

**Proof of Evidence
Heritage**

By

Rob Bourn

**Appeal under Section 78 of
Town and Country Planning Act 1990
By Hayfield Homes Construction Ltd**

Land at Berrow Green Road, Martley

**Appeal Ref:
APP/J1860/W/24/3348743**

Application Ref: M/23/01711/OUT

October 2024

Report

Proof of Evidence – Heritage

Site

Land at Berrow Green Road, Martley

Client

Hayfield Homes Construction Ltd

Planning Authority

Malvern Hills District Council

Prepared By

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Report Status

Final

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1.0 Introduction

- 1.1 My name is Robert Bourn and I am Managing Director at Orion Heritage Ltd. Orion Heritage is an independent heritage consultancy based in Brighton and Manchester. The company acts for a wide range of private and public sector organisations across the UK and advises on all aspects of historic environment related planning policy and practice. Prior to setting up Orion in June 2015, I was a Director of the heritage team at CgMs Ltd for 15 years. Prior to joining CgMs, I was the Planning Archaeologist for Berkshire County Council and its successor Unitary Authorities for 5 years (1995-2000).
- 1.2 I hold a BA (Hons) in Archaeology & Prehistory (Sheffield University), an MA in Environmental Planning (Nottingham University) & postgraduate diploma in archaeological practices (Oxford University). I am a Member of the Chartered Institute for Archaeologists (CIfA), the professional institute for archaeologists and other cultural heritage professionals. I have 35 years' experience as a professional archaeologist & heritage consultant, 29 of which have been in a planning and development context acting for both the public and private sectors. During this period, I have personally dealt with major developments affecting the historic environment and setting issues throughout the UK, including numerous housing schemes of all sizes at both outline and reserved matters stages. I have also appeared as a historic environment expert witness for a number of housing and renewable energy related public inquiries.
- 1.3 This proof of evidence has been prepared on behalf of the appellant, Hayfield Homes Construction Ltd, in relation to an appeal for the refusal of outline planning permission for up to 55 dwellings (with means of access to the site be considered at this stage and all other matters reserved) (application ref: M/23/01711/OUT).
- 1.4 Orion Heritage produced a Historic Environment Desk Based Assessment (CD 1.22) to support the outline planning application dated September 2023. This report was written by my colleagues, Dr Charlotte Willis, Robin Sheehan & Charles Walker.

MHDC has not questioned the methodology, results and the overarching conclusions of the assessment. This includes agreement on a lower level of less than substantial harm to Longstone Cottage (grade II NHLE 1178747). Both the appellant and MHDC agree that the harm to the significance of the grade II cottage will be at the lower end of the less than substantial harm range. Having undertaken my own assessment of the effect of the proposed scheme which has been informed by a site visit as well, I am in agreement with the conclusions of the Orion Heritage report.

Scope of Proof

- 1.5 This proof of evidence outlines reason for refusal no 1 relating the effect on Longstone Cottage (grade II NHLE 1178747).
- 1.6 My evidence is distinct from, but informed by, where relevant, landscape and visual matters, which are dealt with separately by Mr. James Atkins. The consideration of the planning balance (in the context of NPPF 208 and generally) of the proposed development will be dealt with by Cameron Austin-Fell.
- 1.7 The evidence which I have prepared and provide for this appeal in this proof, is true and has been prepared and is given in accordance with the guidance of my professional institution and I confirm that the opinions expressed are my true and professional opinions.

Statement of Common Ground

- 1.8 A heritage statement of common ground has been produced and agreed between the appellant and MHDC. In summary, the following is agreed:

NPPF Paragraph 208

- 1.9 As it is agreed that as the proposed development would result in a less than substantial effect (at the lower end of the bracket) on Longstone Cottage, NPPF paragraph 208 applies. This requires the decision maker to balance the low level less than substantial harmful effect against the public benefits of the proposed development.

Matters of Disagreement

- 1.10 Whilst the appellant and MHDC agree that there is less than substantial harm (at the lower end of the bracket), it is not agreed whether the public benefits of the proposed development outweigh any such harm (applying the NPPF paragraph 208 balance). This is a planning matter not a heritage issue.

2.0 Legislative & Policy Framework

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

Planning (Listed Building and Conservation Areas) Act 1990

- 2.2 The *Planning (Listed Buildings and Conservation Areas) Act 1990* sets out the legal approach and obligations relevant to listed buildings.

- 2.3 Section 66(1) of the Act 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**”.* (emphasis added)

- 2.4 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*. 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.

- 2.5 Relevant case-law on the statutory test is set out further below.

National Planning Policy Framework (NPPF)

- 2.6 Government policy in relation to the historic environment is outlined in Section 16 of the National Planning Policy Framework (NPPF), entitled 'Conserving and Enhancing the Historic Environment'. This provides policy for planning authorities, property owners, developers and others on the conservation and investigation of heritage assets.
- 2.7 Paragraph 200 states that planning decisions should be based on the significance of the heritage asset, including any contribution made by their setting. The 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. It is agreed that sufficient information is before the Inspector to make a decision.
- 2.8 Paragraph 205 outlines that when considering the potential impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation and that the more important the asset, the greater the weight should be. This is irrespective as to whether the harm to the significance of the asset is substantial or less than substantial. This reflects a number of decided cases (such as *Barnwell Manor*) which stress the considerable importance and weight which should attach to a breach of the statutory duty.
- 2.9 Where the harm to a designated heritage asset's significance is less than substantial, which is the case on this appeal, Paragraph 208 states:
- "Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*
- 2.10 Annex 2 of the NPPF has the following relevant definitions.
- *Heritage Assets*: a building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated

heritage assets and assets identified by the local planning authority (including local listing).

- *Designated Heritage Assets* comprise: A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Parks and Garden, Registered Battlefield or Conservation Areas designated under the relevant legislation.
- *Significance*: 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.
- *Setting*: 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. Setting is not a heritage asset itself. The key issue in relation to setting is its contribution to the significance of a designated heritage asset and how a proposed development affect that contribution to the significance.

Planning Practice Guidance (PPG)

- 2.11** The NPPF is supported by the PPG (July 2019). In relation to the setting of designated & non-designated heritage assets, paragraph 002 (002 Reference ID: 18a-002-20190723) states that:

“Where changes are proposed, the National Planning Policy Framework sets out a clear framework for both plan-making and decision-making in respect of applications for planning permission and listed building consent to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance and thereby achieving sustainable development. Heritage assets are either designated heritage assets or non-designated heritage assets.”

Setting

2.12 Paragraph 18a-013 (Paragraph: 013 Reference ID: 18a-013-20190723) 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 places that may have limited or no intervisibility with each other. This may be historic as well as aesthetic connections that contribute or enhance the significance of one or more of the heritage assets.

