

## **Land West of Park Farm, Thornbury Heritage Statement of Common Ground edp7361\_r005c**

### **1. Introduction**

1.1 This Statement of Common Ground (SoCG) on Heritage Matters has been drafted in respect of an appeal [Ref: APP/P0119/W/21/3288019] against the non-determination of Outline Planning Application PT18/6450/O by South Gloucestershire Council (SGC).

1.2 In terms of heritage matters, Reason for Refusal (RfR) 01 of the four reasons given to refuse the Outline Planning Application PT18/6450/O (detailed in the Council's Statement of Case) states that:

*'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.'*

1.3 This Heritage SoCG has been prepared in line with the Inspector's Note of the Case Management Conference and intends to identify and agree matters of common ground between the experts at the Inquiry, and therefore define those heritage issues that remain in disagreement and need to be resolved through the submission of evidence and cross-examination.

1.4 This SoCG relates solely to heritage matters and all other matters are dealt with in the overarching SoCG.

### **2. Matters of Agreement**

2.1 Insofar as heritage matters are concerned, it is common ground between the two main Parties to this Inquiry that:

2.2 Thornbury Castle is not itself a single 'heritage asset' but is instead a collection of inter-related designations comprising five listed buildings (three at Grade I and two at Grade II), a Scheduled Monument and a Grade II Registered Park and Garden, which for ease and the purposes of this Inquiry will be considered together, collectively.

2.3 Historic England identify three grades of listed building, where Grade I is the highest grade used for listed buildings of 'exceptional' interest and Grade II is the lowest of the three and used for Buildings of 'special' architectural or historic interest.



- 2.4 SGC's 'Advice Note 12' (approved on 29 March 2004) constitutes the most recent assessment of the Thornbury Conservation Area's special interest and the aspects that contribute to and underpin its character and appearance.
- 2.5 The four 'assets' identified in RfR 01 of the Council's Statement of Case meet the definition of a 'designated heritage asset' which is presented within Annex 2 of the National Planning Policy Framework (or NPPF) dated July 2021: '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'.
- 2.6 None of the four assets identified by the Council in RfR 01, all of which constitute 'designated' heritage assets, is located within the boundary of the appeal site and so therefore, insofar as the appeal proposals would affect any of these four designated assets, it would do so solely in terms of alterations to their 'setting', rather than through changes to their form, fabric, character or appearance.
- 2.7 The setting of a listed building receives statutory protection, and this is covered by s66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ('The Act') (Appendix A) which sets out the following:
- '...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.'*
- 2.8 Section 66(1) of the 1990 sets out a 'statutory duty' whereby a decision-maker must pay special regard or (in the terms of the Barnwell Manor case, 2014) apply considerable importance and weight to the desirability of preserving a listed building and its setting. At Para 199, the NPPF states that 'great weight' should be given to the conservation of a designated heritage asset and that the more important the asset, the greater the weight should be. This applies here given that highly graded designations are affected. This does not predicate an outcome to that process and instead it is a matter for the decision maker, having given at least great weight to the 'harm', to weigh that harm against the 'public benefits' of the proposal, including where appropriate the optimal viable use of the building (a benefit which is not present in this appeal), in reaching an informed view on the proposal's conformance with policy.
- 2.9 Section 72(1) sets out the statutory protection afforded to the 'character and appearance' of a conservation area, but this does not extend to protect the setting of a conservation area, which is instead a matter addressed in relevant planning policies.
- 2.10 Setting is defined as the 'surroundings in which an asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve' and the relevant guidance is set out in Historic England (2017) *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* [GPA 3].

- 2.11 Paragraph 17 of Historic England's guidance (GPA 3, 2017) states that, because the contribution made by an asset's setting to its significance will vary, this: *'requires the implications of development affecting the setting of heritage assets to be considered on a case-by-case basis'*.
- 2.12 Page 7 of Historic England (2017) *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* provides specific national guidance for the assessment of impacts on church towers and church spires.
- 2.13 The appeal site is located within the setting of the four assets identified in RfR 01 of the Council's reasons for refusal of the outline planning application, insofar as it falls within the surroundings in which the four are experienced.
- 2.14 Paragraph 9 of the Historic England guidance (2017) sets out that all heritage assets possess a setting, but equally advises that in itself setting is not a heritage asset and is of importance only insofar as it makes a contribution to an asset's significance or the ability to appreciate that significance.
- 2.15 Step 1 of the Historic England guidance aims to identify those heritage assets and their settings that would be 'affected' by development and then Steps 2 and 3 determine whether, to what extent and in what way(s) the proposed development would then cause a loss of significance and therefore harm to the heritage assets.
- 2.16 Annex 2 of the NPPF defines 'significance' as *'The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting'*.
- 2.17 The Government's Planning Practice Guidance (PPG) confirms that 'harm' to a heritage asset will only result where its significance is lost or damaged.
- 2.18 Given that none of the four heritage assets is located within the appeal site and harm would only occur as a result of changes within their setting, it stands to reason that the first exercise which must be performed is to determine their overall significance, the portion of that which is drawn from their setting and the role that the land at the appeal site plays in that respect. This equates to Step 2 of the Historic England guidance (2017).
- 2.19 In order to complete Step 3 of the Historic England guidance (2017) and determine whether and to what extent significance would be lost or damaged by the appeal proposals, it is necessary to assess the asset and its setting in the round first.
- 2.20 The appeal site will be located within the parish of St. Mary the Virgin at Thornbury regardless of whether planning permission is granted for development.

