING APPEALS**

4.1 The ten planning appeals selected as case studies for this project all focus on NPPF heritage policies. Otherwise they are heavily mixed by size and type of development, location and outcome. Seven appeals were decided following a public inquiry, one following a hearing and two by written representations. All were appeals against decisions of the local planning authority: there were no called-in applications. Eight of the cases affected the settings of designated heritage assets and just two affected the asset itself (Appeal Case Studies 3 (Hammersmith & Fulham) and 4 (Hinckley & Bosworth)). The ten appeal decisions are summarised on a single page each within a standard template in Appendix 6. These are referred to by the local planning authority in which the development was proposed.

#### **Additional issues in heritage planning**

4.2 The specific issues covered by the appeal decisions are largely familiar from the cases already sampled from local planning authorities' own decisions. However, some of them did discuss in detail topics which had been treated as only of passing relevance in the cases previously reviewed. The main new topics are reviewed briefly below.

#### **Intervisibility**

4.3 Attention was paid to whether the development was visible from the heritage asset or vice versa. This in itself is almost always considered in planning applications affecting heritage assets, though there can be other issues like noise and smell separate from visual impact. The particular question addressed in three of these appeals was whether the 'setting' of the heritage asset could be significantly adversely affected even if there was no significant direct line of sight between development and heritage asset (Appeal Case Studies A1 (Amber Valley), A7 (Stroud) and A10 (Wychavon)). Inspectors took different views on this.

4.4 In Wychavon, the spire of a Grade I listed church was visible from the appeal site but the Grade I listed Bredon Tithe Barn was not. The Inspector considered that the appeal site contributed to and enhanced the appreciation of the Barn's significance as an historical rural farming structure. Also, the Barn and the appeal site could be seen in the same view from one footpath near the village. (That issue also arose in Appeal Case Study 4 (Hinckley & Bosworth), just as it had in applications such as Case Study 18 (South Northamptonshire).) He considered that this contributed to the less than substantial harm which the development would cause to the significance of the heritage asset. This carried considerable weight not least due to the Grade I listing of the barn, and was held to outweigh the public benefits.

4.5 The other two appeals concentrated much more heavily on the need for intervisibility to establish the setting of key heritage assets: the Grade II\* listed Berkeley Castle Home Park registered park and garden in Stroud and the Grade I listed Kedleston Hall registered park and garden in Amber Valley. In Berkeley, English Heritage had emphasised that the Park was of historic significance to the story of England, with the relationship of the castle to its park, the town and the wider landscape an extraordinary survival of a mediaeval entity. The development of 188 dwellings on the north-east side of the village would affect the sequential hierarchical approach to Berkeley from the east (agricultural landscape, park, town, castle). The Inspector nonetheless emphasised lines of sight and concluded that the development would cause limited less than substantial harm to Home Park's setting in views from the east and by its proximity (see Photo 9).



Photo 9 View north from the public entrance to Berkeley Castle: the appeal site is in the field beyond the house in the centre of the picture and has minimal intervisibility with the Castle Park.

4.6 The Inspector in Amber Valley was still more emphatic. The appeal site lay in the setting of the Park visually and historically, and this would be harmed by the development of up to 400 dwellings. However for visual reasons this would be at the lower end of 'less than substantial'. He disagreed with the Historic England assessments: of the impact of the change to the setting from agricultural to housing; of the significance of the appeal site as part of the visitor experience approaching from Derby; and of the historic value of the largely unaltered historical estate. Instead he took a view strongly conditioned by what was visible. He found that the very considerable public benefit of 400 houses easily outweighed the harm to heritage and granted the appeal. This case is now the subject of an appeal to a higher Court.

#### Affecting significance and affecting appreciation of heritage assets

4.7 In Appeal Case Study 3 (Hammersmith & Fulham) the Inspector reviewed the consequences of the proposed internal redevelopment of the former Fulham Town Hall (see Photos 10 and 11). The scheme involved the creation of 18 dwellings within the building together with new retail and community uses. In some respects the proposal would increase opportunities for public access to the ground floor and to the Grand Hall, albeit as shops. However these important public benefits "would not reduce the harm which the interventions would cause to the significance of the building or add to its special interest. That is because there is a difference between how an asset is experienced and how many people experience it so that, while the appreciation of significance can be an important benefit to be weighed in the balance required by NPPF134, this is not a matter that alters the significance itself." He reviewed the way in which this balance had been struck in the High Court case in *Palmer* (noted regarding another point in Appendix 3 paragraph A3.15). Here the Judge had accepted that there might be no net harm if the negative effects on an historic building were outweighed or offset by the positive. The Inspector came to the conclusion that, even if public access was a heritage benefit, given the extent of harm as a result of the changes and alterations,

compared with the benefits of repairs and public access, there would still be significant harm (albeit less than substantial).



Photo 10 Fulham Town Hall, Fulham Road frontage (left), 1888-90 with an extension of 1934 on the right hand side.

Photo 11 Fulham Town Hall, Harwood Road frontage (above), 1904-05.

#### Alternatives and optimum viable use

4.8 The Planning Practice Guidance note *Conserving and enhancing the historic environment* provides advice on the meaning of ‘optimum viable use’ referred to in the NPPF paragraph 134. Paragraph 015 (Reference ID: 18a-015-20140306) states “If there is only one viable use, that use is the optimum viable use. If there is a range of alternative viable uses, the optimum use is the one likely to cause the least harm to the significance of the asset, not just through necessary initial changes, but also as a result of subsequent wear and tear and likely future changes.” Although this issue has been noted above in respect of the Majestic Cinema, Leeds (paragraph 3.39 and Case Study 12), the Inspector in the Appeal Case Study 3 (Hammersmith & Fulham) carried out an impressive assessment of the issue in considerable detail by examining alternative uses and their viability. He concluded that the proposed development was not the optimum viable use. Instead he considered that in the absence of less harmful alternatives office use would be the optimum viable use.

4.9 Alternatives to the development proposed were also considered carefully by the Inspector in Appeal Case Study 2 (Bath & NE Somerset). This revolved around Bath University’s desire for additional car parking space associated mainly with the University’s expansion. The Inspector made clear that the University would not only have to find other solutions to its parking problem but should also moderate its expectations about what was feasible in a highly constrained urban location in a World Heritage Site: “With the pressure to accommodate additional research facilities and the constraints of the campus the appellant’s desire for ‘*commodious*’ car parking may be something it can ill-afford.” This is an example of an Inspector taking a proactive approach to alternatives in the wider public interest.

## Paragraph 134 and the wider planning balance

4.10 Many local authority case officer reports treat heritage interests, including paragraph 134 of the NPPF, as one of a number of considerations in turn before reaching a conclusion. However, in appeals the balance between heritage and other public benefit issues in NPPF paragraph 134 is often systematically separated by Inspectors from the wider planning balance required elsewhere in the NPPF. The outcome of the balancing exercise under paragraph 134 of the NPPF is treated as an input to the wider planning balance. This can sometimes appear to give competing interests ‘two bites at the cherry’ for attempting to outweigh heritage interests. The approaches used by Inspectors also illustrate the complexities built into the NPPF on how different issues are to be weighed against each other in different circumstances. A simple example is provided by Appeal Case Study 4 (Hinckley & Bosworth). In that case the Inspector found that the very limited harm caused to the setting of a heritage asset (the tower and spire of the Grade II\* listed All Saints church, Nailstone) by the proposed wind turbine would be outweighed by the modest benefit of reductions in CO<sub>2</sub> emissions. In effect, the development would not be resisted on NPPF heritage grounds. The Inspector then went on to review the other issues relevant to the appeal decision, again mentioning in that process that there was less than substantial harm to a heritage asset which did not amount to a policy objection.

4.11 In Appeal Case Study 6 (North Norfolk), the Inspector reviewed the proposed development of holiday chalets in the setting of Beeston Regis Priory Scheduled Monument, and found that the proposal would fail to preserve the setting of the assets, causing clear and material harm to their significance. In the balance of paragraph 134 of the NPPF the public benefits were found to fall some way short of outweighing the heritage harm. The Inspector then assessed whether the scheme amounted to sustainable development. There were other aspects of the scheme which complied with the development plan, but the Inspector held that these did not come close to outweighing both the heritage harm and landscape harm previously identified.

4.12 In Appeal Case Study 9 (Warwick), the Inspector went through a balancing exercise using paragraph 134 as there would be less than substantial harm to the Castle Park (see Photo 12). However, because the local planning authority did not have a five-year housing land supply, paragraph 14 of the NPPF applied. In this case the Inspector concluded that the adverse effects of granting planning permission did “significantly and demonstrably outweigh the benefits” when assessed against the policies of the NPPF as a whole. She therefore recommended that planning permission be refused. The Secretary of State accepted all the Inspector’s arguments regarding heritage, but came to a different conclusion on the planning balance, approving the scheme mainly for the housing benefit.

## **Further insights**

4.13 Issues raised by Inspectors provide additional perspectives on a number of topics already apparent from the assessment of sampled planning applications. We highlight the following:

(i) Inspectors sometimes helpfully indicate the position on the spectrum when applications cause ‘less than substantial harm to the significance of heritage assets’ where they consider a proposed development lies. This helps when carrying out the balancing exercise required by NPPF paragraph 134. There is no ranking system (nor should there be) and Inspectors use their own phraseology to express themselves, such as ‘low’ (Appeal Case Study 2 (Bath & NE Somerset)), ‘limited’ (Appeal Case Study 4 (Hinckley & Bosworth)), ‘upper’ (Appeal Case Study 3 (Hammersmith & Fulham)) and ‘real and serious’ (Appeal Case Study 9 (Warwick)).



Photo 12 View of Warwick Castle Park Grade I RPG from the castle towards The Asps appeal site (Appeal Case Study 9) which is in the middle of the picture beyond the trees marking the Park boundary. The roofs of the proposed houses may be glimpsed from the towers but would have no harmful effect on the significance of the Castle. However the Park's significance would be diminished considerably, the Inspector concluded and Secretary of State agreed.

(ii) Inspectors seemed to us to be more forthright than some local authority case officers in clarifying that mitigation of the impact of proposals on heritage assets was sometimes not practical (see Appeal Case Studies 1 (Amber Valley), 6 (North Norfolk), 8 (Swale) and 10 (Wychavon)).

(iii) Inspectors were often clear about identifying the significance of heritage assets (not just noting their existence) and explaining how proposed developments would impact on that significance (not simply be visible from them). This was clear in Appeal Case Studies 2 (Bath & NE Somerset), 3 (Hammersmith & Fulham), 8 (Swale), 9 (Warwick) and 10 (Wychavon). However this was not achieved in Appeal Case Study 7 (Stroud).

### **Overview**

4.14 Planning Inspectors are usually very efficient in applying NPPF policies procedurally. There need be no general cause for concern about the work of the Inspectorate in heritage cases judging by this very limited selection of ten cases. Cases where Inspectors appeared to us not to give 'great weight' to heritage conservation or not provide 'clear and convincing justification' for any harm to heritage were scarce (notably Appeal Case Study 8 (Swale)). Nonetheless, there are some topics which cause confusion and inconsistency, principally around the interpretation of 'setting'. This was indicated in paragraphs 4.5-6 above in respect of handling intervisibility.

4.15 We also consider that the related issue of the historical and contextual aspects of setting also need further attention. In addition to the difficulties in Amber Valley and Stroud, there was a confused approach to this matter in Appeal Case Study 8 (Swale). The issue here concerned the

impact of development on a Grade II listed farmhouse, principally by demolition of some former outbuildings (no longer in its curtilage but still in its immediate setting). The Inspector considered that demolition of the outbuildings would result in substantial harm to the historic significance of the farmhouse. That might have been expected to prompt an assessment of the issues using NPPF paragraph 133. However, instead, the Inspector argued that the architectural qualities of the farmhouse were also important and, as they would be unaffected, this diminished the overall impact of the development on heritage significance. If the idea of different significances cancelling each other out seems questionable, so too does the Inspector's reliance on the listed building description from 1967, which did not mention the significance of the building's setting. There needs to be clarity that decisions on heritage-related cases using NPPF policies should not rely on outdated descriptions on the Heritage List: the implication otherwise would be that Historic England would need to mount an urgent and extremely expensive reassessment of the setting of every property on the List – for very little real benefit. There appears to be a need for greater appreciation of advice such as Historic England's Good Practice Advice note on *The setting of heritage assets* (revised edition December 2017). That this is a material consideration in settings-related cases was confirmed by the Secretary of State in his decision in *The Asps case* (Appeal Case Study 9 (Warwick)).

## CHAPTER 5

### CONCLUSIONS

5.1 This project has reviewed the implementation of the heritage policies of the NPPF in development management. It addresses only designated heritage assets. The policy requirements of the NPPF were broken down into their constituent parts and allocated as responsibilities to the main parties in the planning application process as appropriate – applicants, local authority specialist heritage advisers, planning case officers and councillors. Our conclusions are based primarily on a sample of 318 planning applications, with one application taken from each of almost every district, borough, and unitary authority in England. Only cases decided by councillors were included, avoiding delegated decisions. Information was obtained from local authority websites, especially committee reports and committee minutes, and checked against other sources such as the statutory Heritage List. This was supplemented by information from 25 case studies providing more detail, insight and context for the topics raised by the 318 sampled applications.

#### Are the NPPF heritage policies effective?

5.2 The overall picture is disappointing. Referring to heritage-related planning applications across the country as a whole, the take-up of NPPF policies is patchy and certainly less than might reasonably have been expected more than four years after the NPPF was issued (as most of our information derives from the latter half of 2016). We came across very good practice at all stages in development management, but equally we came across parties at all stages in the process who ignored NPPF heritage policies. None of the groups of participants (applicants, local authority specialist heritage advisers, planning case officers and councillors) performed obviously better or worse than the others. This is therefore a finding of generally slack take-up of policy.

5.3 Applicants for planning permission and their advisers identified the correct heritage assets likely to be affected by their proposals in little more than two thirds of cases, though the large majority of those who did so also identified the significance of those assets. Using information from the Historic Environment Record to inform applications is specified by the NPPF as a ‘minimum requirement’, yet less than two thirds of applicants are estimated to have done this. A similar proportion used appropriate heritage expertise. Whether an archaeological desk-based assessment or the report of a field examination needs to accompany an application will depend on the circumstances of the proposal, but we know that 36% of applicants did this. There was no evidence that attention to archaeology was lagging behind attention to above-ground heritage assets. The primary purpose of these efforts is to identify the impacts of planning applications on the significance of heritage assets, but we found that just 56% of applicants did this. There was evidence that applicants were generally better at assessing the baseline heritage position, with some holding-back on specifying impacts. The overall conclusion is therefore that a significant proportion of applicants are not engaging properly with the requirements of Government policy on planning for heritage and explaining the impacts of their proposals. Our assessment suggested that this could not be explained by applicants taking a ‘proportionate’ approach, by not providing as much information when heritage impacts would be modest as when they would be more significant.

5.4 Examining applicants’ performance across all six issues at the same time showed that 43% of applicants satisfied all policies and 25% of applicants satisfied none. The latter group appear to have provided wholly insufficient information about heritage assets to inform a judgement about the impacts of their proposals on heritage. This also put designated heritage assets at some risk: in 26 of the 80 cases where no information was provided, either the local authority’s specialist heritage adviser or the case officer (or both) identified that the applications would cause harm to heritage

assets (in one case substantial harm). The absence of supporting heritage information with the application not only failed to satisfy national planning policy but also missed the opportunity for the applicants to present proposals devised to satisfy it and increase the chance of permissions being granted.

5.5 Local authority specialist heritage advisers are predominantly made up of heritage conservation officers employed by local authorities, with a few fellow-officers contracted from other authorities to provide the service plus a very small number of private consultants. Numbers of heritage staff available have been declining slowly since 2006, but their availability shows no relationship with take-up of NPPF policies. However, there is some evidence that local heritage specialists are not always asked for their advice when planning applications are submitted which would affect heritage assets.

5.6 Barely 30% of heritage advisers in our sample are known to have identified the significance of heritage assets which might well be affected by planning applications. There was some problem identifying actual engagement by heritage advisers in detailed issues such as this (e.g. communications may have been taking place in the background), so there may be a problem of transparency in some local authorities in recording the actions being taken. The more likely explanation is that the lack of evidence of activity is because it did not happen. The NPPF expects local authorities to identify and assess a proposal's likely impact on the significance of heritage assets, including their settings, and we found that at least 37% did so. However this is well below the 69% of authorities who took heritage advice and represents a distinct shortfall against expectations. A similar proportion – heritage advisers in 38% of authorities – is known to have identified the level of harm that applications would cause to heritage assets ('no harm', 'less than substantial harm' or 'substantial harm'), and again more may have done so. Nonetheless, across the evidence base, the difficulty we had in demonstrating compliance with national policy does suggest deep-seated disengagement since greater involvement by heritage advisers would usually have been recorded in committee reports. Across the main issues, at least 23% of heritage advisers fulfilled all NPPF policies and 4% complied with none of them.

5.7 Some actions are only expected of specialist heritage advisers if applications would cause harm to heritage assets. Advisers in just 25% of authorities are known to have offered advice on mitigation in accordance with NPPF policy, even though the proportion of applications causing some level of harm is known to have been significantly higher than this. However in only 10% of authorities did heritage advisers indicate to case officers how much weight should be given to heritage in relation to competing benefits: other advisers may have considered this beyond their remit, but equally case officers would benefit from an indication of how seriously heritage needed to be taken in particular cases. With these percentages discernibly lower than on earlier issues, and not explicable by an absence of need for action, there is an indication that some heritage advisers are choosing not to take steps which are less than essential.

5.8 Planning authority case officers have a major role to play in assessing the impact of planning applications on heritage assets and responding to that. In 86% of applications case officers correctly identified the relevant heritage assets which would need to be assessed, though in only 35% of authorities did they properly identify in their reports the significance of these assets. In 72% of authorities case officers fully or partially identified the impact of applications on heritage significance, and in 76% they identified the level of harm. This still means that a quarter of case officers were not identifying a harm level, which is an essential building block for implementing NPPF policy. Furthermore, the level of harm identified in 31% of authorities was 'no harm', surprisingly high since the sampling method had been chosen to ensure that applications were only accepted if there was at least a worthwhile possibility of making an assessment of harm. Mitigation measures

were proposed by case officers in about one third of authorities. These figures show variable rates at which case officers applied NPPF policies, but always leave a significant tranche of around one quarter of case officers failing to do so (other than the most basic identification of heritage affected).

5.9 Evidence that just one quarter of case officers give 'great weight' to heritage might suggest that case officers generally are not taking heritage as seriously as the NPPF expects. However, case officers were following the advice of their heritage advisers in 81% of cases where the heritage adviser's recommendations are known, similarly taking forward Historic England's advice in 76% of cases, and providing 'clear and convincing justification' for harm in 73% of cases where harm arose. This does of course mean that one in four case officers are still not applying NPPF heritage policies. Across the five main NPPF policies which case officers need to implement, 14% of authorities applied all policies and 15% none of them (except identifying heritage assets). The implication is that the large majority of case officers, like heritage advisers, are partially implementing the NPPF heritage policies.

5.10 Councillors overwhelmingly agreed with their case officers' recommendations on heritage issues (92%). Out of 318 applications, they approved 7 applications they were recommended to refuse. They also refused 17 applications they were recommended to approve, on heritage grounds (occasionally where the heritage adviser had recommended refusal but been overruled by the case officer). The NPPF imposes onerous obligations to prove a need to permit development in cases where there would be substantial harm to heritage assets, especially the highest grade assets. However, on two occasions councillors approved development which the case officer had identified as causing substantial harm, against advice, and in neither case were reasons given that were adequate in NPPF terms. While theoretically open to legal challenge given the inadequate justification of the substantial harm involved at the point of decision (within the period allowed), this is not a realistic remedy in the vast majority of cases. Councillors too are not entirely aware of the NPPF heritage policy requirements.

5.11 Effective implementation of the NPPF heritage policies also depends on carrying out internal and statutory consultations and making use of the responses received. The statutory consultation requirements are expressed in terms of 'development likely to affect' heritage assets or where it 'would affect' them. This is not a precise obligation, but our judgement was that appropriate consultations usually took place with Historic England: there were 19 omissions, almost all affecting the settings of Grade I or Grade II\* listed buildings. Consultations with The Gardens Trust, however, appear unreliable (albeit from a small sample size): 14 cases were missed compared with 13 consultations undertaken. A notable feature is that in 7 of the 8 developments proposed within the setting of a Grade I or Grade II\* registered park and garden on which The Gardens Trust was not consulted, Historic England was consulted. The problem is therefore not a lack of awareness of registered parks and gardens but some lack of awareness of the need to consult The Gardens Trust. Historic England responded to almost all its consultations but The Gardens Trust to only 3 of its 13.

5.12 The project found evidence that case officers were distinctly more likely to apply NPPF heritage policies if they had received local heritage advice than if they had not. In particular, case officers who had received this appeared twice as likely to give great weight to conserving heritage assets as those who had not, and 50% more likely to identify the significance of heritage assets than those who had not (albeit still only a modest proportion of the sample). However, the data are not strong enough to merit testing for the significance of the findings.

5.13 Overall our conclusion is that there are severe limitations in the extent to which the NPPF policies are effective across all stages of the planning application process. There are plenty of parties who demonstrate that implementing the policies is entirely feasible, but still more who do

not do this on a reliable basis. There is an urgent need for planning practice to improve, across the spectrum of participants.

5.14 Finally on effectiveness, the project considered the implementation of NPPF heritage policies by Planning Inspectors when determining planning appeals. From a small sample of cases, the evidence suggested that Planning Inspectors are usually very efficient in applying NPPF policies procedurally. There need be no general cause for concern about the work of the Inspectorate in heritage cases. However, there are some topics which cause confusion and inconsistency, principally around the interpretation of 'setting'. We found there were still problems when identifying and responding to the contribution which settings make to the significance of heritage assets and we consider there are likely to be more such cases in the foreseeable future. This needs attention with more detailed guidance in the Planning Practice Guidance *Conserving and enhancing the historic environment*. The revised Historic England Good Practice Advice note 3 *The Settings of Heritage Assets* (December 2017) will be of assistance.