2.13 Paragraph 18a-013 concludes:

“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 on-going conservation.”

Substantial Harm

2.14 A key aspect of NPPF paragraphs 199-202 is the level of harm to a designated asset. Neither less than substantial harm nor substantial harm is defined in the NPPF. It is agreed (in this case) that there is less than substantial harm and that such harm is to the lower end of that bracket.

2.15 Paragraph 18a-017 (Paragraph: 017 Reference ID: 18a-017-20190723) of the PPG provides additional guidance on substantial harm. It states:

“What matters in assessing whether a proposal might cause 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.

Proposed development affecting a heritage asset may have no impact on its significance or may enhance its significance and therefore cause no harm to the heritage asset. Where potential harm to designated heritage assets is identified, it needs to be categorised as either less than substantial harm or substantial harm (which includes total loss) in order to identify which policies in the National Planning Policy Framework (paragraphs 194-196) apply.

Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.

Whether a proposal causes substantial harm will be a judgment for the decision-maker, 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 additions to historic buildings where those additions are inappropriate and harm the buildings' 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, depending on the nature of their impact on the asset and its setting.*** (emphasis added)

- 2.16** Paragraph 208 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. It follows that less than substantial harm to a designated heritage asset can be compliant with the NPPF.

- 2.17** Paragraph 18a-020 of the PPG (Paragraph: 019 Reference ID: 18a-019-20190723) outlines what is meant by public benefits:

*“Public benefits may follow from many developments and **could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, **benefits do not always have to be visible or accessible to the public in order to be genuine public benefits**, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.”*** (emphasis added)

Local Planning Policy

- 2.18** The South Worcestershire Development Plan was adopted in 2016 and contains the following policies relevant to this assessment:

SWDP 6 Historic Environment

- A. Development proposals should conserve and enhance heritage assets, including assets of potential archaeological interest, subject to the provisions of SWDP 24. Their contribution to the character of the landscape or townscape should be protected in order to sustain the historic quality, sense of place, environmental quality and economic vibrancy of south Worcestershire.*
- B. Development proposals will be supported where they conserve and enhance the significance of heritage assets, including their setting. In particular this applies to:*

- i. *Designated heritage assets; i.e. listed buildings, conservation areas, scheduled monuments, registered parks and gardens and registered battlefields, as well as undesignated heritage assets.*
- ii. *The historic landscape, including locally distinctive settlement patterns, field systems, woodlands and commons and historic farmsteads and smallholdings.*
- iii. *Designed landscapes, including parkland, gardens, cemeteries, churchyards, public parks, urban open spaces and industrial, military or institutional landscapes.*
- iv. *Archaeological remains of all periods.*
- v. *Historic transportation networks and infrastructure including roads and trackways, canals, river navigations, railways and their associated industries.*
- vi. *The historic core of the cathedral city of Worcester, with its complex heritage of street and plot patterns, buildings, open spaces and archaeological remains, along with their settings and views of the city.*
- vii. *The civic, religious and market cores of south Worcestershire's city, town and village fabric with their wide variety of building styles, materials and street and plot patterns.*

SWDP 24 Management of the Historic Environment

- A. *Development proposals affecting heritage assets will be considered in accordance with the Framework, relevant legislation and published national and local guidance.*
- B. *Proposals likely to affect the significance of a heritage asset, including the contribution made by its setting, should be accompanied by a description of its significance in sufficient detail to allow the potential impacts to be adequately assessed. Where there is potential for heritage assets with archaeological interest to be affected, this description should be informed by available evidence, desk-based assessment and, where appropriate, field evaluation to establish the significance of known or potential heritage assets.*

- C. *The sympathetic and creative reuse and adaptation of historic buildings will be encouraged. Such proposals, and other proposals for enabling development that provide a sustainable future for heritage assets identified as at risk, will be considered in accordance with SWDP 24 A.*
- D. *Where a material change to a heritage asset has been agreed, recording and interpretation should be undertaken to document and understand the asset's archaeological, architectural, artistic or historic significance. The scope of the recording should be proportionate to the asset's significance and the impact of the development on the asset. The information and understanding gained should be made publicly available, as a minimum through the relevant Historic Environment Record and where appropriate at the asset itself through on-site interpretation.*

2.19 It is noted that these policies are not consistent with NPPF due to the absence of the consideration of the public benefit balance where heritage harm is identified. However, per paragraph 87 of *City & Country Bramshill Ltd v Secretary of State for Housing Local Government and Communities, Hart District Council, Historic England & The National Trust for Places of Historic Interest or Natural Beauty EWCA Civ 320* (CD 6.7), the absence of reference to the planning balance between harm and public benefit in SWDP6 and SWDP24, does not mean that such balance should not still be applied. Once the outcome of that balance is determined, in line with the NPPF, if it is against the proposal, the policies may still be given weight. Conversely, if that balance is in favour of the development (as is argued by the Appellant here) the judgement on policy weight is to be made in the knowledge that the policy and the Framework have led to different outcomes, underscoring the lack of consistency of the local policy with the Framework. This would clearly indicate reduced weight to the local policy in the decision-making process. That is the Appellant's position in this appeal. The last three sentences of para 87 of *Bramshill* apply in this case:

“They (the Local Plan policies) do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which “public benefits” are set against “harm”. But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.”

Neighbourhood Planning

- 2.20** The Martley, Knightwick and Doddenham Neighbourhood Plan (Version for Making January 2018) contains the following policy relevant to this assessment:

Policy MKD3 - Building Design Principles outside Martley Conservation Area

All new development proposals must meet the following requirements:

- 1. New development should enhance and reinforce the local distinctiveness of the area and proposals should show clearly how the general character, scale, mass, and layout of the site, building or extension fits in with the ‘grain’ of the surrounding area. Care should be taken to ensure that building(s) height, scale, and form, including the roofline, do not disrupt the visual amenities of the street scene. Generic house styles that do not reflect the distinct local character will not be acceptable.*
- 2. Redevelopment, alteration or extension of historic farmsteads must be sensitive to their distinctive character, materials and form.*
- 3. Driveway and entrance gates should reflect the rural nature of the Parish.*

- 2.21** It is noted that this policy is also inconsistent with NPPF due to the absence of the consideration of the public benefit balance where heritage harm is identified. The process as outlined in paragraph 2.19 above applies in relation to the Neighbourhood Plan policy.

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

2.22 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 England (HE) Good Practice Advice in Planning Note 3 (GPA 3) 'The Setting of Heritage Assets' 2017 (Second Edition) (CD 7.12)

2.23 *Historic England's Historic Environment Good Practice Advice in Planning Note 3* (Second Edition) provides guidance on the management of change within the setting of heritage assets.

