

LOOKING AFTER HERITAGE THROUGH THE PLANNING SYSTEM



FOREWORD

Kent is blessed with beautiful and varied countryside and towns, villages and isolated settlements of great charm and character. They form the unique setting for Kent's exceptional wealth of historic buildings and structures and archaeological sites, from our cathedrals of Canterbury and Rochester and great houses, like Knole, to tiny cottages and barns, and from well-known sites like Richborough and Kit's Coty to medieval hedgerows and field boundaries. This rich heritage is under severe threat from intense development activity, much of which is intensified by central Government policies designed to accelerate house-building, promote economic growth and improve roads and other infrastructure. The ability of local communities to oppose or influence major developments has been eroded by changes to planning law and policies designed to achieve these policy goals.

As this Guide explains, however, the measures enacted to protect heritage assets have, for the most part, remained in place. Examples are emerging in which the pressure to deliver housing and other development is shown to be of secondary importance to the need to protect heritage assets and their setting. Dealing in turn with listed and unlisted historic buildings, conservation areas, scheduled monuments and archaeological sites, parks, gardens and battlefields and heritage landscapes, the Guide sets out as simply and briefly as possible the legal protections which apply and the procedures to be followed by developers and local planning authorities in addressing them. We hope you will find it both of interest and of practical use in engaging with the planning process, when Kent's precious heritage is at stake.

John Wotton

Chairman, Kent Historic Buildings Committee and Trustee of CPRE Kent

Using this Guide

This guide has been produced as a guidance document to help those interested in the preservation of heritage assets in Kent to engage with the planning system. It does not constitute definitive advice, which should always be sought from your Local Planning Authority or Historic England as appropriate. Many sources of additional information are available and some are listed at the end of the document. While primarily focusing on Kent, the guide references planning policy which currently applies in England.

Acknowledgements

The production of this document would not have been possible without the inspiration and determination of Rose Lister and Jill Barr. Sincere thanks also go to John Wotton, Graham Horner and other members of the Kent Historic Buildings Committee, Richard Bate, and to Vicky Ellis who provided all the illustrations.

CPRE Kent June 2017

Contents

FOREWORD	1
LOOKING AFTER HERITAGE THROUGH THE PLANNING SYSTEM	3
What is Heritage?	3
The National Planning Policy Framework	4
Designated and Non-designated Heritage Assets	4
Significance of a Heritage Asset	5
Setting of Heritage Assets	5
Planning Permission and Listed Building Consent	8
Heritage Statements	9
Design and Access Statements	9
NPPF and Decision-making	10
DESIGNATED HERITAGE ASSETS	13
Listed Buildings	13
Decisions that Affect a Listed Building, or its Setting	13
Managing Change in Listed Buildings	14
Conservation Areas	14
Planning Decisions	15
Managing Change in Conservation Areas	15
Scheduled Monuments and Archaeological Sites	16
Archaeology	16
Managing change in Scheduled Ancient Monuments & Sites of Archaeological Importance	18
Parks, Gardens and Battlefields	18
Historic Parks and Gardens	18
Battlefields	19
NON-DESIGNATED HERITAGE ASSETS	20
Local List of Non-designated Assets	20
Heritage Landscapes	21
Ancient Woodlands, Veteran Trees and Historic Hedgerows	22
Ancient Woodland	22
Veteran Trees	23
Useful questions: suggestions on how to assess proposals affecting heritage assets	25
Conservation Area	25
Listed Buildings	26
Archaeology	26
Parks and Gardens	26
General	27
Using the language – what does it mean?	28
Where can I find more information?	29
Case Studies	30
High Court Decisions	30
Planning Appeal Decisions	31

LOOKING AFTER HERITAGE THROUGH THE PLANNING SYSTEM

Cultural heritage cannot be replaced once it is damaged or destroyed. As a result, the proper assessment of the impact of development on our heritage assets is an important aspect of the planning system. Development

Sustainable Development

Decisions in the UK planning system are based on the principle of sustainable development, to be achieved concurrently across three specific areas: society, economy and environment.

Heritage can play a part in all three.

Sustainable development focuses on conservation for the enjoyment of our own and future generations. This concept is often more commonly associated with the protection of the natural heritage, but cultural heritage is also important to achieving sustainable development.

It supports integrated conservation – seeking sensitive and appropriate uses for our built heritage so that its conservation enhances its contribution to meeting social and economic needs.

should be sited and designed to minimise conflict with the conservation of heritage assets. This is an important aspect of sustainable development and in some cases the harm may be so great that development should not be permitted.

This guide considers the planning system and the way it relates to our heritage assets. It will be looking at the different ways the planning system is involved in **safeguarding**, and **managing change** in the historic environment.