2.21 Step 4 (*Explore ways to maximise enhancement and avoid or minimise harm*) of the Historic England guidance (2017) highlights at Paragraph 38 that:

*'enhancement may be achieved by actions including...*

- *restoring or revealing a lost historic feature or view;*
- *introducing a wholly new feature that adds to the public appreciation of the asset;*
- *introducing new views (including glimpses or better framed views) that add to the public experience of the asset; and*
- *improving public access to, or interpretation of, the asset including its setting.'*

2.22 Paragraph 39 of the Historic England guidance (2017) states that:

*'Options for reducing the harm arising from development may include the repositioning of a development or its elements, changes to its design, the creation of effective long-term visual or acoustic screening, or management measures secured by planning conditions or legal agreements. For some developments affecting setting, the design of a development may not be capable of sufficient adjustment to avoid or significantly reduce the harm, for example where impacts are caused by fundamental issues such as the proximity, location, scale, prominence or noisiness of a development. In other cases, good design may reduce or remove the harm, or provide enhancement. Here the design quality may be an important consideration in determining the balance of harm and benefit.'*

2.23 NPPF Paragraph 199 states 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 (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.'*

2.24 The NPPF (Para 200) advises that *'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification'*.

2.25 The PPG states that *'substantial harm' is a 'high test, so it may not arise in many cases'* and the Bedford Judgement (Paras 24 and 25) advises that:

*'What the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away. Plainly in the context of physical harm, this would apply in the case of demolition or destruction,*

*being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.'*

- 2.26 Accordingly, the category of 'less than substantial harm' must therefore cover the full range of heritage effects from proposals which have a small yet material adverse effect to development proposals that would come close to 'substantial harm' and where the latter category would result in 'very much, if not all, of the significance' of the asset being lost to development.
- 2.27 RfR1 of the Council's four reasons for refusal of the outline planning does not suggest or allege that the harm to any of the designated heritage assets would be 'substantial' and instead sets out that it would constitute 'less than substantial harm'.
- 2.28 The implementation of the appeal proposals would give rise to 'less than substantial harm' in respect of the following:
- Thornbury Castle;
  - The Parish Church of St. Mary the Virgin; and
  - Thornbury Conservation Area.
- 2.29 Paragraph 202 of the NPPF deals with proposed development that would cause less than substantial harm to a designated heritage asset and states that: '*Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use*'.
- 2.30 With regard to what constitutes a 'public benefit', the Government's PPG provides the following commentary:
- 'Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.'*
- 2.31 The Government's PPG states that a 'heritage benefit' may include '*...sustaining or enhancing the significance of a heritage asset and the contribution of its setting*'.

### **3. Matters Not Agreed**

- 3.1 Whether, in resolving to refuse the outline planning application (in part) on heritage grounds, the Council identifies only the following four assets as being 'harmed' by the implementation of the appeal proposals:
- Thornbury Castle;
  - Parish Church of St. Mary the Virgin Grade I Listed Building;
  - Sheiling School Grade II Listed Building; and
  - Thornbury Conservation Area.
- 3.2 The importance attributed to the appeal site as part of a former deer park and part of a wider landscape around the castle in terms of the setting and significance of the four designated heritage assets identified in RfR 01.
- 3.3 Whether there is a risk that the contribution which is made by the land at the appeal site to the significance of the heritage assets in RfR 01 may be over-estimated if the asset and its setting are not assessed in the round first.
- 3.4 Whether to date the Council has received advice from its in-house conservation officer and external consultant that the harm to the heritage assets in RfR1 would be at the 'lower end' of less than substantial harm, if there would be any harm caused at all, and this is the position it has identified in its putative RfR 1 and Statement of Case. It was the Council therefore that identified a spectrum within the definition of less than substantial harm. The Council's expert for this appeal is a third and different heritage professional and identifies the harm as medium less than substantial harm.
- 3.5 Whether the implementation of the appeal proposals would cause harm to the significance of Sheiling School.
- 3.6 Where the impacts to Thornbury Castle, the Parish Church of St. Mary the Virgin and Thornbury Conservation Area are considered to be located on the spectrum of less than substantial harm, to complete the 'heritage balance' outlined in Paragraph 202 of the Framework.

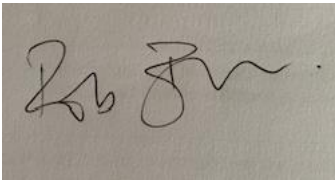
Signed by

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Date 16/03/22

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Andrew Crutchley

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Date 16/03/22

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Rob Burns