

Proof of Evidence

Joanne Upton

Appeal under Section 78 of the
Town and Country Planning Act 1990
By Laver Leisure (Oakamoor) Limited

Moneystone Eco Park
Whiston
Staffordshire

Application Number:
SMD/2014/0682

October 2017

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Report

Proof of Evidence - Heritage

Site

Moneystone Eco Park
Whiston
Staffordshire

Planning Authority

Staffordshire Moorlands District Council

Site Centred At

SK 0464 4641

Prepared & Approved By

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Report Status

Final

Issue Date

October 2017

Orion Ref

PN1067/4

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1.0 Introduction

- 1.1 My name is Jo Upton and I am a Technical Director at Orion Heritage. Orion is an independent heritage consultancy based in Brighton, Manchester and Worcester. The company acts for a wide range of private and public sector organisations and advises on all aspects of historic environment related planning policy and practice.
- 1.2 Prior to joining Orion in March 2017, I was retained Heritage and Conservation Consultant at Genesis Town Planning Ltd for over 3 years. Prior to this, I was Director at Sanderson Heritage Limited. I have worked as a Conservation Officer at a number of London Boroughs on a consultancy basis and was a Conservation Officer at Adur and Worthing Council following nearly 6 years at CgMs, working UK wide as a Senior Planner and latterly as a Historic Buildings Consultant. Prior to working at CgMs I was a town planner, working at the London Borough of Newham.
- 1.3 I hold a BA (Hons) and Master of Town Planning (MTP) in Town and Country Planning from the University of Manchester and an MSc in Historic Building Conservation from the University of Portsmouth. I have 20 years' experience working as a planner and historic buildings professional, acting for both the public and private sectors. During this period, I have personally dealt with a wide variety of developments affecting the historic environment and with setting issues throughout the UK. I am a full member of the Institute of Historic Building Conservation.
- 1.4 My proof of evidence has been prepared on behalf of the appellant, Laver leisure (Oakamoor) Limited in relation to a planning application (LPA ref: SMD/2014/0682) for:
- “The erection of a high quality leisure development comprising up to 250 holiday lodges; a new central hub building (providing swimming pool, restaurant, bowling alley, spa, gym, informal screen/cinema room, children’s soft play area, café, climbing wall and shop); café; visitor centre; administration building; maintenance building; archery centre; water sports centre; equipped play and adventure play areas; multi-sports area; car parking; and managed footpaths and cycleways set in attractive landscaping and ecological enhancements”.*
- 1.5 My first involvement with Moneystone Eco Park was in September 2017 when I undertook a visit to the site and familiarised myself with the case. Prior to this, my colleague Dr Rob Smith was involved on behalf of Orion Heritage. In October 2015 Orion Heritage was engaged to produce a Heritage Assessment in response to consultation comments received from Staffordshire Moorlands District Council’s Senior Conservation Officer, requesting that further information concerning the potential impact of the proposed development on Little Eaves Farm, which comprises two Grade II Listed Buildings (Little Eaves Farmhouse and Barn located c. 5 m east of Little Eaves Farmhouse). Following this, Dr Smith had personal involvement with all aspects of the historic environment elements of the proposed development. Consequently, we are both familiar with the site of the proposed development and its surroundings. Dr Smith and I have visited the site and the wider area on a numerous occasions.

Scope of Evidence

- 1.6 My evidence is prefaced by a review of relevant legislation, local development plan policy, and national policy and guidance relating to the historic environment (Section 2), the putative reasons for refusal (Section 3), and the specific heritage impacts of the proposed development on the designated heritage assets which comprise Little Eaves Farm within the vicinity of the proposed development (Section 4).
- 1.7 My evidence is distinct from landscape and visual matters, which are dealt with separately by Mr Jon Berry (Partner at Tyler Grange LLP). Although I refer in my evidence to the balance of harm and public benefits in relation to the historic environment, the overall planning balance in this case is contained within the evidence of Mr Jon Suckley (Partner at HOW Planning LLP).
- 1.8 I understand my duty to the Inquiry, and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed, and that the Inquiry’s attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct irrespective of by whom I am instructed.

2.0 Legislative and Policy Framework

- 2.1 Where any development may have a direct or indirect effect on designated heritage assets, there is a legislative framework to ensure the proposals are considered with due regard for their impact on the historic environment.

Ancient Monuments & Archaeological Areas Act 1979

- 2.2 The Ancient Monuments & Archaeological Areas Act 1979 (as amended) protects the fabric of Scheduled Monuments, but does not afford statutory protection to their settings.

Planning (Listed Building and Conservation Areas) Act 1990

- 2.3 The Planning (Listed Building and Conservation Areas) Act 1990 sets out broad policies and obligations relevant to the protection of Listed Buildings and Conservation Areas and their settings. The following section of the Act is relevant:

- 2.4 Section 66(1) states:

“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”.

- 2.5 Section 69 of the Act requires local authorities to define as conservation areas any ‘areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance’.

- 2.6 Section 72 gives local authorities a general duty to pay special attention ‘to the desirability of preserving or enhancing the character or appearance of that area’ in exercising their planning functions. These duties are taken to apply only within a Conservation Area. The Act does not make specific provision with regard to the setting of a Conservation Area that is provided by the policy framework outlined below.

National Planning Policy and Guidance

National Planning Policy Framework (March 2012)

- 2.7 In March 2012, the government published the National Planning Policy Framework (NPPF).

- 2.8 The NPPF promotes sustainable development as a fundamental theme in planning and provides, to this end, a series of ‘Core Planning Principles’ (Paragraph 17). These core principles of sustainable development highlight that planning should be a creative exercise in finding ways to enhance and improve the places in which people live their lives; that it should secure high quality design and a good standard of amenity; and that heritage assets should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.

- 2.9 The guidance contained within Section 12, ‘Conserving and enhancing the historic environment’, Paragraphs 126-141, relates to the historic environment, and developments which may have an effect upon it. These policies provide the framework to which local authorities need to refer when setting out a strategy for the conservation and enjoyment of the historic environment in their Local Plans.

- 2.10 Paragraph 128 states that planning decisions should be based on the significance of the heritage asset and that level of detail supplied by an applicant should be proportionate to the importance of the asset and should be no more than sufficient to understand the potential impact of the proposal upon the significance of that asset.

- 2.11 Heritage assets are defined in Annex 2 of the NPPF as:

“A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. Heritage assets include designated heritage assets and assets identified by the local planning authority (including local listing)”.

2.12 Designated heritage assets comprise:

“World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Parks and Garden, Registered Battlefield and Conservation Area”.

2.13 Significance is defined as:

“The value of a heritage asset to this and future generations because of its heritage interest. This interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting”.

2.14 Setting is defined as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral”.

2.15 As stated in Paragraph 128, when determining applications, LPAs should require applicants to describe the significance of the heritage assets affected and any contribution made by their setting. The level of detail provided should be proportionate to the significance of the asset and sufficient to understand the impact of the proposal on this significance.

2.16 According to Paragraph 129, LPAs are also obliged to identify and assess the significance of any heritage asset that may be affected by a proposal and should take this assessment into account when considering the impact upon the heritage asset.

2.17 Paragraph 131 emphasises that local planning authorities should take account of the desirability of new development making a positive contribution to local character and distinctiveness.

2.18 Paragraph 132 states that in assessing the effects of development on a heritage asset, the weight given to an asset’s conservation should be proportionate to its significance.

2.19 Paragraph 132 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. It emphasises that the weight given to an asset’s conservation should be proportionate to its significance, and that clear and convincing justification will be required for loss and harm to heritage assets.

2.20 Paragraph 132 states that ‘substantial harm’ or loss to designated heritage assets of the highest significance (i.e. Grade I and II* Listed Buildings, Grade I and II* Parks and Gardens, Scheduled Monuments, Wrecks, Battlefields and World Heritage Sites) should be wholly exceptional. It also states that substantial harm to Grade II Listed Buildings and Parks and Gardens should be exceptional. The NPPF does not define what is meant by substantial harm.

2.21 Paragraphs 133 and 134 address the balancing of harm against public benefits. This guidance lays down a clear dividing line between causing substantial harm or total loss of significance on the one hand, and those cases where the harm is less than substantial on the other. Proposals that would result in substantial harm or total loss of significance should be refused, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss.

2.22 The guidance emphasises that where less than substantial harm will arise as a result of a proposed development, this harm should be weighed against the public benefits of a proposal (para 134). Although the NPPF does not state that there are gradations within the less than substantial harm category, in my professional opinion, less than substantial harm can be sub-divided to reflect the severity of the effect. Consequently, less than substantial harm ranges from a slight effect, through to minor, and then moderate toward the higher end of the less than substantial harm range.

The National Planning Policy Guidance

2.23 The NPPF is supported by the National Planning Policy Guidance (NPPG) which is an online resource that was published in March 2014. In relation to the historic environment, paragraph 18a-001-20140306 states that:

“Protecting and enhancing the historic environment is an important component of the National Planning Policy Framework’s drive to achieve sustainable development (as defined in Paragraphs 6-10). The appropriate conservation of heritage assets forms one of the ‘Core Planning Principles’”.

2.24 Paragraph 18a-002-20140306 makes a clear statement that any decisions relating to Listed Buildings and Conservation Areas and their settings must address the statutory considerations of the Planning (Listed Buildings and Conservation Areas) Act 1990 as well as satisfying the relevant policies within the NPPF and the Local Plan.

2.25 The key element of the NPPG in relation to this appeal relates to the setting of heritage assets which is addressed in paragraph 18a-013-20140306. The key elements of this paragraph is that the assessment of the impact of a proposed development on the setting of a heritage asset needs to take into account and be proportionate to the significance of the asset being considered and the degree to which the proposed development enhances or detracts from the significance of the asset, and the ability to appreciate the significance. Paragraph 013 outlines that the setting of an asset may be more extensive than its curtilage.