### **Is the historic environment being protected and enhanced?**

5.15 The results above give some indication of the level of compliance with the NPPF. However local planning authorities are giving somewhat more attention to heritage than the results suggest. The project found numerous heritage advisers offering careful assessment of the heritage impacts of planning applications, but not following the procedural steps in the NPPF. However, failure to follow the correct approach will impose significant limitations on what heritage advisers and case officers can achieve for the historic environment: refusal of permission on heritage grounds is likely to be challenged at appeal unless policy is followed clearly.

5.16 This project focuses on implementation of the NPPF: that is not the same as maximising the protection and enhancement of the historic environment, because the balancing process within the heritage policies does allow that a procedurally correct decision can still permit heritage interest to be lost. Conclusions on protection and enhancement have therefore been approached in other ways.

5.17 Historic England's recommendations to local planning authorities on planning applications were not accepted in 24% of the applications sampled. The reasons for this were identified. The main reasons grouped themselves between cases where the case officer did not accept the advice of Historic England in heritage terms and cases where other interests were held to outweigh the accepted heritage drawbacks. There were various levels of non-acceptance of Historic England's heritage advice. There was a similar pattern of reasons why local heritage advisers' recommendations were not accepted in the 19% of applications affected. The findings are not entirely surprising:

- (i) In cases where there is found to be 'no harm' to heritage assets, then a planning application 'has no case to answer', and the weighting and balancing arguments are avoided which a case officer would otherwise need to go through if the finding had been of 'less than substantial harm'.
- (ii) The 'public benefits' argument to overcome harm to heritage is easily invoked and is a key one in causing poor outcomes for heritage. The NPPF gives considerable encouragement to meeting development needs, especially housing, so the importance of development is not in dispute: the risk is that the counterbalancing provisions of paragraphs 133 and 134 are exercised too lightly.

5.18 The research found evidence suggesting that some case officers play down the heritage issues when considering planning applications. Fundamentally they are searching for ways of

delivering development rather than stopping it, and for ways to overcome impediments rather than resign themselves to these. The most demonstrable way in which heritage was played down was on occasions when Historic England and the local authority's heritage adviser made different recommendations: the case officer would most often follow the advice of the consultee who took the less robust approach to heritage conservation. (There were, however, exceptions when the reverse was the action taken in, for example, Croydon, Knowsley (Case Study 9) and Leeds (Case Study 11)). Heritage consultees need to be alert to couching their advice in ways which specify clearly what they want and why, and in terms that cannot easily be interpreted as meaning something less than they intended in heritage protection terms.

5.19 We also identified weaknesses in the planning system (a) when previous permissions with less than ideal consequences for heritage are treated as a starting point rather than an aberration, and (b) when land is allocated in plans for development without taking adequate account of heritage. In the latter case, the problem is that at the allocation stage the argument may well be that heritage issues can be sorted out at the planning application stage, but when that time comes the argument is that development cannot now be compromised for heritage because that was not written into the policy. This needs more attention at the plan-making stage so that heritage does not fall down cracks in the planning system.

5.20 Case officers' recommendations in our sample of applications were dominated by approvals (89%). This is a fairly typical rate. These were fairly evenly spread across three of the categories: 'Approve as no harm to heritage assets', 'Approve where there was less than substantial harm to the heritage which was outweighed by the public benefits of the proposal (including securing optimum viable use of the heritage assets)', and 'Approve without reference to harm or without reference to heritage assets'. The approvals without reference to harm or heritage are of concern because the NPPF policies should have been applied. The 'no harm' cases are again surprising in view of the sample selection method. The figures therefore suggest weak application of policy and risk to the historic environment.

## CHAPTER 6

### RECOMMENDATIONS

#### **A. Checklist of steps for complying with the NPPF when a planning application may affect designated heritage assets.**

To address the generally unsatisfactory level of application of the NPPF heritage policies across England as a whole, we recommend that Historic England, supported by MHCLG and DDCMS, make an effort to raise standards by promoting the following checklist to the parties involved in planning applications. The checklist should be published by Historic England and widely circulated.

#### Applicants for planning permission

1. Identify the correct heritage assets for evaluation.
2. Identify the significance of these heritage assets, including their settings, proportional to their importance.
3. Use the Historic Environment Record to inform steps 1 and 2 (minimum requirement).
4. Use appropriate heritage expertise.
5. Where archaeological assets may be present, prepare and submit a desk-based assessment or carry out a field evaluation.
6. Identify the potential impact of the proposal on the significance of each heritage asset

#### Local authority specialist heritage advisers

7. Identify the correct heritage assets for evaluation.
8. Identify the significance of these heritage assets, including their settings, proportional to their importance.
9. Identify and assess the proposal's likely impact on the assets' significance, including settings.
10. Identify if there would be 'no harm', 'less than substantial harm' or 'substantial harm' to the significance of each of the heritage assets.
11. Consider means of avoiding or minimising conflict through mitigation (between the heritage asset's conservation and any aspect of the proposal).
12. Clarify the decision recommended to the authority on heritage grounds, with reasons, and provide advice on the weight to give to heritage in relation to the benefits.

#### Local authority planning case officers

13. Check that the appropriate statutory consultations are carried out (with Historic England and/or The Gardens Trust), including where the settings of relevant heritage assets could be affected.

14. Obtain advice on the planning application from the local authority's specialist heritage adviser.
15. List the relevant heritage assets and then identify their significance.
16. Identify and assess the proposal's likely impact on the assets' significance, including settings.
17. Identify if there would be 'no harm', 'less than substantial harm' or 'substantial harm' to the significance of each of the heritage assets.
18. Consider means of avoiding or minimising conflict through mitigation (between the heritage asset's conservation and any aspect of the proposal).
19. Give great weight to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets' importance). The more important the asset, the greater the weight should be.
20. Review the heritage advice received from the local authority's specialist heritage adviser and from any statutory consultee.
21. If recommending that the benefits of a proposal outweigh the heritage interest (whether substantial or less than substantial), then clear and convincing justification for any harm to or loss of a heritage asset is required (proportionate to the proposal's impact on its significance).
22. Where a development proposal would 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; checklist steps 19 and 21 will apply to this.
23. Where a development proposal would lead to substantial harm to or total loss of significance of a designated heritage asset, the application should normally be refused; permission should only be given if it can be demonstrated that this level of harm is necessary to achieve substantial public benefits that outweigh that harm or loss, noting that:
  - (a) in the case of a Grade II listed building or a Grade II registered park and garden, substantial harm to or total loss should be exceptional (i.e. exceptional circumstances must be demonstrated); or
  - (b) in the case of heritage assets of the highest significance\*, substantial harm to or total loss should be wholly exceptional (i.e. wholly exceptional circumstances must be demonstrated) – which is the most demanding requirement in the whole NPPF.

\* Scheduled Monuments, protected wrecks sites, battlefields, Grade I and II\* listed buildings and Grade I and II\* registered parks and gardens, and World Heritage Sites.

## **B. Other recommendations**

- (i) The Secretary of State at the Ministry for Housing, Communities and Local Government should clarify by an amendment to the NPPF that the potential consequences for heritage should be fully examined in the process of allocating land for development in all development plans, so that any necessary limitations on development can be established at this time. Policy should clarify that, if for any reason such examination is not achieved, the NPPF heritage policies will take precedence over the land allocation when any subsequent planning application is considered (paragraph 3.36).

(ii) The Secretary of State at the Ministry for Housing, Communities and Local Government should revise the Planning Practice Guidance *Conserving and enhancing the historic environment* at paragraph 19 (Reference ID: 18a-019-20140306) to make clear that real efforts should be made to find alternatives to submitted proposals in order to reduce heritage impacts. The need to 'reveal alternative development options' should be expanded and emphasised. This should include design alternatives. Consideration of alternatives in cases involving harm to designated heritage assets should be a standard practice, comparable to Environmental Impact Assessment (paragraph 3.48).

(iii) The Secretary of State at the Ministry for Housing, Communities and Local Government should revise the Planning Practice Guidance *Conserving and enhancing the historic environment* to make clear that the statutory Heritage List should not be relied upon to explain the significance of the setting of each property (paragraph 4.15).

(iv) Local planning authorities should more vigorously refuse to register or process planning applications which fail to satisfy the information requirements of NPPF paragraph 128, until this information is provided (paragraph 3.12).

(v) Local planning authorities particularly should be trained in the proper application of policy on the settings of heritage assets, so that NPPF heritage policies can be applied effectively (paragraph 3.51) and more guidance on this matter should be provided in Planning Practice Guidance (paragraph 3.50).

(vi) Local authority specialist heritage advisers and statutory heritage consultees facing applications which they consider would harm heritage assets should state their clear preference for heritage outcomes; the applicant, planning case officer and any other interested party should be encouraged to consider, where appropriate and with the consultee, how the planning application could achieve these outcomes (paragraph 3.54).

(vii) Local authority specialist heritage advisers should indicate to case officers the degree of harm which would be caused to heritage assets by planning applications (especially if within the range 'less than substantial') and advise on the seriousness with which heritage interests need to be considered in particular cases (paragraph 2.31 and see also 4.13(i)).

(viii) The Gardens Trust, Historic England and representatives of local government should work together to find ways of resolving shortcomings in the incidence of consultations with The Gardens Trust and in the scale of responses achieved the Trust (paragraph 2.42).

## **APPENDIX 1 LEGISLATION AND NATIONAL POLICY FOR HERITAGE PLANNING**

### **Legislation for heritage planning**

A1.1 Specific laws address the protection and conservation of listed buildings, scheduled monuments and (beyond the scope of this project) conservation areas. At the same time, land use planning legislation applies irrespective of whether these heritage assets are affected in any way. The result is that two or more laws can operate at the same time when change is proposed which would affect these heritage assets, and all legislation must be complied with.

### **Scheduled Monuments**

A1.2 Scheduled Monuments (SMs) are protected by the Ancient Monuments and Archaeological Areas Act 1979. Section 2 provides that it is an offence to carry out certain works without authorisation:

- “(a) any works resulting in the demolition or destruction of or any damage to a scheduled monument;
- (b) any works for the purpose of removing or repairing a scheduled monument or any part of it or of making any alterations or additions thereto; and
- (c) any flooding or tipping operations on land in, on or under which there is a scheduled monument.”

The 1979 Act provides for a system of Scheduled Monument Consent whereby authorisation can be sought for change to SMs. Consent is required from the Secretary of State at the Department for Digital, Culture, Media and Sport (not from the local planning authority). Applications for Scheduled Monument consent are submitted to Historic England, which is responsible for the administration of the regime and makes recommendations to the Secretary of State as to whether consent should be given and, if so, on any conditions that should be attached to the consent. This legislation is independent of the planning system, so planning permission may also be required for proposed works to an SM. Scheduled Monuments are entered on the National Heritage List for England where most contain a map. Protection is offered to everything that forms part of the land and buildings within the map boundary unless expressly excluded, as some features are, such as modern-day road surfaces. There is no statutory requirement to have regard to the setting of an SM outside its designated boundary.

A1.3 Despite the separate legal foundation, the planning system does have regard to SMs as a matter of policy. Scheduled Monuments are one of a number of types of ‘designated heritage asset’ to which national planning policies have been applied. In particular, as a matter of national planning policy (not law) the impact of a development proposal on the setting of a SM is a material planning consideration (NPPF paragraphs 65, 128, 129, 132, 137) which should be taken into account as well as impacts upon the designated monument itself. In addition, paragraph 139 of the NPPF provides that “Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.”

### **Listed buildings**

A1.4 Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a “General duty as respects listed buildings in exercise of planning functions.” Subsection (1) provides: “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.”

Legal controls over listed buildings are part of the planning system, unlike controls over scheduled monuments. Section 66 of the Act gives a ruling on how planning applications are to be considered in cases affecting listed buildings, and also includes an obligation to protect the setting of listed buildings, unlike the legislation covering SMs. This legislation has been assessed by the Courts on various occasions, invariably finding that, if there would be harm to a listed building or its setting, that harm must be given considerable importance and weight and not treated merely as a ‘material consideration’ to which decision-makers can attach such weight as they think fit (more detail is given in Appendix 3).

### Case law

A1.5 Selected rulings by the Courts relevant to this project are reviewed briefly in Appendix 3. This contains sections on:

- the statutory presumption in favour of preservation;
- demonstrating compliance with the law;
- interpreting ‘significance’, ‘substantial harm’ and ‘weight’;
- the relationship with the NPPF five-year housing land supply; and
- taking into account the setting of listed buildings: detailed cases.

### Statutory consultation requirements

A1.6 The legal requirements for consultations on planning applications affecting designated heritage assets are helpfully set out in the national Planning Practice Guidance *Conserving and enhancing the historic environment*, addressing consultation with Historic England (Table 1) and with The Gardens Trust (Table 2). These tables are reproduced below in Boxes 2 and 3 respectively. So far as the designated heritage assets in this project are concerned, Historic England must be consulted when planning applications would be likely to affect SMs, Grade I or II\* listed buildings, Grade I or II\* RPGs or Registered Battlefields. The Gardens Trust must be consulted when planning applications would be likely to affect any RPG. The phrase ‘likely to affect’ a heritage asset is interpreted to include the asset’s setting, but this is only stated specifically in respect of consulting Historic England on Grades I and II\* listed buildings.

A1.7 The consultation requirements show that Historic England should not be consulted on planning applications affecting Grade II (unstarred) listed buildings. However, Historic England must be notified of applications for Listed Building Consent on Grade II buildings involving ‘relevant works’<sup>11</sup> which centre on demolition of the principal building or alteration involving demolition of its principal external wall or of a substantial part of its interior. In these cases Historic England’s responses on Listed Building Consent issues may also extend to cover planning issues if there is an accompanying planning application. In conservation areas Historic England must be consulted on planning applications for larger development proposals and on applications by local planning authorities for the demolition of unlisted buildings. In practice, consultations on development proposals in conservation areas may engage Historic England in cases where Grade II listed buildings are also affected. In these circumstances Historic England may offer comments on proposals affecting Grade II listed buildings. In the project’s review of planning applications in 318 local authorities, 138 (43%) were by chance wholly or partly inside a conservation area. In a selection of those cases Historic England’s views relevant to the project were only obtained because, by chance, they had been consulted on a Listed Building Consent application or on a conservation area issue.

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<sup>11</sup> Details are set out in *Arrangements for handling heritage applications – Notification to Historic England and National Amenity Societies and the Secretary of State (England) Direction 2015*.

**Box 2: Applications for planning permission – requirements to consult or notify Historic England**

<u>Broad requirements</u>	<u>Detailed requirements</u>
For development that would affect the setting of a Grade I or Grade II* listed building	Regulation 5A(3) of the Town and Country Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended)
For development involving the demolition, in whole or part, or the material alteration of Grade I or II* listed buildings	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015
For development that would affect the character and appearance of a conservation area where the development involves the erection of a new building or the extension of an existing building, and the area of land in respect of which the application is made is more than 1,000 square metres	Regulation 5A(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended)
For development likely to affect the site of a scheduled monument	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015
For development likely to affect a registered battlefield or a grade I or II* park or garden on Historic England’s Register of Historic Parks and Gardens of Special Historic Interest in England	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015
For development likely to affect certain strategically important views in London	Secretary of State for Communities and Local Government Directions relating to Protected Vistas
All applications by local planning authorities for demolition of an unlisted building in a conservation area	Regulation 4A of the Town and Country Planning General Regulations 1992 (as amended)

**Box 3: Applications for planning permission – requirements to consult The Gardens Trust**

<u>Broad requirements</u>	<u>Detailed requirements</u>
For development likely to affect any park or garden on Historic England’s Register of Historic Parks and Gardens of Special Historic Interest in England	Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015

## **National planning policy**

### **National Planning Policy Framework**

A1.8 National planning policy for listed buildings is in many respects a means of applying section 66 of the Planning (Listed Buildings and Conservation Areas) Act. A comparable ‘General duty as respects conservation areas in exercise of planning functions’ is set out in section 72 of the Act (though without reference to their settings), and this is also taken forward in the NPPF. Policy on ‘Conserving and enhancing the historic environment’ is set out in section 12 of the NPPF. Paragraphs 128-134 provide policy on designated heritage assets which are of key relevance to this project, in effect providing policy support to all designated heritage assets broadly similar to the legislative requirements for listed buildings, and including their settings within this. These paragraphs are set out in Box 4 below.

A1.9 Other policies in the NPPF relevant to this project, but less centrally, are:

- paragraph 17: a core planning principle is that planning should “conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations”;
- paragraph 136: “Local planning authorities should not permit loss of the whole or part of a heritage asset without taking all reasonable steps to ensure the new development will proceed after the loss has occurred”;
- paragraph 137: “Local planning authorities should look for opportunities for new development within.... the setting of heritage assets to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to or better reveal the significance of the asset should be treated favourably”; and
- paragraph 141: “the ability to record evidence of our past should not be a factor in deciding whether such loss should be permitted”.

In addition, a range of policies in section 7 of the NPPF on ‘Requiring good design’ have particular relevance in areas where designated heritage assets are present, notably paragraphs 60, 61 and 65.

A1.10 The NPPF includes definitions relevant to heritage assets as follows:

*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.

*Historic environment record:* Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use.

*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. 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.

**Box 4: National Planning Policy Framework paragraphs 128-134**

“128. 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.

129. 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.

130. Where there is evidence of deliberate neglect of or damage to a heritage asset the deteriorated state of the heritage asset should not be taken into account in any decision.

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

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

132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.

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

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

134. 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 securing its optimum viable use.”

## Planning Practice Guidance

A1.11 The national Planning Practice Guidance note *Conserving and enhancing the historic environment* contains advice relevant to this research. Individual points are noted throughout this report. However, guidance specifically on designated heritage assets is brief, as the main policy is detailed and set out in the NPPF. Key issues for this project are in the following paragraphs:

- 008-010: significance
- 013: setting (see also Appendix 3, especially paragraph A3.16 of this report)
- 015-016: viability
- 017: substantial harm
- 019: minimising harm
- 020: public benefits

## Historic England's 'Good Practice Advice'

A1.12 Historic England publishes a wide range of documents relevant to planning including a series of Good Practice Advice Notes. Of the nine of these Notes published so far, the two most relevant to this project cover *Managing significance in decision taking in the historic environment* (GPA2, March 2015) and *The setting of heritage assets* (GPA3, revised edition December 2017). These have from time to time been cited in local authority committee reports, planning appeal decisions and High Court judgements: by virtue of being published by the Government's statutory adviser on heritage, they can carry weight in planning decisions.

## **APPENDIX 2 RESEARCH METHODS**

### **Part One: survey of decisions by local planning authorities**

A2.1 The principal purpose of this research is to investigate the extent to which the development management provisions of the National Planning Policy Framework are being implemented correctly in respect of designated heritage assets. The first and largest part of the information gathering undertaken was the assessment in some depth of how one heritage-related planning application was treated in each of the large majority of local planning authorities. The survey covered every unitary and lower tier district and borough planning authority in England, including London and metropolitan boroughs. County planning authorities were omitted (see paragraph 1.9 above). National Park Authorities were also omitted: here there is generally a strong limitation on significant development and a high level of regard for heritage and environmental issues, so these were outside the main focus on the generality of local government practice. This provided a pool of 325 local authorities.

A2.2 A series of questions was generated to be asked of each planning application selected. This closely followed the terms of the NPPF. They covered selected information to identify the application and its relevance to the project, followed by questions on the:

- heritage information submitted with the application;
- conservation response given by specialist advisers to the local planning authority;
- statutory consultations undertaken and responses received;
- report of the local authority case officer; and
- councillors' decision.

A2.3 In order to be as objective as practicable, questions were framed in ways which allowed only one of a limited number of possible answers. Where matters of judgement by those considering the application were involved, scope was provided for the actual statements made to be included verbatim within the spreadsheet for recording results. The questions asked are reproduced in Appendix 4. The completed spreadsheet has been supplied to Historic England as a separate document; the main findings from it are presented in this report.

A2.4 The choice of case for investigation was filtered to ensure that only significant planning applications were eligible and to avoid potential distortions in how those cases were addressed:

- (i) Cases had to be decided by elected councillors. This eliminated decisions taken by officers under delegated powers. Local authorities vary in the Standing Orders they have chosen which affect when planning applications are taken for committee decision, but for the most part this criterion filters out minor cases (even if it can miss quite major ones).
- (ii) Enabling development cases were omitted. In these cases the balance of the arguments is slightly different from normal, with consideration being given to whether or not to permit a development not conforming with policy for the greater good of a heritage asset otherwise at risk. These would have distorted the analysis.
- (iii) Enforcement decisions were omitted: these are a special case and would have been an unnecessary complication for the project.
- (iv) Whether or not a planning application was accompanied by an Environmental Impact Assessment was immaterial to the project and not recorded.

In practice, there were five local authorities which had no heritage-related planning applications which met our criteria considered by a planning committee in the study period 1 January 2016 to 5 April 2017 (Copeland, Fylde, St Helens, High Peak and Nuneaton & Bedworth). No further consideration was given to these authorities.

A2.5 Information collection was principally from local authority websites. Most authorities post details of planning applications on a fairly accessible webpage and include at least the application and supporting documents. The better websites also post responses by external and internal consultees and submissions by local residents and interested parties. Case officer reports are usually available both there and on a separate webpage for the committee meeting at which the application was considered. Committee agenda papers and minutes are available on the latter webpage. For the most part these websites provided most or all of the information required, though sometimes needed to be supplemented by investigations on the National Heritage List for England (held on Historic England's website) or Google Earth or Google Streetview to obtain a clearer impression of the heritage interest in the vicinity. However, time limitations prevented the project from obtaining a complete record of answers to all questions in all cases. A 'don't know' entry was logged where information could not be gleaned from the sources noted or from brief contacts with local authority staff.

A2.6 There were additional difficulties in a very small number of authorities which, for example, placed only scanned documents on their websites, rather than originals capable of interrogation using the 'Find' command, or for other reasons had websites which were difficult or time-consuming to use. In practice a combination of such difficulties precluded the obtaining of information from two local authorities in a reasonable time (Sandwell and East Riding of Yorkshire) and no further consideration was given to these authorities. Together with the five authorities without suitable cases there were therefore seven authorities omitted. 318 authorities were studied. The number of authorities from which information was obtained by region was as follows:

East Midlands	41
East of England	46
London	33
North East	12
North West	36
South East	67
South West	37
West Midlands	28
Yorkshire & Humber	18

A2.7 The large majority of planning applications studied raised other issues for decision as well as heritage. This project concentrated exclusively on the application of the NPPF to designated heritage assets. If, for example, an application was found to cause no harm to heritage assets but was refused for other reasons, the project recorded that the application would have been approved because it caused no harm to heritage assets. The cases reported are therefore not general reviews of the issues raised but specific reviews of the treatment of designated heritage assets alone. This approach was applied to Parts Two and Three as well.