2.24 The document restates the definition of setting as outlined in Annex 2 of the NPPF. 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 separately designated. Its importance lies in what the setting contributes to the significance of a heritage asset. This is a manner of judgment for the heritage assessor.

2.25 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;
2. Assessment of whether and what contribution the setting makes to the significance of a heritage asset;
3. Assessing the effects of proposed development on the significance of a heritage asset;
4. Maximising enhancement and reduction of harm on the setting of heritage assets; and
5. Making and documenting the decision and monitoring outcomes.

2.26 The guidance reiterates the NPPF in stating that where development 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.

Relevant Case Law

Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council
[2014] EWCA Civ 137 (CD 6.8)

2.27 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 listed buildings when balancing harm against benefit as required by paragraphs 133 and 134 of the 2012 NPPF, which have the same wording as paragraph 206-208 of the 2023 NPPF. 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 that 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.

- 2.28** The second key point 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 as whether a reasonable observer would always be able to understand the development was a modern addition to the landscape. The process required here is the 5-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) as outlined in paragraphs 2.23-2.25 above.

Jones and Mordue and Secretary of State for Communities and Local Government v South Northamptonshire Council [2015] EWCA 539 (Admin) (CD 6.9)

- 2.29** The relevant aspect of the case is that paragraph 132-134 of the NPPF (now 205-208 of the 2023 NPPF) lays down an approach that corresponds with the duty of section 66 of the 1990 Planning Act. Accordingly, if a decision maker has worked through the tests in the NPPF, they will have accorded with S66 of the 1990 Act. Paragraphs 132-134 of the 2012 NPPF have the same wording as paragraphs 205-208 of the 2023 NPPF.

Catesby Estates Ltd v Peter Steer [2019] 1 P&CR 5, McFarlane, Lindblom, Asplin LJJ(CD 6.10)

- 2.30 The key aspect about this case is the issue of historical associations and other non-visual connections, the identification of the setting, whether there is harm to the significance of an asset and the need for the decision maker to apply “considerable importance and weight” to the conservation of the significance of the set.

26. *[It is not the case] that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building’s setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in Williams (see also, for example, the first instance judgment in R. (on the application of Miller) v North Yorkshire County Council [2009] EWHC 2172 (Admin), at paragraph 89). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in paragraph 18a-013-20140306 of the PPG, that the Government recognises the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, “the historic relationship between places”. Historic England’s advice in GPA3 was broadly to the same effect.*

27. *It has also been accepted in this court that the effect of development on the setting of a listed building is not necessarily confined to visual or physical impact. As Lewison L.J. said in R. (on the application of Palmer) v Herefordshire Council [2016] EWCA Civ 1061 (in paragraph 5 of his judgment), “[although] the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell”. In that case the potential harm to the setting of the listed building was by noise and odour from four poultry broiler units.*

28. Three general points emerge. First, the section 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, makes it necessary for the decision-maker to understand what that setting is – even if its extent is difficult or impossible to delineate exactly – and whether the site of the proposed development will be within it or in some way related to it. Otherwise, the decision-maker may find it hard to assess whether and how the proposed development “affects” the setting of the listed building, and to perform the statutory obligation to “have special regard to the desirability of preserving ... its setting ...”.

29. Secondly, though this is never a purely subjective exercise, none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building’s setting. Nor could it. In every case where that has to be done, the decision-maker must apply planning judgment to the particular facts and circumstances, having regard to relevant policy, guidance and advice. The facts and circumstances will differ from one case to the next. It may be that the site of the proposed development, though physically close to a listed building, has no real relationship with it and falls outside its setting, while another site, much further away, nevertheless has an important relationship with the listed building and is within its setting (see the discussion in sections 14.3, 15.2 and 15.8 of Mynors and Hewitson’s “Listed Buildings and Other Heritage Assets”, fifth edition). Under current national planning policy and guidance in England, in the NPPF and the PPG, the decision-maker has to concentrate on the “surroundings in which [the heritage] asset is experienced”, keeping in mind that those “surroundings” may change over time, and also that the way in which a heritage asset can be “experienced” is not limited only to the sense of sight. The “surroundings” of the heritage asset are its physical surroundings, and the relevant “experience”, whatever it is, will be of the heritage asset itself in that physical place.

30. *Thirdly, the effect of a particular development on the setting of a listed building – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the “significance” of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker, subject, of course, to the principle emphasized by this court in **East Northamptonshire District Council v Secretary of State for Communities and Local Government** [2015] 1 W.L.R. 45 (at paragraphs 26 to 29), **Jones v Mordue** [2016] 1 W.L.R. 2682 (at paragraphs 21 to 23), and **Palmer** (at paragraph 5), that “considerable importance and weight” must be given to the desirability of preserving the setting of a heritage asset. Unless there has been some clear error of law in the decision-maker’s approach, the court should not intervene (see **Williams**, at paragraph 72). For decisions on planning appeals, this kind of case is a good test of the principle stated by Lord Carnwath in **Hopkins Homes Ltd. v Secretary of State for Communities and Local Government** [2017] 1 W.L.R. 1865 (at paragraph 25) – that “the courts should respect the expertise of the specialist planning inspectors and start at least from the presumption that they will have understood the policy framework correctly”.*

R (James Hall and Company Ltd) v City of Bradford MDC [2019] EWHC 2899 (Admin), HHJ Belcher (CD 6.11)

- 2.31 This case addressed the three categories of heritage harm (i.e. no harm, less than substantial harm and substantial harm). Paragraph 34 states:

“In my judgment the three categories of harm recognised in the NPPF are clear. There is substantial harm, less than substantial harm and no harm. There are no other grades or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than substantial harm will cover a broad range of harm. It will be a matter of planning judgement as to the point at which a particular

degree of harm moves from substantial to less than substantial, but it is equally the case that there will be a number of types of harm that will fall into less than substantial, including harm which might otherwise be described as very much less than substantial. There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF. However, in my judgment, minimal harm must fall to be considered within the category of less than substantial harm.”(emphasis added)

- 2.32** This case is important. Whilst considerable importance and weight (or great weight) should be afforded to the principle of preserving or enhancing the significance of designated heritage assets, given the relevant statutory tests (*supra*), it is the actual impact to the relevant heritage asset which needs to be weighed in the balance, taking into account the statutory tests. Not all impacts to all heritage assets are the same. All things being equal: the same impact to a Grade I listed building will be afforded greater weight than to a Grade II listed building. Similarly, a lesser impact to a heritage asset (impact to the wider rural setting) will be given less weight than a greater impact (total demolition) to the same heritage asset.
- 2.33** It follows that there is a scale of impact. The calibration of impact (or harm) must be capable of allowing for the full range of such impacts. The NPPG requires (post the *Shimbles case*) the assessor to identify where on the less than substantial harm bracket (in this case) the harm lies. In this case, it is agreed that any harm lies to the lower end of less than substantial.