This guide is intended to help local communities identify heritage assets and assess the impact development might have on them. Local communities can ensure that heritage assets are protected, enhanced and managed appropriately for the future by responding effectively to planning applications.

What is Heritage?

Heritage relates to those parts of our environment that have been affected by relationships with people and can be physical, natural and cultural. It ranges from historic places, sites and buildings, to people, landscapes and cultural practices. Heritage has been defined by the International Council on Monuments and Sites¹:

¹ www.icomos.org

The National Planning Policy Framework

The National Planning Policy Framework (NPPF)² sets out the government's planning policies for England. It makes it clear that sustainable development involves seeking positive improvements in the historic environment (paragraph 9) and it is a core planning principle that heritage assets should be conserved in a manner appropriate to their significance (paragraph 17).

The main section that relates to heritage assets is the chapter titled: 'Conserving and enhancing the historic environment'.

Paragraphs 131 to 135 are particularly important to the decision-making process. The language can be quite complicated and the following sections try to help with the following concepts:

- Designated and non-designated assets (page 4)
- Significance of a heritage asset (page 5)
- Setting of heritage assets (page 6)

NPPF Core Planning Principles

'... planning should ... conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations.'

(NPPF Paragraph 17, bullet point 10)

Designated and Non-designated Heritage Assets

It is important to understand the term 'heritage asset'. The definition in the NPPF for '**heritage asset**' is:

*'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 asset includes designated heritage assets and assets identified by the local planning authority (including local listing).'*³

Some **heritage assets** are **not designated**, but may still have a degree of significance which should be considered in important a planning decision. It might be because they have not yet been designated, or they do not meet the normal requirements for designation (but are still significant). Some non-designated heritage assets might be identified by a local authority as '**locally listed**'⁴.

They might include nationally important, but unscheduled monuments. In the case of archaeology, the existence of an asset may be unconfirmed, but the potential may be considered to be high.

Designated assets include⁵:

- Listed Buildings, Scheduled Monuments, Conservation Areas;
- Registered Parks or Gardens;
- Registered Battlefields.
- Protected Wrecks

² National Planning Policy Framework, Department of Communities and Local Government, 2012

³ NPPF Annex 2, Glossary

⁴ Planning Practice Guidance (Paragraph: 039 Reference ID: 18a-039-20140306)

⁵ A small number of areas, for example Canterbury, also have the following designations: World Heritage Sites (WHS) and Areas of Archaeological Importance (AAI).

Significance of a Heritage Asset

The greater the significance of the asset, the greater the presumption should be in favour of its conservation.

NPPF Paragraph 132

When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification.....

This is supported by NPPF paragraph 132. 'Significance' lies in the value of a heritage asset to this and future generations because of its heritage interest, which may be archaeological, architectural, artistic or historic. The **setting** of a historic asset also contributes to its significance. Different terms are used to describe levels of significance, for example outstanding universal value for World Heritage Sites, special interest for listed buildings and conservation areas and national importance for scheduled monuments.

The determination of significance (the sum of the heritage values) relates to the way an asset is understood and is measured against four values. These are described in detail in the Historic England document 'Conservation Principles, Policy and Guidance'⁶, but include the following:

- Evidential value: the potential for remains to give us evidence about past human activity;
- Historical value: the ways in which the site reflects people and events from the past;
- Aesthetic value: the sensory and intellectual stimulation people can derive from a place;
- Communal value: the meanings of a place for people, which might be political or cultural or spiritual.

Once the value of a place is understood, then it is possible to understand its significance.

It is important to understand that the study of the physical building or remains will rarely be enough to describe the significance of a place. Understanding the social and cultural context of its history and the value of different aspects of the assets to local communities will be important.

The Historic England document 'Managing Significance in Decision-Taking in the Historic Environment'⁷ is a good source of advice about the assessment of significance as part of the planning process. Local knowledge is also invaluable: paintings, poetry, photographs, maps and other records can also help understand the significance of heritage assets. The National Heritage List for England (search online) is the definitive register of protected buildings and sites, and although the List Description for Listed Buildings includes features of importance, it is not a list of all the features that contribute to its local significance.

Setting of Heritage Assets

⁶ Conservation Principles, Policies and Guidance, English Heritage 2008

⁷ Managing Significance in Decision-Taking in the Historic Environment, Historic England, 2015

The NPPF describes ‘**setting**’ as an unfixed area within which a heritage asset is experienced. It cannot be mapped and may change as more is learned about a heritage asset.