A2.8 The survey of decisions by local planning authorities was not designed to be statistically significant. There was no means of knowing whether the case chosen from an individual authority was representative of that authority (e.g. the practices of the individual case officer, type of application or level of attention to heritage issues). No attempt was made to sample affected heritage assets in proportion to their prevalence (and in any event many planning applications affected more than one designated heritage asset), or by type of applicant or by type or size of planning application. Instead the results could only be indicative, though hopefully instructive when based on cases in 318 authorities (as the reliability of findings rises quickly with sample size). One analytical benefit was that all cases sampled were random at the local authority level (there was no predisposition to pick any particular kind of application to study). The cases were also wholly independent of each other, being from different authorities who had no influence over each other's

individual decisions. So far as we are aware, there were therefore no particular biases in the data collection methodology, though any statistical analysis of the findings should be approached with great caution.

### **Compatibility with similar future assessments**

A2.9 Historic England or another agency may wish to repeat the assessment process in this report on future occasions. Compatibility between this and any future report would be important, so the methodology had to be reproducible. Attention to two groups of issues should resolve this: the questions to be asked of planning applications selected for study and the method of selecting case studies in local planning authorities. The former has been outlined in paragraphs A2.2-4 above, using data which is reasonably easy to obtain.

A2.10 Case study planning applications were selected as follows in each local authority:

- (a) The relevant committees deciding planning applications were identified from the list of committees and then from the timetable of local authority meetings;
- (b) The search for relevant planning applications began at the first relevant committee meeting on or after 6 April 2016 (i.e. at the start of the 2016-17 financial year);
- (c) Planning applications decided at that meeting were studied to find a case which included one or more designated heritage assets, using a key-word search of the case officer's report to committee, starting with the first agenda item; planning applications where decisions were deferred for a site visit, withdrawn or not decided for any other reason were neglected;
- (d) If no suitable planning application was identified at the first meeting, the process was repeated for the committee's next meeting; this continued until the end of the financial year (5 April 2017); if there were still no cases found, the process was continued by working backwards through committee agendas from 6 April 2016 to 1 January 2016.

This sequential approach would be straightforward to reproduce in another future financial year.

A2.11 Part (c) of the process described required careful assessment. Designated heritage assets are often mentioned even if the proposed development would clearly cause them no harm, e.g. due to distance from the application site, intervening development or for other reasons. This can typically arise if an applicant's Heritage Statement mentions a range of assets mainly for completeness and this is restated in the case officer's report. The project would be of little value to Historic England if it identified an undue number of cases where 'no harm' would clearly be caused to heritage assets. The approach adopted in cases where 'no harm' was found was as follows. First, all cases were included in the project where 'no harm' was said to be caused to a designated heritage asset when this was within the 'red line' of the application site. This ensured that changes of use of listed buildings and impacts on curtilage buildings were always included. Second, where there was said to be 'no harm' to offsite heritage in cases of designated assets which appeared to be remote or marginal to the development applied for, these cases were dropped. Third, the remaining cases finding 'no harm' to offsite heritage assets were included in the study: essentially this included all cases where one or more of the applicant, heritage adviser or case officer identified a proposal as causing any level of harm above nil, or where we considered the authority ought to have carried out an evaluation of the proposal against NPPF policies.

A2.12 There was clearly a judgement in that last respect, but there were good reasons for including some cases where the authority might find an absence of harm to offsite heritage assets. In some cases identification of heritage assets potentially affected was sub-standard (e.g. references to 'nearby listed buildings' or even only a 'graded building' were discovered), so the consideration of harm to them was also sub-standard (with little if any subsequent review). Local authorities

sometimes claimed there was ‘no harm’ to an offsite heritage asset even though there was inadequate reporting on how that finding had been reached. Also, offsite heritage assets might be considered purely in visual terms, even though a designated heritage asset not intervisible with the proposed development was considered by others to be in the setting of the heritage asset in other ways. There were also cases where a suspicion arose that a finding of ‘no harm’ to a heritage asset was a convenient way of absolving the planning authority from carrying out a review of public benefits against harm, or, more simply, an indirect way of supporting the proposed development more emphatically. For all these reasons, caution needed to be exercised before deciding whether or not to include or exclude from analysis planning applications said to cause ‘no harm’ to offsite heritage assets.

A2.13 We were also alert in this process to the proportionality test in the NPPF: that the level of heritage detail required should be proportionate to the assets’ importance and no more than is sufficient to understand the potential impact of the proposal on their significance. In the case of modest developments affecting offsite Grade II listed buildings (a common occurrence in our study), the harm to heritage could easily be played down, and the project needed to establish if this was justified. There was also a possibility that harm to an offsite heritage asset had been overlooked by all parties, even to the point where a heritage asset had not been identified at all – though that complication was not one that this project could reliably resolve.

A2.14 Taken together, we consider that the approach outlined above fulfils the third aim of the project ‘to develop a methodology that can be repeated on a regular basis’, bearing in mind the difficulties of deciding whether or not to include cases where ‘no harm’ is claimed to offsite heritage assets.

### **Part Two: case studies of decisions by local planning authorities**

A2.15 Part Two of the project comprised the analysis of 25 planning applications decided by local authorities around England. The intention here was to provide a cross-section of cases illustrating how authorities have addressed designated heritage assets in development management, providing a range of good practice and poor practice (or in part good or poor). These would help lessons to be learnt from each case. Cases were selected which illustrated experiences with applying the NPPF identified from the study of authorities in Part One. The large majority of them involved Grade I and II\* heritage assets or others where Historic England was involved as a statutory consultee. Most cases were recommended for study by local offices of Historic England, though others were chosen for further analysis from Part One of this project by agreement.

A2.16 All planning applications used as case studies in Part Two were subject to the same initial analysis as the sample cases in Part One. Similar limitations were imposed on the selection of planning applications for case studies, notably decisions by committees of councillors, though two enabling development cases have been included. For Part Two all relevant documents were obtained so that the ‘don’t know’ option in some Part One responses did not apply. Additional analysis was undertaken and the results presented in each case in a single page summary using a standard template. This analysis concludes with commentary identifying points arising from the case study of wider relevance to the project. Summarising the sometimes significant cases in a single page necessitated considerable truncation of their full details. Sufficient details are provided in each case to give access to the source documentation, should further information be required.

A2.17 The 25 case studies were chosen to represent a wide range of application sizes, from changes of use and replacement dwellings through to major housing estates and tower blocks, and of application types, including a hotel, student flats, an industrial estate, a farmyard redevelopment,

a mosque, offices, a trampoline park, a wind turbine and development in the grounds of a country house. The cases are spread reasonably evenly around England. Chapter 3, reviewing the findings from the study of 318 local planning authorities, includes references to the various Case Studies to illustrate the kinds of issues which can arise in practice. The Case Studies are therefore not reviewed separately.

### **Part Three: case studies of planning appeal decisions**

A2.18 In addition to reviewing decision-making in local government, the project has also examined how closely Planning Inspectors and the Secretary of State follow the NPPF in decisions on planning appeals and called-in planning applications. To this end Part Three of the project examined ten appeal decisions which revealed the approaches taken and contributed to learning lessons from practice. Cases were mainly chosen by Historic England from the experiences of local offices together with others from Green Balance records by agreement. The issues arising from these appeal cases are reviewed in Chapter 4.

## **APPENDIX 3 REVIEW OF RELEVANT LEGAL CASES**

### **The statutory presumption in favour of preservation**

A3.1 The starting point for the application of section 66 in planning practice has been set out in various judgements. For example, in *Garner and Others v. Elmbridge BC and Others* ([2011] EWCA Civ891) on 24 June 2011, the Court of Appeal endorsed (at paragraph 7) the approach of the judge in the earlier High Court hearing, who had also responded to the colloquial summary of the position that there is a ‘presumption against’ harming a listed building or its setting:

“Section 66 does not permit a local planning authority to treat the desirability of preserving the setting of a listed building as a mere material consideration to which it can simply attach what weight it sees fit in its judgment. The statutory language goes beyond that and treats the preservation of the setting of a listed building as presumptively desirable. So if a development would harm the setting of a listed building, there has to be something of sufficient strength in the merits of the development to outweigh that harm. The language of presumption against permission or strong countervailing reasons for its grant is appropriate. It is the obvious consequence of the statutory language, rather than an illegitimate substitute for it.”

A3.2 One of the most prominent recent judgements on a heritage case was the Court of Appeal decision regarding *Barnwell Manor Wind Energy Ltd v East Northamptonshire DC* ([2014] EWCA Civ 137) on 18 February 2014. This concerned the impact of a proposed windfarm on the setting of a range of heritage assets of which the most important was Lyveden New Bield, a Grade I listed building and Scheduled Monument within a Grade I Registered Park and Garden. The weight to be given to ‘setting’ derived from section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and from policy in Planning Policy Statement 5 *Planning for the Historic Environment* (which was extant at the time of the original local authority decision). The Court ruled that a Planning Inspector deciding the case had given insufficient weight to the desirability of protecting the setting of a listed building. The judgement is a reminder of the importance in planning decisions of the legislative basis in the 1990 Act for having special regard to a listed building or its setting where these are affected. It puts beyond doubt that planning decision makers are not allowed to treat the desirability of preserving the setting of listed buildings as merely a ‘material consideration’ to which they can simply attach such weight as they see fit: if there is harm to the setting of a listed building, they must give that harm considerable importance and weight. However, we consider there must be some caution in reading across from this case based in part on PPS5 to the currently applicable policy in the NPPF.

A3.3 Some of the arguments in *Barnwell* reappeared in the High Court decision soon afterwards regarding development in Penshurst, Kent, where the local authority was challenged for giving insufficient weight to the settings of a number of listed buildings when considering a development proposal for affordable housing. In *R (oao The Forge Field Society) v Sevenoaks DC* ([2014] EWHC 1895 (Admin)) decided on 12 June 2014, the NPPF policies applied (rather than the preceding policies from PPS5). The Court confirmed an earlier ruling that ‘preserving’ the setting of a listed building means ‘doing no harm’, and stated that if the setting of a listed building would be harmed, then there is 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” (paragraph 49).

A3.4 Justice Lindblom commented on the officer's report to committee in *Forge Field*:

"it seems to me that the officer equated "limited" or "less than substantial" harm with a limited or less than substantial objection. He appears to have carried out a simple balancing exercise between harm to heritage assets and countervailing planning benefits without heeding the strong presumption inherent in sections 66 and 72 of the Listed Buildings Act against planning permission being granted in a case such as this.... The members were told that there was a 'legislative duty' on the Council "to have special regard to the preservation of conservation areas and listed buildings". But this was not the same thing as demonstrably applying the strong presumption against approval in the planning balance on which the written and oral advice given to the committee – and the committee's decision – was based" (paragraph 55).

As Martin Edwards commented on the case, "this case provides a salutary lesson and officers may have to take greater care when drafting reports to show that they have fully respected and followed these clear statutory duties which still have to be applied even if there is tension with a relevant policy in the development plan" (*Journal of Planning and Environment Law*, Issue 1, 2015, page 42).

A3.5 *Forge Field* also established that alternative options need to be considered where a development proposal would cause harm to heritage assets. The judge commented: "If there is a need for development of the kind proposed, which in this case there was, but the development would cause harm to heritage assets, which in this case it would, the possibility of the development being undertaken on an alternative site on which that harm can be avoided altogether will add force to the statutory presumption in favour of preservation. Indeed, the presumption itself implies the need for a suitably rigorous assessment of potential alternatives" (paragraph 61).

### **Demonstrating compliance with the law**

A3.6 The judgement in *Barnwell* was given further attention by the Court of Appeal in a decision on the case of *Jones v Mordue* ([2015] EWCA Civ 1243) on 3 December 2015. This concerned the impact of a wind turbine of the setting of the Grade II\* listed church of St Mary, Wappenham in South Northamptonshire (and to a lesser degree on the setting of other listed buildings). The case centred on earlier judgements giving two potentially different approaches to the adequacy of reasons for a planning decision. This was between the established authority regarding the standard of reasons to be expected where a planning permission is granted for development which has a detrimental impact on listed buildings, namely *Save Britain's Heritage v Number 1 Poultry Ltd* ([1991] 1 WLR 153 HL), and the standards set in *Barnwell*. It was possible to interpret the *Barnwell* decision as authority for the proposition that there is an onus on a decision-maker positively to demonstrate by the reasons given that considerable weight has been given to the desirability of preserving the setting of relevant listed buildings. However, this was contrary to the general position in *Save Britain's Heritage*. The guidance in that case had subsequently been set out in more accessible form by Lord Brown in *South Bucks District Council v Porter (No. 2)* ([2004] UKHL 33; [2004] 1 WLR 1953) as follows (paragraph 36):

"The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn....".

A3.7 The Court of Appeal in *Jones v Mordue* ruled that there had been no change to the standard of reasons since *Save Britain's Heritage* and that *Barnwell* had not departed from that. The *Barnwell* judgement had been made in the context of a decision letter which positively gave the impression that the inspector had *not* given the requisite considerable weight to the desirability of preserving the setting of the relevant listed buildings, where as a result it would have required a positive statement by the inspector referring to the proper test under section 66(1) to dispel that impression. The Court ruled that the position in *Jones v Mordue* was different in that the Inspector had given clear reasons for his decision and gave strong indications that he had the relevant legal duty in mind and complied with it.

A3.8 The Court set down a brief and useful statement on what a planning decision-maker has to do to demonstrate compliance with the law in these issues:

“Paragraph 134 of the NPPF appears as part of a [bundle]<sup>12</sup> of paragraphs, set out above, which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty” (paragraph 28).

The judgement in *Jones v Mordue* also set down a yardstick for judging Inspectors' Reports. Paragraph 28 continued:

“When an expert planning inspector refers to a paragraph within that grouping of provisions (as the Inspector referred to paragraph 134 of the NPPF in the Decision Letter in this case) then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned.”

(The Court of Appeal in *Williams v Powys County Council* (see paragraph A3.16 below) noted at paragraph 66 the applicability of this observation in *Jones v Mordue* also to planning officers' reports to committee as well as to Inspectors' reports.)

A3.9 If reciting the statutory duty to be applied may not be sufficient (if there are contrary indications that these have not been applied), so also failure to recite it need not be fatal to the lawfulness of a decision to grant planning permission, provided the duty has actually been performed by the planning decision maker. This was explained by the Court of Appeal in an earlier case affecting the setting of a Grade I listed building and SM (*Garner and Others v. Elmbridge BC and Others* ([2011] EWCA Civ891) on 24 June 2011):

“The question is not whether a local planning authority says that it has had special regard to the desirability of preserving the setting of a listed building but whether it did in fact have special regard to the desirability of preserving the setting of the listed building in question when deciding whether or not to grant planning permission” (paragraph 8).

### **Interpreting 'significance', 'substantial harm' and 'weight'**

A3.10 The Courts have considered how 'great weight' should be given to the interests of heritage assets in accordance with NPPF paragraph 132, and to the associated judgements about the degree of impact of a proposal on a heritage asset. Different approaches are to be taken in planning

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<sup>12</sup> Lord Justice Sales used the word 'fasciculus'.

practice according to whether the harm to ‘significance’ is ‘substantial’ or ‘less than substantial’ (paragraphs 133 and 134 respectively). ‘Significance’ is defined for NPPF purposes in its Glossary (see Appendix 1 paragraph A1.10).

A3.11 A wind turbine at Lanreath near Looe was refused permission by Cornwall Council on grounds of impact on the setting of Scheduled Monuments, but granted on appeal. Mr Pugh challenged the decision in the High Court. The decision in *Pugh v SSCLG* ([2015] EWHC 3 (Admin)) on 5 January 2015 is of interest to this project primarily because of its ruling on the way in which the NPPF paragraph 132 is to be applied regarding how ‘great weight’ should be given to heritage assets’ conservation. The claimant argued that the Inspector had failed to describe the weight he gave to the harm to the SMS’ settings, and had not provided the ‘clear and convincing justification’ for any harm or loss, as required by that paragraph. Justice Gilbart did not accept that, arguing that ‘great weight’ was sufficiently applied by following the sequential steps in paragraphs 132-134 (cf. the judgement in *Jones v Mordue* at paragraph 28: see paragraph A3.8 above). He commented:

“Paragraphs 126-134 are not to be read in isolation from one another. There is a sequential approach in paragraphs 132-4 which addresses the significance in planning terms of the effects of proposals on designated heritage assets. If, having addressed all the relevant considerations about value, significance and the nature of the harm, and one has then reached the point of concluding that the level of harm is less than substantial, then one must use the test in paragraph 134. It is an integral part of the NPPF sequential approach. Following it does not deprive the considerations of the value and significance of the heritage asset of weight: indeed it requires consideration of them at the appropriate stage. But what one is not required to do is to apply some different test at the final stage than that of the balance set out in paragraph 134. How one strikes the balance, or what weight one gives the benefits on the one side and the harm on the other, is a matter for the decision maker. Unless one gives reasons for departing from the policy, one cannot set it aside and prefer using some different test” (paragraph 50).

A3.12 The Judge was also clear that “the significance of a heritage asset still carries weight at the balancing stage required by paragraph 134” (paragraph 49), reiterating the finding in the Forge Field case, paragraph A3.4 above. He specifically endorsed Justice Waksman in *Hughes v. South Lakeland DC* ([2014] EWHC 3979 (Admin), 28 November 2014), who had ruled:

“..... in a paragraph 134 case, the fact of harm to a heritage asset is still to be given more weight than if it were simply a factor to be taken into account along with all other material considerations, and paragraph 134 needs to be read in that way. By way of contrast, where non-designated heritage assets are being considered, the potential harm should simply be “taken into account” in a “balanced judgment” – see paragraph 135. It follows that paragraph 134 is something of a trap for the unwary if read – and applied – in isolation” (paragraph 53).

### **The relationship with the NPPF five-year housing land supply**

A3.13 A housing development at Newent in the Forest of Dean, Gloucestershire was refused by the local planning authority, but on appeal by the developer permission was granted. The Council applied for judicial review. The decision throws light on the approach to be adopted in the treatment of designated heritage assets when a local planning authority does not have available a five-year supply of housing land. Under paragraph 49 of the NPPF, relevant policies for the supply of housing would then not be considered up-to-date, and paragraph 14 of the NPPF specifies the approach to be followed instead. In *Forest of Dean District Council v SSCLG* ([2016] EWHC 421 (Admin)), 4 March 2016, consideration was given to the relationship between paragraphs 14 and 134 of the NPPF. Justice Coulson ruled for various reasons that paragraph 134 should be regarded as a

policy restricting development. This meant that the final clause of paragraph 14 applied: that planning permission should be granted unless “specific policies in this Framework indicate development should be restricted”<sup>13</sup>. This had the effect of disapplying the presumption in favour of sustainable development. The practical effect of this logic affected the balancing exercise between heritage and other issues. Paragraph 134 of the NPPF should therefore be applied as it stands: where there is “less than substantial harm to the significance of a heritage asset, this harm should be weighed against other public benefits...”. Conversely, the alternative test set out in paragraph 14 did not apply, namely “granting permission unless... any adverse impacts of doing so would demonstrably outweigh the benefits...”. Because the Inspector in this case had applied the paragraph 14 test instead of the paragraph 134 test, there was an error in law and the claim by the District Council was upheld. The case therefore provides some comfort for the protection of heritage assets in housing cases where the local authority has less than a five year housing land supply.

A3.14 *Suffolk Coastal DC v Hopkins Homes Ltd* ([2017] UKSC 37), decided on 10 May 2017, is the determining Supreme Court case on the correct interpretation of paragraph 49 of the NPPF. This covers in particular the meaning of when relevant “policies for the supply of housing should not be considered up to date if the local planning authority cannot demonstrate a five-year supply of deliverable housing sites”. The ruling is of wide applicability but has two specific features affecting heritage. The first concerns footnote 9 to paragraph 14 of the NPPF, which includes ‘designated heritage assets’ amongst policies in the Framework which “indicate development should be restricted”. The ruling clarified that, in circumstances where a local planning authority cannot identify a five-year housing land supply, the policies constraining development exemplified in footnote 9 could not necessarily be expected to carry their full weight in planning decisions:

“79. Among the obvious constraints on housing development are development plan policies for the preservation of the greenbelt, and environmental and amenity policies and designations such as those referred to in footnote 9 of paragraph 14. The rigid enforcement of such policies may prevent a planning authority from meeting its requirement to provide a five-years supply.”

“83. If a planning authority that was in default of the requirement of a five-years supply were to continue to apply its environmental and amenity policies with full rigour, the objective of the Framework could be frustrated. The purpose of paragraph 49 is to indicate a way in which the lack of a five-years supply of sites can be put right. It is reasonable for the guidance to suggest that in such cases the development plan policies for the supply of housing, however recent they may be, should not be considered as being up to date.”

85. From the presumption in favour of sustainable development in paragraph 14,.... “The decision-maker should therefore be disposed to grant the application unless the presumption can be displaced. It can be displaced on only two grounds both of which involve a planning judgment that is critically dependent on the facts..... The second ground is that specific policies in the Framework, such as those described in footnote 9 to the paragraph, indicate that development should be restricted. From the terms of footnote 9 it is reasonably clear that the reference to “specific policies in the Framework” cannot mean only policies originating in the Framework itself. It must also mean the development plan policies to which the Framework refers. Green belt policies are an obvious example.”

The second feature concerned the correct treatment of paragraph 135 of the NPPF concerning non-designated heritage assets (paragraphs 40, 52 and 67-68). That is beyond the scope of this project.

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<sup>13</sup> The final clause of paragraph 14 refers to Footnote 9, which states that ‘designated heritage assets’ are amongst the policies restricting development.