Summary of the Key Points in Relation to Setting

2.34 Government policy aims to preserve the significance of heritage assets.

- All heritage assets have a setting, and that setting may contribute to the significance of the asset.
- Change in the setting of a heritage asset may (or may not) affect that contribution.
- 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 setting to the significance of the heritage asset.
- It is the scale of the impact to the significance of the asset which is important, not the scale of the change.
- The correct basis for an assessment is therefore an analysis of the significance of the heritage asset, including the contribution made by setting and the impact caused to that significance.
- In cases where only setting is affected, only the portion of significance derived from setting can be affected.
- 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 are not useful criteria on their own for the assessment of impact magnitude. What must be understood is how this visual change affects the contribution to significance made by setting before a conclusion can be reached about the magnitude of any impact.
- It cannot be assumed that a more important asset (typically a high-grade designated asset) will *necessarily* experience a greater magnitude of impact. What matters is the extent to which its significance derives from setting and this is unrelated to the importance of the asset. In most cases, the majority of significance ascribed to a heritage asset lies in its form and fabric and this will be unaffected by change in the setting. In this case, the issue is the effect of the proposed development on the contribution that the wider rural setting has

to the significance of a grade II cottage. This effect should be given less weight than a greater impact such as total or partial demolition would have.

- 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. Policy and law does not recognise separate concepts such as ‘harm to the setting’ or ‘harm to the significance of a setting’.
- For the purposes of paragraphs 206 and 207 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. Paragraph 26 of *Bedford Borough Council v Secretary of State for Communities and Local Government & Nuon UK Ltd* ([2013] EWHC 2847 (Admin)) (CD 6.12) is of relevance in this respect:

*“In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have **such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.**”* (emphasis added)
- Where there is harm on a designated heritage’s asset’s significance from a proposed development, the decision maker should put great weight on the asset’s conservation (the more important the asset, the greater that weight should be). This is irrespective of whether potential harm amounts to substantial harm total loss or less than substantial harm to its significance.
- Where 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.
- However, the degree of harm is relevant to the balance of harms against benefits; *R (James Hall and Company Ltd) v City of Bradford MDC* [2019] EWHC 2899 (Admin) (CD 6.11). That is, there is a range of harm within the less than substantial harm range. The level of harm within this range goes to the

weight that is given to that harm in the NPPF paragraph 208 balance against public benefits.

3.0 Committee Report and Reason for Refusal in Relation to Heritage Matters

Committee Report (CD 2.1)

- 3.38** The committee report addresses the effect on Longstone Cottage on page 19 and 20. It outlines the main points of policies SWDP6 and SWDP24 as well as section 66 of the 1990 Listed Buildings and Conservation Areas Act. It also outlines the requirements of NPPF paragraphs 205 and 206. It does not mention or discuss NPPF paragraph 208, where there is an effect on the significance of a designated heritage that is less than substantial harm, but it does apply the planning balance of weighing the heritage harm with the public benefits of the proposed development.
- 3.39** **The report concludes that the proposed development will have a less than substantial harmful effect on the significance of the cottage and that this effect would be at the lower end of the less than substantial harm range.** This conclusion is in accordance with my and Orion Heritage’s assessment of the harm on the significance of Longstone Cottage.
- 3.40** The report also mentions that Rose Cottage and Row End, which are next to the appeal site, are considered to be non-designated heritage assets and that their setting would also be affected by the proposed development.
- 3.41** The final paragraph of the heritage section of the report considers the significance of the designated and non-designated heritage assets together, concluding less than substantial harmful effect on all of them. However, as non-designated heritage assets, paragraphs 205-208 of the NPPF do not apply, so the assessment of harm being substantial or less than substantial harm does not apply. The relevant paragraph of the NPPF is 209 which requires the decision maker to take the effect on a non-designated heritage asset into account in determining a planning application. The paragraph states that a balanced judgement is required which has regard to the scale of any harm or loss to the significance of the non-designated assets in question.

- 3.42** The committee report concludes that the proposed development will detrimentally alter the significance of Longstone Cottage when considered with the cumulative effect of other consented developments in the immediate area of the cottage. It therefore would conflict with policies SWDP6 and SWDP24. However, as outlined above, both of these policies are inconsistent with the NPPF as they do not allow for the heritage harm to be weighed against the public benefit.
- 3.43** In relation the NPPF paragraph 208, the committee report concludes that the public benefit would not outweigh the harm to the significance of Longstone Cottage. This is a matter of planning judgment for Cameron Austen-Fell.

Malvern Hills District Council Reason for Refusal & Statement of Case

- 3.1** The planning application was refused permission on 11th April 2024 (CD 4.2). Reason for refusal no 1 states:

The residential development of this site would, by reason of its location, scale and prominence constitute an incongruous and visually intrusive feature when viewed from a number of publicly accessible locations, and have an unacceptably urbanising and consequently adverse impact upon the character and appearance of the area, resulting in demonstrable harm to the open and undeveloped character and appearance of the land, rather than integrating as discrete infill or 'rounding off' of the existing village.

Furthermore, the proposal would overwhelm the Grade II listed Longstone Cottage by surrounding it with built development which would encroach upon and adversely impact its setting.

As such, the proposal would be contrary to Policy SWDP21, SWDP25, SWDP6, SWDP24, SWDP2 and SWDP5 of the South Worcestershire Development Plan, and

policy MKD1, MKD3, MKD4 and MKD6 of the Martley, Knightwick, and Doddenham Neighbourhood Plan, and guidance contained within the National Planning Policy Framework that amongst others aim to safeguard the intrinsic character and beauty of the countryside and improve the character and quality of an area.

- 3.2 The heritage element of this reason for refusal is paragraph 2 and this states that Longstone Cottage will be 'overwhelmed' by the proposed development. This is a strong word (and an inaccurate term) to describe the effect. Indeed, the committee report is clear that MHDC consider the harm to the significance of the cottage to be at the lower end of the less than harmful harm range. This low level of less than substantial harm effect is a conclusion that accords with my and Orion Heritage's assessment of the effect of the proposed development. Whilst there is no official categorisation of the 'lower end', both parties agree that the harm or impact is towards the lowest end of the scale. It is this impact which must be attributed weight and applied in the balancing exercise, rather than hyperbolic and inaccurate terms such as "overwhelmed".