It is important to understand what contribution the setting of an asset contributes to its significance. For example:

- The rural and agricultural setting of an historic farmhouse might make a strong contribution to its significance, since there is often a natural connection and inter-relationship between the wider agricultural landscape, tracks and out-buildings with the farmhouse (as the social and administrative hub of a farm holding).
- The extensive open views around a country house might make a strong contribution to its significance. Development in the surrounding landscape might intrude on important views from the building designed into the landscaping of its gardens, or it might disrupt valued views of the historic building on approaching roads or other viewpoints.
- The setting of a Conservation Area (which may be described as the rural or urban area in which it is situated) may make an important contribution to its special character/significance. For example, views into and out of open farmland may contrast with the intimate built form of a village conservation area, and provide a distinctive setting.

**Setting of Heritage Assets:
Historic Environment Good
Practice Advice in
Planning 3, Historic
England, 2015**

While setting can be mapped in the context of an individual application or proposal, it does not have a fixed boundary and cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset.

The setting of a heritage asset can extend over a large area when buildings are tall, or if the building is in an open landscape. Or it can be a smaller area, such as a street or walled garden. Historic England’s Good Practice Advice, titled ‘The Setting of Heritage Assets’⁸, gives further guidance.

When considering an application for development within the setting of a heritage asset you could consider:

- How important is the setting to the significance of the asset?
- Does the development detract from the asset’s significance? (For example, will it affect key views, change the character of the area, change the skyline, or be visually distracting because of its colour, materials, scale or design?)
- Will the development be detrimental to the economic viability of the asset?
- What are the implications of cumulative changes to the setting of an asset?

⁸ The Setting of Heritage Assets, Historic England, 2015



Fig 1. Diagram of heritage asset, indicating its setting and curtilage.

Remember that changes to setting of a heritage asset are not always physical. The setting of an asset may be affected by air, light and noise pollution or vibrations caused by traffic, particularly if tranquillity and remoteness are currently defining features.

In some cases, the setting of a heritage asset may have been damaged by previous development. This does not mean that protection of its setting is no longer relevant. Instead, it may mean that the remaining relationships to the historic setting are all the more valuable.

In some cases, development proposals may provide opportunities to enhance the setting of the asset, perhaps by restoring some views that were previously blocked, or improving the appearance of a previous development site on the approach to a historic settlement. It is important that the setting of historic assets is enhanced wherever possible.

Planning Permission and Listed Building Consent

If a building is listed the whole of the building is protected and should not be demolished, extended or altered in any way which affects its character without first obtaining **Listed Building Consent** from the Local Planning Authority. This applies to internal and external works, but also to walls, gates or outbuildings within the curtilage. Sometimes changes need to be made to a building to ensure it has a sustainable use, but the changes should not detrimentally affect the character of the building. The applicant should demonstrate that the works are carefully thought-out and represent the minimum necessary intervention possible - to ensure that the effects of the proposal on the character of the building are minimised.

Planning Permission may be needed for the changes to a heritage asset too. Planning permission is needed for most new buildings, works that affect the external appearance of a property and for material changes of use. Sometimes more minor works may be permitted development, which means that a planning application is not necessary, though these are more restricted in Conservation Areas, Areas of Outstanding Natural Beauty and National Parks.

For example, within a **Conservation Area**, planning permission is needed:

- to demolish a building in a conservation area with a volume of more than 115 cubic metres (with some exceptions, available from the relevant Local Authority);
- to demolish a **gate, fence, wall or railing over 1 metre high next to a highway** (including a public footpath or bridleway) or public open space; or over 2 metres high elsewhere.

In Conservation Areas, any remaining permitted development rights might have been removed by the Local Authority by means of an Article 4 Direction. This will mean that development which previously may not have needed permission, including changes to windows, installing satellite dishes, extensions and building walls, may now need planning permission.

The decision-maker has a **duty** to give considerable importance to the desirability of preserving a heritage asset or its setting. As well as a statutory obligation, it is a matter of national policy to avoid harm to the significance of heritage assets.

In order to do this, the decision-maker must have a good understanding of the 'significance' of the assets. Paragraph 128 of the National Planning Policy Framework requires applicants to describe the heritage asset and its setting.

NPPF Paragraph 128

In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. Where a site on which development is proposed includes or has the potential to include heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.

This can be done in a **Heritage Impact Assessment/Heritage Statement** (see page 9). Most local authorities require a Heritage Significance Statement to accompany proposals affecting heritage assets.

The Design and Access Statement (see below) that normally accompanies major applications for Planning Permission⁹ and Listed Building Consent is also an opportunity to explain design principles and concepts and demonstrate how the application has taken account of heritage assets and their setting.