2.26 The NPPG outlines that, although the extent and importance of setting is often expressed in visual terms, it can also be influenced by other factors such as noise, dust and vibration. Historic relationships between places can also be an important factor stressing ties between place that may have limited or no intervisibility with each other. This may be historic as well aesthetic connections that contributes or enhances the significance of one or more of the heritage assets.

2.27 Paragraph 18a-013-20140306 concludes stating:

“The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance. When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset’s significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation”.

2.28 As stated in paragraph 2.21 above, whether a proposed development results in substantial harm or less than substantial harm is a key test in NPPF paragraphs 132-134. However, substantial harm is not defined in the NPPF. Paragraph 18a-017-20140306 of the NPPG provides additional guidance on substantial harm. It states:

“What matters in assessing if a proposal causes substantial harm is the impact on the significance of the heritage asset. As the National Planning Policy Framework makes clear, significance derives not only from a heritage asset’s physical presence, but also from its setting. Whether a proposal causes substantial harm will be a judgment for the decision taker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset’s significance rather than the scale of the development that is to be assessed”.

“The harm may arise from works to the asset or from development within its setting. While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm”.

2.29 Paragraph 134 of the NPPF outlines that where a proposed development results in less than substantial harm to the significance of a heritage asset, the harm arising should be weighed against the public benefits accruing from the proposed development. Paragraph 18a-020-20140306 of the NPPG outlines what is meant by public benefits:

“Public benefits may follow from many developments and could be anything that delivers economic, social or environmental progress as described in the National Planning Policy Framework. 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. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits”.

Local Planning Policy

Staffordshire Moorlands Core Strategy (2014)

- 2.30 Section 8.1.76 identifies the Churnet Valley as an area of significant landscape, wildlife and heritage value.
- 2.31 Spatial Objective SO9 aims to:
- “Conserve and improve the character and distinctiveness of the countryside and its landscape, heritage, biodiversity and geological resources.”*
- 2.32 Section 7.46 delivers the strategy for the Churnet Valley which is:
- “...to increase the economic contribution from sustainable tourism by enhancing the attraction of the Churnet Valley...by development of its heritage, nature based activities and outdoor recreational pursuits.... and promoting opportunities for visitors to access, understand and engage with the Churnet Valley's landscape, heritage and nature conservation assets’ though ‘...development must not be at the expense of the special qualities of the Staffordshire Moorlands”.*
- 2.33 Strategy SS7 Churnet Valley Area Strategy identifies the valley as an area for sustainable tourism and rural regeneration. With support given to:
- “...measures to enhance, protect and interpret the landscape character and heritage assets of the Churnet Valley’ and to ‘... measures that support and integrate the heritage transport infrastructure of the valley, sympathetically with enhancing and developing links to strategic footpaths, cycle and horse riding routes”.*
- 2.34 Policy E3 (Tourism and Cultural Development) states that:
- “All development shall be of an appropriate quality, scale and character compatible with the local area, protect the residential amenity of the area, enhance the heritage, landscape and biodiversity of the area and shall not harm interests of acknowledged importance”.*
- 2.35 Section 8.6 sets out the Council’s Design and Conservation Policies. Policy DC2 dealing with the historic environment is reproduced in full below.
- “The Council will safeguard and, where possible, enhance the historic environment, areas of historic landscape character and interests of acknowledged importance, including in particular scheduled ancient monuments, significant buildings (both statutory listed and on a local register), the settings of designated assets, conservation areas, registered historic parks and gardens, registered battlefields and archaeological remains by:*
- *Resisting development which would harm or be detrimental to the special character and historic heritage of the District’s towns and villages and those interests of acknowledged importance.*
 - *Promoting development which sustains, respects or enhances buildings and features which contribute to the character or heritage of an area and those interests of acknowledged importance through the use of conservation area appraisals, design statements, archaeological assessments, characterisation studies and Masterplanning.*
 - *Preventing the loss of buildings and features which make a positive contribution to the character or heritage of an area through appropriate reuse and sensitive development, including enabling development, unless their retention is not viable or there would be substantial planning benefits to outweigh the loss”.*

- 2.36 The masterplan identifies industrial heritage as one of the key strengths of the Churnet Valley, though a weakness is that it is relatively underappreciated and not well maintained. Several of the industrial heritage sites, such as the canal, in the valley have the potential to be further developed as attractions. I would include the history of quarrying to be part of that heritage.
- 2.37 One of the principals of the masterplan is that future development should make appropriate provision for the management of heritage by recognising the contribution of industrial historic buildings and structures and areas of special archaeological interest and by celebrating and encouraging increased awareness and understanding of the area's heritage assets.
- 2.38 Sustainable tourism should not damage heritage assets and the strategy aims to enhance the heritage of the Churnet Valley.
- 2.39 The valley is broken down into a series of character areas; the site lies within the Moneystone Character Area. The concept statement for Moneystone Quarry cites the development as an opportunity to promote industrial heritage of site and educational opportunities.

Historic Environment Good Practice Advice in Planning Note 2 Managing Significance in Decision-Taking in the Historic Environment (Historic England 2015) (CD 93)

- 2.40 The purpose of this document is to provide information to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the NPPF and NPPG. It outlines a six stage process to the assembly and analysis of relevant information relating to heritage assets potentially affected by a proposed development.
- 1) Understand the significance of the affected assets;
 - 2) Understand the impact of the proposal on that significance;
 - 3) Avoid, minimise and mitigate impact in a way that meets the objectives of the NPPF;
 - 4) Look for opportunities to better reveal or enhance significance;
 - 5) Justify any harmful impacts in terms of the sustainable development objective of conserving significance and the need for change; and
 - 6) Offset negative impacts on aspects of significance by enhancing others through recording, disseminating and archiving archaeological and historical interest of the important elements of the heritage assets affected.

Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets (Historic England 2015) (CD 94)

- 2.41 Historic England's Historic Environment Good Practice Advice in Planning Note 3 provides guidance on the management of change within the setting of heritage assets.
- 2.42 The document restates the definition of setting as outlined in Annex 2 of the NPPF and quoted above (para 2.14). Setting is also described as being a separate term to curtilage, character and context; while it is largely a visual term, setting, and thus the way in which an asset is experienced, can also be affected by noise, vibration, odour and other factors. The document makes it clear that setting is not a heritage asset, nor is it a heritage designation, though land within a setting may itself be designated. Its importance lies in what the setting contributes to the significance of a heritage asset.
- 2.43 The Good Practice Advice Note sets out a five stage process for assessing the implications of proposed developments on setting:
- 1) *Identification of heritage assets which are likely to be affected by proposals.* The guidance states that if development is capable of affecting the contribution of a heritage asset's setting to its significance or the appreciation of its significance, it can be considered as falling within the asset's setting. Importantly, it is distinguished that an impact on setting does not necessarily equate with harm and may be positive or neutral. This judgement of impact instead depends upon a detailed understanding of the individual heritage asset's significance, of which setting may form a greater or lesser

part. In consideration of large or prominent development proposals, Local Planning Authorities are advised to have due regard to proportionality of the assessment required by the applicant and to minimise the need to analyse large numbers of assets in detail.

- 2) *Assessment of whether and what contribution the setting makes to the significance of a heritage asset.* This depends upon an understanding of the history and development of the site, utilising historic mapping where possible. This assessment should also be informed by the physical surroundings of the asset, including its relationship with other heritage assets, the way in which the asset is experienced and the asset's associations and patterns of use. All this information will provide a baseline for establishing the effects of a proposed development on the significance of a heritage asset;
- 3) *Assessing the effects of proposed development on the significance of a heritage asset.* With the baseline information gathered at Stage 2, it will be possible to identify a range of effects development may have on setting, which will be evaluated as beneficial, neutral or harmful to the significance of the heritage asset. The location and siting, form and appearance, permanence and any other effects of proposals will all inform the assessment process;
- 4) *Maximising enhancement and reduction of harm on the setting of heritage assets.* Measures to reduce harm could include relocation of all or parts of a development, changes to the layout, screening, etc. Where harm cannot be eliminated, design quality of the proposed development may be one of the main factors in assessing the balance of harm and benefit. Where a development cannot be adjusted and where some harm to the setting of heritage assets is unavoidable, appropriate screening may be required to reduce the extent of the harm caused;
- 5) *The final decision about the acceptability of proposals.* This will depend on the range of circumstances that apply to a heritage asset and the relative sensitivity to change. Decisions are therefore made on a case by case basis, recognising that all heritage assets are not of equal importance and the contribution made by their setting to their significance also varies.

2.44 The guidance reiterates the NPPF in stating that where developments affecting the setting of heritage assets results in a level of harm to significance, this harm, whether substantial or less than substantial, should be weighed against the public benefits of the scheme. As stated in para 2.22 above, although the NPPF and Historic Environment Good Practice Advice in Planning Note 3 do not state that there are gradations within the less than substantial harm category; in my professional opinion, less than substantial harm can be sub-divided to reflect the severity of the effect. The bracket has a very wide spectrum, ranging from de minimus/negligible impacts at the bottom end of the bracket, up to harm that is bordering on substantial.

Caselaw

- 2.45 There are several Court cases which are relevant to this Appeal. They are cited below. The detail of each Appeal decision is included within Appendix 1 of this proof.
- 1) Court of Appeal decision in relation to Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137, issued on 18th February 2014, relates to the quashing by the High Court of a decision of a Planning Inspector to grant planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire, where the Inspector had failed to make special regard to the desirability of preserving the settings of Listed Buildings, taking into account Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Court of Appeal ruled that it was Parliament's intention in enacting Section 66(1) of the Act that decision makers should give 'considerable importance and weight' to the desirability of preserving the setting of Listed Buildings when carrying out the balancing exercise.
 - 2) The High Court decision of The Forge Field Society and others v Sevenoaks District Council [2014] EWHC 1895 (Admin), issued on 12th June 2014, is in part related to the effect of a proposed housing development on the setting of Listed Buildings and the character and appearance of Conservation Areas. The judgment ruled that the duties of Section 66(1) and 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990 did not allow a local planning authority to treat the desirability of preserving the settings of Listed Buildings and the character and appearance of Conservation Areas as mere material considerations to which it could attach weight as it saw fit.