4.0 Assessment of Significance and Impact on Designated Heritage Assets

Introduction

- 4.1 The approach to assessing the effect on the settings of heritage assets adopted in my proof of evidence follows the approach that is set out in Historic England's *Historic Environment Good Practice Advice in Planning Note 3*. The 5 staged approach is as follows:
1. Identification of heritage assets which are likely to be affected by proposals;
 2. Assessment of degree to which the setting of these assets makes to the significance of the heritage assets or allow the significance to be appreciated;
 3. Assess the effects of the proposed development, whether beneficial or harmful on the significance of a heritage asset or on the ability to appreciate it;
 4. Explore ways to maximise enhancement and avoid or minimise harm; and
 5. Make and document the decision and monitoring outcomes
- 4.2 Stage 5 is for the decision maker to undertake and so will not be undertaken in my proof.
- 4.3 This assessment utilises the research undertaken for the September 2023 HEDBA by Orion Heritage which was written by my colleagues, Dr Charlotte Willis, Robin Sheehan and Charles Walker (CD XX) and site visits by myself. Orion Heritage's report was undertaken in accordance with Historic England's Statements of Heritage Significance: Analysing Significance in Heritage Assets Historic England Advice Note 12 (2019) (CD 7.13).
- 4.4 This proof presents my own assessment of the significance and setting of Longstone Cottage as well as the two non-designated heritage assets Row End & Rose Cottage and the effect of the proposed development upon their significance. However, the two assessments should be read together as they are in accord with each other.

4.5 In all instances, the significance of the assets primarily resides within their architectural and historic interest (i.e. their form and fabric). Consequently, as the proposed development will have no direct effects on any designated heritage assets, the core of the significance of all of the assets potentially affected will not be impacted upon. The setting in each case is a much more modest component of the asset's significance, when compared to the architectural and historic interest of the buildings themselves. The listing for Longstone Cottage does not refer to the setting of the building.

4.6 Historic England's Listing describes the architectural elements of the exterior of the cottage. This is indicative of its architectural values.

GPA3 Stage 1

4.7 Malvern Hills District Council's statement of case and committee report outlines that they consider that one listed building and two non-designated built heritage assets are affected by the proposed development. These are:

- Longstone Cottage (grade II NHLE 1082996)
- Row End & Rose Cottage

4.8 Figure 1 shows the location of these buildings in relation to the appeal site. Appendix 1 includes photographs of the assets in question and their setting.

GPA3 Stage 2

Longstone Cottage (grade II NHLE 1082996)

Significance

4.9 The listing description for Longstone Cottage states:

Cottage. C17 with C19 and C20 alterations. Timber-frame with brick infill, on brick plinth, plain tile roof, brick end stacks. Two storeys; three two-light C19 casements

in three framed bays, entrance off centre left, C20 glazed door; single storey brick lean-to on left. Framing: four square panels high to wallplate, queen strut trusses to gables.

- 4.10** The significance of the cottage derives principally from its architectural interest of its early date and the relative intactness of its built fabric. The retention of the historic planform of the building, its red brick noggings and timber framing as well as the retention of its clay tile roof covering are all key in terms of understanding the vernacular character and historic usage pattern of the building. Its historic interest resides in it having been a feature adjacent to Berrow Green Road since the 17th century. It has been an isolated building within the countryside just to the west of Martley since it was built.
- 4.11** Longstone Cottage also has some limited historic interest in the former historic ownership connection between the cottage and the appeal site. Documentary evidence indicates that at the time of the 1843 tithe map, Longstone Cottage is shown in Plot 422 (HEDBA Figure 6 – CD 1.22) which was owned by Lord William Ward and occupied by William Rogers, who also owned and occupied part of the appeal site. This historic link has been severed.
- 4.12** The cottage has no known archaeological interest. It has limited aesthetic interest which derives primarily how it is experienced within its garden when facing the front of the house from the east side of Berrow Court Road.

Setting

- 4.13** The immediate setting of Longstone Cottage is its historic garden plot within which it is located. It is within the garden that the building is best appreciated. It is within this area and directly to the east of the cottage that the setting has a strong positive contribution to the significance of the cottage as this is where its architectural interest is most apparent and from where its aesthetic interest can be appreciated (Appendix 1 Plate 1).

- 4.14** Historically the garden was a smaller triangular plot with a path orientated NE-SW immediately to the west of the cottage (as shown in Figs. 6-9 of the HEDBA CD 1.22). The path was not shown on the 1972 and 1994 OS maps (HEDBA Figs 10 & 11) but was still in use as a PROW. The garden was extended sometime between 1994 and 200X to incorporate part of the land to the rear of the cottage thereby creating the garden as it is currently (HEDBA Figs 11 & 12). At this time the footpath was rerouted along the southern boundary of Longstone Cottage's garden. Consequently, historically the north eastern part of what is now the garden was outside the plot of the house until relatively recently and consequently does not historically contribute to the historic interest of the house.
- 4.15** Historically the cottage was located in the countryside slightly to the west of Martley (Appendix 1 Fig. 2 & 3). This historic rural context has a minor positive contribution to the significance of the Longstone Cottage. The built up area of Martley has expanded west since the 1965 OS map was published (Figs 4 & 5). Martley Cricket Club moved to its current location in the late 1970s with the first match being played on the current Jewry Field site opposite Longstone Cottage in 1978. Two residential schemes have been granted permission to the west of Martley in recent years, one of which is currently under construction (Appendix 1 Fig. 6). This process has eroded the contribution that the rural aspect of the setting has to the significance of the cottage. However, it does still have a minor contribution to the significance.
- 4.16** Due to the dense planting along the boundaries of the plot (Appendix 1 Plates 1 - 3) , the cottage's principal (east) elevation is not readily visible from the appeal site and is not appreciated. Indeed, it is only fully appreciated when viewed immediately opposite the building from the B4197 (Appendix 1 Plate 1). The dense vegetation surrounding the plot blocks views out from the garden and house to the wider landscape. There is no intervisibility with the appeal site.

- 4.17** There is a limited view of the rear of the cottage from the west toward the allotments and northern part of the site, though these are largely filtered by the existing boundary planting (Appendix 1 Plate 4). There is a degree of co-visibility of Longstone Cottage and the appeal site when approaching along the B4197 from the north-east (Appendix 1 Plates 5 & 6). This co-visibility is restricted to the eastern extremity of the appeal site. When approaching along the PROW which runs through the centre of the appeal site, the cottage is completely obscured from view by the existing boundary planting (Appendix 1 Plates 2 & 3). Historically and more recently prior to the garden being extended in the 1990s, people using the footpath would have passed immediately to the rear (west of the cottage).
- 4.18** The cricket pitch/recreation ground is located on the eastern side of Berrow Green Road. In its current form it does not contribute to the significance of the cottage but its open mature does enable the historical open nature of the land to the west to be appreciated and therefore it has a mild positive contribution to the significance of the cottage (Appendix 1 Plate 7).