Heritage Statements

A heritage significance statement/heritage assessment is a document that investigates the significance of an historic asset or environment. They normally have five elements:

- A study of the evolution of the asset and its setting, normally using maps to review of the area (geologically, topographically, historically and archaeologically) and description of key phases of development and alterations;
- Assessment of Heritage Significance which might include reference to existing research;
- Assessment of the impact of development on the asset or its setting, or the need for further evaluation;
- Assessment of the impact of the development on the historic fabric, aesthetic value, special interest, or character and appearance;
- Proposals for a mitigation strategy to address any impacts of the proposed development on the significance of the heritage asset.

They are usually desk based assessments which will use existing records to assess the nature, significance and extent of the historic environment within a specified area. The **Historic Environment Record** is an essential source of information, but it will often be necessary to complete additional research (such as review of existing research, archaeological evaluation or building survey), before the impact of the proposed work can be adequately understood.

Design and Access Statements

The 2004 Planning and Compulsory Purchase Act states that planning applications and listed building consent must be accompanied by a statement covering design and access concepts.

This legislation aims to ensure that applicants deliver inclusive design and can show that they have considered a range of requirements. The Planning Practice Guidance contains further advice on design and access statements, explaining that 'design' should seek to sustain and enhance heritage assets when responding to context and reinforce locally distinctive patterns of development. The detailed text of the PPG (ID: 26-007-20140306) is set out below:

'Development should seek to promote character in townscape and landscape by responding to and reinforcing locally distinctive patterns of development, local man-made and natural heritage and culture, while not preventing or discouraging appropriate innovation.'

⁹ (With some exceptions, such as some minor development outside designated areas)

The successful integration of all forms of new development with their surrounding context is an important design objective, irrespective of whether a site lies on the urban fringe or at the heart of a town centre.

When thinking about new development the site's land form should be taken into account. Natural features and local heritage resources can help give shape to a development and integrate it into the wider area, reinforce and sustain local distinctiveness, reduce its impact on nature and contribute to a sense of place. Views into and out of larger sites should also be carefully considered from the start of the design process.'

NPPF and Decision-making

The NPPF requires 'great weight' to be given to the conservation of historic assets when considering the impact of development proposals (paragraph 132).

Local Planning Authorities (LPAs) should **refuse** an application for development if it will lead to substantial harm¹⁰ or total loss of significance of a designated heritage asset, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or it can meet the tests in paragraph 133 of the NPPF.

NPPF Para 133

Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply: ● the nature of the heritage asset prevents all reasonable uses of the site; and ● no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and ● conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and ● the harm or loss is outweighed by the benefit of bringing the site back into use.

NPPF Para 132

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

¹⁰ **Substantial harm** is normally considered to be a test with a high threshold, such as demolition, or a serious impact on a key aspect of significance.

When it comes to listed buildings, registered parks and gardens and World Heritage Sites, permission should be exceptional, or wholly exceptional for higher grades (NPPF para 132) and housing need (for example) will not normally outweigh the harm.

NPPF Para 134

Where a development proposal will lead to less than substantial harm to the significance of a designated asset this harm should be weighed against the public benefits of the proposal.

In most cases, the harm to the designated heritage asset will be ‘less than substantial’, and harm should be weighed against the benefits of the proposal (NPPF para 134).

However, even if this ‘less than substantial’ degree of harm must be given great weight on the negative side of the balance when considered in a balance of benefits and harms (NPPF Paragraph 135)¹¹

NPPF Para 135

The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that affect directly or indirectly non designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

Most Local Plans have policies on heritage issues and the decisions should normally be made in accordance with the Local Plan unless material considerations indicate otherwise.

If the plan is absent, or silent, or its policies are out-of-date, then the applications should be determined in accordance with the presumption is favour of sustainable development.

For designated assets, the presumption in favour of sustainable development, central to the NPPF, is only triggered if the proposal passes the tests in paragraph 133 and 134 of the NPPF (see our case studies at the end of this document).

For all heritage assets, the decision-making process should be as follows:

1. Determine the significance of the heritage asset;
2. Identify the harm to the significance of the heritage asset;
3. Re-evaluate and re-design proposal to demonstrate that the works represent the minimum necessary intervention possible - to ensure that the effects of the proposal on the character of the building are minimised.
4. Once the harm has been minimised, define the degree of the harm (for example, is it **substantial** or **less than substantial**). To determine whether harm is ‘substantial’ it is important to consider whether adverse impact seriously affects a key element of its special architectural or historic interest.
5. Balance the degree of harm to the heritage asset against the public benefits of the proposal. Harm to a heritage asset exerts ‘great weight’ on the negative site of the balance. The presumption in favour of granting permission is disapplied. **If the public benefits do not outweigh the harm to the heritage asset, then the permission should be refused. The Local Authority has to demonstrate there are exceptional circumstances to allow substantial harm.**

¹¹ If a listed building is affected, the weight attached to its protection is bolstered further by section 66(1) of the Listed Buildings and Conservation Areas Act 1990.