- 3) The Court of Appeal decision in relation to Jones and Mordue and the Secretary of State for Communities and Local Government v South Northamptonshire Council [2015] EWCA 539 [Admin], in which the Deputy Judge of the High Court had allowed a challenge to the grant of planning permission for a wind turbine, on the basis that the Inspector's decision did not demonstrate compliance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Deputy Judge considered that he was required, as a result of the Barnwell Manor appeal decision, to reach this conclusion, but found it to be in tension with the decision of the House of Lords in Save Britain's Heritage.

Summary of the Key Points in relation to Setting

- 2.46 Government policy aims to preserve the significance of heritage assets, but countenances that development which harms significance can be consented provided that considerable weight has been afforded to the principle of avoiding harm and that such harm is clearly outweighed by other factors in the public interest.
- 2.47 All heritage assets have a setting and that setting may contribute to the significance of the asset.
- 2.48 Change in the setting of a heritage asset may affect that contribution.
- 2.49 Change (for example visual change) is not in itself an impact on the significance of a heritage asset. An impact will only occur if the change affects the contribution made by the setting to its overall significance.
- 2.50 The correct basis for an assessment is therefore an analysis of the significance of the heritage asset, including the contribution made by setting.
- 2.51 Change to setting is only of concern in heritage terms if it gives rise to harm to the significance of the asset (i.e that the significance is in part derived from the asset's current setting).
- 2.52 It cannot be assumed that visual change constitutes an adverse impact or that more visual change will be a greater impact. So, proximity to and intervisibility with modern structures are not useful criteria on their own, for assessment of impact. What must be understood is how such visual change affects the contribution to significance made by the setting before a conclusion can be reached about magnitude.
- 2.53 It cannot be assumed that a more important asset (typically a high grade designated asset) will experience a greater magnitude of impact. What matters is the extent to which its significance is derived from setting which is a judgment which is unrelated to the importance of the asset. In very many cases, the majority of significance ascribed to a heritage asset lies in its fabric which will be unaffected by change in the setting.
- 2.54 Harm in all cases, means 'harm to the significance of a heritage asset'.
- Where the setting of a heritage asset contributes to its significance, change in that setting may harm the significance of the heritage asset.
- 2.55 For the purposes of paragraphs 133 and 134 of the NPPF, "substantial harm" means an impact which would have such a serious impact on the significance of the asset that its significance was either removed or very much reduced.

3.0 Background and Reasons for Refusal

3.1 On 2nd December 2015, Staffordshire Moorlands District Council (the Council) refused the following application by Laver Leisure (Oakamoor) Limited (the Appellant) on land at Moneystone Quarry, Whiston Eaves Lane, Whiston, Staffordshire ST10 2DZ:

“Outline planning permission with all matters reserved except access for the erection of a high quality leisure development comprising holiday lodges; a new central hub building (providing swimming pool, restaurant, bowling alley, spa, gym, informal screen/cinema room, children’s soft play area, café, climbing wall and shop); café; visitor centre; administration building; maintenance building; archery centre; water sports centre; equipped play and adventure play areas; multi-sports area; car parking; and managed footpaths and cycleways set in attractive landscaping and ecological enhancements.”

3.2 The application was recommended for approval by Officers subject to the completion of a Section 106 Legal Agreement and a number of conditions.

3.3 With respect to the archaeology and heritage element of the Appellant’s case, the Officer’s Report concludes:

“The conclusion is that there will be some harm to the significance of the setting of the historic asset, Little Eaves Farm arising from views from the asset itself to the east/southeast and to a lesser extent from the loss of seclusion and tranquillity. This harm however weighs against the application. The harm is considered to be less than substantial and in terms of the Framework should be weighed against the public benefits of the proposal. The Planning Practice Guidance confirms that this could be anything that delivers economic, social or environmental progress in line with the Framework and is discussed in the planning balance” (paragraph 48).

However, and despite the professional recommendation from the Officer, the application was refused by Members for the following reasons as set out in the Decision Notice dated 2nd December 2015 (CD 84):

“The proposed development will have an adverse impact on the setting of Little Eaves Farm, a Grade II Listed Building which lies to the west of the site.

There will be direct views from this heritage asset to the south/south east into the Multi Activity Hub Area owing to gaps in existing planting. Although it may be possible to provide landscaping within this area to filter views, the exact siting of the buildings, their form, mass and design is unknown. The existence of overhead power lines crossing into the site will compromise the ability to provide effective screening and in any event planting will take many years to establish.

In the wider landscape there would be views of the heritage asset particularly from Whiston Eaves Lane, from the public footpath which runs through the site and from the site itself. In these views the asset would be read in conjunction with the proposed development which would erode the agricultural hinterland in which the asset is experienced.

The close proximity of the asset to the central Multi Activity Hub Area would also result in loss of tranquillity and seclusion, elements which also make a positive contribution to the significance of the asset.

Considerable weight has been given to the harm that would be caused to the heritage asset as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 when carrying out that exercise. The harm is judged to be less than substantial in terms of paragraph 134 of the National Planning Policy Framework but it is not considered that the public benefits arising from the proposal outweigh the harm. As such there is conflict with Policy DC 2 of the Adopted Core Strategy Development Plan Document which seeks to safeguard and where possible enhance the historic environment.”

3.4 A revised outline scheme was submitted to Staffordshire Moorlands District Council in June 2016 (LPA Ref. SMD/2016/0378). Planning permission was granted on 26th October 2016. The application was the subject of a legal challenge which was heard on 20th July 2017. This was dismissed.

3.5 Should the Inspector decide not to determine the proposals on the basis of this revised scheme, I can confirm that the original scheme is nonetheless acceptable in heritage terms for the reasons I explain at Appendix 2 of this proof. By “acceptable” I mean that there is

some effect but that the effect is very limited and I understand from Mr Suckley that there are substantial public benefits.

- 3.6 There are a number of designated heritage assets within the surroundings of the site – these have been considered in detail in the supporting information provided as part of the planning application (and in particular the cultural heritage chapter of the Environmental Statement). This proof intentionally focuses only on those particular designated assets which have been cited as being of principal concern to the local planning authority: namely, the potential effect of the proposed development on the contribution that the setting provides to the significance of Little Eaves Farm (which comprises two Grade II Listed Buildings [Little Eaves Farmhouse and Barn located c. 5 m east of Little Eaves Farmhouse]) in relation to local and national planning policy and guidance, as mentioned in the reason for refusal. Plainly the proof should be read in the context of all of the cultural heritage material which has been provided.

4.0 Assessment of Significance and Impact on Designated Heritage Assets

Introduction

- 4.1 In this section of my proof, I assess the significance of the designated heritage assets which comprise Little Eaves Farm (which comprise two Grade II Listed Buildings [Little Eaves Farmhouse and Barn located c. 5 m east of Little Eaves Farmhouse]) and the contribution of the setting to their significance; relating these to the reasons for refusal.
- 4.2 Throughout, I have adapted the staged approach to the effect on the setting of the designated heritage assets which comprise Little Eaves Farm, as outlined in Historic England's Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets. This is namely to understand the significance of these heritage assets and how their settings contribute to their significance. It is followed by an assessment of the effect of the proposed development on the contribution that the setting makes to their significance.
- 4.3 In both instances, the significance of the designated heritage assets primarily resides within their own form and fabric. Consequently, as the proposed development will have no direct effects on either of them, the core of the significance of both of these assets potentially affected, will not be adversely impacted upon.
- 4.4 The order in which the heritage assets are addressed below relates to the order of the putative reasons for refusal. It is not a reflection of the degree of impact that the proposed development may have upon them.

Cultural Heritage

- 4.5 The impact of the proposed development on designated heritage assets has been considered within the ES Addendum (*Moneystone Park, Whiston, Staffordshire: ES Addendum* [HOW Planning 2015]), Heritage Assessment (*Moneystone Park, Whiston, Staffordshire: Heritage Assessment* [Orion Heritage 2015]), *Statement of Significance (Little Eaves Farmhouse and Barn, Kinglsey, Staffordshire S10 2JD: Statement of Significance* [Archangel Heritage 2016]) and the ES resubmission (*Moneystone Park, Whiston - Chapter 10: Archaeology and Heritage* [Orion Heritage 2015]).
- 4.6 The above documents consider that the proposed development will have no direct (i.e. physical) effects on any designated heritage assets (Scheduled Monuments, Conservation Areas, Registered Parks and Gardens, and Registered Battlefields), and a neutral effect on the setting and significance of these designated heritage assets in the surroundings of the site.
- 4.7 The extent that the proposed development may cause harm to the significance of nearby Listed Buildings located in the vicinity of the site; this is considered below.

Listed Buildings

- 4.8 With the exceptions of the two demolished Listed Buildings within the site boundary (Whiston Eaves Farmhouse and Stable at Whiston Eaves), there are 26 Grade II Listed Buildings within a 1 km radius of the site. The demolished Listed Buildings will be discussed in detail below.
- 4.9 A number of the Listed Buildings are considered to have settings that are limited to the surrounding villages of Whiston and Oakamoor within which they are located, and consequently, the proposed development is considered to be situated beyond their settings. In each of these cases, dense woodland and topography of the landscape will block views to and from the site, and as such, there will be no impacts on the settings or significance of these buildings.
- 4.10 Several Listed Buildings are situated beyond the settings of Whiston and Oakamoor. However, dense woodland and/or topography of the landscape will block views to and from the proposed development site. Therefore, it is considered that there will be no impacts on the settings or significance of these buildings.
- 4.11 Two Grade II Listed Buildings (Eavesford Farmhouse and Barn c. 25 m north-east of Eavesford Farmhouse) are situated c. 600 m to the north-west of the site. The settings of both buildings comprise various farm buildings of c. 17th to 20th century date, beyond which arable land surrounds the site. Woodland is located to the south-east. The rural setting has a positive contribution to the significance of the two buildings. Woodland to the south-east of

the buildings and topography of the landscape block views to and from the proposed development site. Therefore, it is considered that there will be no impacts on the settings or significance of these buildings.