### Taking into account the setting of listed buildings: detailed cases

A3.15 In *R (oao Palmer) v Herefordshire Council* ([2016] EWCA Civ 1061) decided on 4 November 2016 the Court of Appeal heard a case devoted wholly to establishing whether there had been compliance with s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The case involved the construction of four poultry broiler units for 45,000 chickens and associated infrastructure 50 metres from Flag Station, a Grade II listed former railway station converted to an agricultural worker's dwelling. The Court undertook a detailed review of the report of the case officer, and of specialist landscape and heritage advice provided. It concluded that the correct procedures had been followed and there was no case to intervene in the planning judgements made. The Court noted (paragraph 5) that "Although the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell", and that these had both been addressed.

A3.16 The Court of Appeal has provided helpful guidance on the performance of the duty in s66(1) of the Listed Buildings Act 1990 to have special regard to the desirability of preserving a listed building's setting. *R (Williams) v Powys County Council* ([2017] EWCA Civ 427), decided on 9 June 2017, concerned the impact of a wind turbine on the setting of two Scheduled Monuments and a Grade II\* listed building. Lord Justice Lindblom explained the appropriate approach to the issue as follows:

"53. As the case law shows, the circumstances in which the section 66(1) duty has to be performed where the setting of a listed building is concerned will vary considerably, and with a number of factors. What are those factors? Typically, I think, they will include the nature, scale and siting of the development proposed, its proximity and likely visual relationship to the listed building, the architectural and historic characteristics of the listed building itself, local topography, and the presence of other features – both natural and man-made – in the surrounding landscape or townscape. There may be other considerations too. Ultimately, the question of whether the section 66(1) duty is engaged will always depend on the particular facts and circumstances of the case in hand.

.....

56. The setting of a listed building is not a concept that lends itself to an exact definition, applicable in every case. This is apparent, I think, from the deliberately broad definitions of the setting of an historic – or heritage – asset in Cadw's document and in the NPPF..... I would not wish to lay down some universal principle for ascertaining the extent of the setting of a listed building. And in my view it would be impossible to do so. Clearly, however, 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. This will often require the site of the proposed development and the listed building to be reasonably close to each other, but that will not be so in every case. Physical proximity is not always essential. This case illustrates the possible relevance of mutual visibility – or "intervisibility", as the judge described it – and also of more distant views from places in which the listed building and the proposed development can be seen together – "co-visibility", as it was described in submissions before us. But this does not mean that the mere possibility of seeing both listed building and development at the same time establishes that the development will affect the setting of the listed building.

.....

58. As the judge in this case recognized, the fact that the possible effect of the proposed development on the setting of a listed building has not been identified as an issue in responses

to consultation, or in representations made by third parties, does not of itself relieve a local planning authority of the duty. There will also be cases where only the developer himself identifies the possibility of some change to the setting of a listed building but contends either that the change would not be harmful or that the harm would be insignificant or acceptable. Depending on the circumstances, this too may be enough to engage the section 66(1) duty, and, if it does, the decision-maker will err in law in failing to perform that duty.”

A3.17 In *Goring-on-Thames Parish Council v South Oxfordshire DC* ([2016] EWHC 2898 (Admin)) decided on 17 November 2016, the impact on heritage was one of three grounds of challenge to a planning permission for a hydropower scheme (three Archimedes Screws and ancillary works) to be incorporated into Goring Weir on the River Thames. The judge ruled that the Council had fallen down in fulfilling its duty to apply s72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requiring special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area – a parallel to s66 dealing with Listed Buildings in comparable terms – but that if this had been correctly applied the outcome would not have been substantially different.

A3.18 Part of the challenge included an alleged failure to take into account the impact on listed buildings. South Oxfordshire DC had argued in response that no objector had referred to the impact on listed buildings in any representation. The judge ruled in passing on this issue that:

“the Council is entitled to maintain its submission in this regard when knowledgeable groups like Goring Parish Council did not raise listed buildings and their settings as a concern. The duty to investigate under section 66, which I am prepared to accept, must be triggered by at least someone either in the Council or outside raising it as a potential issue. In the circumstances as I have described them that threshold cannot be regarded as having been reached” (paragraph 61).

He then went on to say:

“Apart from the Swan Hotel, the setting of listed buildings was never a main issue of the application. Therefore it was not necessary for the officer’s report to identify each one simply to confirm that there would be no material impact upon it. As Evans LJ put it in *MJT Securities v. Secretary of State for the Environment* (1998) 75 P & CR 188, there is no need to refer to insignificant issues, only the main issues. Since there was no harm to any listed building which the Council was required to take into account, the duty in section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 did not arise” (paragraph 63).

A3.19 The Courts may wish to revisit this pair of arguments. Can planning decision-makers reasonably outsource the fulfilment of their legal responsibility to apply s66 to a random process of consultees’ views? The implication would seem to be that, if a Council failed to identify a listed building that might be affected by a development proposal, whether through ignorance, oversight or failing to investigate, and no-one corrected that error in a consultation response, then the Council would be absolved from responsibility for upholding s66 of the Listed Buildings Act. This could even be rather convenient for cash-strapped authorities disinterested in heritage who chose not to consult such heritage experts as might be available to them. The question of whether there would be harm to listed buildings could in effect be prejudged in the negative. The Court of Appeal has commented on parallel circumstances in *Williams v Powys County Council* at paragraph 58 (see paragraph A3.16 above).

A3.20 In *Steer v. SSCLG (& others)* ([2017] EWHC 1456 (Admin)) decided on 22 June 2017, Justice Lang considered an appeal against the decision of an Inspector to grant planning permission for developments of 400 and 195 dwellings (the smaller on part of the larger site) near the Grade I listed Kedleston Hall with its Grade I Registered Park and Garden, in Amber Valley, Derbyshire. The Claimant, a local resident, argued that the Inspector erroneously applied a narrow interpretation when determining the setting of the Hall, in which a physical or visual connection was needed, despite the existence of an historical, social and economic connection between the Hall and its agricultural estate lands. This approach was inconsistent with the broad meaning given to setting in the NPPF, the PPG and Historic England's 'Good Practice Advice'. Mr Steer argued that there was a body of expert evidence at the public inquiry stating the historical connection did bring the appeal site within the setting of the Hall. If the basis of the Inspector's decision was that he rejected this evidence, and preferred the evidence of the developer's expert that the historical connection was insufficient to bring the appeal site within the setting, then he failed to provide adequate reasons for this conclusion, particularly bearing in mind that he was disagreeing with Historic England, a specialist statutory consultee.

A3.21 The Judge agreed with all these arguments. She found that the Inspector accepted the evidence that there existed historic, social and economic connections between the Hall and Park and the area in which the appeal site was situated, but he rejected the evidence and submissions that the appeal site was part of the setting of the Hall: he had treated the physical and visual connection as determinative. When considering the Park, the Inspector found that the appeal site was within the setting of the Park because of its "*relative proximity*" and the fact that there were "*clear views of the boundary of the Park*", although the views into the Park had been obscured. The judge ruled that the Inspector had:

"adopted a narrow interpretation of setting which was inconsistent with the broad meaning given to setting in the relevant policies and guidance which were before him (see the extracts from the NPPF, the PPG, and HE's 'Good Practice Advice', set out above). Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. The term setting is not defined in purely visual terms in the NPPF which refers to the "*surroundings in which a heritage asset is experienced*". The word "*experienced*" has a broad meaning, which is capable of extending beyond the purely visual" (paragraph 64).

She also considered that:

"...the Inspector concluded that there had to be a physical or visual connection going beyond the historic social and economic connections between the Hall and its estate "*otherwise land completely remote from the Hall could be deemed within its setting*". Later on... he referred to the fact that there was estate land in Staffordshire. In my view, the Inspector's justification for his narrow interpretation was misplaced because the term "*surroundings*" in the NPPF definition of setting does place a geographical limitation on the extent of the setting. The estate in Staffordshire could not be treated as part of the Hall's "*surroundings*".

The judge concluded:

"69. I agree with the submission of the Claimant and Historic England that the Inspector adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative. In adopting this approach, the Inspector made an error of law."

An appeal was lodged against this ruling and a final decision from a higher Court is pending.

A3.22 The High Court ruling at Kedleston is in marked contrast to an earlier decision in 2009, prior to the NPPF, in *R (oao Miller) v North Yorkshire County Council* ([2009] EWHC 2172 (Admin)) which considered the impact of proposed mineral working on the setting of Thornborough Henges, a Scheduled Monument. Planning policy at that time was set out in Planning Policy Guidance Note 16: *Archaeology and Planning* (November 1990), which stated that “the desirability of preserving an ancient monument and its setting is a material consideration in determining planning applications”. Justice Hickinbottom commented:

“89. There is no definition of “setting” in this context, but it was common ground before me that it is a matter of judgment to be determined in visual terms, with regard being had to (i) the view from the monument towards the development (ii) the view from the development towards the monument and (iii) any other relevant view which includes both the monument and the development...”.

He went on to conclude:

“96. Of course, lay persons can have an opinion on setting. The Friends [of Thornborough Henges] contended that the impact of the extension on the setting for the henges was significant, on essentially “non-visual” grounds.... However, that was an assertion that was misdirected (in that setting is a visual concept) and, perhaps for that reason, unsupported by any professional evidence.... Because setting is a visual concept, particular views have to be considered. That is exactly what the professional advice obtained did. In the event, there was no professional advice that the impact on setting would be significant: all such advice was that it would not be significant.”

A3.23 The change in approach to ‘setting’ between the 2009 and 2017 High Court decisions illustrates the impact of a revised approach promoted through PPS5 *Planning for the Historic Environment* in March 2010 and subsequently maintained in the NPPF. Both policy documents used the same definition for the 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.” The Government’s intention is further amplified in the Planning Practice Guidance on *Conserving and enhancing the historic environment* from March 2014 which includes the guidance:

“The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each” (part of paragraph 013, emphasis added).

## **APPENDIX 4 SPREADSHEET QUESTIONS**

*Note: spreadsheet entries should use one of the **bold** entries in each case*

*Additional columns are provided for quotations after Qs 12, 19, 20, 21, 22, 23, 24, 25 & 27*

Region

Local planning authority

Application reference number

Date decided by Committee (in format 'yyyymmdd')

Brief description of application (incl. development or change of use)

Heritage assets potentially affected

Comments

### **Research questions**

1. Did the application documents identify the correct heritage assets for evaluation?  
Option 1 **Yes**  
Option 2 **No**
2. Did the application identify the significance of these heritage assets (incl. setting) proportional to their importance?  
Option 1 **Yes**  
Option 2 **No**
3. Did the application make use of the Historic Environment Record?  
Option 1 **Yes**  
Option 2 **No**
4. Did the application use appropriate heritage expertise?  
Option 1 **Yes**  
Option 2 **No**
5. Where archaeological assets may be present, was a desk-based assessment submitted or a field evaluation made?  
Option 1 **Yes**  
Option 2 **No**  
Option 3 **n/a** Not applicable if no archaeological assets affected
6. Did the application identify the potential impact of the proposal on the significance of the heritage assets?  
Option 1 **Yes**  
Option 2 **No**
7. Was the LPA consideration assisted by appropriate expertise from:  
Option 1 A Conservation Officer employed by the authority?  
Option 2 A contracted (or consulted) Conservation Officer from another authority?  
Option 3 A private sector specialist heritage consultant?  
Option 4 None of these or no reference to advice having been obtained?  
Option 5 Heritage advice obtained but kind of advice not known?
8. Did the LPA heritage adviser identify the significance of the heritage assets?  
Option 1 **Yes**  
Option 2 **No**  
Option 3 **n/a** Not applicable if no LPA heritage adviser  
Option 4 **dk** (don't know)

9. Did the LPA heritage adviser identify and assess the proposal's likely impact on the assets' significance (including settings)?
- Option 1 **Yes**  
Option 2 **No**  
Option 3 **n/a** Not applicable if no LPA heritage adviser  
Option 4 **dk** (don't know)
10. Is the application site in whole or part within a Conservation Area?
- Option 1 **Yes**  
Option 2 **No**
11. Did the LPA heritage adviser identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets?
- Option 1 **Yes**: no harm  
Option 2 **Yes**: less than substantial harm  
Option 3 **Yes**: substantial harm  
Option 4 **No**  
Option 5 **Not applicable** if no LPA heritage adviser  
Option 6 **Don't know**
12. Did the LPA heritage adviser consider means of avoiding or minimising conflict through mitigation (between the heritage assets' conservation & any aspect of the proposal)?
- Option 1 **Yes** (*if so, quote what these were in additional column provided*)  
Option 2 **No**  
Option 3 **n/a** Not applicable if no harm or no LPA heritage adviser  
Option 4 **dk** (don't know)
13. Did the LPA heritage adviser advise on weight to give to heritage in relation to the benefits?
- Option 1 **Yes**  
Option 2 **No**  
Option 3 **n/a** Not applicable if no harm or no LPA heritage adviser  
Option 4 **dk** (don't know)
14. Did the LPA carry out the correct statutory heritage consultations?
- Option 1 **Yes**  
Option 2 **No**
15. Did Historic England when consulted:
- Option 1 **Respond with site-specific comments?**  
Option 2 **Respond without site-specific comments?**  
Option 3 **Not respond?**  
Option 4 **Not applicable if Historic England not consulted (or should not have been)**
16. Did the Gardens Trust when consulted:
- Option 1 **Respond with site-specific comments?**  
Option 2 **Respond without site-specific comments?**  
Option 3 **Not respond?**  
Option 4 **Not applicable if the Gardens Trust not consulted**
- 17a. Did the case officer's report list the relevant heritage assets?
- Option 1 **Yes**  
Option 2 **No**

- 17b. Did the case officer's report identify their significance?  
 Option 1 **Yes**  
 Option 2 **No**
18. Did the case officer identify and assess the proposal's likely impact on the assets' significance (including settings)?  
 Option 1 Yes: fully  
 Option 2 Yes: partially  
 Option 3 No
19. Did the case officer identify if there would be no harm, substantial harm or less than substantial harm to the significance of the heritage assets?  
*(If Option 1, or 2 or 3, quote the reasons given in additional column provided)*  
 Option 1 Yes: no harm  
 Option 2 Yes: less than substantial harm  
 Option 3 Yes: substantial harm  
 Option 4 No
20. Did the case officer seek to avoid or minimise conflict (between the heritage assets' conservation and any aspect of the proposal)?  
 Option 1 **Yes** *(if so, quote what these were in additional column provided)*  
 Option 2 **No**  
 Option 3 **n/a** Not applicable if no harm
21. Did the case officer's report give great weight to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets' importance)?  
 Option 1 **Yes** *(if so, quote how this was done in additional column provided)*  
 Option 2 **No**
22. Did the case officer's report follow any recommendations made by heritage adviser?  
 Option 1 **Yes**  
 Option 2 **No** *(if so, quote reasons given for this in additional column provided)*  
 Option 3 **n/a** Not applicable if no LPA heritage adviser or no recommendation  
 Option 4 **dk** (don't know)
23. Did the case officer's report follow any recommendations made by Historic England?  
 Option 1 **Yes**  
 Option 2 **No** *(if so, quote reasons given for this in additional column provided)*  
 Option 3 **n/a** Not applicable if HE not consulted (or should not have been) or no recommendation
24. Did the case officer's report follow any recommendations made by The Gardens Trust?  
 Option 1 **Yes**  
 Option 2 **No** *(if so, quote reasons given for this in additional column provided)*  
 Option 3 **n/a** Not applicable if the Gardens Trust not consulted (or should not have been)

(continued)

25. If recommending that the benefits of a proposal outweigh the heritage interest (whether harm would be substantial or less than substantial), did the case officer's report provide clear and convincing justification for any harm to or loss of a heritage asset (proportionate to the proposal's impact on its significance)?
- Option 1 **Yes** (*if so, quote reasons given for this in additional column provided*)
  - Option 2 **No**
  - Option 3 **n/a** Not applicable if benefits of the proposal said not to outweigh heritage, or if proposal would cause no harm to heritage interests, or answer to Q19 is 'No'.
26. What was the case officer's recommendation on heritage grounds?
- Option 1 Approve as no harm to heritage assets
  - Option 2 Approve where there was less than substantial harm to the heritage which was outweighed by the public benefits of the proposal (including securing optimum viable use of the heritage assets)
  - Option 3 Approve where there was substantial harm to the heritage which was outweighed by the substantial public benefits of the proposal
  - Option 4 Approve where there was substantial harm to the heritage which was outweighed by all four criteria in paragraph 133 of the NPPF
  - Option 5 Approve without reference to harm or without reference to heritage assets
  - Option 6 Refuse due to less than substantial harm to the heritage
  - Option 7 Refuse due to substantial harm to the heritage
27. Did councillors implement the case officer advice on heritage specifically?
- Option 1 Yes, without discussion of heritage recorded in Committee minutes
  - Option 2 Yes, following discussion recorded in the Committee minutes
  - Option 3 No, reaching a different decision on heritage (*if so, quote reasons given for this in additional column provided*)

## **APPENDIX 5 PLANNING APPLICATION CASE STUDIES**

1. East of Cardington Airship Sheds, Shortstown, Bedford Borough Council
2. 2 Arena Central, Broad Street, Birmingham, Birmingham City Council
3. Makkah Mosque, Grecian Crescent, Bolton, Bolton Council
4. St Stephen's Road car park, Bournemouth, Bournemouth Borough Council
5. 174 Ossulston St, Somers Town, London NW1, Camden London Borough Council
6. Stane Street, Westhampnett, West Sussex, Chichester District Council
7. Guys Hall Farm, Awre, Gloucestershire, Forest of Dean District Council
8. Cross Lane, Brancaster, Norfolk, King's Lynn & West Norfolk Borough Council
9. Prescott water treatment works, Prescott, Knowsley Council
10. Rear of Pleasureland, Marine Road, Morecambe, Lancaster City Council
11. 17 Wellington Street, Leeds, Leeds City Council
12. The Majestic, City Square, Leeds, Leeds City Council
13. 54-58 London Road, Leicester, Leicester City Council
14. Acklam Hall, Middlesbrough, Middlesbrough Council
15. Pierson House, Mulgrave Street, Plymouth, Plymouth City Council
16. The Crescent, Salford, Salford City Council
17. 81A & The Longhouse, High St, Marshfield, South Gloucestershire Council
18. M1 Junction 16, Northamptonshire, South Northamptonshire District Council
19. Capital House, Houndwell Place, Southampton, Southampton City Council
20. Bullsland Farm, Chorleywood, Hertfordshire, Three Rivers District Council
21. 1 Cambridge Heath Road, Whitechapel, Tower Hamlets London Borough Council
22. Sun Hotel, 1 North St, Gainsborough, Lincolnshire, West Lindsey District Council
23. 285-329 Edgware Road, London W2, Westminster City Council
24. Berkeley Way, Warndon, Worcestershire, Worcester City Council
25. Swan Hotel, High Street, Worthing, West Sussex, Worthing Borough Council

**1. East of Cardington Airship Sheds, Shortstown. Bedford Borough Council.**

**Application no.: 11/02686/EIA.**

**Decision date: 27 January 2014.**

Proposed development

425 dwellings, access road from A600, internal roads, open space and associated infrastructure.

Designated heritage assets potentially affected

Cardington Shed No. 1 built in 1917 & Shed No. 2 built in the 1920s are both Grade II\* former airship sheds surrounded by airfield. No. 1 Shed was high on English Heritage's Buildings At Risk Register.

Heritage statement accompanying application

Enabling development was required to fund recladding No. 1 Shed. The setting of the Sheds has evidential, historic and aesthetic value. The core flying field area to the south would not be built on. In mitigation, maximum ridge heights would apply across the development and public space would be located close to the Sheds allowing the public to experience their scale in close proximity for the first time. Despite separation from the Sheds, which have very high heritage value, the development would still have moderate adverse impacts on their setting.

Review by Conservation Adviser and Case Officer

The open rural character of the former airfield and adjoining land surrounding the vast sheds is of great significance as it relates to the original choice for their location and function. The open space is therefore considered to be a fundamental element of the buildings' setting and significance. The Conservation Officer disagreed with the Heritage Statement. The proposal would totally alter the sense of openness of the land around them where the airships were formerly manoeuvred. This would alter the way in which the Sheds are experienced from close-by and looking out. The open view from the eastern edge of the former airfield would be fundamentally altered to a housing estate. There would be substantial harm to the significance of the Sheds. English Heritage agreed and felt the harm was neither clearly justified nor necessary to achieve substantial public benefits.

The Conservation Officer advised that securing the future of Shed No. 1 was a substantial public benefit under NPPF paragraph 133 that could outweigh the substantial harm. The Case Officer therefore considered in detail the case for this unusually large enabling development. Background points were that (i) previous extant permissions allowed industry on the site without enabling funding or alternatively 425 homes in principle; and (ii) English Heritage advised that its criteria for enabling development were not satisfied on a number of points. Shortcomings in the proposal, incl. further harm to heritage from attenuation ponds and developing 3.3ha more than previously allowed (supported by an agreed viability assessment), were outweighed by the benefit of refurbishing Shed No. 1 as 'wholly exceptional' circumstances. Permission should be granted.

Council decision

Councillors approved the application without reference to heritage being made in the minutes.

Commentary

This difficult case applied the NPPF policies where 'substantial harm' to heritage assets would arise in the context of a need for enabling development where there was an awkward planning history.

Proposed development

Reserved Matters application for 27,000sqm of office and numerous ancillary uses, services, landscaping and public realm works, arising from an outline permission originally granted in 2000 but repeatedly revised for development beside Centenary Square, primarily in an 11-storey tower.

Designated heritage assets potentially affected

The tower would fit between the Grade II Alpha Tower (1970-73, by Geoff Marsh of Richard Seifert & Partners, 13.5m distant) & Grade II former Birmingham Municipal Bank (c1931, 3m distant). Broad Street separates it from the Hall of Memory (Grade I, 1923) and Baskerville House (Grade II, 1938).

Heritage statement accompanying application

The Heritage Statement provided an admirable review of the significance of the four main heritage assets likely to be affected, but did not identify any adverse impacts on their settings caused by the proposed tower block.