Row End and Rose Cottage (non-designated heritage assets)

Significance

- 4.19** The Worcestershire Historic Environment Record records states the following about the two buildings:
- The Row (Outfarm), Martley. Extant 17th century unlisted outfarm with converted buildings. Uncertain or unknown plan. Isolated location. Working building(s): 17th century. Stone, later brick, tile roof. HER photographs record a converted, three bay, threshing barn and two cottages, now a house. The buildings are not joined and this does not appear to be a LIN. Possible outfarm associated with the Berrow Hill Estate.*
- 4.20** The two buildings have some limited local historic significance. They are depicted on the 1843 Tithe map, although the more historic parts of the buildings are likely to pre-date this.

- 4.21 The two buildings have some limited local architectural significance. Row End is raised in locally sourced stone rubble with brick quoins on its corners. Three bays on its east elevation, the central bay having been infilled with coursed brickwork. The principal entrance to the building is through a central doorway and porch which was likely to be the eastern entrance to the former threshing barn before its conversion into a residential property (Appendix 1 Plate 8)
- 4.22 Rose Cottage appears to be entirely raised in coursed brickwork and was in fact a terrace of several small dwellings based on bricked up doorways that are evident on its east elevation. The building appears to have been re-roofed at some point with modern cement tiles and likely had several chimneys which have also been removed (Appendix 1 Plate 8).
- 4.23 Both Row End and Rose Cottage have undergone extensive alterations including extensions to their west elevations and the insertion of windows which appear to date from the 20th century. This has impacted on the legibility and significance of the buildings as former agricultural buildings parts of which possibly date from the late 18th early 19th century. For these reasons the buildings are considered to have a limited level of local significance.
- 4.24 The two buildings have no archaeological interest. While they are not unattractive buildings, they do not have aesthetic interest.

Setting

- 4.25 The setting of the buildings relates principally to that of their garden plots and their location within the street scene along the road with the site providing their wider rural/agricultural context where co-visibility exists.
- 4.26 The appeal site is considered to contribute in a negligible way to the limited heritage significance of the buildings. The appeal site forms part of the buildings' original rural context. There is no historic ownership connection between the buildings and the appeal site. The significance of the two buildings resides in their

limited architectural interest and their setting away from how they are experienced from Berrow Court Farm does not contribute to the significance. The buildings are screened from the appeal site by tall hedges and trees along water western boundary (Appendix 1 Plate 9).

GPA3 Stages 3 & 4

The Impact of the Proposed Development on the Significance of Longstone Cottage

- 4.27** As outlined above, the appeal site forms part of the setting of Longstone Cottage.
- 4.28** There is no direct impact to the listed building, which contains the substantial part of its heritage significance (historic and architectural). There is no impact to the designed or immediate setting (the garden). Rather, there is an impact to part of the wider setting, with which there is no intervisibility. On that basis alone, there is a less than substantial impact (at the lower end of the bracket).
- 4.29** The immediate setting of Longstone Cottage and the area where the setting has its strongest positive contribution to its significance is within its garden. It can also be appreciated from the area immediately to the west of the cottage, including the north western part of the cricket ground. These areas of the setting will not be affected by the proposed development and therefore the contribution that this key aspect of the setting provides to the significance of the building, will be unaffected.
- 4.30** As outlined above, Longstone Cottage and the appeal site have an historic ownership link which adds a level of illustrative value to the cottage's significance through the provision of an historic rural/agricultural context. The proposals will change the character of the land contained within the appeal site from open agricultural land to a residentially developed site. However, the level of existing screening surrounding Longstone Cottage's historic plot will largely screen the

proposed development from the asset. Consequently, there will no change from within the garden. There is a degree of intervisibility with the existing allotments that are within the red line of the appeal but these are being retained as allotments and consequently, there will be no change in this aspect of the setting of the cottage.

4.31 The proposed development will be visible to the left of the cottage when it is viewed from directly in front Longstone Cottage on Berrow Court Road and from within the cricket pitch. The development will be a very noticeable change in this view. The current agricultural nature of the field will change to be an urban environment. As outlined in paragraph 4.15, the appeal site forms part of the rural setting of the cottage and this has a minor positive contribution to the significance of the cottage. The proposed development will reduce this contribution to the significance. The proposed development will result in the cottage no longer being experienced within a rural context. The primary source of significance resides primarily in its architectural interest and this will not be affected by the proposed development. The historic interest of it being an isolated rural setting will be reduced. That is, the effect on Longstone Cottage's significance is the minor loss of the contribution that the appeal site as an agricultural field makes to the significance of Longstone Cottage and consequently, there will be some limited harm to their significance. This is considered to equate to less than substantial harm as the architectural interest will be unaffected and the loss of the field will result in a minor loss in its historic interest as an isolated cottage.

4.32 The proposed development is set back from Berrow Court Road and from the boundary with Longstone Cottage with open space which includes a wildlife pond and SUDS basin and the boundary with the cottage will be bolstered with additional planting (CD 1.5). This design response will filter views of the development toward and from Longstone Cottage. It will also make the eastern edge of the development less apparent as an observer travels west/south east from Martley along the B4197. Furthermore, the proposed development will retain the allotments along the northern area to the rear of the cottage thereby retaining

a green corridor behind the cottage into the countryside beyond the appeal to the west. The planting will be bolstered along the northern boundary of the appeal site which as the planting matures, will further filter views toward the cottage from the north of the appeal site.

- 4.33 Given the relatively limited contribution that the appeal site currently provides to the significance of Longstone Cottage and limited intervisibility between it and the appeal site, the change of the appeal site from an arable field to residential will have a limited negative effect on the significance of the cottage, through development in its setting. This, combined with the design response of the proposed development, means the impact on the significance of Longstone Cottage is considered to be at a low level of less than substantial harm. This accords with the conclusion of the committee report (CD 2.1).

Cumulative Effect on Longstone Cottage

- 4.34 The Orion Heritage assessment took into account one consented and one proposed scheme in the vicinity of the appeal site in the assessment of the low level less than substantial effect on Longstone Cottage. The committee report and the reason for refusal raises the issue of the cumulative effect of the appeal scheme with recently consented nearby residential schemes. The two schemes are:
- 20/01963/OUT Land at Berrow Green Road, Martley. Outline application with all matters reserved (except for access) for the erection of up to 60 dwellings, including 50% affordable homes, up to 10no. self-build plots and a public car park together with ancillary works. This was granted planning permission on appeal in May 2023 prior to Orion Heritage’s assessment for the current appeal site (Appendix 1 Fig. 7).
 - M/23/00863/FUL Land At Hollins Lane, Martley. Development of 83 new dwellings, new access, open space, sustainable drainage and associated infrastructure. Granted consent on 17th November 2023 Orion Heritage undertook the heritage assessment for this scheme in 2021 (Appendix 1 Fig. 8).

