



**Land to the West
of Park Farm,
Oldbury Lane,
Thornbury**

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

In respect of:
Heritage Matters

On behalf of:
**Barwood Development
Securities Ltd and the
North West Thornbury
Land Consortium**

PINS REF:
APP/P0119/W/21/328
8019

LPA REF:
PT18/6450/0

**Volume III:
SUMMARY OF PROOF
OF EVIDENCE**

February 2022
Report Ref:
edp7361_r004b

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Volume III: Summary of Proof of Evidence

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	Report Ref: edp7361_r004			
	Author	Formatted	Peer Review	Proofed by/Date
r004_2 nd DRAFT	AC	FM	-	-
r004a_FINAL DRAFT	AC	FM	EO	FJ 250222
r004b	AC-	-	-	FJ 280222

Summary

Policy Review and Conclusions

S.1 My Proof of Evidence (PoE) responds to and then addresses Reason for Refusal (RfR) 1 of the Council's Statement of Case (issued on 28 January 2022). This states the following:

'The proposed development would cause less than substantial harm at the lower end of the spectrum to the setting of the Grade I listed Thornbury Castle and St. Mary's Church and the Grade II listed Sheiling School and Thornbury Conservation Area. Great weight is required to be attached to this harm and applying PSP17 and paragraph 202 of the NPPF it is not considered that the public benefits of the proposal outweigh that harm.'

S.2 Paragraph 4.4 then expands on the RfR and sets out the Council's Case insofar as heritage matters are concerned:

'The natural and historic environment is a finite and irreplaceable resource, and the protection of heritage assets is a priority nationally, as well as one for the Council. The Council will show that the appeal proposal will result in less than substantial harm to the setting and significance of the Grade I listed Thornbury Castle and St Mary's Church and the Grade II Listed Sheiling School and the Thornbury Conservation Area and the public benefits do not outweigh that harm so that there is a clear reason that permission should be refused under both paragraph 11 d(i) of the NPPF and PSP17 of the Development Plan.'

S.3 The focus of the Council's case on heritage matters is then set out in Paragraph 5.87 of its Committee Report when it identifies the following assessment:

'However, overall, the Conservation Officer's advice is that the urban design approach, whilst it will enable views of the [church] tower from within the development itself and so promote character/local distinctiveness it would not overcome or mitigate for the loss of views of St. Mary's Church Tower from Oldbury Lane. He is also of the view that by the inherent nature of the scheme the development will result in change in landscape character and would further erode the character of the historic deer park which makes a

positive and material contribution to the setting of the Thornbury Castle building group. He considers that for similar reasons there would be harm to the other assets as well.'

S.4 Hence, it appears to be the Council's case that, insofar as heritage matters are concerned, it accepts that the impacts of the appeal proposals on heritage assets have been minimised as far as possible through consultation and design changes in the course of the planning application process, but even so there would (a) still be harm caused to four heritage assets via changes within their wider setting, (b) this would constitute *less than substantial harm* at the 'lower' end of that broad spectrum of impact and (c) the balance of heritage harm against public benefits is now struck **against** the approval of the application, in contrast to the position as recently as last summer when the then Case Officer apparently determined that the outline application was '*fully policy compliant*' in a Briefing Note prepared to inform members of the Planning Committee.

S.5 Notwithstanding the fact that the Council already had three consultation responses on file from its in-house Conservation Officer (Rob Nicholson) that started with an identification of harm to the four heritage assets as '*limited or lower end of less than substantial harm*' and then progressed to '*reduced further but still less than substantial harm*' as a result of that process of post-submission consultation and design changes; a second opinion was sought and obtained from Tim Murphy at Place Services in winter 2021 and concluded with advice to the effect that the implementation of the appeal proposals would cause no harm to any of the assets assessed and highlighted that:

'...there is no objection to this proposal which is not considered to harm the significance of any of the designated heritage assets'.

S.6 Whilst the Case Officer dismisses this advice in their report to the Planning Committee on the premise that it represents an 'outlier', this is clearly not the case when it is put into its context and considered alongside the assessment of Mr Ben Stephenson, who drafted the reports that accompanied the planning application and the responses that were submitted by the Council's in-house Conservation Officer and Historic England, where so far not one of them has identified an impact to designated heritage assets that is of greater magnitude than at the '*lower end of less than substantial harm*' in terms of the Framework.

S.7 I was not involved in preparing any of the application documents on heritage matters and was only initially engaged by the appellant in summer 2021 to review those documents and

the subsequent responses from the consultees, in order to provide a second opinion on the likely nature and scale of impacts from the proposals on the four designated assets which had to that point been highlighted as being affected by them.

S.8 Having undertaken background research and visited the four heritage assets, the appeal site and its wider surroundings on a number of occasions since accepting an instruction for the project in the autumn; my professional opinion is that the implementation of the appeal proposals would give rise to the following impacts (**Table AC 3**):

Table AC 3: Updated Summary of Heritage Impacts

Asset Ref	BS	HE 06.19	TM 12.21	RN 01.22	AC 02.22
Thornbury Castle	Neutral	LTSH	No harm	Lower end LTSH	Small Lowest end LTSH
Church of St. Mary the Virgin	Neutral		No harm		Small Lowest end LTSH
Sheiling School	Neutral	N/A	No harm		No Impact (Neutral)
Thornbury Conservation Area	Neutral	N/A	-		Small Lowest end LTSH

LTSH: Less Than Substantial Harm (Paragraph 202 of the NPPF)

BS: Ben Stephenson (BSA Heritage)

HE: Historic England

TM: Tim Murphy (Place Services)

RN: Rob Nicholson (Council Conservation Officer)

AC: Andrew Crutchley (EDP)

S.9 With regard to **Table AC 3** (above), it might reasonably be concluded that there is a narrow breadth of opinion and a strong degree of commonality in respect of the assessments that these five experts have made of the appeal proposals' impact on the heritage assets.