Review by Conservation Adviser and Case Officer

In view of the substantial comments by English Heritage, the Conservation Officer was not asked to comment. English Heritage advised that, although some design changes had been made to reflect pre-application comments, it objected to the proposed configuration. The scale, mass, height and location would have a negative impact on Alpha Tower. The height of the proposed block would compete visually with Alpha Tower, was too close to it and should be set back into the site to allow better views of its tapered end from Centenary Square. The new block would also be overly-dominant adjacent to the Municipal Bank and in the highly-valued setting of the Hall of Memory. The Case Officer noted the increase in scale of the building above the consented 2014 masterplan (14m higher and extending further into the site) which challenged the prominence of the adjacent listed buildings. Arguments were presented against the main English Heritage comments, often based on the Heritage Statement. There would be some harm to the setting of Alpha Tower, but this would be less than substantial. Public benefits were considered to outweigh this (brownfield site redevelopment, offices for 1000 employees and funding of infrastructure around the site). The analysis noted the need to give great weight to heritage but did not fully follow the NPPF steps.

Council decision

Councillors approved the application without reference to heritage being made in the minutes.

Commentary

Key decisions had been taken in the outline permission for the wider Arena development in 2014, limiting the scope for responding to a fresh review of heritage interests. The officers used the basic terminology of the NPPF but did not apply its detailed policies, e.g. giving 'great weight' to heritage or showing clear and convincing justification for harm. The public benefits might well have been obtained from a scheme causing less harm to heritage. The review of the impact on the significance of heritage assets was taken more from the applicant's heritage statement than from English Heritage comments, much reducing the perceived problem. No further mitigation was required.

Proposed development

Erection of a replacement mosque and community centre covering 0.59ha, including parking for 90 cars.

Designated heritage assets potentially affected

Grecian Mills is a five-storey cotton spinning mill dating from 1845 listed Grade II with separate warehouse, office blocks and doubling sheds. It lies immediately to the north of the application site.

Heritage statement accompanying application

There was no Heritage Statement. The Design and Access Statement did not discuss heritage at all, but noted that the ridge height of the proposed mosque would be 5m below that of the mill.

Review by Conservation Adviser and Case Officer

There was no consultation with a Conservation Adviser. The Case Officer identified 'the impact on the character and appearance of the area and the setting of the adjacent Grade II listed building (Grecian Mill)' as one of five main impacts of the proposal for assessment. The review of this issue focused entirely on the design quality of the intended landmark building. It acknowledged the need to conserve and enhance the heritage significance of heritage assets, recognising the importance of sites, areas and buildings of historic, cultural and architectural interest and their settings. However, no analysis whatsoever was undertaken of this issue: local heritage policy was itemised but the proposal not reviewed against this. The NPPF and relevant legislation were not mentioned. There was no analysis of the significance of the Grecian Mills or the impact of the proposed development upon the complex. Heritage issues were not weighed against competing interests. The Case Officer recommended approval.

Council decision

Councillors approved the application without reference to heritage being made in the minutes.

Commentary

The applicant was not required to remedy the absence of a Heritage Statement. Representations on this substantial scheme included some doubt about the scale of the development close to the listed Grecian Mills (now a site in multiple business uses). The impact upon this listed building was properly identified as a key issue, but surprisingly the issue was taken no further. Design quality is clearly of great significance, but is not the same as heritage interest. There was clearly a complete failure to apply local and national heritage planning policy to the case. Heritage was a non-issue in this case.

**4. St Stephen's Road car park, Bournemouth. Bournemouth Borough Council.**

**Application no.: 7-2016-7044-H. Decision date: 16 January 2017.**

Proposed development

St Stephen's Road car park, Bournemouth: 46 flats in one 6-storey and one 7-storey building with associated access and landscaping, proposed by a public-private partnership led by the Council. The site was identified for residential or employment development in the Town Centre Area Action Plan.

Designated heritage assets potentially affected

In the setting of the large Grade I listed St Stephen's Church (1881ff by JL Pearson); also at greater separation from the Grade II Walton House, Grade II Town Hall, and the Grade II Upper, Central and Lower Pleasure Gardens Registered Park and Garden. Two conservation areas are adjacent.

Heritage statement accompanying application

St Stephen's church was built on a hill to be seen from the Town Hall and properties below, but significant changes to the road layout have altered how it is appreciated. The key experience of its setting is now from the west along St Stephen's Road. Development on the car park site, on higher ground beside its eastern frontage, would be clearly seen in the context of the church, causing less than substantial harm. Retention of extensive mature trees on the site boundary would be vital.

Review by Conservation Adviser and Case Officer

The Conservation Officer considered the scheme harmful and contrary to legislation. There would be an overly-dominant northern block which would compete with the prominence of the church, being 3 or 4 storeys too high and too far forward. A significant amount of essential tree screening would be lost (to facilitate slope stabilisation) which acts as a buffer between the church and any new development, and makes a significant contribution to the setting of the church. The Case Officer reported on pre- and post-application discussions to blend the development better into the background, including steps to ease the Conservation Officer's concerns. Although concluding that the proposals would not have a significantly detrimental impact on the setting of the church, no reference at all was made to using the steps set out in the NPPF to evaluate the impact on setting.

Council decision

Councillors approved the application as recommended. Heritage was not mentioned in the minutes.

Commentary

The Case Officer had made real efforts through negotiation with the applicant to reduce the impact of the development on the setting of the nationally important St Stephen's church, and continued to do so post-application (e.g. in response to the Conservation Officer) and through conditions. However there was no real compromise on the height and scale of development to reduce the impact on setting (requested by both the Conservation Officer and Historic England), because of the dwelling contribution to the town centre area as a public benefit. The pressures on planning authorities to provide housing land are understandable, all the more so when the applicant is a Council-controlled body, but following the NPPF steps would have drawn out the judgements being made and given greater impetus to implementing the Government's objectives for heritage.

**5. 174 Ossulston St, Somers Town, London NW1. Camden London Borough Council.**

**Application no.: 2015/2704/P.**

**Decision date: 8 September 2016.**

Proposed development

136 dwellings over 6 buildings of 3-25 storeys in height, together with integrated community facilities covering 1,765m<sup>2</sup>, a separate school and ancillary provisions. The scheme was promoted by the Council as a regeneration scheme to provide a replacement primary school, nursery, community facilities, affordable housing and public realm improvements, funded by sales of dwellings.

Designated heritage assets potentially affected

The site is close to the Grade I listed St Pancras Station and British Library, various other listed buildings, St Pancras Gardens Registered Park & Garden and adjacent to a Conservation Area. The proposed tower would intrude into the setting of the Grade I registered Regents Park and the Grade I listed Chester Terrace, notably from Chester Street. There are no other tall buildings in this view.

Heritage statement accompanying application

This provided statements of significance for all nearby heritage assets likely to be in the setting of the development. An impact assessment concluded that none would be adversely affected. However, Historic England requested a further assessment from Regents Park and its Inner Circle. That review established that the top six floors of the 25-storey tower would be visible 1.6km from the Inner Circle. It questioned the contribution made by the settings to the significance of Regents Park and Chester Terrace, and the scale of the impact of the proposal on that significance. The impact would be neutral. Also, iterations in design of the proposal showed that there would be disadvantages in alternative layouts; there were extensive public benefits to weigh in the balance; and a viability study showed that removing the top six floors would lose 20 affordable homes.

Review by Conservation Adviser and Case Officer

Conservation advice was not recorded separately but included in the officers' report in an extensive review of heritage assets affected and the impacts on these. Most would be unharmed (and in some instances enhanced). The 25-storey tower would cause very slight 'less than substantial harm' to two nearby Grade II listed buildings. Views of the tower would also do moderate 'less than substantial harm' to the settings of 1-42 Chester Terrace and Regents Park, outweighed by very significant public benefits. The itemised public benefits of the 20 affordable units were substantial and compelling and outweighed the identified less than substantial harm to heritage assets.

Council decision

Councillors discussed the application at length before approving it, but barely mentioned heritage.

Commentary

Historic England objected to the application on the basis of harm caused to heritage assets of the highest significance, advising that alternative housing layouts should be considered to avoid that harm. The adjoining Borough of Westminster also sought refusal for this reason. Heritage interests in this case revolved principally around the weight to give to the setting of Regents Park and Chester Terrace in relation to the housing benefit of 20 affordable homes. The dismissive view of the applicant on heritage impact was not accepted, but the housing held to carry compelling weight.

### Proposed development

Residential development of up to 300 houses with associated accesses, community facility, open space and infrastructure. Material amendments to the application required a further resolution from councillors. These included a response to concerns about the effect of the development on St Peter's Church by enlarging and relocating the greenspace to form part of the church's setting.

### Designated heritage assets potentially affected

The Grade II\* St Peter's Church Westhampnett 60m from the site boundary would be the designated heritage most adversely affected, though other Grade II listed buildings were close to the west and SE boundaries, plus a listed building in a Grade II registered park and garden further west.

### Heritage statement accompanying application

Heritage assets likely to be affected or unaffected by the development were identified. The scheme would cause moderate harm to the significance of the church and at most low levels of harm to the other designated heritage assets, usually due to existing screening or, it was argued, due to their significance being architectural and historical rather than derived mainly from their settings. The scheme's layout responded to the presence of heritage assets; no further mitigation was needed.

### Review by Conservation Adviser and Case Officer

The Council had approved a Planning Concept Statement followed by extensive discussions with the applicant. The Conservation Adviser was very critical of the proposals on many grounds, including: the 'contrived argument' to reduce the claimed harm by understating impact on settings; the need for separation between 'the city' and Westhampnett; no mention of the church's off-centre location in a tranquil setting adjacent to open fields which would be harmed (identified by Historic England too); and the suburban design which did not recognise the site's special character. A request for a major redesign of the SE corner, to avoid a complete loss of the church's rural setting, led to a draft revision of the layout. The Case Officer agreed with Historic England and the applicant that there would be less than substantial harm to the listed buildings close to the SE corner. The site formed part of a Strategic Development Location under Policy 17 of the adopted Chichester Local Plan, and the Case Officer advised simply that it was not possible to meet the allocation objectives without using the SE corner of this site. Heritage assets had been assessed at the allocation stage. It was not possible to retain the settings of the listed buildings close to the site undisturbed. Design changes which kept 300 dwellings and better protected settings would be tackled at reserved matters stage.

### Council decision

Councillors again resolved to permit the application subject to a s106 agreement, in line with advice.

### Commentary

This case illustrates deficiencies in the assessment of harm to the significance of heritage assets (in the Heritage Statement, not being addressed by the Conservation Adviser, and not being given great weight by the Case Officer in the balancing assessment). Some opportunity for mitigating impact on settings was eventually found despite the seeming dominance of a Local Plan housing allocation.

**7. Guys Hall Farm, Awre, Gloucestershire. Forest of Dean District Council.**

**Application no.: P0783/16FUL.**

**Decision date: 9 August 2016.**

Proposed development

The resiting of a large farm dwelling. Permission had previously been granted for the dwelling to be tucked between existing agricultural buildings at the farm. A subsequent application to relocate the new dwelling to the current more prominent site had been refused. This was a revised proposal with small modifications.

Designated heritage assets potentially affected

The setting of the Grade I listed Awre Parish Church and Grade II\* Guy Hall Farmhouse. Two other Grade II dwellings are nearby (and the Awre Conservation Area is at the historic village core).

Heritage statement accompanying application

The Heritage Statement identified the appropriate heritage assets for attention, and in each case addressed both their significance and the impact of the proposals upon this. It found that the proposed scheme would have a clear effect on a single view towards the church from part of a footpath, amounting to less than substantial harm.

Review by Conservation Adviser and Case Officer

The Conservation Adviser was critical of the heritage statement on some detailed points and disagreed with the analysis, but the only claim relevant to NPPF criteria challenged was that the public benefits argued for the scheme, to outweigh the harm, were in practice private benefits or not connected to the application. The Conservation Adviser and the Case Officer both presented excellent analyses of the planning application in relation to heritage policies in the NPPF in all key respects. The Case Officer's views did not differ from those of the Conservation Adviser. Both presented thorough and clear arguments, including explaining how conflict with heritage interests could be minimised by siting the dwelling elsewhere. Great weight was overtly given to the protection of heritage assets. Historic England indicated that the original siting of the dwelling resulted in less harm and should be reconsidered as more suitable. The Case Officer recommended refusing permission on the single heritage ground that the scheme would cause significant (but less than substantial) harm to the settings of nearby listed buildings and the Conservation Area.

Council decision

The Planning Committee agreed by a majority of 9 to 3 (with 1 abstention) to grant planning permission. This was on the ground "That the application be approved as the landscape and heritage assets would not be harmed by this development...".

Commentary

This decision was remarkably different from the advice the Councillors received: even the application accepted the development would cause some harm to heritage. Councillors did not explain why they disagreed with their advice, and made no attempt to engage with NPPF policies. They responded notably to the local support for the proposal and the claimed agricultural benefits from granting permission. The period for challenge in the High Court has passed, but there might have been some arguable points of law in the decision.

**8. Cross Lane, Brancaster, Norfolk. King's Lynn & West Norfolk Borough Council.**  
**Application no.: 16/00026/F. Decision date: 6 June 2016.**

Proposed development

Construction of a new dwelling following demolition of the existing house, Salcombe House. A previous permission allowed two dwellings on the plot; this application was for a single larger house.

Designated heritage assets potentially affected

Branodunum Roman Fort Scheduled Monument covers a wider area than the above-ground fort 140m to the east. It abuts the application site, which also lies within a Conservation Area.

Heritage statement accompanying application

A very brief Heritage Statement was submitted near the end of the planning process after concern expressed by Historic England. This did not identify the significance of the Roman fort and there was no evidence of the Historic Environment Record having been consulted (a 'minimum requirement' in NPPF paragraph 128). The visual impact of the proposal on the SM was limited to glimpsed views, and the two could not be 'read' together. The Design and Access Statement noted that very little impact was expected due to dwellings adjacent to the application site and existing tree cover.

Review by Conservation Adviser and Case Officer

The Conservation Officer had no objections after some revisions had been made to the proposals. In contrast, Historic England explained the significance of the SM, including its setting. Dwellings on Cross Lane were negative elements in the setting and the proposal's scale would be more dominant in views from the monument; works to the eastern boundary would physically impact on the SM. Historic England later advised that revisions to the scheme would minimise visual impact but not negate it completely, so the building would still be visible from inside the scheduled monument, with its upper levels and rooftops likely to be seen above the existing field boundaries. This was 'less than substantial harm' requiring clear and convincing justification. Further revisions to reduce the scale, mass and eaves height were welcomed by Historic England, but the overall height and visibility of the proposed building would be largely unchanged. The Case Officer identified impact on the setting of the SM as one of seven main issues, and considered that Historic England essentially did not object to the amended design, subject to conditions. The Historic England view that harm would be caused to the setting was rejected as the 1.4m increase in building height was only marginal.

Council decision

Councillors agreed the approval recommendation with no more mention of heritage in the minutes.

Commentary

Historic England complained three times about the lack of discussions from applicant, absence of sufficient heritage information including a Heritage Statement (poorly rectified), and potential physical impact of works on the eastern boundary (which needed SM Consent in any event). It sustained its concern about the impact on the SM's setting, but this was misrepresented in the Case Officer report and treated as 'no harm' despite clearly different advice. The assessment of setting in a very weak Heritage Statement was treated as superior. In consequence the Case Officer report did not assess the scheme against the NPPF policies, just as the Conservation Officer had not.

Proposed development

Single wind turbine with a maximum blade tip height of 76.5m, and associated infrastructure.

Designated heritage assets potentially affected

Knowsley Park Registered Park and Garden (Grade II) is 330m distant, with listed buildings St Mary's Church, Prescott (Grade I) at 1km, 4 Grade II\* incl. Knowsley Hall at c.2.2km & 34 Grade II at <2.5km.

Heritage statement accompanying application

The Heritage Statement noted the proposed turbine would be appreciable from various locations within the registered park, to varying degrees of visibility, dependent on the topography of the landscape, distance and existing tree coverage. This would have a less than substantial effect on the significance of the registered park. There would be no views of the turbine when viewing Knowsley Hall from its Park. Potential views from the Hall's upper floor windows would be mitigated by existing tree coverage, with a possibility of very limited perception of blade movement in winter. There would be no appreciable effect on the significance of the other listed buildings.

Review by Conservation Adviser and Case Officer

The Conservation Officer recommended refusal because there would be substantial harm to Knowsley Hall and Knowsley Park and less than substantial harm to St Mary's Church, Prescott due to impact on their settings. The turbine hub height had been lowered by 4m and the blade tip height by 2m compared with a previously refused scheme but these did not materially alter the impacts. There remained an absence of visualisations in the application from some key viewpoints. No reference was made to the NPPF. Historic England had no objection to the application regarding the impact on the Grade II\* heritage assets which fell within its remit. The Lancashire Gardens Trust (on behalf of The Gardens Trust) objected to the likely visual impact on the registered park, details still missing from the proposal, and the poor consideration of impacts in winter when trees were not in leaf. The Case Officer accepted the Conservation Officer's advice on the harm to heritage assets, emphasising Knowsley Park's seclusion and the impact in winter. The proposal did not comply with the heritage policy of the Core Strategy or with the NPPF. However, officers did not consider the public benefits or exceptional circumstances to justify the proposal. Refusal was recommended.

Council decision

Councillors refused the application without mention of heritage in the minutes.

Commentary

The Council clearly gave great weight to conserving heritage assets but did not apply all the policy steps in the NPPF. The Case Officer agreed with advice from both the Conservation Officer and the Lancashire Gardens Trust. However, Historic England had no objection to the impact on Knowsley Hall or St Mary's Church, Prescott whereas council officers identified substantial harm and less than substantial harm respectively to these heritage assets. The harm to Knowsley Hall was based partly on additional visualisations obtained from the applicant. This was a revised application with much reliance on an earlier Heritage Statement and officer comments which had been expressed on that.

**10. Rear of Pleasureland, Marine Road, Morecambe. Lancaster City Council.**

**Application no.: 16/00578. Decision date: 22 August 2016.**

Proposed development

Erection of a 2,400m<sup>2</sup> two storey indoor trampoline park with associated landscaping and parking and extension of terrace to rear of Pleasureland Arcade, Morecambe.

Designated heritage assets potentially affected

The Winter Gardens is listed Grade II\* (1878), (adjoins Pleasureland and is in part twice its height).

Heritage statement accompanying application

The impressive elevation of the Winter Gardens to the promenade is dramatically different from the rear elevation: a barely relieved bulky mass 25m high used as a goods and service entrance, with an extensive car park beyond. The Design, Access and Heritage Statement noted the history of the building but did not assess its significance or setting, or the impact of the proposal upon this. The development on the car park was claimed to have a positive effect on its surroundings.

Review by Conservation Adviser and Case Officer

The Conservation Officer summarised the significance of the Winter Gardens and strongly objected to the proposal which resembled a modern and uninspiring industrial warehouse. The design and appearance would have a negative visual impact on the setting of the listed building and adjacent conservation area. Revised design details did not change this. The large footprint building should also be sited further away than the proposed 11m from the Winter Gardens. Historic England had no comments. The Case Officer found that the development was acceptable in principle due to an Action Area Plan policy encouraging leisure uses on this site. Given the size of building required for the type of leisure use proposed, it would never be able to fully respect the scale of the surrounding buildings and would be seen as a stand-alone building. A contemporary design and, broadly, the revised design details, were acceptable. The revised footprint and location were unaltered, but the Case Officer nevertheless considered that – given the separation distance proposed and the scale and appearance of the rear of the Winter Gardens – the proposal would not unduly impact on its setting. NPPF policies were listed but not applied to the case at all. In conclusion, amendments had gone some way to addressing the original concerns regarding the massing & design of the building, notably in relationship to the Grade II\* Listed Building. Overall the Case Officer considered that there would not be an adverse impact on the setting of the Winter Gardens or conservation area.

Council decision

Councillors all agreed the recommendation to permit, without mention of heritage in the minutes.

Commentary

The Heritage Statement, Conservation Officer and Case Officer all failed to apply the NPPF heritage policies systematically, if at all. The Conservation Officer's strong objection clearly indicated harm to the significance of the Winter Gardens, but this was played down by the Case Officer who first reported this only as 'concerns' and then substituted her own opinion on the suitability of revised designs in heritage terms. A local policy supporting this kind of development on the site in effect took precedence over heritage.

### Proposed development

Partial demolition and change of use of 17 Wellington Street, demolition of curtilage 49 Aire Street, and a 7-storey new development facing Aire Street, for 26 dwellings and restaurant/café use overall.

### Designated heritage assets potentially affected

17 Wellington Street is a Grade II 6-storey former woollen warehouse of the 1850s with its principal frontage adjacent to no. 19, also Grade II, and an L-shaped extension to Aire Street to the rear. The extension and 49 Aire Street (detached in the arm of the L) would be demolished. The Conservation Area would be affected and the last L-shaped warehouse of the Leeds textile industry be lost here.

### Heritage statement accompanying application

The explanation of the significance of the listed building was mostly excellent, with its history and context of the Leeds textile industry, and the impact of the proposed development upon this. It recognised that the scheme would ‘have a major impact upon the listed building’, but the harm arising would be less than substantial due to previous external and internal alterations to the wing; positive elements contributing to the Conservation Area’s character and appearance would be lost.

### Review by Conservation Adviser and Case Officer

The application showed that the listed building interior had key constraints on adaptation to other uses but was now largely devoid of historic detailing. Finding occupiers for the vacant building had been unsuccessful, though it was not clear if historic buildings specialists had been approached. That viable alternative uses were limited was broadly endorsed by the District Valuer. The Conservation Officer considered that the initially submitted contemporary replacement block would not cause harm to the listed building or Conservation Area, and that replacing the wing of the listed building was sound. The Case Officer accepted this view, commenting that the buildings to be demolished were of little architectural or historic significance. The design would enhance the Conservation Area and return a listed building to use. Later improvements, notably retaining the façade of the listed wing and a more imaginative frontage to Aire Street, were sufficient for Historic England to express concern rather than object outright. The revised officer report again applied NPPF policy weakly, with the public benefits in the new design and the economic advantages of the development hardly providing clear justification for outweighing the heritage harm.

### Council decision

Councillors had been concerned at the pre-application stage when an 11-storey building had been proposed, reduced on application to 7. The initial officer recommendation to approve was not accepted: further revisions were requested to the new design and scale of demolition, later agreed.