6. If the public benefits outweigh the harm to the heritage asset, then the presumption in favour of sustainable development should be applied. The benefits of development should outweigh the harm, but this time other harms associated with the development, such as landscape and congestion, would also be considered in the planning balance.
7. In cases where there is either 'substantial harm' or 'less than substantial harm' to heritage assets, a planning application should only be permitted if there is 'clear and convincing justification' for any harm or loss to a designated heritage asset.
8. Where the harm is less than substantial, then the degree of harm will still be important in the planning balance. The decision-maker still needs to be aware of the statutory duty which gives considerable importance and weight to preserving listed buildings and their settings.

DESIGNATED HERITAGE ASSETS

Listed Buildings

The term 'listed building' can cover a wide variety of man-made structures including houses, churches, agricultural buildings, bridges, and even walls. The listing of a building marks and celebrates a building's special architectural or historic interest.

The process of listing buildings has been in place since the 1940s and is now carried out under the powers of the Planning (Listed Buildings and Conservation Areas) Act 1990. To be listed, a building needs to be assessed against particular criteria, which determine whether it is of sufficient architectural or historic interest¹². Once listed, the designation protects not only the building itself but any object or structure within its curtilage (provided it was built prior to 1948). For example, a tailrace that carries water away from a mill and water wheel is ancillary to a listed mill. Therefore the tailrace is part of the single listing. The list is maintained by Historic England and entries on the list are classified into three categories which show levels of their significance:

- Grade I – buildings of exceptional interest
- Grade II* – particularly important buildings of more than special interest
- Grade II – buildings of special interest that warrant every effort to preserve them. Most (92%) of listed buildings are in this category

It is important to note that just as a listed building receives statutory protection, so does its 'setting'.

Decisions that Affect a Listed Building, or its Setting

If a development is proposed which affects a listed building or its setting, then the local planning authority must have regard to the desirability of preserving the building, and/or:

- its setting,
- any features of special architectural interest it possesses,
- any features of historic interest it possesses.

This does not mean that change cannot happen. It means that its special interest should be preserved, and as recent appeal decisions have confirmed, that this issue should be given considerable importance and weight in planning decisions. This is supported by section 66(1) of the Planning (Listed Buildings and Conservation Area) Act 1990 which provides a strong presumption against development that harms a listed building or its setting.

Planning (Listed Buildings and Conservation Areas) Act 1990, Section 66 (1)

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.

¹² Principles of Selection for Listing Buildings, DCMS, 2010 (being updated)

Managing Change in Listed Buildings

It is not always possible for a listed building to continue in its original use. In some cases, grant funding or public ownership might secure its future. Often, however, it can be good for the future of the building to find a sustainable new use. This should only be permitted if the necessary changes can be sensitive to the original setting, structure, fabric and special features of the building. It is important to remember the cumulative impact of incremental small-scale changes may have a great effect on the setting of a heritage asset as a large-scale development.

Some buildings are more sensitive to change than others. Timber framed barns can be very sensitive to change. Structural changes, changes to internal layout, openings and domestic additions to its setting (such as flower beds and washing lines) can result in a proposal that fails to preserve its special interest.

It is in the public interest to manage change. Changes should sustain, reveal, reinforce (or add to future) interest and value, and not erode its value. As well as understanding the significance of heritage to our own generation, it is also important to make careful assessment of the value of the listed asset and its setting to future generations. This is key to sustainable development.

Conservation Areas

*Conservation Areas are identified and designated by Local Planning Authorities and are defined in legislation as 'an area of special architectural interest, the **character or appearance** of which it is desirable to preserve or enhance'¹³.*

Local planning authorities have a duty to prepare and publish proposals for the preservation and enhancement of the Conservation Areas. These are often prepared as part of Conservation Area Appraisals. If a Conservation Area Appraisal has been completed, this can be a useful source of information on the Conservation Area. It can help you understand what elements contribute to its special quality and which don't.

Important elements of the character of a Conservation Area include:

- Current and previous land uses;
- Architectural quality, orientation and built form;
- Archaeological and historic sites;
- The relationship to setting and the contribution the setting makes to its plan, form and character;
- The impact of historic development on the plan form and character;
- The location and importance of trees, open spaces, gaps, views, parks and gardens;
- Features and names that contribute to local distinctiveness and sense of place;
- The location of designated and non-designated heritage assets and the contribution they make to the character of the area.

¹³ Planning (Listed Buildings and Conservation Areas) Act 1990 S69

Planning Decisions

When determining a planning application in a conservation area, the council will give special attention to **conserving the character or appearance of the area**. Conservation areas do not usually extend to the wider landscape (although parklands are sometimes included), but the setting of a conservation area can make a significant contribution to its character.