- 4.35** In relation to 20/01963/OUT Land at Berrow Green Road, Martley, the Inspector considered the potential effect on the significance of Longstone Cottage. In relation to the setting of the cottage, the Inspector stated in paragraph 42:

“Due to the relative positions of the appeal site and the listed building at right angles to each other on a bend in the road, this largely reduces views of these two sites together to more acute angles of their respective frontages for passers-by along the B4197. From my own observations on site, while the Nubbins forms part of the wider local landscape, it is a peripheral feature of the listed buildings setting. Outward views from the listed building and its grounds are largely restricted towards the recreation ground due to the orientation of its principal elevation and the substantial planting to all sides other than the front boundary.”

- 4.36** This assessment accords with the assessment of the setting as laid out in Orion Heritage’s assessment that supported the application for the appeal site.

- 4.37** In relation to the proposed development considered in the appeal, the Inspector stated in paragraph 44:

“Provided that a similar layout was to come forward as part of the reserved matters, the general position of the buildings would be sufficient to retain an overriding open and soft landscaped character in shared views of the site and listed building along the road frontages. Even though buildings within the development would be more appreciable in wider vistas of the listed building, such as from the recreation ground, this would not dominate views of the listed building. Rather the degree of spacing retained together with supplementary planting would sufficiently allude to the listed building’s historical context set away from the nearest settlement in the countryside.”

- 4.38** The Inspector concluded in paragraph 45 that the proposed development was capable of preserving the setting of Longstone Cottage. That is, the consented, and now under construction, scheme would be a change in the setting but with

the design providing open space on the southern area closest to the road and the cottage, it would not harm the significance of Longstone Cottage. If the setting was preserved, there can be no cumulative harm with the current appeal scheme.

4.39 In relation to M/23/00863/FUL Land At Hollins Lane, Martley, the Orion Heritage heritage statement submitted with the application concluded that there was limited inter-visibility between the Land At Hollins Lane site and Longstone Cottage, and that given the relative distance and the intervening vegetation, the proposed scheme would cause no adverse harm to the setting of the heritage asset. The MHDC Conservation Officer's consultation response to this application stated that there would be no impact on the setting of the closest designated heritage assets and that there was no objection from a heritage perspective. Planning permission was granted on 17th November 2023. If there was no harm, there can be no cumulative harm with the current appeal scheme.

4.40 In relation to current appeal, the Orion Heritage assessment took the combined cumulative effect of these two consented schemes as a baseline, along with the appealed proposed development. Given that the two consented cumulative schemes were granted permission with either the Inspector or MHDC concluding that they would not result in harm to the significance of Longstone Cottage, the cumulative effect of the current proposed development is no greater than the adverse effect from the appeal site proposed scheme. That is, the effect on Longstone Cottage's significance is the minor loss of the contribution that the appeal site as an agricultural field makes to the significance of Longstone Cottage and consequently, there will be some limited harm to their significance. This is considered to equate to less than substantial harm as the architectural interest will be unaffected and the loss of the field will result in a minor loss in its historic interest as an isolated cottage.

4.41 This harm is considered to be in the lower end of the less than substantial range, as also concluded in the committee paper, and therefore paragraph 208 of the NPPF is the relevant test in this instance. Paragraph 208 requires the decision

maker to weigh the harm to a heritage asset against the public benefit of the proposed development. As per paragraph 199, the decision maker is required to give this harm considerable weight. However, per *R (James Hall and Company Ltd) v City of Bradford MDC [2019] EWHC 2899 (Admin)*, HHJ Belcher (CD 18) as quoted on paragraph 2.35 above, where the harm to the significance of a heritage asset is toward the lower end of the less than substantial harm range, as is the case here, even following the application of considerable weight to that harm, the potential for the ability of the public benefits to outweigh this harm, is greater than where the harm is higher on the less than substantial harm range. This planning balance exercise is a planning not a heritage task and this is dealt with by Cameron Austen-Fell.

- 4.42 Reason for refusal 1 and the Council’s Statement of Case both allege that the proposed development will result in less than substantial harm (at the lower end of the bracket). Therefore, it is the planning balance process as required by NPPF paragraph 208 that should be applied.

The Impact of the Proposed Development on the Significance of Row End and Rose Cottage

- 4.43 Although the non-designated heritage assets, Row End and Rose Cottage, appear to retain some of their historic fabric, their subsequent alteration and conversion into residential properties has made their historic function less legible, particularly so in the case of Row End which may have possibly been a threshing barn originally. The infilling of the principal doorways into Rose Cottage along its eastern elevation and the conversion of the building (formerly several cottages) into a single dwelling has also reduced its legibility as row of former agricultural workers cottages. Through a combination of the alterations, the buildings are considered to have a limited level of significance. The setting of the buildings relates principally to that of their garden plots and their location within the street scene along the road with the site providing their wider rural/agricultural context where co-visibility exists. The appeal site is considered to contribute in a negligible way to the setting of the buildings and makes no contribution to their limited significance. It is not considered that the proposed development will have an

adverse effect on the significance of these non-designated heritage assets. There is no harm to weigh in the planning balance.

Berrow Hill Camp Scheduled Ancient Monument (NHLE 1005332)

- 4.44 Berrow Hill Camp is a scheduled Iron Age hillfort located c. 1km to the south west of the appeal site. It is not referred to in reason for refusal number 1 and the effect on the scheduled monument is not contested by the Council. To aid the Inspector in case this designated asset is referred to during the appeal, the scheduling document describes the fort as follows:

“This monument includes a large univallate hillfort situated in a commanding position on a steep sided hill overlooking the River Teme. The monument survives as an irregular elongated hillfort enclosure with a modified escarpment encompassing the top of the hill. The hillfort is orientated north east to south west and is up to 355m long and 155m wide tapering in the centre. The north, north eastern and southern sides are defined by a counterscarp rampart bank up to 1.2m high. The remaining sides are defined by an earthen rampart up to 5.8m high on top of the natural escarpment. The hillfort has a large gap approximately 56m long on the south eastern side of the bank and an entrance gap at the south eastern corner and an inturned entrance gap on the western side.”

- 4.45 Its significance resides primarily within its archaeological evidential interest (i.e, the earthworks and the below ground features within the scheduled area). Berrow Hill on which is located, is a strategic location that enables the lower ground all around the fort to be observed and provides a perfect defensive location. Due to its elevated location on Berrow Hill, it has an extensive 360° setting and this aspect of the setting has a strong positive contribution to the significance of the monument.