- 4.12 Two Grade II Listed Buildings (Little Eaves Farmhouse and Barn c. 5 m east of Little Eaves Farmhouse), along with a possible curtilage listed barn located c. 15 m south of Little Eaves Farmhouse, are all situated c. 100 m to the west of the proposed development site. These are discussed below.

Demolished Listed Buildings

- 4.13 There are two Grade II Listed Buildings which are recorded within the site boundary (Whiston Eaves Farmhouse and Stable at Whiston Eaves). However, neither of these buildings physically exist as buildings any more. Listed Building consent was obtained in 1998 (planning permission reference number: SMD/1998/0448) for the dismantling of the Whiston Eaves Farmhouse and demolition of the Stable. This consent was attained in connection with a condition (condition 10 of planning permission reference number: SM.96935) which states:

“The area delineated on Drawing No. 001/P02/07/005 shall remain unworked prior to a planning consent being issued for the relocation of the Listed Building.”

- 4.14 The location of the reconstructed Farmhouse is at Heath House Farm, Ross Road, Whiston, Staffordshire ST10 2JF (planning permission application number: 12/01340/FUL). Consideration has been given as to whether the reconstructed Farmhouse would retain the Grade II Listed Building status. The decision of Lord Justice Buxton (in refusing permission for leave to appeal to the Court of Appeal) in *Judge v The First Secretary of State* [2005] EWCA Civ 1155 is relevant to this issue:

“True it is, of course, that the code in terms does not deal with the moving of a building. But I find it impossible to say that such a step is excluded from the code - that is to say, excluded from any possibility of receiving listed building permission - merely by the fact that an object of this sort is to be moved rather than left in its place. If that were the case the barn that was referred to in the Leominster District Council case would have ceased to be covered by the code, so that permission could not have been granted under the code, as soon as any part of it was dismantled. That, in my judgement, cannot be right.

I quite accept that this is a new instance not previously covered by express authority, but nonetheless I find it impossible to say that the action proposed in this case was outside anything for which the Secretary of State could properly grant permission.”

- 4.15 Whilst not legally binding (being a decision to refuse permission to Appeal), Lord Justice Buxton’s judgment indicates that where a Listed Building is dismantled and relocated, then it can, in principle, retain its Listed Building status. Although, it would appear that this would turn on the particular facts. However, once reconstructed, it seems unlikely to retain such status, since the building will be materially different from the original Farmhouse and will use extensive new material, notwithstanding the retention of much of the former Listed Building on pallets stored on site since the building was dismantled.
- 4.16 Nonetheless, it is reasonably assumed that for the purposes of this assessment that, at the least, the reconstructed Farmhouse constitutes a non-designated heritage asset, being in part constructed of the remnants of a formally Listed Building. Accordingly, the effect on the non-designated heritage asset would need to be considered, under paragraph 135 of the National Planning Policy Framework.
- 4.17 Guidance provided by Historic England sets out the concept of values when weighing the significance of heritage assets with reference to the following value criteria:
- *Evidential* (Archaeological) value - Deriving from the potential of a place to yield evidence about past human activity.
 - *Historical* value - Deriving from the ways in which past people, events and aspects of life can be connected through a place to the present. It tends to be illustrative or associative.
 - *Aesthetic* (Architectural or Artistic) value - Deriving from the ways in which people draw sensory and intellectual stimulation from a place.
 - *Communal* value - Deriving from the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory. Communal values are

closely bound up with historical (particularly associative) and aesthetic values, but tend to have additional and specific aspects.

- 4.18 Even if the reconstructed Farmhouse was to be treated as a Listed Building, the setting and significance of it will have been considerably reduced. The Farmhouse will be relocated several kilometres beyond the proposed development site boundary; hence there has been a demonstrable change to its setting. In terms of Historic England's value criteria for weighing the significance of heritage assets, the Farmhouse has no evidential (archaeological) or artistic interest; and very limited architectural and historic interest as a dismantled and subsequently reconstructed 18th century vernacular Farmhouse of a different design to that of the original building.
- 4.19 However, without prejudice to this position, and for the sake of robustness, the impact on the Farmhouse has been considered as if it were a Listed Building, where the setting and significance were as if they were the same as the original setting and significance of the Grade II Listed Building. This approach has been adopted in order to consider the impact of the proposed development on the Farmhouse on a 'worst case scenario' basis.
- 4.20 Accordingly, applying this 'worst case scenario' approach, the proposed development would have no impact on either the setting and significance of the Farmhouse, as there is no inter-visibility between the building and the proposed development site. It follows, therefore, that there are no heritage issues that ought to be factored into the planning balance with respect to the reconstructed Farmhouse.

Location

- 4.21 Little Eaves Farm is situated in the civil parish of Kingsley, to the south east of the hamlet of Whiston and to the west of the former Moneystone Quarry site. The site contains a number of buildings, the main building being the Grade II Listed Little Eaves Farmhouse (the location of which is shown by the blue triangle on Figure 1). A Grade II Listed Barn is located c. 5 metres to the east of the Farmhouse (-the closest other building to the Farmhouse on Figure 1). Larger farm buildings are located to the south-east.

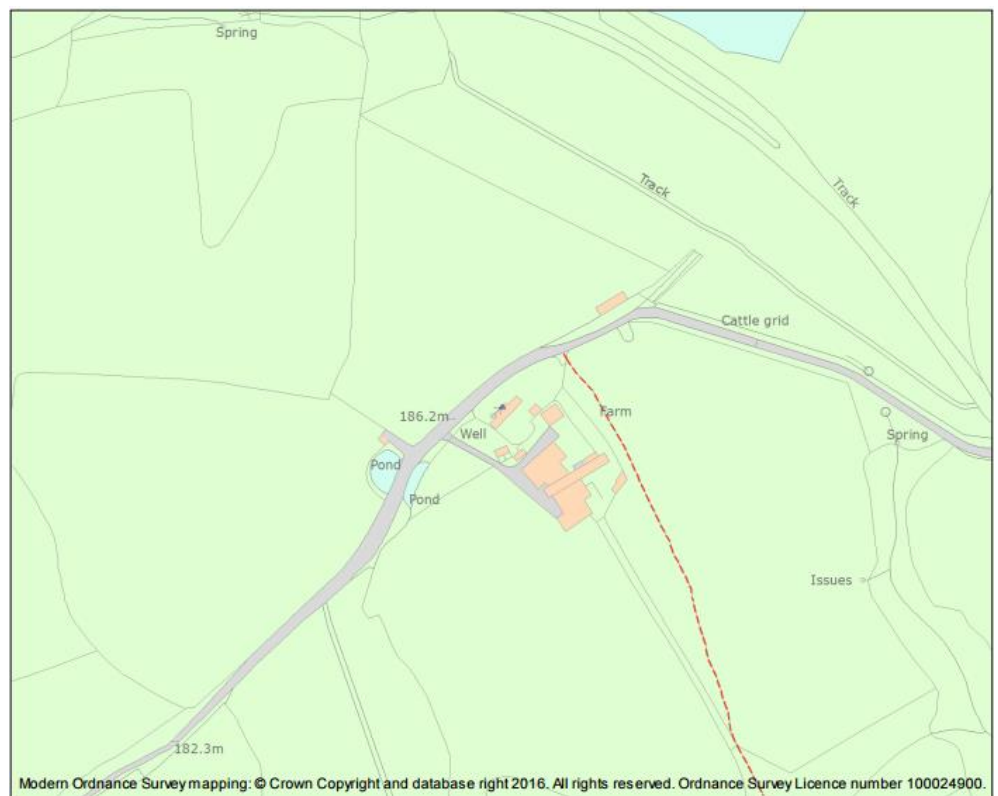


Figure 1: Site Location.

- 4.22 Access to the farm complex is reached via an access track which roughly arcs from the east around to the west (denoted in grey on Figure 1). A private drive leads to the Farmhouse and Barn off this access track (-the red dashed line on Figure 1 shows where the private drives commences). The modern farm buildings are reached from another private drive which leads off the access track and runs north-west to south-east; this drive is situated to the west of the Farmhouse (also denoted in grey on Figure 1).

Little Eaves Farmhouse

Stage 1 - Heritage asset potentially affected

- 4.23 Little Eaves Farmhouse is an 18th century Grade II Listed Building (List Entry Number: 1038028), which was designated in 1986. The list description for Little Eaves Farmhouse was written in 1987 (at the time of listing) and has not been updated since:

“It is an 18th century 2-storey farmhouse with minor mid-19th century alterations built to a T-shaped plan. It is constructed of fine quality coursed dressed and squared stone and has a tiled roof with verge parapets. A brick end stack and ridge stack is situated towards the right end. The front is long and low with random fenestration; three 2-light block mullioned casement windows and there are four casement windows on the ground floor. There is a gabled wing with similar details to the rear.”

- 4.24 The significance of the building lies in its historic and architectural interest as an 18th century farmhouse.

Stage 2 - Assessment of whether and what contribution the setting makes to the significance of the heritage asset

- 4.25 The Farmhouse is located near the top of an area of high ground; levels fall away from this area in all directions. The core setting of the Farmhouse is its garden which lies to the north and east, the contemporary Grade II Listed Barn c. 5 m to the east, another barn of early to mid-20th century date c. 15 m to the south, and a number of modern farm buildings to the south and south-east. The modern farm buildings are an incongruous contrast to the Farmhouse, significantly compromising its historic setting.
- 4.26 Early cartographic evidence shows that part of the original core setting of the Farmhouse was an orchard which lay to the south and south-west of this building (Figures 2 and 3). The orchard has since been replaced by the modern farm buildings (Figure 4).