As is the case with listed buildings, even if 'less than substantial' harm, can be shown to occur to a conservation area, this should be given considerable importance and weight in the planning balance. The default position should be a refusal by the Local Authority if public benefits do not outweigh the harm to the character and appearance of the conservation area. The onus is on the applicant to demonstrate sufficiently powerful material considerations necessary to justify harm.

It is essential that new development in conservation area proactively seeks to respect the local context. This is an approach supported at paragraph 58 of the NPPF which states that planning policies and decisions should aim to ensure that developments '*respond to local character and history, and reflect the identity of local surroundings and materials, while not preventing or discouraging appropriate innovation*'. The existing urban grain, pattern and rhythm is relevant, as are materials, local details, scale, mass and plot size. An informed approach to design can help ensure that development preserves and enhances the conservation area.

With regard to demolition within a conservation area, planning permission is needed:

- to demolish a building with a volume of more than 115 cubic metres (with some exceptions: contact the relevant Local Authority).
- to demolish **a gate, fence, wall or railing over 1 metre high next to a highway** (including a public footpath or bridleway) or public open space; or over 2 metres high elsewhere.

Managing Change in Conservation Areas

Change is inevitable, but it is essential that change is managed so that it preserves or enhances the conservation area. In this way development can contribute to meeting the requirements of sustainable development. Enhancement could take the form of removing intrusive features, restoring historic patterns or features, or revealing lost historic features. A management plan that responds to threats and opportunities in the conservation area should be produced by the local planning authority to ensure that development conserves the special quality of the conservation area. An advice note was published by Historic England in 2016¹⁴.

¹⁴ Conservation Area Designation, Appraisal and Management, Historic England, 2016

Scheduled Monuments and Archaeological Sites

Scheduled Monuments are sites included in the Schedule of Monuments held by the Secretary of State for Culture, Media and Sport (DCMS). The sites are of national importance for their historic, architectural, traditional, artistic or archaeological interest and are afforded protection under the provisions of the Ancient Monuments and Archaeological Areas Act 1979.

The designation of a Scheduled Monument is normally applied to sites which have no potential for a new use (and are therefore not economically viable) or the structures are underground. It can therefore be used to give protection to archaeological sites. Everything within the boundary of the designation is protected, unless it has specifically been excluded. It is possible for a site to be both a listed building and a scheduled monument (for example, scheduled archaeological remains may lie under one or more listed buildings).

There is no statutory requirement to designate a nationally important monument. Non-designated assets of archaeological significance that have equal significance to scheduled monuments should still be subject to NPPF policies for designated assets.

Scheduled Monument Consent is needed for works within the protected area of a Scheduled Monument. In terms of the impact on 'setting' and whether development will have an impact on significance, this should be considered as part of the application for planning permission. Significance of a Scheduled Ancient Monument can derive, in part, from its setting.

NPPF Paragraph 137

Non-designated heritage assets of archaeological interest that are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.

Archaeology

Archaeological interest differs from historic interest by recognising the need to protect the 'potential' for future archaeological investigation to reveal information about our past. Because archaeology is often hidden it is often not possible to know, without investigation, if a site contains important archaeology. Using information from previous archaeological discoveries and the knowledge of archaeological experts, it is possible to determine whether archaeology is likely to be present. The Historic

Environment Record (and in some cases the Urban Archaeological Database) provides an important source of information.

Archaeology can be both below ground (such as postholes, ditches, wells, artefacts, burials, pits, and preserved land surfaces), or above ground (such as field boundaries, earthworks, walls, standing stones and buildings). It is a finite and non-renewable resource that can be fragile and easily damaged. Archaeological remains contain irreplaceable information about our past.

Whether or not they are designated, the benefits of conserving sites of archaeological interest are a material consideration when determining planning applications. The County Archaeologist (or equivalent) will act as an advisor to the local planning authority.

If available information or expert advice suggests that archaeology is a potential constraint on the site then an initial evaluation should be required before the application is determined. This is particularly important if

desk-based assessments indicate that the evaluation has the potential to alter the outcome of the application. The outcomes of work should be included in the information submitted with an application, as part of the Heritage Statement.

In some cases, the archaeology on a site may be of sufficient significance and quality that development is refused so that the remains are preserved *in situ*. If the assets of archaeological interest are demonstrably of equivalent significance to a scheduled monument, then they should be subject to the policies for designated heritage assets. Paragraph 135 deals with non-designated assets and this may be relevant for archaeological sites that are not demonstrably equivalent to scheduled sites¹⁵.