### Commentary

Historic England and the applicant saw much more significance in the heritage asset and harm to it by the scheme than did the officers. Historic England objected to the originally submitted proposals for causing major irreversible harm to the listed building and permanent erosion of the heritage of the textile industry in Leeds. Their detailed reasons were neglected in the officers’ review.

### Proposed development

Remodelling of former Majestic Cinema to create 6-storey office building with ground floor and basement commercial uses. While the building was being converted to leisure uses in 2014 a serious fire destroyed the main dome and much internal decoration, reducing the auditorium to a shell. Most of the remaining internal fabric would be replaced by a high specification decorative scheme with a contemporary aesthetic. A 3-storey rooftop extension would be the main external change.

### Designated heritage assets potentially affected

The Majestic Cinema, 1921-22, listed Grade II, converted to a bingo hall 1969 and a nightclub 1996, is at the heart of the Leeds City Centre Conservation Area and close to numerous listed buildings.

### Heritage statement accompanying application

This statement provided a thorough summary of the significance of The Majestic and more briefly the surrounding heritage assets. A commentary on the proposal's impact concluded there would be less than substantial harm to that significance. A further statement on 'heritage assets harm versus public benefits' responded to concerns (notably the loss of the surviving Palm Court and rear staircase) from Historic England, C20th Society, Leeds Civic Trust and Cinema Theatres Association.

### Review by Conservation Adviser and Case Officer

The new development had much merit and proposals for the glazed roof extension were welcomed by the Conservation Officer. The applicant made a persuasive case that offices were the optimum viable use, which would involve the total loss of internal features, but there was no substitute for the authenticity of the historic features lost. The harm was 'less than substantial' but still significant. The Case Officer put considerable emphasis on paragraph 132 of the NPPF and the need to justify the harm by working through a series of questions (as had the applicant's heritage advisers). What alternative uses could the building be put to and are they viable? What is the optimum viable use? Why can't certain features be retained and what is the level of harm arising? What are the public benefits arising? Do the public benefits outweigh any harm – i.e. the balancing exercise? The answers were considered to give compelling justification for the scheme in heritage terms.

### Council decision

Councillors heard representations, discussed heritage issues in detail and approved the application.

### Commentary

This is a very prominent site in the city centre requiring careful handling. The former cinema had been vacant for ten years and finding the optimum viable new use was urgent, especially after the fire. Historic England accepted that the proposals for the replacement of Palm Court were of particularly high quality and addressed the requirement for additional light penetration into the deep plan whilst reflecting the original Palm Court in a contemporary manner, but wanted to see strong justification for office use and why Palm Court could not be incorporated into the scheme. This was provided by the applicants, certainly to the satisfaction of the Conservation Officer and Case Officer. The officer's report gave meaningful consideration to justifying harm to heritage.

Proposed development

6 to 7-storey building with 68 student flats (142 bedspaces), after demolition of existing buildings.

Designated heritage assets potentially affected

The Grade II listed 55-57 London Road (1935) is opposite and the Grade II porte-cochere to the front of Leicester railway station (1892) is close by. The site is within South Highfields Conservation Area.

Heritage statement accompanying application

The heritage statement followed the methodology set out in English Heritage's *The setting of heritage assets*, identifying the significance of the heritage assets, assessing their settings & stating the effect of the proposed development upon them. As no harm to their significance was found in either case, there was no need to consider minimising harm (though design changes followed later).

Review by Conservation Adviser and Case Officer

The Conservation Officer noted the proximity of the listed buildings and the few remaining original buildings in the Conservation Area, but focused on the design of the replacement. The Case Officer reported briefly on the listed buildings but did not follow the steps in the NPPF: (i) their significance was not identified; (ii) 'some impact' of the proposal on them was noted but not explained; (iii) the level of harm to them was 'acceptable'; (iv) the design of the scheme had been revised but not specifically to benefit the listed buildings and no further mitigation was proposed; (v) NPPF para. 132 was quoted, noting the need to give 'great weight' to conserving heritage assets, but this was not apparent in practice; (vi) the need for 'clear and convincing justification' for harm was accepted in principle but not provided, probably because the replacement buildings were viewed as making a positive contribution to the conservation area whereas those to be lost made a neutral contribution.

Council decision

Councillors approved the application as recommended. Heritage was not mentioned in the minutes.

Commentary

Development proposals are frequently in proximity to listed buildings in urban settings. This case illustrates the risk of eroding the existing context of listed buildings and damaging their settings by constructing inappropriate new development. English Heritage recommended refusal in this case: "the poor quality and inappropriate scale [of the proposed development], combined with the loss of the existing buildings, will diminish the quality and experience of the immediate townscape which forms part of the setting of the listed structures." (The Victorian Society and Leicester Civic Society agreed.) Had the steps in the NPPF been applied, a more reliable assessment would have been possible. The problem was compounded here because English Heritage considered the heritage statement revealed a lack of understanding of setting. The case officer substituted his own views for the specialist advice received, such as: (a) the buildings to be lost made a neutral contribution to the conservation area (the heritage statement had found no. 58 made a positive one); (b) London Road was appropriate for large buildings which made the impact on listed buildings acceptable; (c) the bold modern design of the new building would make a valuable contribution to the mix of styles.

Proposed development

Medical facility with 19 beds, theatre suite & associated services covering 4,389m<sup>2</sup> internal floor space and up to 11.5m high (on two floors with plantroom above), access road, landscaping, parking for 100 cars, and electricity substation.

Designated heritage assets potentially affected

Permission was given in 2012 for extensive enabling development to fund the restoration (since completed) of the Grade I listed Acklam Hall of c.1680 (also in its own Conservation Area). The proposal would replace a permission for an 85-bed care home 80m to the side and rear of the Hall. A nationally important but unscheduled moat, filled in the C20th, lay beneath the site and car park.

Heritage statement accompanying application

The Heritage Statement relied heavily on the principles of development on the site having been permitted previously, and on the detailed heritage assessments carried out at the time including the Hall's significance. Only limited consideration was given to the different impact of a discernibly larger development at the site on the Hall's setting. Some mitigation was attempted through design and materials (but not scale), with proposals for reduced impact on the archaeology by piling.

Review by Conservation Adviser and Case Officer

The Conservation Officer considered the setting of the Hall would not be preserved and wanted alternative design solutions to remedy this and to avoid disturbing the form of the moated site. Heritage issues were the key ones addressed by the Case Officer. NPPF policies were reported selectively, and a scathing report by Historic England appended. For assessing the Hall's significance and the impact of development upon this, reliance was placed on an Acklam Hall Conservation Plan prepared for the original outline application for a care home on this site, with little allowance for differences in the new scheme. The report argued variously that the scheme would cause no harm or some harm and, although weight was given to heritage, still more was given to the other public benefits to be derived from the proposal. Much reliance was placed on the long-term funding of the Hall, and revised mitigation efforts were held to be sufficient in the circumstances.

Council decision

Councillors accepted the officers' recommendation for approval, contrary to Historic England's view.

Commentary

The officers' report partially followed the steps in the NPPF for assessing the proposal's impacts of on designated heritage assets. The impact of the scheme on the Grade I building was reviewed with varying conclusions. The scale of the facility was assumed to be fixed, and officers disagreed with heritage advice from their Conservation Officer and Historic England about design issues and the technical reliability of means to protect the nationally important archaeology. Officers viewed the enabling function of the development as critical – disagreeing on this, as on almost everything else, with Historic England.

### Proposed development

Demolition of care home and construction of 7-storey building containing 76 apartments with undercroft parking, and associated landscaping and infrastructure. An earlier proposal for 9 storeys had been refused partly for its substantial harm to listed buildings and the conservation area.

### Designated heritage assets potentially affected

The most adverse impact would be on Lockyer Court, listed Grade II, and the highest-rated building affected would be 1 The Crescent, Grade II\* (1833), both imposing end-terrace stuccoed buildings. Development of the site, on the edge of The Hoe Conservation Area, had townscape implications.

### Heritage statement accompanying application

The existing building was identified in the Conservation Area Appraisal as having 'negative quality'. The heritage statement used the English Heritage guidance *Seeing the history in the view* (2011) to assess how the proposed development contributed to the setting of heritage assets and to views in the townscape. The development would only be visible in a few views of townscape importance and would enhance a sometimes unattractive context. There would be less than substantial harm to heritage assets, with benefits to the Conservation Area and regeneration. Design was not addressed.

### Review by Conservation Adviser and Case Officer

The proposed block had been reduced in height and its top floor set back but was still twice as high as the existing building. The Conservation Officer focused on ideas for further design improvements and eventually felt that the applicant had done enough to alleviate most of the team's concerns. In contrast to the heritage statement, the Case Officer considered the site very prominent and visible and in close proximity to important listed buildings. Historic England's concern about the height and massing of the building, and its failure to make a positive contribution to local character and distinctiveness, was reported. However, the context of the site would change with developments of 7 to 13 storeys under construction on the opposite side of Notte Street, so the building would not look significantly out of place. The NPPF tests were noted but the scheme not assessed against most of them. Housing supply and £0.5m for offsite affordable housing were outweighing public benefits.

### Council decision

A motion to refuse the application on the grounds of impact on the conservation area and listed buildings was put to the vote and lost; the officer recommendation to approve was then agreed.

### Commentary

This decision focused heavily on trying to improve the deficient design qualities of the proposal. Historic England noted the perceived scale and massing of the building 'relates more to the architecture of the post-war city centre estate, yet the immediate historic context is firmly domestic'. The Case Officer accepted a less than ideal outcome, referring to taller buildings on both sides of the street: 'although these existing buildings are not all of great quality and should not strictly be used as a positive precedent, they do form part of the character of the street...'. More attention should have been paid to applying the NPPF effectively, especially after the earlier refusal.

Proposed development

Mixed use redevelopment including 399 dwellings in buildings part 5, part 6 and part 21 storeys, on a site of 1.83ha vacant apart from a locally-listed former public house in a poor state of repair.

Designated heritage assets potentially affected

A sequence of Grade II listed buildings, including a terrace of 13 large late-Georgian town houses, line the same side of The Crescent as the application, all opposite the River Irwell. All are within a Conservation Area. The Grade II\* Salford Cathedral and St Philips Church punctuate the skyline.

Heritage statement accompanying application

While demonstrating an awareness of relevant policy, the Heritage Statement did not address the settings of the listed buildings carefully. It emphasised the unaltered views across the river from them, more than the impact of the scheme on views towards them. It dismissed the impact of the imposing new tall buildings as 'urban drama' and saw setting as an urban design, not heritage, issue.

Review by Conservation Adviser and Case Officer

Advice was not requested from a Conservation Officer. The Case Officer showed awareness of NPPF policy that 'great weight' needed to be given to designated heritage assets, but failed to apply the tests properly. The significance of the listed buildings was not stated, though "substantial harm" was recognised to the setting of those on The Crescent frontage due to the height, location and massing of the scheme. 'Exceptional circumstances' to justify the substantial harm to heritage was neither claimed nor shown. The scale and massing of the taller tower had been adjusted so that it stepped down to The Crescent, and its height increased making it more slender, in response to comments by Historic England. However, no clear and convincing justification was offered in response to their reasons for objection, and the report missed the point by stating "it is not reasonable to expect the cityscape to the rear of the Crescent to remain undisturbed." Instead 'substantial weight' was given to the regenerative benefits from the delivery of what was considered (in marked contrast to Historic England) a high quality scheme. Securing 399 homes was critical.

Council decision

Councillors agreed with the recommendation to grant permission. The minutes record no discussion.

Commentary

The Crescent Development Framework agreed in 2014 aimed to inspire regeneration in the area and identified the application site as suitable for residential development. However, the proposal failed to respect details (following the existing frontage, not dominating key buildings, incorporating the locally-listed public house, and enhancing the character of the Conservation Area). These were nonetheless viewed as insufficient to require further amendment to the scheme. The principle of tall buildings in the setting of designated heritage assets had been accepted by the Council on previous occasions, and in this case the contemporary design "that clearly responds to the listed Crescent buildings" was viewed as a particularly strong feature. An 18 storey building had been permitted on the site to the south of the application. The case turned on issues other than heritage.

**17. 81A & The Longhouse, High St, Marshfield. South Gloucestershire Council.**

**Application no.: PK16/5741/F. Decision date: 26 January 2017.**

Proposed development

Expansion of accommodation to rear of 81A High Street and conversion of rear outbuildings (The Longhouse) to separate dwelling.

Designated heritage assets potentially affected

81A High Street is Grade II listed as part of no. 81, and The Longhouse a curtilage listed structure. Close behind is the Grade II\* listed former Unitarian chapel of 1752. All are sited within a linear historic burgage plot and Marshfield Conservation Area.

Heritage statement accompanying application

Pre-application discussions had identified the heritage impacts of the proposed scheme, but only limited changes had been made to mitigate the concerns of officers. The application focused on the impact on 81A and The Longhouse, paying only cursory attention to impact on the listed chapel. The heritage statement therefore did not properly address the significance of key heritage assets affected or the scheme's impact upon them. Historic England's comments criticised this.

Review by Conservation Adviser and Case Officer

The Conservation Officer opposed the scale of the proposed conversion and extension of The Longhouse. These would be completely incompatible with the character of the site and would overwhelm the setting of the chapel. The graveyard's contribution to the chapel's significance would also be eroded by extending the domestic curtilage. The historic relationship between the outbuildings and 81 High Street would be distorted by extensions deep into the burgage plot. The proposals were not assessed against NPPF policies. The Case Officer presented a thorough review of the national policy requirements and consequences of key case law. All key aspects of the NPPF were covered, though not necessarily in easily accessible form (e.g. the 'significance' of the heritage assets affected). Harm was identified in various ways and described overall as 'significant', though that this was 'less than substantial' was deducible rather than stated. The report then followed the correct approach by concluding that, with harm to the setting of a number of designated heritage assets identified, the statutory presumption for protecting them was engaged which only powerful material considerations could outweigh. None were present and refusal was recommended.

Council decision

Councillors agreed unanimously with the officers' recommendation on heritage (and other) grounds.

Commentary

The case illustrates the importance of LPAs making their own assessment of the heritage assets which would be affected by a proposed development, rather than assuming the heritage statement with the application is sufficient. Officers had indicated in pre-application discussions how the impacts on heritage assets could be mitigated. The Officer's report covered all key heritage aspects of the NPPF, albeit some obliquely, and included a particularly helpful review of the legal basis on which the decision should be taken. This provided councillors with reassurance for refusing a planning application on grounds of causing less than substantial harm to designated heritage assets.

**18. M1 Junction 16, Northamptonshire. South Northamptonshire District Council.**  
**Application no.: S/2016/0400/EIA. Decision date: 9 June 2016.**

Proposed development

A 48ha industrial park with access to the M1 at Junction 16, comprising 165,600m<sup>2</sup> of industrial and associated floorspace, a lorry park and infrastructure.

Designated heritage assets potentially affected

Five villages lay within 2km of the site, each with designated heritage assets. The setting of the Grade I listed St Luke's Church Kislbury at 1km would be the most adversely affected. A detailed archaeological review identified various on-site undesignated remains of up to medium significance.

Heritage statement accompanying application

The EIA providing the heritage review concentrated on archaeology while a Historic Landscape Character Assessment identified listed buildings in the vicinity, their significance and the scheme's impacts upon that significance. The wider setting of the church was largely truncated by the intervening flood defence bund beside the river: a sliver of development would be partly visible over the top of the bund but its impact on the significance of the church's setting was negligible.

Review by Conservation Adviser and Case Officer

The Conservation Officer was not satisfied the contribution of the setting to significance had been fully understood by the applicant (notably the scheme and the church in the same views) or that the assessment of the proposal on that significance has been undertaken in an appropriately rigorous manner. The assessment of impact was therefore not reliable. However, the NPPF was barely mentioned, no alternative assessment was offered nor advice on harm levels or the weight to give to heritage interests. The Case Officer identified the designated heritage assets affected and set out the NPPF heritage policy basis for the decision (though incorrectly advised that the NPPF advocates the grant of planning permission (for sustainable development), unless substantial harm to or loss of a heritage asset can be demonstrated as a result of the proposal – later corrected in relation to NPPF para. 134). Historic England recommended the use of its own guidance to judge the impact of development on settings, which was applied by the Case Officer in general terms. It reminded the authority of the tests to be satisfied. Its advice on obtaining additional evidence on visual impact was not pursued. The Case Officer found that the scheme would lead to less than substantial harm. However, this was outweighed by the economic benefits from delivering a strategic employment site which had been allocated in the adopted West Northamptonshire Joint Core Strategy (WNJCS).

Council decision

Councillors approved the application as recommended. Heritage was not mentioned in the minutes.

Commentary

The Case Officer review of the heritage impact of this proposal was only partially compliant with the NPPF, though inhibited by gaps in the supporting evidence in the Heritage Statement and limited practical assistance in policy terms from conservation advisers. A dominant factor was the recent allocation of the site for this type of employment use. The heritage impact of major development in principle on this site should have been taken into account in the WNJCS plan-making process.

**19. Capital House, Houndwell Place, Southampton. Southampton City Council.**

**Application no.: 16/00196/FULL. Decision date: 12 April 2016.**

Proposed development

Flats for 423 students through conversion and alterations to Capital House (295 units in 13 storeys), with 11 4-storey townhouses (128 units), a 2-storey commercial unit & demolition of a public house.

Designated heritage assets potentially affected

Hoglands Park north of the site is part of Central Parks, a Grade II\* Registered Park and Garden.

Heritage statement accompanying application

Archaeological investigations would be needed. The development would alter the setting of only a small part of the RPG. The new 4-storey building would represent a distinct improvement over the unsympathetic form and materials of the pub, and the appearance of Capital House would improve.

Review by Conservation Adviser and Case Officer

The City Centre Action Plan allocated the site for retail-led mixed uses subject to conditions including the setting of the RPG being respected and enhanced. Planning permission was given in 2013 for a foodstore (retaining Capital House and the public house) but not taken forward. The City Heritage team advised that the site lay in a zone of known extra-mural occupation containing regionally and nationally significant archaeology, which would be damaged or destroyed. The site would require full archaeological excavation prior to development. There was no other Conservation Officer advice.

The Case Officer noted the presence of Hoglands Park in the immediate surroundings and included an adopted Local Plan policy on historic Parks and Gardens in a list of relevant policies. Southampton Commons and Parks Protection Society objected to failure to discuss and contribute to mitigation works in the Park to provide for the additional student use generated by the scheme including access to Southampton Solent University; this should be funded directly, not through CIL. The Society expressed concern at the uneasy, restless relationship between the 'saw-tooth' roofline of the new block of townhouses when viewed from the Park: this would be too dominant. The Case Officer rejected these comments: funding for improvements to the city's open spaces fell within the CIL funding regime; in design terms, the immediate juxtaposition of buildings of different age and style was characteristic of many cities and there was no reason to oppose the application on these grounds. No further reference was made to Hoglands Park or NPPF heritage policies in the analysis. Planning permission was recommended: the proposal complied with relevant policies of the City Centre Action Plan, was acceptable in design terms and contributed to student accommodation.

Council decision

Planning permission was granted by the Chairman's second and casting vote; no reference was made to heritage in the minutes of the meeting. Archaeology conditions were included.

Commentary

NPPF and local heritage policies were not applied. The significance of the RPG was not identified, nor possible harm to it, nor opportunities taken to mitigate impacts. Neither Historic England nor The Gardens Trust was consulted regarding the RPG which was given minimal weight in the decision.

**20. Bullsland Farm, Chorleywood, Hertfordshire. Three Rivers District Council.**

**Application no.: 16/2516/FUL.**

**Decision date: 23 March 2017.**

Proposed development

Part conversion, part demolition and construction of new buildings to create four dwellings at Bullsland Farm (no longer a working farm), and associated works.

Designated heritage assets potentially affected

Bullsland Farm is a complex of domestic, residential and former agricultural buildings in open countryside. The buildings within the application site centre on an extensive paved courtyard faced by two Grade II listed buildings: the Farmhouse (late C16th) and a large timber barn with attached stables – the Threshing Barn (C17th). Four buildings to the immediate south are curtilage listed.

Heritage statement accompanying application

A very detailed Heritage Statement assessed the heritage value of existing buildings at Bullsland Farm and then reviewed the impact on designated heritage and curtilage buildings. The proposals would cause less than substantial harm which would be outweighed by the benefits to the local landscape and the viable re-use of the retained heritage assets. Details to justify development were needed particularly due to a planning history of previous proposals on the site, some refused.

Review by Conservation Adviser and Case Officer

The Conservation Officer commented that previous permissions had already accepted an intensive residential use of the site, and further expansion would be fundamentally in conflict with the established agricultural character of the buildings (which were not originally designed for residential use) and harm their settings. Historic maps showed that the increased physical footprint now proposed for the farmyard never existed. The historic buildings' settings would best be protected by keeping the land open. The Case Officer disagreed with the Conservation Officer's assessment: (i) the proposal involved removing a later addition to the Threshing Barn, improving openness; (ii) the historic buildings were already in ancillary residential use and would be fully used (with extensions and alterations); (iii) new buildings would be of a scale and design appropriate to the setting of the listed buildings; and (iv) the proposed development would maintain and in part improve the relationship of built form surrounding the listed buildings. Overall the proposal would not result in demonstrable harm to the listed buildings or their settings. The proposal was in line with development plan policies and the views of the earlier appeal inspector.

Council decision

Councillors all agreed the recommendation to permit, without mention of heritage in the minutes.

Commentary

The Case Officer substituted his own assessment of heritage merits for those of the Conservation Officer, with limited justification. The finding of 'no demonstrable harm' from the proposals directly conflicted with both the applicant's acceptance of 'less than substantial harm' and the Conservation Officer's objection to harm to the listed buildings' setting. The plan policies with which the proposal was found to be in conformity did not reflect the policy steps in the NPPF. Those steps were not mentioned by the Case Officer and 'great weight' was not given to conserving heritage assets.

**21. 1 Cambridge Heath Road, Whitechapel. Tower Hamlets London Borough Council.**  
**Application no.: PA/15/00837. Decision date: 21 December 2016.**

Proposed development

Replacement Sainsbury foodstore, with underground car parking and accompanying 8 blocks for 559 dwellings, one being a 28 storey tower block, plus an energy centre and ancillary development.