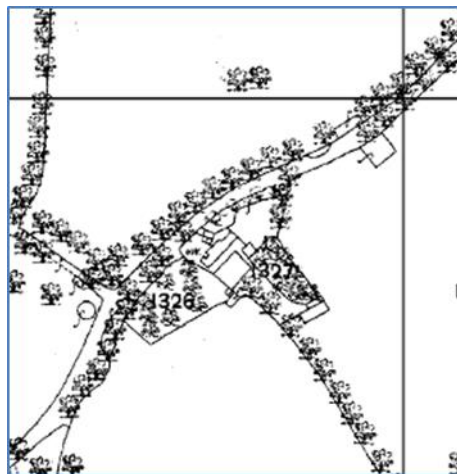


Figure 2: Extract from the First Edition Ordnance Survey Map, 1879.



Figure 3: Extract from the Second Edition Ordnance Survey Map, 1900.

- 4.27 Surrounding agricultural fields form the wider setting of the Farmhouse. The wider setting has a strong positive contribution to the significance of the Farmhouse, and places it in a rural context with which it has a functional relationship.



Figure 4: Extract from the Ordnance Survey Map of 2016.

- 4.28 The agricultural fields are of some antiquity, but have changed significantly over time (particularly in respect of the quarrying operations). Changes to these fields have compromised the wider setting of the Farmhouse.
- 4.29 The modern access track to the east of Little Eaves Farm, which is now used as the main approach to the farm complex, compromises part of its wider setting. The historic access track which ran between Whiston Eaves Farm and Little Eaves Farm was removed (along with Whiston Eaves Farmhouse and Stable at Whiston Eaves) during quarrying operations. Removal of the historic access track has also compromised its wider setting.
- 4.30 The historic map regression in Figures 5 to 7 show the removal of the historic access track sometime after 2006.

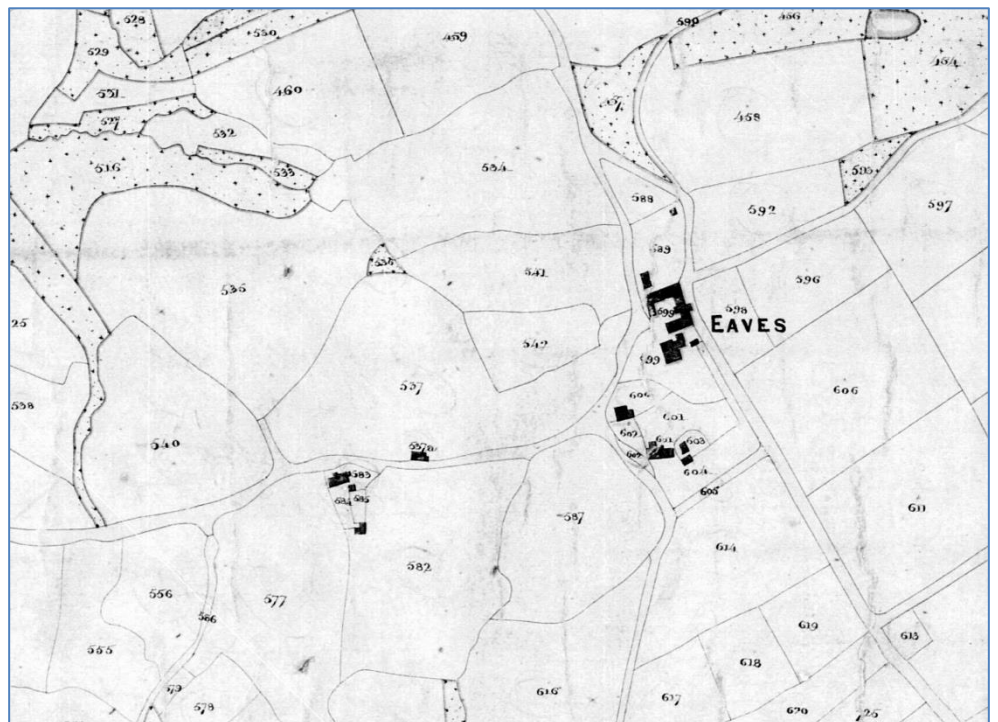


Figure 5: Detail from the Tithe Map for the Township of Whiston, 1839 (Little Eaves Farm lies on the north-west boundary of the field numbered 582).



Figure 6: Extract from the Ordnance Survey Map of 2006.

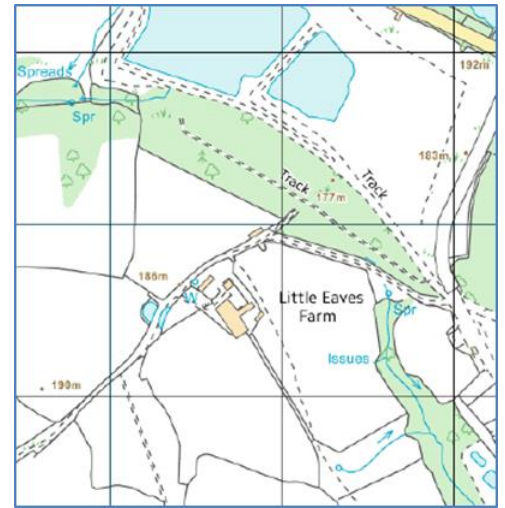


Figure 4: Extract from the Ordnance Survey Map of 2016.

- 4.31 The removal of the orchard to the south and south-west of the Farmhouse, and the subsequent replacement of part of the Farmhouse's original core setting with modern farm buildings, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, have all seriously compromised the setting and significance of the Farmhouse.

Stage 3 - Assessing the effects of proposed development on the significance of the heritage asset

- 4.32 The core setting of the Farmhouse is its garden which lies to the north and east, the contemporary Grade II Listed Barn c. 5 m to the east, another barn of early to mid-20th century date c. 15 m to the south, and a number of modern farm buildings to the south and south-east. Views from the Farmhouse to the north are restricted by mature trees and woodland, to the east by mature trees around the eastern perimeter of the farm complex, and to the south and south-east by modern farm buildings.
- 4.33 The surrounding agricultural fields which comprise the wider setting of the Farmhouse have a positive contribution to the significance of the building and place it in a rural context with which it has a functional relationship. The long-standing quarrying operations to the north and east of the Farmhouse, on the contrary, have a negative contribution to the significance of the building, placing it in a semi-industrial context. Even once the quarry has been restored then the incongruous nature of the landform would mean that it still would be read as being a semi-industrial context.
- 4.34 The proposed Multi Activity Hub area will be visible from the Farmhouse in views to the south-east. However, views are restricted by dense vegetation and trees which run along the western perimeter of the proposed development site, and mature trees located around the eastern perimeter of the farm complex. Therefore, the core setting of the Farmhouse, and the majority of its wider setting, will be unaffected by the development.
- 4.35 The significance of the Farmhouse lies primarily in its historic and architectural interest (i.e. its form and fabric). However, the removal of the orchard to the south and south-west of the Farmhouse, and the subsequent replacement of part of its original core setting with modern farm buildings, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, all compromise the setting of the Farmhouse. Therefore, a negligible effect is considered on the proposed development on the contribution that the wider setting provides to the significance of the building, in limited views to and from it. The overwhelming majority of its wider setting will be maintained. The core of the buildings' significance (i.e. its form and fabric) will be unaffected.
- 4.36 Within the wider landscape, namely along Whiston Eaves Lane (to the north of the site) and the public footpath (to the south-east of the site) which runs through the site, there would be occasional distant glimpsed views of the Farmhouse which would be read in conjunction with the proposed development.

Stage 4 - Maximising enhancement and reduction of harm on the setting of the heritage asset

- 4.37 The effect on the contribution that the wider setting provides to the significance of the Farmhouse will be mitigated by the following (these measures respond directly to concerns raised by Staffordshire Moorland District Council's Conservation Officer):
- Additional tree planting along the western perimeter of the proposed development site and through the reduction in height of the Multi Activity Hub. The height of the proposed Central Hub building has been reduced from 12 metres to 6 metres. It has also been relocated in order to enable the building to have a more limited perception of scale (- see Parameter Plan);
 - The Parameter Plan has been adjusted to provide more certainty on the future location of the activity hub buildings. The area in which the Multi Activity Hub can be located at the detailed design stage has been significantly reduced in order to ensure that proposed buildings are not located within the sight line from the Farmhouse along the overhead power lines easement, towards the site (see CD60);
 - Additional layers of landscaping are proposed within the area of the Multi Activity Hub, which further screen the Central Hub from the Farmhouse and the surrounding footpaths. The additional landscaping is shown on the Illustrative Landscape Detailed Plan for The Hub (see CD 73 which accompanied the application re-submission; and
 - Advanced under-storey planting will be implemented along Whiston Eaves Lane to infill the gaps that have established in the roadside vegetation. This will further restrict the occasional distant views of the Farmhouse from the north of the site.

Stage 5 - Conclusions based on Stages 1-4

- 4.38 It is concluded that there will be no change to the core setting of the Farmhouse from the proposed development. Although there will be a degree of change to the wider setting of the Farmhouse, where there are occasional distant glimpsed views of it which would be read in conjunction with the development, the level of effect is considered to be negligible.
- 4.39 This negligible effect from the proposed development on the contribution that the wider setting provides to the significance of the Farmhouse will be mitigated by additional tree planting along the western perimeter of the development site, a reduction in the height and relocation of the Multi Activity Hub, additional layers of landscaping within the area of the Multi Activity Hub and the implementation of advanced under-storey planting along Whiston Eaves Lane.
- 4.40 The effect would equate to less than substantial harm, as per NPPF paragraphs 132-134. Therefore, the requirements of Paragraph 134 of the NPPF will apply, and this harm should be weighed against the public benefits of the proposed development. This balance is undertaken by my colleague Mr Suckley.