It may also be possible to preserve remains *in-situ* while the development proceeds by carefully designing site layout (roads, buildings, open space, drainage etc.) and the design of foundations. If avoiding disturbance is not feasible, or the remains are of lesser significance, then then 'preservation by record', though a less favourable alternative, might in some cases be acceptable.

A condition might be attached to a planning permission which requires proposals for preservation on-site. If this is not possible then the condition will normally require that development should not take place until a written scheme of investigation and mitigation has been agreed. The investigation might include the following

- Desk-based assessments - these look into historic maps, written evidence, geographical information and photos of the area to assess the likelihood of there being archaeological significance. This is normally completed before the decision is made.
- Field evaluation – this is an examination of an area to get information about the archaeological resource. It can include trial trenching, field walking and a geographical survey. This should enable an assessment of their significance and is normally completed before the decision is made.
- Excavation and recording – This is the recording of archaeological finds that would be harmed by a development. It seeks to examine and understand an asset and reiterate the findings in a report.
- A watching brief – this is a period of observation and investigation to ensure any assets that are disturbed are recorded correctly.
- Building recording – This seeks to establish the character, history, dating, form and archaeological development of a building or structure, so that the future management/demolition can be considered.

¹⁵ Canterbury City benefits from an Area of Archaeological Importance designation.



Managing change in Scheduled Ancient Monuments & Sites of Archaeological Importance

Not all archaeological assets have an equal significance or equal sensitivity to change. Conflicts between archaeology and development are much easier to reconcile if developers discuss plans at an early stage with the local council before the planning application has been finalised.

For change to the archaeological resource to be managed properly, sufficient information is needed to ensure all material considerations are taken into account in the decision.

Parks, Gardens and Battlefields

Historic Parks and Gardens

The Parks and Gardens Register was created in 1983. It is similar to the list of buildings of architectural or historic interest and is held by Historic England. It seeks to promote parks and gardens of interest and ensure they are protected for the future. They are graded as follows:

- Grade I – areas of exceptional interest
- Grade II* - areas of more than special interest
- Grade II – areas of special interest that warrant every effort to preserve them.

Inclusion of park or gardens on the register means that their features and qualities must be considered by the planning authority when considering applications for planning permission. Unlike listed buildings or scheduled monuments, there are no statutory controls following from the inclusion on the register. However, the effect of development on a registered park or garden or its setting is a material consideration in the determination of a planning application. Indeed, paragraph 132 of the NPPF states that substantial harm or loss of Grades I and II* registered parks and gardens should be wholly exceptional. They can encompass aesthetic, philosophical, botanical and scientific heritage and contribute to the environmental quality, diversity and pattern of place, and biodiversity. In many cases parks and gardens form part of the setting of historic buildings.

Kent County Council, in conjunction with the Kent Gardens Trust, has produced the Kent Gardens Compendium, which is a register of historic parks and gardens in Kent.

For planning applications that affect Grade I and II* registered sites LPAs are required to consult Historic England. All planning applications concerning registered gardens need to consult the Garden History Society regardless of their grading. The Garden History Society must be consulted on all planning applications concerning registered gardens, irrespective of their grading.

Battlefields

The Historic England Register of Historic Battlefields was established in 1995 with the purpose of giving battlefields protection through the planning system and promoting a better understanding of their significance. The criteria for registering a battlefield require the site to have been of national significance and reliably defined on the ground. Other factors such as the potential for archaeology, topographical integrity and written evidence will increase the likelihood of its registration. Information on registration is set out in detail in guidance from Historic England¹⁶.

Battlefields are considered designated heritage assets for the purposes of decision making. The NPPF requires that great weight should be given to their conservation. Any harm or loss requires clear and convincing justification and substantial loss or harm to the site by a development proposal should be wholly exceptional (NPPF paragraph 132).

¹⁶ Battlefields, Historic England, 2012

NON-DESIGNATED HERITAGE ASSETS

Local List of Non-designated Assets

The NPPF definition of a heritage asset includes designated heritage assets and assets identified by the local planning authority (including local listing).

The maintenance of an up to date list of non-designated heritage assets of local historical/architectural merit provides a strong evidence base for determining planning applications. These assets are often valued locally and contribute to a sense of place and local distinctiveness. Such a local list can contain not only buildings but also other structures, parks, gardens, landscapes or sites of archaeological interest. It should contain assets with enough heritage or archaeological interest for their significance to be a material consideration in the planning process.

A list is not essential however, and some councils rely on a criterion-based approach to assets, which are recorded on the Historic Environment Register. Such criteria frequently include:

- Age
- Rarity
- Representativeness
- Aesthetic appeal
- Townscape or Landscape Value
- Integrity
- Group value
- Artistic interest
- Historic association
- Archaeological interest

The criteria for assessing interest and significance may be given more weight in decision-making if included in a local plan policy or otherwise adopted by the council with consultation.