Designated heritage assets potentially affected

Settings of Grade I listed Trinity Green Almshouses built in 1695 and Grade II Albion Brewery (Entrance Block), together with lesser effects on the settings of other Grade II listed buildings. (Part of the application site lay just within the Whitechapel Market Conservation Area.)

Heritage statement accompanying application

The Heritage Statement had an excellent methodology in NPPF terms and a clear layout. However, the principal conclusions reached attracted little support subsequently: that the likely significance of the impact of the scheme on the significance of the Grade I Almshouses was 'negligible' and on the significance of the Albion Brewery (Entrance Block) was 'minor, positive' (due to public open space).

Review by Conservation Adviser and Case Officer

The Conservation Officer advised in detail on the heritage impact in NPPF terms on the Almshouses and conservation area while the Case Officer reviewed the impact on the Brewery. This was supported by extensive engagement by Historic England. All three agreed that the proposed tower block would cause 'substantial harm' to the setting of the Almshouses and 'less than substantial harm' to the setting of the Albion Brewery Entrance Block. Council Officers agreed with the Historic England view that "it may be perfectly possible to redesign the scheme to achieve all of its potential public benefits that give rise to no conflict with the NPPF objective of heritage conservation. That would therefore be truly sustainable development and a solution that the NPPF obliges decision-makers to pursue." Three of the four recommended reasons for refusal were heritage-based, led by the impact on the Almshouses.

Council decision

Councillors discussed a range of issues, though heritage was marginal to these. Planning permission was refused by unanimous vote of the Committee.

Commentary

This major development proposal attracted extensive engagement by many parties. Procedurally, all the main parties took a very sound approach to responding to the NPPF's heritage policies. However, they reached strikingly different conclusions on the scheme's impact on both the Grade I listed Almshouses and the Grade II listed Albion Brewery Entrance Block. Given that so many potential issues in a scheme of this size had been resolved, the applicant's decision not to compromise the scheme design to accommodate heritage issues was as noteworthy as it proved costly.

**22. Sun Hotel, 1 North St, Gainsborough, Lincolnshire. West Lindsey District Council.**

**Application no.: 131219. Decision date: 20 August 2014.**

Proposed development

Demolition of the existing buildings comprising the Sun Inn Hotel plus a Grade II listed building and construction of a new four storey hotel (Premier Inn) with ancillary facilities and servicing access.

Designated heritage assets potentially affected

37 Market Street is a Grade II listed building formerly comprising a bar, rear access and staff accommodation for the hotel (which has its main structure and frontage to North Street). In its setting are 35 Market Street adjacent, also listed Grade II, and the County Courthouse opposite listed Grade II\*. (The site also lies within the Britannia Works Conservation Area.)

Heritage statement accompanying application

Heritage information was split between a 'Heritage Statement' largely comprising an archaeological assessment, a 'Statement of Significance' reviewing the existing Sun Hotel, and a Design and Access Statement making the case for demolition and the replacement building. While each made a contribution, compliance with the NPPF fell between them: nearby listed buildings were neither identified as important nor assessed for either significance or impact of the development. Options to retain 37 Market Street within the new development were rejected in favour of a 'statement' new building.

Review by Conservation Adviser and Case Officer

Both the Conservation Adviser and the Case Officer provided thorough reviews of the proposals in terms of the NPPF. The policies were identified and then, for each relevant designated heritage asset, the significance of that asset, the impact of the scheme upon it and the level of harm caused were reported. As well as substantial harm from the total demolition of a listed building, substantial harm was also identified to the setting of the Grade II\* listed Courthouse opposite. The new building would loom over and dominate the Courthouse due to its height. The monolithic design of the hotel did not take into account the established grain of Market Street. A 4-storey blank elevation would abut the listed No. 35. Furthermore, the application clearly did not meet the requirements of NPPF paragraph 133. The Case Officer recommended that permission be refused.

Council decision

Councillors agreed unanimously to grant permission for the development. There was considerable support for it from commercial interests in the town and the balance of advantage was in favour of this investment rather than heritage. Councillors considered that the setting of the Grade II\* Courthouse opposite would be enhanced by the scheme.

Commentary

English Heritage objected to the application and wanted to see the retention and redevelopment of the hotel, incorporating the listed 37 Market Street. Despite considering options which would retain the listed building on the site, the applicant wished to test the total demolition option. The application's inadequate handling of the heritage impacts of the scheme was rectified by the efficient reviews by officers, but councillors nevertheless did not wish to prioritise heritage issues.

**23. 285-329 Edgware Road, London W2. Westminster City Council.**  
**Application no.: 15/11677/FULL. Decision date: 12 April 2016.**

Proposed development

652 dwellings in 7 mansion blocks of 7-19 storeys and a residential tower of 30 storeys on 1ha site, with spa, basement parking for 270 cars & 1,080 bicycles, commercial development & landscaping.

Designated heritage assets potentially affected

Settings of 17-18 Paddington Green and Children's Hospital (both Grade II) and two Conservation Areas. Various other listed building and structures were nearby. There were views to the proposed tower from the Grade I Registered Parks of Hyde Park and Regents Park and Grade II Primrose Hill.

Heritage statement accompanying application

The Heritage Statement noted that an extant 2005 consent for a 22-storey building on the site had already established the acceptability of a tall building here as not harming heritage. It considered that the development would have major beneficial effects on the settings of the two closest listed buildings by regenerating a site vacant and degraded since the 1990s which detracted from their significance. There would be some visibility of the proposed development from the Registered Parks of Hyde Park and Regents Park, as part of their wider built settings, having neutral effect on significance. There would be cumulative development with other approved schemes, especially 1 Merchant Square (a 42-storey tower block nearby) but the heritage effects would be unchanged.

Review by Conservation Adviser and Case Officer

The Design Officer considered the proposals were a significant improvement on the existing site and better than the 2005 permission. The tower would be visible above the treeline in some views from the Registered Parks but would variously sit in a cluster of higher buildings, be seen mainly between trees, or directly on axis with 1 Merchant Square, and not be unduly intrusive due to distance. The exteriors of the two nearest listed buildings contributed more to their significance than the applicant claimed and the impact on their setting was greater. The tower (taller and wider than already permitted) and three of the blocks would be visually dominant in their backdrops. This would constitute less than substantial harm to the setting of these listed buildings. The Case Officer advised that the proposed development included many public benefits, some of which did not exist when the 2005 permission or the dismissed appeal were considered, including significant public realm improvements, unlocking regeneration opportunities, and major housing contributions (incl. affordable homes). He recommended that the public benefits outweighed the less than substantial harm to heritage assets (provided members had special regard to the statutory requirement to give great weight to the desirability of preserving or enhancing heritage assets).

Council decision

Councillors approved the application without reference to heritage being made in the minutes.

Commentary

Officers disagreed with Historic England on the impacts of the proposals on Registered Parks and gave little weight to planning policy controlling tall buildings. The degree of 'less than substantial harm' to heritage was unclear and in the balance considerable weight was given to public benefits.

#### Proposed development

Employment development comprising 2,050m<sup>2</sup> of office and research & development floorspace with associated access, parking, landscaping and other works on a 1.9ha greenfield site close to M5 Junction 6. Much of the site was planted with woodland in the 1990s for a nearby housing scheme.

#### Designated heritage assets potentially affected

On rising ground to the south lie the Grade I listed Warndon Church and the Grade II\* listed Warndon Court Farm, together with a churchyard cross and three former outbuildings to the Farm all listed Grade II (all incorporated in the Warndon Court Conservation Area) and others beyond.

#### Heritage statement accompanying application

The Heritage Statement paid considerable attention to the potential impact on archaeology as the site is within a designated Archaeological Sensitive Area. However, despite identifying the relevant listed buildings potentially affected, its review of the significance of these assets and the impact of the scheme upon them was cursory. These shortcomings were rectified in an Addendum reappraising the issues after an objection by English Heritage had led to the removal of a proposed warehouse (the tallest and most massive element of the scheme and closest to the heritage assets).

#### Review by Conservation Adviser and Case Officer

Two Conservation Officers originally raised concerns about the proposal particularly arising from the impact of the proposed warehouse, which they wished to see greatly reduced in scale. After the deletion of this element, the City Archaeological Officer reviewed in detail the impact on the setting of the heritage assets. This concluded that the development would not be visible or otherwise perceptible from within the heritage assets, while from surrounding positions the impact was insufficient for the application to be refused. The City Conservation Officer similarly considered that, not least as the impacts were less than those of six previous permissions granted, the benefits of the scheme significantly outweighed the 'little if any harm' to the significance of the heritage assets. The Case Officer set out the formal basis for the decision required by extensive reference to policy and Court rulings, and agreed with Conservation Officers' advice, disagreeing with Historic England.

#### Council decision

Councillors were initially minded to refuse the proposal against advice, mainly on heritage grounds.

#### Commentary

The heritage advice from Council officers had shortcomings in not properly identifying the significance of the heritage assets in relation to the scheme and in comparing the impact of the proposed development not against NPPF policies but against previous planning decisions in the locality. The Case Officer rectified this with a correct understanding of the policy base. There was almost no intervisibility of the proposal with the heritage assets, but there remained a key disagreement with Historic England regarding the appreciation of, especially, the Grade I church in its setting when seen in a wider context which included the development. Historic England and others considered that the development, which had merit, did not need to be on that site.

**25. Swan Hotel, High Street, Worthing, West Sussex. Worthing Borough Council.**

**Application no.: AWDM/0577/16. Decision date: 29 June 2016.**

Proposed development

Change of use of land adjacent to the Swan Hotel from public open space owned by the Council to beer garden, plus a serving kiosk, fencing and planting. The land would be leased to the hotel.

Designated heritage assets potentially affected

The Swan Hotel is a Grade II listed building, 18<sup>th</sup> century, three storeys and in a Conservation Area. 43 High Street is another Grade II listed building nearby.

Heritage statement accompanying application

A document describing itself as a 'Design, Access and Heritage Statement' was submitted with the application. It had two pages of text. This did not mention that the Swan Hotel was a listed building, refer to any local authority planning policies or to the NPPF. Such case as there was for the development appeared to rest on statements of support from neighbours.

Review by Conservation Adviser and Case Officer

The authority's Conservation Officer was not consulted. The Case Officer identified that the main issues in the determination of the application were the effect of the proposals upon the character of the area, the Conservation Area and the setting of the listed buildings having regard to the loss of open space and upon the amenities of nearby residential properties. The Council had a duty to ensure that the character of the area was maintained or enhanced. However, no reference was made to any local heritage policies, the NPPF or legislation relating to development in the setting of a listed building. Benefits of the proposal were identified, and presented as a counter argument to the need to maintain and enhance heritage. No attempt was made to respond to the submission of the Worthing Society that the proposal would adversely affect the setting of the Swan and other listed buildings in the vicinity. A proposal for mitigation by the Parks Manager, that an open style of fencing would be preferable, was agreed by the Case Officer who noted that this would also help to reduce any adverse impact on the setting of the listed building. Approval was recommended.

Council decision

Councillors approved the application with no further mention of heritage in the minutes.

Commentary

This was clearly a minor planning application, yet the extremely limited regard for the statutory heritage interest in the listed Swan Hotel pervaded all stages of the planning process – other than in the comments of a local organisation. Paragraph 128 of the NPPF advises that the level of detail by applicants in describing heritage assets' significance should be proportionate to the assets' importance. This cautions against unnecessary investigations, but cannot explain the paucity of attention to heritage policy in this case.

## **APPENDIX 6 PLANNING APPEAL CASE STUDIES**

- A1. Kedleston Road, Allestree, Derbyshire, Amber Valley Borough Council
- A2. Bathampton Camp, Claverton Down, Bath, Bath & North East Somerset Council
- A3. Fulham Road, London SW6, Hammersmith and Fulham London Borough Council
- A4. Barlestone Road, Bagworth, Leics, Hinckley & Bosworth Borough Council
- A5. 36 Station Road, Stoke Golding, Leics, Hinckley & Bosworth Borough Council
- A6. Priory Gardens, Cromer Road, Beeston Regis, North Norfolk District Council
- A7. Canonbury Street, Berkeley, Gloucestershire, Stroud District Council
- A8. London Road, Newington, Kent, Swale Borough Council
- A9. The Asps, Banbury Road, Warwick, Warwick District Council
- A10. Tewkesbury Road, Bredon, Worcestershire, Wychavon District Council

Proposed development

Up to 400 dwellings, convenience store, access, earthworks and other ancillary and enabling works.

Designated heritage assets potentially affected

The setting of Kedleston Hall (Grade I), Kedleston Hall Registered Park & Garden (Grade I) and its Conservation Area, and to a less extent Kedleston Hotel (Grade II\*) & Quarndon Conservation Area.

Review by Inspector

The Inspector found no reason why harm to the landscape should compel dismissal of the appeals, so the dominant issue for consideration was the impact on the setting of Kedleston Hall and its Park – heritage assets of the very greatest importance. An important issue of context was the Derby Screen, a tree belt planted from 1960 now 40m deep to obscure the view of Allestree whose development had encroached over the horizon. The Screen changed the setting of the Hall. There had previously been designed views out from Hall and Park towards Derby (with incidental views to the appeal site) and views inwards with glimpses of the Hall across the appeal site from Kedleston Road (whether designed or not). The Screen meant that the proposed development would have no visual impact whatsoever on the setting of the Hall. The Inspector considered remote the prospect of the Screen being removed or opened up. Even if it was, nothing suggested a view from Kedleston Road might be restored giving a glimpse of the Hall. The harm caused by the appeal to the Hall would be less than substantial to the point of being negligible. The appeal site did not lie within the setting of Kedleston Hall, so paragraphs 131-137 of the Framework did not apply.

The Park had been designed naturalistically and had continuity with the surrounding farmland. There was no dispute that the appeal site lay within the setting of the Park. The Inspector found that there would be harm to the setting of the Park in both visual and historical aspects from developing the appeal site. This would be at the lower end of 'less than substantial', being mitigated to a degree by the existing built-up area, existing vegetation, and the 1km remaining open land between Park and site. If the Derby Screen were removed or opened out, the very modest harm to the Park would only increase to no more than modest. There would be no harm at all to the significance of Kedleston Hotel or Quarndon Conservation Area. The very great public benefit of 400 houses (in a context of the Council having only a 3.08 year housing land supply) was more than sufficient to tip the balance in favour of the appeal proposals. In the planning balance, clear social and economic benefits far outweighed the limited environmental harm. Permission was granted.

Commentary

The Inspector disagreed fundamentally with all the extensive heritage advice submitted except the applicant's. Historic England and others emphasised the contribution of the appeal site to the significance of the Park and Hall (an integral whole), as part of both the visitor experience approaching from Derby and also the largely unaltered historical agricultural estate. Transformation of the setting from agricultural to housing, by bringing the edge of Derby still closer to Kedleston would only exacerbate noise and light impacts and suburbanisation of its setting. This objection in principle could not be mitigated. The Inspector applied the NPPF only on his terms, emphasising lines of sight. He noted that setting is 'the surroundings within which a heritage asset is experienced' but took a narrow view of visitor experience and wider aspects of heritage setting.

**A2. Bathampton Camp, Claverton Down, Bath. Bath & North East Somerset Council.**  
**Appeal no.: APP/F0114/W/15/3138529. Decision date: 27 January 2017.**

Proposed development

Construction of a car park for 136 cars and access road on 0.97ha at the University of Bath campus at Claverton Down.

Designated heritage assets potentially affected

The appeal site was adjacent to the 31ha Bathampton Camp Scheduled Monument, a rare survival of an Early Iron Age hillfort, overlooking the River Avon valley. Although partly used as a golf course, covered reservoir and formerly a quarry it was still a readable monument in the landscape.

Review by Inspector

Impact on the setting of the SM was one of two principal issues at the inquiry. Despite human interference, known at the time of scheduling, the green spaces within and around the SM and the pervading general sense of calmness evoked some semblance of the original landscape setting. The green open qualities of the appeal site helped appreciate this. Historic England evidence on the site's contribution to the significance of the asset was accepted rather than the appellant's. The Inspector considered that the car park, lighting columns, pay machines and vehicular activity would all but obliterate the qualities of the site which contributed to the significance of the SM.

The Inspector found that the proposed development would result in less than substantial harm to the significance of Bathampton Camp. He found that within the category of less than substantial harm the effect of the proposal would be 'towards the lower end of the spectrum' (Historic England had said 'considerable'). This was mainly due to the hillfort's significance deriving primarily from its archaeological interest more than its landscape context. However, this did not mean that this harm carried limited weight in the planning balance. As set out in the NPPF, great weight should be given to an asset's conservation. The more important the asset, he said, the greater the weight should be.

Applying this in the balancing exercise in the NPPF paragraph 134, the Inspector carried out a detailed review of the claimed public benefits. Transport and parking were key issues for the future expansion of the University. It had tried to reduce the demand for car parking. However, the University's *Environmental Development Capacity Report, 2001* had not identified the site for development and there was an unconvincing case that the site was no longer highly sensitive. There remained options: to increase car parking provision considerably at some existing campus car parks; alternatives included undercroft and decked parking at some existing car parks; and improved enforcement might enable the University to enhance operational efficiency. The public benefits of the scheme did not outweigh the less than substantial harm to heritage. The appeal was dismissed.

Commentary

The searching analysis which the Inspector carried out of the claimed public benefits of the proposal resulted in a finding that these were insufficient to outweigh less than substantial harm to the hillfort's significance, even when this harm had been specifically identified as towards the lower end of the spectrum. 'Great weight' was clearly given to this harm. The Inspector also hinted tellingly that the University's aspirations may need to be tempered in view of its sensitive location: "With the pressure to accommodate additional research facilities and the constraints of the campus the appellant's desire for 'commodious' car parking may be something it can ill-afford."

**A3. Fulham Road, London SW6. Hammersmith and Fulham London Borough Council.**

**Appeal no.: APP/H5390/W/15/3140593. Decision date: 4 April 2017.**

Proposed development

Redevelopment and refurbishment of Fulham Town Hall and redevelopment behind the façade of the 1934 Extension, providing 18 dwellings, retail and community uses; in a Conservation Area.

Designated heritage assets potentially affected

Fulham Town Hall Grade II\*, built in 1888-90, extended 1904-5 with a new façade to Harwood Road; listed mainly for its Italianate & Baroque facades and exceptionally rich and barely altered interiors.

Review by Inspector

There was general agreement by the parties on the significance of each part of the Town Hall, with the entrance halls, Grand Hall & its staircase, the Harwood Road Staircase, the Council Chamber, the Mayor's Parlour, and the rooms around the central light well of highest aesthetic, communal and historic value as a cohesive suite. There was a lack of clarity whether the 1934 Fulham Road extension was part of the listing or in its setting, but the Inspector found that, either way, the roof extension and the large areas of glazing and Portland stone would be at odds with the existing character. The entrance halls would be extensively altered and the Harwood Road staircase demolished. There would be new openings on both sides of the central corridor on the Fulham Road entrance. The Concert Hall and Assembly Rooms, of high significance but secondary status, would be converted to flats and given new mezzanines. Four of the five staircases would be lost, altering the circulation routes and taking away much of the physical evidence of the way the building once functioned. The Inspector concluded that the impact on the fabric of the interiors, its intactness and its historic interest would be at the upper end of the spectrum of less than substantial harm.

Several public benefits to be included in the NPPF paragraph 134 balance included extensive repairs, public access, a museum and community facilities, new retail frontages, new market housing with affordable housing contributions, and economic development. The Inspector distinguished changes which altered the significance of the heritage asset from appreciation of that asset: a benefit could be how it was experienced and how many people could do so, but that did not reduce harm (with the minor exception if part of the asset's significance lay in its communal value). Securing optimum viable use (OVU) of a heritage asset is included in paragraph 134 assessment. The Inspector considered OVU implied there could be several viable uses but that only the least damaging from a conservation viewpoint is to be preferred. He considered that alternative schemes without some of the harmful features of the appeal proposals would be significantly more likely to represent the OVU (without loss of the Harwood Road staircase or the insertion of mezzanines into the Concert Hall and Assembly Rooms). In the absence of less harmful alternatives, evidence suggested an office-based use as the OVU. There was no urgency to accept the first scheme to come along just to preserve the building. The public benefits would therefore not outweigh the harm to the building's significance. The proposals would conflict with numerous development plan policies. He dismissed the appeal.

Commentary

This appeal is notable for the Inspector's attention to finding the optimum viable use of a heritage asset when weighing less than substantial harm to its significance against public benefits, in the NPPF para. 134 balance. The Inspector gave lengthy attention to viability assessments, alternative uses and different levels of harm. He also clarified that public access did not reduce actual harm.

Proposed development

Single wind turbine with maximum blade tip height of 94m and associated infrastructure. The appeal was determined by written representations.

Designated heritage assets potentially affected

The tower of Grade II\* All Saints Church, Nailstone with its spire was a prominent landscape feature.

Review by Inspector

The effect on the settings of designated heritage assets was one of two main issues addressed by the Inspector. The visual supremacy of the church in its setting contributed to its significance. The turbine and church would be seen in the same view by walkers travelling from Bagworth towards Nailstone on a short section of the Ivanhoe Way. The Inspector considered there would be a limited degree of harm to the heritage asset. In terms of NPPF paragraph 134, the public benefits of the turbine were electricity supplied to the grid to power 470 homes and annually saving 21,600 tonnes of CO<sub>2</sub>: this modest benefit would outweigh the very limited harm to the significance of the church. In coming to that conclusion, the Inspector had special regard to preserving the setting of the listed building as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990. 'Preserving' heritage assets has been interpreted by the Courts to mean doing no harm. Where, as in this case, an albeit very limited degree of harm had been found, that harm must be given considerable importance and weight in the balancing exercise required by paragraph 134.

In the wider planning balance, the economic role was uncertain as the benefit of diversification to the farm business had not been presented. There would be environmental benefits from the renewable energy but some landscape harm and less than substantial harm to the heritage asset (though not a policy objection). Against the test for the environmental dimension of sustainable development (NPPF paragraph 7) there would be no positive contribution overall. The development did not amount to sustainable development. The Inspector considered limited weight should be given to conflict with development plan policies. However, that was not the view in representations from the local community (on landscape character, visual impact and the effect on the view to Nailstone church). The proposed development would not meet the transitional arrangements set out in the Written Ministerial Statement of 18 June 2015: that a proposal can be acceptable if the planning impacts identified by affected local communities have been addressed and therefore has their backing: significant weight should be given to that non-compliance. Permission was refused.