Barn c. 5 m east of Little Eaves Farmhouse

Stage 1 - Heritage asset potentially affected

- 4.41 Located c. 5 m east of Little Eaves Farmhouse (List Entry Number: 1294408) is a contemporary Grade II Listed Barn, which was designated in 1967 (Figure 1). The list description for the Barn was written in 1967, and has not been updated:
- "The barn was dated to the 18th century and was built in the same style and fabric as the house, suggesting that they are contemporary, i.e. of coursed dressed squared stone with a tiled roof and verge parapets. It was built to a small single-storey plan and entered from the south. The east face has a row of four vents and there is a south gable with steps up to a boarded door. The barn is located c. 5m east of the farmhouse, emphasising their historical relationship."*
- 4.42 The significance of the Barn lies in its historic and architectural interest as an 18th century farm outbuilding.

- 4.43 The Barn is located near the top of an area of high ground; levels fall away from this area in all directions. The core setting of the Barn is the Farmhouse c. 5 m to the west, the garden which lies to the north-west, another barn of early to mid-20th century date c. 20 m to the south-west, and a number of modern farm buildings to the south and south-west. The modern farm buildings are an incongruous contrast to the Barn, compromising its historic setting.
- 4.44 Early cartographic evidence shows that part of the original core setting of the Barn was an orchard which lay to the south and south-west (Figures 2 and 3). The orchard has since been replaced by the modern farm buildings (Figure 4).
- 4.45 Surrounding agricultural fields form the wider setting of the Barn. This setting has a strong positive contribution to the significance of the Barn, and places it in a rural context with which it has a functional relationship.
- 4.46 The agricultural fields are of some antiquity, but have changed significantly over time (particularly in respect of the quarrying operations). Changes to these fields have compromised the wider setting of the Farmhouse.
- 4.47 The modern access track to the east of Little Eaves Farm, which is now used as the main approach to the farm complex, compromises part of its wider setting. The historic access track which ran between Whiston Eaves Farm and Little Eaves Farm was removed (along with Whiston Eaves Farmhouse and Stable at Whiston Eaves) during quarrying operations. Removal of the historic access track has also compromised its wider setting.
- 4.48 The historic map regression in Figures 5 to 7 show the removal of the historic access track sometime after 2006.
- 4.49 The removal of the orchard to the south and south-west of the Barn, and the subsequent replacement of part of the Barn's original core setting with modern farm buildings, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, all compromise the setting and significance of the Barn.

Stage 3 - Assessing the effects of proposed development on the significance of the heritage asset

- 4.50 The core setting of the Barn is the Farmhouse c. 5 m to the west, the garden which lies to the north-west, another barn of early to mid-20th century date c. 20 m to the south-west, and a number of modern farm buildings to the south and south-west. Views from the Barn to the north are restricted by mature trees and woodland, to the east and south-east by mature trees around the eastern perimeter of the farm complex, and to the south and south-west by modern farm buildings.
- 4.51 The surrounding agricultural fields which comprise the wider setting of the Barn have a positive contribution to the significance of the building and place it in a rural context with which it has a functional relationship. The quarrying operations to the north and east of the Farmhouse, on the contrary, have significantly compromised its wider setting, placing it in a semi-industrial context.
- 4.52 The Barn will be visible from the proposed Multi Activity Hub area located to the south-east. However, views are restricted by dense vegetation and trees which run along the western perimeter of the proposed development site, and mature trees located around the eastern perimeter of the farm complex. Therefore, the core setting, and much of the wider setting, will be unaffected by the development.
- 4.53 The significance of the Barn lies primarily in its historic and architectural interest (i.e. its form and fabric). However, the removal of the orchard to the south and south-west of the Barn, and the subsequent replacement of part of the Barn's original core setting with modern farm buildings, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, all compromise the setting of the Barn. Therefore, a negligible effect is considered from the proposed development on the contribution that the wider setting provides to the significance of the building, in limited views to and from it. The core of the buildings' significance (i.e. its form and fabric) will be unaffected.

- 4.54 Within the wider landscape, namely along Whiston Eaves Lane (to the north of the site) and the public footpath (to the south-east of the site) which runs through the site, there would be occasional distant glimpsed views of the Barn which would be read in conjunction with the proposed development.

Stage 4 - Maximising enhancement and reduction of harm on the setting of the heritage asset

- 4.55 The effect on the contribution that the wider setting provides to the significance of the Barn will be further mitigated by the following:
- Additional tree planting along the western perimeter of the proposed development site and through the reduction in height of the Multi Activity Hub. The height of the proposed Central Hub building has been reduced from 12 metres to 6 metres. It has also been relocated in order to enable the building to have a more limited perception of scale (- see Parameter Plan);
 - The Parameter Plan has been adjusted to provide more certainty on the future location of the activity hub buildings. The area in which the Multi Activity Hub can be located at the detailed design stage has been significantly reduced in order to ensure that proposed buildings are not located within the sight line from the Barn along the overhead power lines easement, towards the site (see CD 60);
 - Additional layers of landscaping are proposed within the area of the Multi Activity Hub, which further screen the Central Hub from the Barn and the surrounding footpaths. The additional landscaping is shown on the Illustrative Landscape Detailed Plan for The Hub (see CD73) which accompanied the application re-submission; and
 - Advanced under-storey planting will be implemented along Whiston Eaves Lane to infill the gaps that have established in the roadside vegetation. This will further restrict the occasional distant views of the Barn from the north of the site.

Stage 5 - Conclusions based on Stages 1-4

- 4.56 It is concluded that there will be no change to the core setting of the Barn from the proposed development. Although there will be a degree of change to the wider setting of the Barn, where there are occasional distant glimpsed views of it which would be read in conjunction with the development, the level of effect is considered to be negligible.
- 4.57 This negligible effect from the proposed development on the contribution that the wider setting provides to the significance of the Barn will be further mitigated by additional tree planting along the western perimeter of the development site, a reduction in the height and relocation of the Multi Activity Hub, additional layers of landscaping within the area of the Multi Activity Hub and the implementation of advanced under-storey planting along Whiston Eaves Lane.
- 4.58 This effect is considered to equate to less than substantial harm as per NPPF paragraphs 132-134. Therefore, the requirements of Paragraph 134 of the NPPF will apply, and this harm should be weighed against the public benefits of the proposed development.

Curtilage Listed Barn

- 4.59 Located c. 15 m south of Little Eaves Farmhouse is a single storey barn, which is built in a similar style and fabric as Little Eaves Farmhouse and Barn. The barn was built between 1910 and 1938. It comprises course dressed squared stone with a tiled roof and verge parapets. The Barn was built to a small single-storey plan and is entered from the east.
- 4.60 The significance of the barn lies in its historic and architectural interest as a 20th century farm outbuilding. For the purpose of this assessment I have robustly assumed that it lies within the curtilage of the listed buildings, albeit that this is a debatable point. Even were it not to be a curtilage building then it should be assessed as a non-designated heritage asset.

Stage 2 - Assessment of whether and what contribution the setting makes to the significance of the heritage asset

- 4.61 The barn is located near the top of an area of high ground; levels fall away from this area in all directions. The core setting of the Barn is the Farmhouse c. 15 m to the north, the Barn c.

20 m to the north-east, and a number of modern farm buildings to the immediate south and south-east. The modern farm buildings are an incongruous contrast to the barn, significantly compromising its historic setting.

- 4.62 Early cartographic evidence shows that part of the original core setting of the barn was an orchard which lay to the west and north-west of this building (Figures 2 and 3). The orchard has since been removed (Figure 4).
- 4.63 Surrounding agricultural fields form the wider setting of the barn. The wider setting has a strong positive contribution to the significance of the barn, and places it in a rural context with which it has a functional relationship.
- 4.64 The agricultural fields are of some antiquity, but have changed significantly over time (particularly in respect of the quarrying operations). Changes to these fields have compromised the wider setting of the Farmhouse.
- 4.65 The modern access track to the east of Little Eaves Farm, which is now used as the main approach to the farm complex, compromises part of its wider setting. The historic access track which ran between Whiston Eaves Farm and Little Eaves Farm was removed (along with Whiston Eaves Farmhouse and Stable at Whiston Eaves) during quarrying operations. Removal of the historic access track has also compromised its wider setting.
- 4.66 The historic map regression in Figures 5 to 7 show the removal of the historic access track sometime after 2006.
- 4.67 The removal of the orchard to the west and north-west of the barn, and the addition of modern farm buildings immediately to the south and south-east, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, and replacement of this with the modern access track to the east of Little Eaves Farm, all compromise the setting and significance of the barn.

Stage 3 - Assessing the effects of proposed development on the significance of the heritage asset

- 4.68 The core setting of the barn is the Farmhouse c. 15 m to the north, the Barn c. 20 m to the north-east, and a number of modern farm buildings to the immediate south and south-east. Views from the barn to the north and north-east are restricted by the Farmhouse and Barn, beyond which lie mature trees and woodland, to the east and south-east by modern farm buildings.
- 4.69 The surrounding agricultural fields which comprise the wider setting of the barn have a positive contribution to the significance of the building and place it in a rural context with which it has a functional relationship. The quarrying operations to the north and east of the Farmhouse, on the contrary, have significantly compromised its wider setting, placing it in a semi-industrial context.
- 4.70 The barn will not be visible from the proposed Multi Activity Hub area located to the south-east, due to modern farm buildings blocking views to and from it. Therefore, its core setting will be unaffected by the development. Views of the wider setting of the barn are restricted by dense vegetation and trees along the western perimeter of the proposed development site, and mature trees along the eastern perimeter of the farm complex. Therefore, the majority of the barn's wider setting will be unaffected by the development.
- 4.71 The significance of the barn lies primarily in its historic and architectural interest (i.e. its form and fabric). However, the removal of the orchard to the west and north-west of the barn, and the addition of modern farm buildings immediately to the south and south-east, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, all compromise the setting of the barn. Therefore, a negligible effect is considered from the proposed development on the contribution that the wider setting provides to the significance of the barn, in limited views to and from it. The core of the buildings' significance (i.e. its form and fabric) will be unaffected.
- 4.72 Within the wider landscape, namely along Whiston Eaves Lane (to the north of the site) and the public footpath (to the south-east of the site) which runs through the site, there would be occasional distant glimpsed views of the barn which would be read in conjunction with the proposed development.