S.10 Whilst it is recognised and accepted that the appeal proposals would give rise to 'harm' in respect of three out of the four designated assets identified by the Council as being affected and cited in RfR 1 of its Statement of Case, it is still of course correct to conclude that the acceptability of those effects and that harm is a matter for the decision-maker to decide upon and nothing in legislation, case law or planning policy (either nationally or locally) proscribes the outline application's approval, as the Council's previous assessment that it was '*fully policy compliant*' only last summer clearly serves to underline.

S.11 As far as relevant legislation and case law is concerned (**Appendix AC 1**) even the '*strong presumption against*' the grant of planning permission in the Forge Field judgement is still

accepted in the same judgement as not being an *'irrebuttable'* presumption and one where factors of sufficient weight to do so can outweigh it. In a similar way, the Barnwell Manor judgement requires a decision maker to apply *'considerable importance and weight'* to the desirability of preserving a listed building and its setting, but it again still does not preclude development that would cause harm. It is true to say that the *strong presumption* may tilt the balance against the approval of harmful proposals, but it still remains a matter for the decision maker to weigh and then determine.

- S.12 Paragraph 199 of the NPPF (July 2021) identifies that *'great weight'* should be given to the desirability of conserving designated assets and qualifying that the weight afforded should be proportionate to the significance of the asset or assets. The following paragraph (200) of the Framework adds that *'clear and convincing justification'* is required where harm would be caused to a designated heritage asset.
- S.13 Paragraph 199 of the NPPF also sets out a principle of *'proportionality'* where the weight to be afforded to the conservation of designated heritage assets increases as the significance of the assets also increases.
- S.14 Even so, it ultimately remains the case that Paragraph 202 of the NPPF (July 2021) advises the decision maker to weigh the *less than substantial harm* against the public benefits that the appeal proposals would deliver, mindful of the *'special regard'* duty set out in s66(1) of the 1990 Act. Hence, in and of itself the finding of *less than substantial* harm to three of the four designated heritage assets does not necessarily proscribe or preclude the grant of planning permission.
- S.15 It is for my colleague, Mr. Matthews (covering planning matters on behalf of the appellant) to undertake the balancing exercise detailed in Paragraph 202 of the NPPF and PSP 17 of the South Gloucestershire *Policies Sites and Places Plan (2017)*, although neither of these two policies countenances against the grant of planning permission in this case so long as the benefits of doing so are of sufficient weight.
- S.16 In that sense, PSP 17 follows the approach set out in the Framework, whereby the Council states that it will only grant planning permission where all of the four following tests can be met by the proposals:

- *the proposal results in public benefits that outweigh the harm to the heritage asset,*

considering the balance between the significance of the asset affected, the degree of harm and the public benefits achieved;

- *there is no other means of delivering similar public benefits through development of an alternative site;*
- *the harm to the heritage asset is minimised and mitigated through the form and design of the development and the provision of heritage enhancements; and*
- *the heritage asset will be properly recorded to professionally accepted standards’.*

S.17 Of course, it should be highlighted that PSP 17 was adopted by the Council in 2017 and it would have represented the adopted Local Plan policy against which the appeal proposals were assessed last summer (2021), where the Officer at the time is reported in the Report to the Strategic Sites Delivery Committee (20 January 2022) [**CD 5.11**] to have reached the view that the development was ‘*fully policy compliant*’ in spite of the Conservation Officer’s identification of less than substantial harm to **four** designated assets.

S.18 Finally, it is possible that the Neighbourhood Plan will be ‘made’ ahead of the opening of the Public Inquiry on 29 March and so therefore appropriate consideration has been given to Policy 11 of that Plan which sets out that:

‘Any new development or improvements proposed in the town centre should be undertaken with a view to conserving and enhancing the historic market town character and identity of Thornbury.

Within the Conservation Area, development should respect the provisions of the 2004 Thornbury Conservation Area Advice Note, produced by South Gloucestershire Council, the following elements of which are especially pertinent:

- *Respect for the style and form of the town centre buildings and streetscape, enhancing the character and appearance of the historic market town;*
- *The use of materials which are sustainable and fit for purpose, but which blend with the existing colours and styles;*

- *A consistent and appropriate style of street furniture including benches, lighting, signage and bins; and*
- *Maintain the views over the lowland levels and Severn Estuary and the open aspects to the west and north with the old town walls set within open space and the open spaces identified within the town development boundary.'*

S.19 Once again, this Neighbourhood Plan policy does not in any way count against the approval of the proposals forming the basis of this appeal because the focus is firmly placed on the town centre and development within the conservation area. It is clearly true to say that the appeal site does not impact upon the town centre because it is not located within the town centre. Likewise, the appeal site is not located within the boundary of the conservation area and would only impact upon the conservation area insofar as its setting is concerned. This Neighbourhood Plan policy does not extend to address development positioned outwith the conservation area and where its setting only would be affected. It is therefore assumed that the evaluation and determination if the appeal proposals would in this respect be on the basis of the relevant paragraphs of the NPPF and Policy PSP17 of the Local Plan.

S.20 Therefore, I conclude that there is no reason, in terms of heritage matters, why the appeal proposals should not be treated favourably and approved.



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