Commentary

The Environmental Report on the application and the specialist reviews of it, including by English Heritage, had found no evidential basis for concerns expressed in the representations (or which could not be controlled by condition) other than landscape and visual impact. However, based on his visit to the site and surrounding area, the Inspector took the initiative to consider too the effect on cultural heritage. In the event, his detailed assessment showed very limited harm and that the development met the balancing requirements of NPPF paragraph 134 and the legislation. Ordinarily permission would have been granted so far as heritage was concerned. However, in the concluding weighing of interests a key issue was the significant weight to be given under wind energy policy to local community views, which included concern about the visual impact on the listed building.

Proposed development

Erection of a single dwelling in the garden of 36 Station Road. The existing dwelling was located in a large plot which sat in an elevated position, with land sloping down on two sides. The appeal was decided by written representations.

Designated heritage assets potentially affected

The appeal site lay within the boundary of the Registered Bosworth Battlefield, a heritage asset of national significance, and within the Stoke Golding Conservation Area. Extensive research by English Heritage had identified the extent of the battlefield, resulting in a boundary amendment in 2013.

Review by Inspector

The character of the battlefield was one of undeveloped open land. The appeal site lay on the periphery of the designated Battlefield site and was in a residential use. However, as a result of its open undeveloped nature, the Inspector considered that this land continued to make a significant contribution to the Battlefield's character. The proposed dwelling would result in the encroachment of built form into this area. This would have an adverse impact on the appreciation of the Battlefield boundary. The dwelling would intrude into the Battlefield area and its presence would have an adverse impact on its visual extent and open character. Given the scale of the appeal proposal and its effect on the Conservation Area and Battlefield as a whole, the Inspector considered this harm would be less than substantial.

The Inspector identified the requirement of NPPF paragraph 132 to give great weight to the conservation of designated heritage assets. In the next paragraph she argued that, in line with the guidance in paragraph 134 of the NPPF, the less than substantial harm must be weighed against the public benefits of the proposal. The proposal would result in a dwelling in a sustainable location which would contribute to the supply of housing in the area. However these benefits would in the Inspector's view be very limited and would not significantly or demonstrably outweigh the harm of the proposal to the significance of the Registered Battlefield and the Conservation Area.

Commentary

This was a simple appeal decision on a very small development proposal where the Inspector worked her way through the steps expected by section 12 of the NPPF, in a proportionate manner. Planning appeals in relation to Registered Battlefield sites are extremely infrequent. With NPPF paragraph 132 policy that the more important the heritage asset the greater the weight that should be given to it, the Inspector specifically identified the 'national significance' of Bosworth Battlefield. In weighing the public benefits of the proposal against the identified harm, the Inspector considered that the benefits would not 'significantly and demonstrably outweigh' the harm of the proposal to the significance of the Registered Battlefield. That phraseology, reminiscent of NPPF paragraph 14, was not strictly necessary, but was the Inspector's way of demonstrating that 'great weight' was indeed being given to the conservation of this designated heritage asset of such importance. Securing the 'optimum viable use' of the Battlefield site did not arise, as the Inspector had identified its character as one of undeveloped open land. In line with NPPF guidance, permission was refused for the 'less than substantial harm' to the designated heritage asset.

**A6. Priory Gardens, Cromer Road, Beeston Regis. North Norfolk District Council.**  
**Appeal no.: APP/Y2620/W/15/3132403. Decision date: 10 February 2016.**

Proposed development

Change of use of land from visitor attraction to siting of thirteen holiday chalets.

Designated heritage assets potentially affected

Beeston Regis Augustinian Priory comprising ruins of the church, chapterhouse and cloisters (Grade I) together with the gatehouse & fishponds also comprising a Scheduled Monument. Abbey Farmhouse to the south (Grade II, mainly late C18) evolved with the Priory following the Dissolution. The Beeston Regis Conservation Area encompassing the site, countryside to the east and north of the listed buildings, and common land to the west was designated for its unspoilt historic landscape.

Review by Inspector

The appeal site fell within the extensive precincts of the Priory and the Inspector considered it made a strongly positive contributor to the setting of the LBs and SM. Though used as the Priory Maze and Gardens tourist attraction, the site was generally open and did not compete with the heritage assets. The appeal site rose to give significant views of the church remains. The Priory remains and Abbey Farmhouse can be read together, being separated from the appeal site by a high hedgerow. The ruins attracted the eye from the popular landmark Beeston Bump, 500m to the north, with the undeveloped appeal site separating them from the residential areas of Beeston Regis.

The Inspector considered the character and appearance of the appeal site would be fundamentally changed by the contemporary-character chalets, however designed and controlled by conditions, and these would harmfully compete with the Listed Buildings and SM. Any planting with the density and height to provide an effective screen would at the same time harmfully increase the separation of the site from the Priory and Farmhouse (and obscure other views too). There would still be an impact from Beeston Bump. The proposal would therefore unacceptably fail to preserve the setting of the heritage assets, causing clear and material harm to their significance.

This less than substantial harm was weighed against the modest public benefits from the employment and visitor spend from five net additional chalets (eight would be removed from East Runton). There would be no substantial heritage benefits: the appeal site was an undesignated heritage asset where it was very possible that below-ground remains of considerable importance were present, but the site already had a beneficial use as part of the successful visitor attraction. The public benefits were collectively modest and fell some way short of outweighing the harm which the proposal would cause to the designated and undesignated heritage assets, contrary to the NPPF. In judging sustainable development, other aspects of the proposal which complied with the development plan did not come close to outweighing the harm to heritage assets and their settings (or harm to the character and appearance of the landscape). The appeal was dismissed.

Commentary

The Inspector properly applied the NPPF policy tests and the legislative tests to this site with its range of designated and undesignated heritage assets. He reminded himself of NPPF paragraph 132 that when considering the impact of proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. He also made an oblique reference to NPPF para. 131 on putting heritage assets to viable uses consistent with conservation.

Proposed development

188 dwellings (reduced from 197 after a Stroud Committee resolution, to moderate adverse impacts on key heritage assets) including new access from B4066, landscaping and associated infrastructure.

Designated heritage assets potentially affected

The settings of Berkeley Castle (Grade I listed building) and its Registered Park and Garden (Grade II\*); the southern tip of the site lay within Berkeley Conservation Area.

Review by Inspector

The Inspector found that the appeal site could only form part of the setting of the castle when viewed from the east (B4066) but any glimpses of the two together would be fleeting and the main parties agreed that there would be no effect on the setting or significance of the Castle. The Inspector considered the impact of the development on the setting of the Registered Park focusing on the Home Park part of the RPG as the designed setting for the castle. The presence of Castle Covert shows views north were never intended from castle or park, where the appeal site is completely hidden and would not impact on their significance. The development would cause limited less than substantial harm to Home Park's setting in views from the east and by its proximity.

English Heritage had argued, in contrast, that the proposed increase in housing would diminish the scale of the Castle and affect the sequential hierarchical approach from the east (agricultural landscape, park, town, Castle). The Park was of historic significance to the story of England, with the relationship of the castle to its park, the town and the wider landscape an extraordinary survival of a mediaeval entity. This legibility would be reduced as housing would spill over the ridge on the approach to Berkeley from the east. The Inspector addressed this legibility, a reason the application was refused. The slope of the hillside on the appeal site could be seen, but much of this had been regraded by previous landfill, and was some distance from the castle. There would be no change in the inter-relationship of the castle to the park or town and legibility not unacceptably lessened.

The housing proposed would be a public benefit: the Council had a five-year housing land supply but unallocated sites would be needed to meet overall requirements. Here the provision of 30% affordable homes was a social benefit carrying very significant weight in favour of the proposal. Construction jobs and revitalisation of the town were also benefits. In the planning balance, the Inspector considered there was no unacceptable harm to the setting of the castle or other designated heritage assets; benefits outweighed the limited localised environmental harm. However, he did not give great weight to heritage or show clear and convincing justification for the harm, particularly considering the high grade of the heritage assets affected. He granted permission.

Commentary

English Heritage had objected that the revised development would have a moderate negative impact on the setting of Berkeley Castle, RPG and Conservation Area. The Inspector's analysis barely identified the significance of the key heritage assets and he did not comment on English Heritage's assessment that the agricultural setting contributed to the significance of the RPG. He only dealt with direct lines of sight, despite English Heritage advice on the need for a broader understanding. The relevance to the appeal of previous inert landfilling to regrade the site was not explained.

Proposed development

Residential development of up to 330 dwellings plus 60 units of Extra Care accommodation, land for a doctor's surgery, and associated services. A development with 126 dwellings was also proposed.

Designated heritage assets potentially affected

The larger proposal included the demolition of unlisted farm outbuildings in the setting of the C18th Pond Farmhouse, listed Grade II. The farmhouse had had a separate residential curtilage since 1963.

Review by Inspector

Heritage was one of eleven main issues addressed. In accordance with the statutory duty of 'special regard', the Inspector assessed the contribution of the outbuildings to the historical significance and setting of the farmhouse. Even though there was no longer any functional relationship between them, the outbuildings' proximity to the listed building enabled appreciation of the historic function of the former farmhouse, and indeed the reason why the farmhouse was built in this location at all. Without the outbuildings the listed building might well appear as just an unusually attractive older residence among all the other dwellings. With them its historical *raison d'être* was plain to see.

The Inspector considered that the demolition of the farm outbuildings would result in substantial harm to the historic significance of Pond Farmhouse. However, this historic significance was only part of its overall significance as a designated heritage asset. Its equally, if not more, important architectural qualities would be unaffected by the proposals. The list entry for Pond Farmhouse, made in 1967, referred only to its external architectural details and made no mention of the outbuildings or of any historical significance they may have. The Inspector then found that the demolition of the outbuildings would cause less than substantial harm to its significance overall.

There would be very substantial housing benefits arising from the proposal, notably with the Council being 1.2 years short of a five-year housing land supply. However, the Inspector considered that against the Local Plan policy these would be outweighed by the harm that the proposals would do (inter alia) to the significance of Pond Farmhouse, which could not be mitigated. However, some of the relevant development plan policies were out of date, so NPPF paragraph 14 applied. Footnote 9 indicated that development should be restricted in respect of designated heritage assets, so NPPF paragraph 134 applied, requiring that harm should be weighed against the proposals' public benefit. The Inspector found that, in combination, on this test, the benefits of the proposals would outweigh the harm the proposals would cause to the significance of the designated heritage asset. Thus the Limb 2 test of NPPF para. 14 did not indicate that permission should be refused on heritage grounds.

Commentary

The Inspector's reasons seem to have rested on the 1967 listing schedule not mentioning the high value of the outbuildings to Pond Farmhouse's significance, even though he appreciated it. There must also be some doubt whether he applied 'great weight' to conserving heritage assets when applying NPPF paragraph 134 (or found the 'clear and convincing justification' for the loss of the outbuildings). This is especially as he had earlier specifically found that the outbuildings' demolition would result in 'substantial harm' to the significance of Pond Farmhouse, which should be acceptable only exceptionally, and that the proposal also failed to satisfy local plan heritage policies.

Proposed development

900 dwellings with primary school, local centre, park-and-ride facility and associated infrastructure.

Designated heritage assets potentially affected

The principal impact would be on the settings of Warwick Castle Park Grade I Registered Park and Garden (also a Conservation Area) and, less so, on Warwick Castle and St Mary's Church, Warwick (both Grade I c.1.8km distant), on The Aspens close to the site (Grade II) and other LBs further away.

Review by Inspector

At present there is no intervisibility between the appeal site and Warwick Castle, though the roofs of some of the proposed buildings may be glimpsed from the towers. However the degree of separation would produce no harmful effect on the significance of the Castle. There would be minimal harm to the significance of The Aspens. However the Inspector considered that the loss of the most important aspect of the appeal site, its openness, would detract from the legibility of the Castle Park beyond its tree-lined periphery. The ability to appreciate the Park's significance would be diminished considerably. Although harm would be less than substantial, it would still be real and serious, attracting considerable weight. Other designated heritage assets would not be harmed.

The Inspector identified public benefits from the development which were in total substantial and carried considerable weight, notably: 900 houses with 40% affordable; a park-and-ride facility having 500 spaces with the potential to reduce vehicular traffic in the town centre and surrounding network; employment benefits in construction and resulting from local household spend; and biodiversity improvements. In all likelihood the Council could not demonstrate a five-year housing land supply (4.85 years seemed a likely maximum), so paragraph 14 of the NPPF applied. However, in this case, the adverse impacts of granting planning permission did significantly and demonstrably outweigh the benefits when assessed against the policies of the NPPF as a whole. There would be very substantial environmental harm: the setting of Castle Park made a valuable contribution to its significance and the balance required by paragraph 134 applied. (There would also be a significant adverse impact on the character and appearance of the area, loss of 50ha of best and most versatile agricultural land and poor accessibility to services.) This was not sustainable development even if the housing need (and five-year land supply) proved larger in the emerging Local Plan.

Secretary of State decision

The Secretary of State agreed almost entirely with the Inspector's findings but did not accept her recommendation of refusal. He specifically took into account the Historic England guidance *The Setting of Heritage Assets* updated in July 2015 and NPPF heritage policies, and paid special regard to heritage legislation. He entirely accepted the assessed harm to heritage assets and the weight to be given to this (and cumulative heritage impact with a nearby housing appeal scheme). However, he considered the benefits, especially the housing supply and park-and-ride, outweighed the harm.

Commentary

The crumb of comfort for heritage in this very close decision lies in the acceptance of the relevance of Historic England's guidance and of the Inspector's broad view of the value of the Park's setting.

Proposed development

Residential development of up to 98 dwellings with associated roads, sewers & green infrastructure.

Designated heritage assets potentially affected

The inquiry focused on the two main Grade I listed buildings, in a Conservation Area: the National Trust-owned Bredon Tithe Barn (also a Scheduled Monument) and St Giles Church.

Review by Inspector

The Inspector identified the listed buildings as having international significance. The Church had evidential and historic value deriving from the survival of early fabric, its legible relationship to surrounding buildings, and to the River Avon and agricultural land that supported the settlement and the functioning of an historic manor, plus a beautiful tower and spire widely visible. The Barn was a surviving presence evocative of the role that the structure had in the agricultural life of the medieval manor and its contribution to community life since it was erected in the 1340s.

The 5.2ha appeal site lay on the south-west approach to the village. This was part of the setting of the Church, contributing towards both the existing views of it and the countryside surroundings that are part of its significance, and the appreciation of these aspects. The site was not intervisible with the Barn. As part of the Barn's rural setting the site contributed to and enhanced the appreciation of its significance as an historic rural farming structure. Although the layout of the scheme could preserve a view of the Church spire, this would be in a new unmistakably urban context detracting from the contribution made to the significance of the Church. Also, from one footpath, buildings on the appeal site would be seen together with both Church and Barn, diminishing the site's contribution to the visual connection between the agricultural land and the assets. The Inspector agreed with English Heritage that the proposal would give rise to a permanent change in the surroundings of the assets over a relatively large area and in proximity to them. The negative effects on the settings of the listed buildings would cause less than substantial harm to their significance.

The proposed housing was a public benefit, especially with 40% affordable homes, which merited substantial weight; also local economic, social and environmental benefits had moderate weight. However, there was no demonstrated requirement for extra housing to this extent to be provided at Bredon, and some disadvantages to the appeal site. In the balance, the harm to the significance of the Church and Barn, by reason of adverse effects on their settings, carried considerable importance and weight due to the statutory duty to have regard to the desirability of preserving their settings. Great weight also attached to this harm under NPPF policies, with the weight increased due to the status of these heritage assets. This harm was the overriding factor and outweighed the benefits. That conclusion could not be altered by mitigation measures. The appeal was dismissed.

Commentary

This decision properly followed the policies in the NPPF, albeit with limited reference to them, and conspicuously gave great weight to the Grade I Church and Barn. The Inspector's treatment of their settings is instructive. Even though the Barn could not be seen from the appeal site and even though the scheme could only be seen in the same view as the Barn and Church from one footpath, harm to the wider context of the historic agricultural surroundings outweighed substantial housing benefits.

## **APPENDIX 7 AVAILABILITY OF LOCAL AUTHORITY HERITAGE STAFF**

A7.1 The most important indicator of the ability of heritage staff to respond to planning applications likely to affect heritage assets is the number of them to whom the local authorities have access. However, the workload which staff face in each authority varies considerably. In most local authorities the volume of heritage work that should ideally be done greatly exceeds the availability of staff to do it. Purely from a development management point of view, an authority's workload is likely to be greater the larger the number of planning applications which need deciding and also the larger the number of heritage assets in its area. Broadly speaking, the larger the number of staff, the more readily workload can be tackled. (This is only indicative, though, as authorities may bring in additional outside advisers when workloads are heavy, and also their own specialist staff may be deployed on other matters such as strategic planning.)

A7.2 The approximate indicators of workload chosen were:

- the number of planning decisions in each authority in the year to 30 September 2016; and
- the number of listed buildings in the authority (easily the largest category of heritage asset).

These can be used to provide a very approximate indicator of likely pressure on heritage staff per head in development management. For each planning authority the two figures were multiplied and the result then divided by the number of conservation staff. This provides a standardised rate of conservation officer availability in real terms (in relation to estimated workload). The figures produced mean nothing in themselves and are purely comparative between authorities. The standardised rate per authority varied from just over 10,000 to over 20,000,000. The higher the number, the larger the anticipated workload for each member of staff. Blackpool was the authority best served by available heritage staff, according to this approach. Particularly high numbers emerged: (a) when staff levels were said to be very low (e.g. less than one person for one day per week devoted to heritage conservation) and (b) in large unitary authorities with very few staff for the size of caseload (e.g. Cornwall and Wiltshire). (Note both that this calculation does not work when there are no conservation staff at all, and that the accuracy of the staffing data has a strong influence on the findings.)

A7.3 The pattern of conservation staff availability using this standardised method can be compared between all the authorities sampled and those authorities where the project found no reference to specialist heritage advice having been obtained. The figures for this noted in paragraphs 2.18-19 have been used. For both groups, authorities with nil conservation staff must be omitted. On this basis 17 authorities out of all 318 covered by the project should be removed from the assessment, and 9 of the 97 for which the project found no evidence of heritage advice having been obtained. The remaining 301 and 88 authorities respectively were included in the analysis.

A7.4 For both groups, the authorities were arranged in ascending order of the new 'standardised rate' of heritage staff availability. Those can be shown on the same line graph. A convenient way to do this is to divide both sets of data into deciles (i.e. the nine points which divide every 10% of authorities in each block of authorities) and then plot the deciles. This is done in Figure 29. The lines would track differently if there was a discernible difference in the 'real' workloads of heritage staff between all authorities together on the one hand and on the other just those from which the project did not obtain heritage advice (the target group).

A7.5 Figure 29 shows that this is hardly the case. The lines follow quite similar paths. Tracking upwards from the horizontal ('x') axis at every decile shows that the figure for standardised rate of heritage adviser availability (taken off the vertical 'y' axis) is lower in the target group than for local authorities as a whole. Lower standardised rates are associated with greater availability of staff against workload. Figure 29 therefore appears to show that there were slightly more staff than

average practically available to the 88 local authorities where there was no reference to specialist heritage advice having been obtained. The data suggest strongly that a shortage of specialist heritage staff in real terms (in relation to workload rather than simply by numbers employed) cannot explain the absence of heritage advice in so many authorities. On this basis, paragraph 2.20 seems to provide more likely explanations for the shortage of information from some authorities.

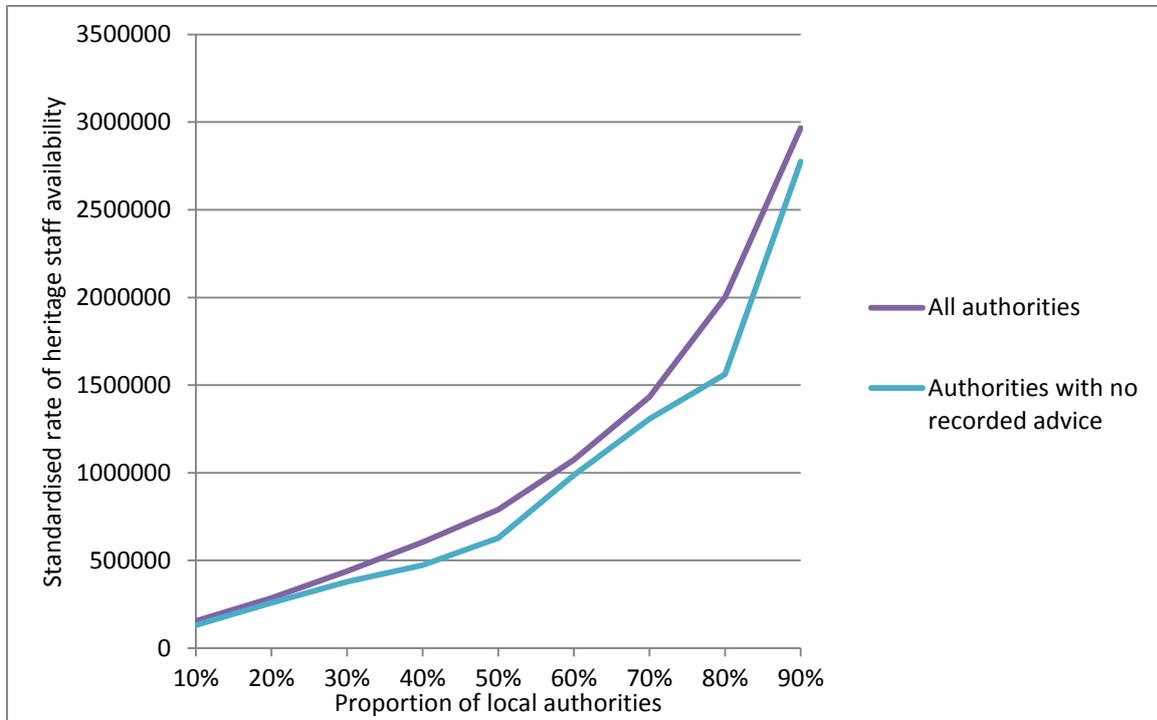


Figure 29 Standardised rate of heritage staff available to local authorities