Stage 4 - Maximising enhancement and reduction of harm on the setting of the heritage asset

- 4.73 Any negligible effect on the contribution that the wider setting provides to the significance of the barn will be mitigated by the following:
- Additional tree planting along the western perimeter of the proposed development site and through the reduction in height of the Multi Activity Hub. The height of the proposed Central Hub building has been reduced from 12 metres to 6 metres. It has also been relocated in order to enable the building to have a more limited perception of scale (- see Parameter Plan);
 - The Parameter Plan has been adjusted to provide more certainty on the future location of the activity hub buildings. The area in which the Multi Activity Hub can be located at the detailed design stage has been significantly reduced in order to ensure that proposed buildings are not located within the sight line from the barn along the overhead power lines easement, towards the site (see CD 60);
 - Additional layers of landscaping are proposed within the area of the Multi Activity Hub, which further screen the Central Hub from the barn and the surrounding footpaths. The additional landscaping is shown on the Illustrative Landscape Detailed Plan for The Hub (see CD 73) which accompanied the application re-submission; and
 - Advanced under-storey planting will be implemented along Whiston Eaves Lane to infill the gaps that have established in the roadside vegetation. This will further restrict the occasional distant views of the barn from the north of the site.

Stage 5 - Conclusions based on Stages 1-4

- 4.74 It is concluded that there will be no change to the core setting of the barn from the proposed development. Although there will be a degree of change to the wider setting of the barn, where there are occasional distant glimpsed views of it which would be read in conjunction with the development, the level of effect is considered to be negligible.
- 4.75 This negligible effect from the proposed development on the contribution that the wider setting provides to the significance of the barn will be mitigated by additional tree planting (as such mitigation will play a part in reducing harm) along the western perimeter of the development site, a reduction in the height and relocation of the Multi Activity Hub, additional layers of landscaping within the area of the Multi Activity Hub and the implementation of advanced under-storey planting along Whiston Eaves Lane.
- 4.76 This effect is considered to equate to less than substantial harm as per NPPF paragraphs 132-134. Therefore, the requirements of Paragraph 134 of the NPPF will apply, and this harm should be weighed against the public benefits of the proposed development.

Summary

- 4.77 By adapting the staged approach to the effect on the settings of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse, in accordance with Historic England's *Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets*, this section of my proof has identified that there will be no change to the core setting of these designated heritage assets.
- 4.78 There will be a degree of change to the wider setting of these designated assets where there are occasional distant glimpsed views which would be read in conjunction with the proposed development. However, the level of effect upon significance of each is considered to be negligible. Such effect would equate to less than substantial harm as per NPPF paragraphs 132-134. Therefore, the requirements of Paragraph 134 of the NPPF will apply, and this harm should be weighed against the public benefits of the proposed development.

Local Planning Policy

Staffordshire Moorlands Core Strategy (2014)

- 4.79 Section 8.1.76 identifies the Churnet Valley as an area of significant landscape, wildlife and heritage value.

4.80 Spatial Objective SO9 aims to:

“Conserve and improve the character and distinctiveness of the countryside and its landscape, heritage, biodiversity and geological resources.”

4.81 Section 7.46 delivers the strategy for the Churnet Valley which is:

“...to increase the economic contribution from sustainable tourism by enhancing the attraction of the Churnet Valley...by development of its heritage, nature based activities and outdoor recreational pursuits.... and promoting opportunities for visitors to access, understand and engage with the Churnet Valley's landscape, heritage and nature conservation assets' though '...development must not be at the expense of the special qualities of the Staffordshire Moorlands”.

4.82 Strategy SS7 Churnet Valley Area Strategy identifies the valley as an area for sustainable tourism and rural regeneration. With support given to:

“...measures to enhance, protect and interpret the landscape character and heritage assets of the Churnet Valley' and to '... measures that support and integrate the heritage transport infrastructure of the valley, sympathetically with enhancing and developing links to strategic footpaths, cycle and horse riding routes”.

4.83 Under SD1 (Sustainable Use of Resources) the Council will require:

“All development to secure the future conservation of a heritage asset through appropriate enabling development in accordance with policy DC2”.

4.84 Policy E3 (Tourism and Cultural Development) states that:

“All development shall be of an appropriate quality, scale and character compatible with the local area, protect the residential amenity of the area, enhance the heritage, landscape and biodiversity of the area and shall not harm interests of acknowledged importance”.

4.85 Section 8.6 sets out the Council's Design and Conservation Policies. Policy DC2 dealing with the historic environment is reproduced in full below.

“The Council will safeguard and, where possible, enhance the historic environment, areas of historic landscape character and interests of acknowledged importance, including in particular scheduled ancient monuments, significant buildings (both statutory listed and on a local register), the settings of designated assets, conservation areas, registered historic parks and gardens, registered battlefields and archaeological remains by:

- *Resisting development which would harm or be detrimental to the special character and historic heritage of the District's towns and villages and those interests of acknowledged importance.*
- *Promoting development which sustains, respects or enhances buildings and features which contribute to the character or heritage of an area and those interests of acknowledged importance through the use of conservation area appraisals, design statements, archaeological assessments, characterisation studies and Masterplanning.*
- *Preventing the loss of buildings and features which make a positive contribution to the character or heritage of an area through appropriate reuse and sensitive development, including enabling development, unless their retention is not viable or there would be substantial planning benefits to outweigh the loss”.*

Churnet Valley Masterplan Supplementary Planning Document (2014)

4.86 The masterplan identifies industrial heritage as one of the key strengths of the Churnet Valley, though a weakness is that it is relatively underappreciated and not well maintained. Several of the industrial heritage sites in the valley have the potential to be further developed as attractions.

4.87 One of the principles of the masterplan is that future development should make appropriate provision for the management of heritage by recognising the contribution of industrial historic buildings and structures and areas of special archaeological interest, and by celebrating and encouraging increased awareness and understanding of the area's heritage assets.

- 4.88 Sustainable tourism should not damage heritage assets and the strategy aims to enhance the heritage of the Churnet Valley.
- 4.89 The valley is broken down into a series of character areas; the proposed development site lies within the Moneystone Character Area. The concept statement for Moneystone Quarry cites the development as an opportunity to promote industrial heritage of site and educational opportunities.

Heritage Enhancements

- 4.90 Measures to enhance, protect and interpret the landscape character and heritage assets of the Churnet Valley are proposed. It is recommended that a Heritage Information Scheme is secured by way of a planning condition. The Heritage Information Scheme will contain provisions to maximise the heritage interest and understanding of the site and its context which could include website development (to include publicly available information regarding the history of the quarry site), interpretation panels and / or blue plaque scheme

5.0 Summary and Conclusions

- 5.1 On 2nd December 2015, Staffordshire Moorlands District Council (the Council) refused the following application by Laver Leisure (Oakamoor) Limited (the Appellant) on land at Moneystone Quarry, Whiston Eaves Lane, Whiston, Staffordshire ST10 2DZ:

“Outline planning permission with all matters reserved except access for the erection of a high quality leisure development comprising holiday lodges; a new central hub building (providing swimming pool, restaurant, bowling alley, spa, gym, informal screen/cinema room, children’s soft play area, café, climbing wall and shop); café; visitor centre; administration building; maintenance building; archery centre; water sports centre; equipped play and adventure play areas; multi-sports area; car parking, and managed footpaths and cycleways set in attractive landscaping and ecological enhancements.”

- 5.2 Despite the professional recommendation from the Officer, the application was refused by Members for the following reasons relating to heritage, as set out in the Decision Notice dated 2nd December 2015 (CD 84):

“The proposed development will have an adverse impact on the setting of Little Eaves Farm, a Grade II Listed Building which lies to the west of the site.

There will be direct views from this heritage asset to the south/south east into the Multi Activity Hub Area owing to gaps in existing planting. Although it may be possible to provide landscaping within this area to filter views, the exact siting of the buildings, their form, mass and design is unknown. The existence of overhead power lines crossing into the site will compromise the ability to provide effective screening and in any event planting will take many years to establish.

In the wider landscape there would be views of the heritage asset particularly from Whiston Eaves Lane, from the public footpath which runs through the site and from the site itself. In these views the asset would be read in conjunction with the proposed development which would erode the agricultural hinterland in which the asset is experienced.

The close proximity of the asset to the central Multi Activity Hub Area would also result in loss of tranquillity and seclusion, elements which also make a positive contribution to the significance of the asset.

Considerable weight has been given to the harm that would be caused to the heritage asset as required by section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 when carrying out that exercise. The harm is judged to be less than substantial in terms of paragraph 134 of the National Planning Policy Framework but it is not considered that the public benefits arising from the proposal outweigh the harm. As such there is conflict with Policy DC 2 of the Adopted Core Strategy Development Plan Document which seeks to safeguard and where possible enhance the historic environment.”

- 5.3 By adapting the staged approach to the effect on the settings of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse, in accordance with Historic England’s *Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets*, my proof has identified that there will be no change to the core setting of these designated heritage assets
- 5.4 It is considered that there will be a degree of change to the wider setting of these designated assets where there are occasional distant glimpsed views which would be read in conjunction with the proposed development. However, the removal of the orchard which was originally part of the core setting of Little Eaves Farm and the addition of modern farm buildings within the core setting, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, all compromise the setting of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse. Therefore, a negligible effect is considered from the proposed development on the contribution that the wider setting provides to the significance of farm complex, in limited views to and from it. The core of the farm’s significance (i.e. its form and fabric) will be unaffected by the development proposals.
- 5.5 This negligible effect from the proposed development on the contribution that the wider setting provides to the significance of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse, will be mitigated by additional tree planting along the western perimeter of the development site, a reduction in the height and relocation of the Multi Activity Hub, additional layers of

landscaping within the area of the Multi Activity Hub and the implementation of advanced under-storey planting along Whiston Eaves Lane.