- 4.46 The appeal site occupies a very small portion of this extensive setting. Views from and toward the appeal site only contribute to the significance of the hill fort as being a small element of the setting. The view toward Berrow Hill from the appeal site and from the cricket ground over the appeal site is one of many views of

Berrow Hill. It is not a key view and the hillfort itself is not visible in the view. The proposed development will be a change in the view toward the hillfort from part of the cricket ground but as the hillfort cannot be appreciated anyway and also as this is only one of many views of the hillfort from all directions, this view in itself does not contribute to the hillfort's significance. When viewed from the hillfort (it should be noted that there is no public access to the hillfort), the proposed development will be a minor change in the view and will be experienced as part of the built up area of Marley which does not reduce the significance or appreciation of the strategic location of the hillfort. Consequently, there will be no harm to the significance of this scheduled monument.

5.0 Summary and Conclusions

5.1 Hayfield Homes Construction Ltd has appealed against the refusal of outline planning permission for up to 55 dwellings (with means of access to the site be considered at this stage and all other matters reserved) (application ref: M/23/01711/OUT).

5.2 Reason for refusal no 1 outlines that the Council considers that the proposed development will result in less than substantial harm to Longstone Cottage (grade II):

“The residential development of this site would, by reason of its location, scale and prominence constitute an incongruous and visually intrusive feature when viewed from a number of publicly accessible locations, and have an unacceptably urbanising and consequently adverse impact upon the character and appearance of the area, resulting in demonstrable harm to the open and undeveloped character and appearance of the land, rather than integrating as discrete infill or ‘rounding off’ of the existing village.

Furthermore, the proposal would overwhelm the Grade II listed Longstone Cottage by surrounding it with built development which would encroach upon and adversely impact its setting.

As such, the proposal would be contrary to Policy SWDP21, SWDP25, SWDP6, SWDP24, SWDP2 and SWDP5 of the South Worcestershire Development Plan, and policy MKD1, MKD3, MKD4 and MKD6 of the Martley, Knightwick, and Doddenham Neighbourhood Plan, and guidance contained within the National Planning Policy Framework that amongst others aim to safeguard the intrinsic character and beauty of the countryside and improve the character and quality of an area.”

- 5.3 Orion Heritage's assessment report submitted in support of the planning application concluded that the proposed development would result in low level less than substantial harm to the significance of Longstone Cottage (grade II). The MHDC committee report also concluded that there would be a low level less than substantial harmful effect on Longstone Cottage.

Significance & Setting of the Heritage Assets

- 5.4 An assessment of the significance of the grade II Longstone Cottage in relation to the proposed development has found that the appeal site forms part of the cottage's wider rural setting. However, the contribution the appeal site makes to the significance of the cottage is considered to be minor.
- 5.5 The immediate setting of Longstone Cottage is its historic garden plot within which it is located and it is within the garden that the building is best appreciated and the setting contribution to its significance is at its greatest
- 5.6 Historically the cottage was located in the countryside slightly to the west of Martley. This historic rural context has a minor positive contribution to the significance of the Longstone Cottage. It part of this historic rural context that the appeal site provides a minor positive contribution to significance as it illustrates how the cottage was historically an isolated rural cottage to the west of Martley.
- 5.7 Due to the dense planting along the boundaries of Longstone Cottage's garden, the cottage is not visible from the appeal site and vice versa. It is only fully appreciated when viewed immediately opposite the building from the B4197.
- 5.8 There is a degree of co-visibility of Longstone Cottage and the appeal site when approaching along the B4197 from the north-east. This co-visibility is restricted to the eastern extremity of the appeal site. When approaching along the PROW which runs through the centre of the appeal site, the cottage is completely obscured from view by the existing boundary planting.

- 5.9** The cricket pitch/recreation ground is located on the eastern side of Berrow Green Road. In its current form it does not contribute to the significance of the cottage but its open mature does enable the historical open nature of the land to the west to be appreciated and therefore it has a mild positive contribution to the significance of the cottage (Appendix 1 Plate 7).
- 5.10** The proposed development has been designed to minimise the effect on Longstone Cottage. It is set back from Berrow Court Road and from the boundary with Longstone Cottage with open space which includes a wildlife pond and SUDS basin and the boundary with the cottage will be bolstered with additional planting (CD1.5). This design response will filter views of the development toward and from Longstone Cottage. It will also make the eastern edge of the development less apparent as an observer travels west/south east from Martley along the B4197. The allotments along the northern area to the rear of the cottage will be retained thereby retaining a green corridor behind the cottage into the countryside beyond the appeal to the west. The planting will be bolstered along the northern boundary of the appeal site which as the planting matures, will further filter views toward the cottage from the north of the appeal site.
- 5.11** Given the relatively limited contribution that the appeal site currently provides to the significance of Longstone Cottage and the limited intervisibility between it and the appeal site, the change of the appeal site from an arable field to residential will have a limited negative effect on the significance of the cottage. This, combined with the design response of the proposed development, the impact on the significance of Longstone Cottage is considered to be at a low level of less than substantial harm.
- 5.12** For the reasons outlined above and in section 4, the proposed development is considered to have a less than substantial harmful effect on the significance of the heritage assets. This effect is considered to be at the lower end of the less than substantial harmful effect, a conclusion that the Committee Report agreed with. Therefore, paragraph 208 of the NPPF is the planning test that should be applied

in this instance. That is, the Inspector will need to balance the harm to the significance of the heritage assets against the public benefits of the scheme. As per paragraph 205 of the NPPF, and in line with case law, the Inspector will need to give great weight to the conservation of the two heritage assets.

- 5.13** It is noted that elements of local plan policies SWDP6 & SWDP24 and Neighbourhood Plan policy MKD3 deviate from the NPPF due to the absence of the consideration of the public benefit balance where heritage harm is identified..
- 5.14** As per *City & Country Bramshill Ltd v Secretary of State for Housing Local Government and Communities, Hart District Council, Historic England & The National Trust for Places of Historic Interest or Natural Beauty* (CD XX), para 87, Local Plan policy must be read alongside NPPF. NPPF paragraphs 206-208 allows for the grant of planning permission where there is harm (including proposals that do not preserve the character of listed buildings and their settings) where the tests set out in NPPF paragraphs 206-208 are applied. It is my view that, as the proposed development results in less than substantial harm to the significance of Longstone Cottage, as long as the decision-maker has followed the process outlined in paragraphs 206-208 of the NPPF, and the public benefits outweigh the harm (which has been given considerable weight), then the proposed development will not be contrary to local plan policies SWDP6 & SWDP24 and Neighbourhood Plan policy MKD3. This planning balance is not a task to be undertaken by the heritage experts. The public benefits of the proposed development are dealt with by Cemeron Austen-Fell.
- 5.15** The appeal site is considered to contribute in a negligible way to the setting of the non-designated heritage assets Row End and Rose Cottage and makes no contribution to their limited significance. It is considered that the proposed development will not have an adverse effect on the significance of these non-designated heritage assets. There is no harm to weigh in the balance.