- 5.6 I regard this negligible harm that I have identified as falling at the very bottom of the wide bracket of less than substantial harm – per NPPF 134.
- 5.7 The impact of the proposed development will not result in a material reduction in the significance nor the ability to appreciate the significance of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse.

Consideration of the Court of Appeal decision in relation to Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137

6.1 Of relevance to this appeal is the Court of Appeal decision of Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137, issued on 18th February 2014. The case relates to the quashing by the High Court of a decision of a Planning Inspector to grant planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire. There were three grounds of challenge presented to the High Court against the Inspector's decision to grant planning permission, all three of which were then considered further by the Court of Appeal. These were:

- 1) The Inspector had failed to have special regard to the desirability of preserving the settings of Listed Buildings, taking into account Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The Court of Appeal ruled that it was Parliament's intention in enacting section 66(1) of the 1990 Act that decision makers should give 'considerable importance and weight' to the desirability of preserving the setting of Listed Buildings when carrying out the balancing exercise.
- 2) The Inspector either misapplied planning policy guidance in relation to substantial harm to the significance of Listed Buildings or, if he correctly applied it, he failed to give adequate reasons for his conclusion that the harm to the setting of the Listed Buildings involved would in all cases be less than substantial. The Court of Appeal concluded that the Inspector did not assess the contribution made by the setting of Lyveden New Bield (the key Listed Building involved), to its significance as a heritage asset. The Inspector considered there to be less than substantial harm to the significance as he considered that the wind farm would not be so distracting that it would not prevent, or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield or Lyveden Old Bield or their relationship to each other. The Court of Appeal considered that the ability of the public to appreciate a heritage asset is one, but not the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset. The contribution that setting makes does not depend on there being ability to access or experience the setting.
- 3) The key issue in the 3rd ground considered by the Court of Appeal was that the Inspector had concluded that there was not substantial harm as any 'reasonable observer' would be able to see and understand that the wind farm was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting. The ruling outlined that the policy guidance in PPS5 and the Practice Guide does not suggest that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the 'reasonable observer' test adopted by the Inspector. The Court of Appeal concluded that:

"If the 'reasonable observer' test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paragraphs 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the Inspector had give proper effect to the section 66(1) duty. (Para 44)."

6.2 The key outcome of the ruling in relation to this appeal is that Section 66 of the 1990 Act requires the decision maker to give considerable importance and weight to the desirability of preserving the setting of a Listed Building when balancing harm against benefit as required by paragraphs 133 and 134 of the NPPF. This is a matter of process in the decision making, rather than a change in the way that impact and harm is assessed. The Barnwell Manor ruling does not require that the effect, and therefore harm, to an asset arising from a proposed development is to be assessed any higher than prior to the ruling. That is, harm arising from a development is based on the effect it has on the contribution that setting makes to the significance of a heritage asset. The Court of Appeal ruling stresses that it is the weight which is accorded to the harm that is the important element in the test for the decision maker. This in turn leads to the appropriate weighting of the harm arising from a development against the public benefits accrued from the development. This does not require for the level of harm arising to be automatically graded as being higher as the nature

of the harm is dependent on how it affects the significance of the asset. The test is the weight that is put on this harm in the planning balance.

- 6.3 The second key outcome from the Barnwell Manor ruling is the importance of adequate articulation of how the assessment of harm has been arrived at. The assessment of the level of harm on Listed Buildings has to be based on the contribution that the setting of an asset makes to its significance and how a proposed development affects this. This should not be on such narrow grounds such as whether a reasonable observer would always be able to understand the development being a modern addition to the landscape. The process required here is the five staged approach to the assessment of the setting of a heritage asset, as outlined in Historic England's Historic Environment Good Practice Advice In Planning Note 3 The Setting of Heritage Assets (2015), outlined in paragraphs 2.42-2.45 above.

Consideration of the High Court decision in relation to The Forge Field Society and others v Sevenoaks District Council [2014] EWHC 1895 (Admin)

- 6.4 The recent High Court decision of The Forge Field Society and others v Sevenoaks District Council [2014] EWHC 1895 (Admin), issued on 12th June 2014, is also of relevance to this appeal. This case is in part related to the effect of a proposed housing development on the setting of Listed Buildings and the character and appearance of Conservation Areas.
- 6.5 The judgment ruled that the duties of Section 66 and 72 of the 1990 Act did not allow a local planning authority to treat the desirability of preserving the settings of Listed Buildings and the character and appearance of Conservation Areas as mere material considerations to which it could attach weight as it saw fit. If a planning authority finds that a proposed development will cause harm to the setting of a Listed Building or to a Conservation Area, it must give considerable importance and weight to that harm in any subsequent balance against public benefits. To find harm to the setting of a Listed Building or to a Conservation Area gives rise to a strong presumption against planning permission being granted. However, whilst the presumption is statutory, it can be rebutted. That is, it can be outweighed by material considerations, if they are of sufficient weight and power and as long as the authority can properly strike such a balance between harm and benefits being conscious of the statutory presumption in favour of preservation. Importantly, the authority will also need to demonstrate that it has applied that presumption correctly to proposals it considers.
- 6.6 The implications of this case are:
- 1) Designated heritage assets and their settings that are potentially affected by a proposed development are clearly identified;
 - 2) The potential impacts (i.e. harm) arising on the contribution that the setting provides to the significance of assets are clearly identified;
 - 3) Any planning benefits that are relied upon to outweigh any harm are also clearly identified; and
 - 4) The decision-maker takes full account of such matters, and if this involves impacts on Listed Buildings and their settings or to Conservation Areas, that the statutory presumption is fully acknowledged when undertaking any planning balance.

Jones and Mordue and Secretary of State for Communities and Local Government v South Northamptonshire Council [2015] EWCA 539 (Admin)

- 6.7 The Court of Appeal has recently handed down judgment in another important case which has relevance to this appeal (Jones and Mordue and Secretary of State for Communities and Local Government v South Northamptonshire Council [2015] EWCA 539 [Admin]).
- 6.8 The Deputy Judge of the High Court had allowed a challenge to the grant of planning permission for a wind turbine, on the basis that the Inspector's decision did not demonstrate compliance with Section 66 of the 1990 Act. The Deputy Judge considered that he was required, as a result of the Barnwell Manor appeal decision, to reach this conclusion, but found it to be in tension with the decision of the House of Lords in Save Britain's Heritage.
- 6.9 The Court of Appeal held that the decision in Barnwell Manor did not require a decision-maker to demonstrate compliance with section 66 of the 1990 Act. The onus was upon a claimant to show that there is a positive indication that the decision-maker has not given the required considerable importance and weight to the importance of conserving a heritage

asset. Only if there is such a positive indication, need a decision-maker make a countervailing positive reference to the relevant duty in the reasons themselves.

- 6.10 The Court of Appeal also held that, given that the relevant part of the NPPF is to be read together, if an Inspector refers to NPPF 134, then unless there is a positive indication to the contrary, the appropriate inference is that he has properly taken into account all of the relevant paragraphs of the NPPF.

7.0 Appendix 2 - Original Scheme

Below is a summary of the key points which show why the original scheme is acceptable in heritage terms

- 7.1 Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse are all situated c. 100 m to the west of the proposed development site.
- 7.2 The core setting of these designated heritage assets is the garden and a number of modern farm buildings located within the farm complex. Views from these heritage assets are restricted by mature trees and woodland to the north and to the east by mature trees around the eastern perimeter of the farm complex.
- 7.3 The surrounding agricultural fields which comprise the wider setting of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse have a positive contribution to the significance of these buildings and place them in a rural context with which they have a functional relationship. The quarrying operations to the north and east of the farm complex, on the contrary, have a negative contribution to the significance of the buildings, placing them in a semi-industrial context.
- 7.4 Within the wider landscape, namely along Whiston Eaves Lane (to the north of the site) and the public footpath (to the south-east of the site) which runs through the site, there would be occasional distant glimpsed views of the farm complex which would be read in conjunction with the proposed development.
- 7.5 It is considered that the proposed Multi Activity Hub area within the development site will be visible from the farm complex, in views to the south-east. However, views are restricted by dense vegetation and trees which run along the western perimeter of the proposed development site, and mature trees located around the eastern perimeter of the farm complex.
- 7.6 By adapting the staged approach to the effect on the settings of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse, in accordance with Historic England's *Historic Environment Good Practice Advice in Planning Note 3 The Setting of Heritage Assets*, it is considered that there will be no change to the core setting of these designated heritage assets; the majority of their wider setting, will also be unaffected by the development.
- 7.7 It is considered that there will be a degree of change to the wider setting of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse, where there are occasional distant glimpsed views which would be read in conjunction with the proposed development. However, the removal of the orchard which was originally part of the core setting of Little Eaves Farm and the addition of modern farm buildings within the core setting, allied with the removal of the historic access track running between Whiston Eaves Farm and Little Eaves Farm, replacement of this with the modern access track to the east of Little Eaves Farm, and the quarrying operations, all compromise the setting of these designated heritage assets. Therefore, a negligible effect is considered from the proposed development on the contribution that the wider setting provides to the significance of farm complex, in limited views to and from it. The overwhelming majority of its wider setting will be maintained. The core of the farm's significance (i.e. its form and fabric) will be unaffected by the development proposals.
- 7.8 The impact of the proposed development will not result in a material reduction in the significance nor the ability to appreciate the significance of Little Eaves Farmhouse, Barn c. 5 m east of Little Eaves Farmhouse and the curtilage listed barn c. 15 m south of Little Eaves Farmhouse. As such, this equates to less than substantial harm to the settings and their contribution to the significance. Consequently, the public benefits arising from the proposal will need to be weighed against the limited harm to these designated heritage assets.