Although non-designated assets are normally given less weight in the planning process than designated assets they should be taken into account in the planning process. The NPPF refers to:

- A balanced judgement having regard to the scale of any harm or loss and the significance of the asset. (para 135)
- Non-designated assets of archaeological significance might attract as much weight as designated heritage assets (para 139)

Most local authorities welcome suggestions for additions to their local list. If an asset is considered under threat they may consider issuing an Article 4 direction which removes permitted development rights.

Heritage Landscapes

Landscapes are included in the NPPF definition of heritage assets.

Landscape has been substantially shaped by the activities of people. The cultural component might be evident in the pattern of the landscape as its field boundaries, roads and paths as well as land use (historic and current) and settlement and will not be confined to designated sites. The European Landscapes Convention defines landscapes as **'an area, as perceived by people, whose character is the result of the action and interaction of natural and/or human factors'**.

Historic or archaeological features can be understood better by considering them in the wider landscape. The relationship to the surrounding environment and evidence of its evolution can tell us a lot about historic buildings and places. Information can be found from the following sources:

- Historic Landscape Characterisation. This seeks to take a broad landscape view to understand how the present landscape is a product of historic processes. This includes identifying visible evidence of how people through history have used, changed and adapted the countryside. An historical perspective on managing development and other changes in land use can maintain and enhance links with the past. It can be used to support sensitive change in the historic landscape and its future management and protection. In Kent this information is available as part of the **Historic Environment Record**.
- Landscape Character Assessments are also widely used to map and describe landscape character. These are often prepared by local authorities. Time-depth information on settlement patterns, land ownership, field boundaries and patterns, and historic land uses can be used to help explain and describe landscape character and the features of historic value.
- National landscape designations, such as National Parks, Areas of Outstanding Natural Beauty and Heritage Coasts are often relevant to planning decisions. They contain many of our historic assets, describe historic landscapes and will often be useful to influence the future management of landscapes.
- Local landscape designations will also be relevant. These have different names, such as Area of Local Landscape Value, or Local Landscape Area, or Area of High Landscape Value. These often seek to protect the valued relationship between historic buildings, cultural features and the historic environment. The Canterbury Area of High Landscape Value, for example seeks to protect the setting of the City and its World Heritage Site.

NPPF paragraph 115 recognises that cultural heritage is an important consideration in the conservation of landscape and scenic beauty in Areas of Outstanding Natural Beauty¹⁷. Although historic features of designated landscapes are fundamental to their character and distinctiveness, the same can apply to non-designated landscapes. Conservation interests (including archaeological or historical and cultural interest)

¹⁷ NPPF also states that cultural heritage is a consideration that should be given 'great weight' in national parks (Paragraph 115).

NPPF Paragraph 115

Great weight should be given to conserving landscape and scenic beauty in National Parks, the Broads and Areas of Outstanding Natural Beauty, which have the highest status of protection in relation to landscape and scenic beauty. The cultivation of wildlife and cultural heritage are important considerations in all these areas and should be given great weight in National Parks and the Broads.

can add value to a landscape. Other factors that help in the identification of valued landscapes are listed in Box 5.1 of GVLIA3 Guidelines¹⁸ and include condition, scenic quality, rarity, representativeness, recreation value, perceptual aspects and association factors.

The concept of landscape 'value' is important in decision-making. The NPPF (paragraph 109) states that the planning system should contribute to 'protecting valued landscapes'. Although **valued** is not defined in the NPPF it

is accepted that this term does not relate only to designated landscapes. The archaeological or historical and cultural interest of a landscape can and does contribute to its value.

Ancient Woodlands, Veteran Trees and Historic Hedgerows

There are numerous natural heritage designations and features, including Sites of Special Scientific Interest and Local Wildlife Sites which can incorporate important features of historic and cultural interest. For the purpose of this document, however, the most relevant are ancient woodland, veteran trees and important hedgerows.

NPPF Paragraph 118 bullet point 5

Planning permission should be refused for development resulting in the loss or deterioration of irreplaceable habitats, including ancient woodland and the loss of aged or veteran trees found outside ancient woodland, unless the need for, and benefits of, the development in that location clearly outweigh the loss.

Ancient Woodland

'Ancient woodland' is an area of land that has been wooded continuously since at least 1600AD and may have substantial cultural and natural heritage value. 'Continuously wooded' does not mean that the entire site has been continuously wooded, since open spaces and management is an important feature of woodland. The definition includes ancient semi-natural woodland (which has been managed by coppicing or felling), and plantations on ancient woodland sites.

Ancient woodland is irreplaceable and should be protected. Their unmodified soils cannot be replicated and the sensitive ecology does not colonize new areas easily. Sensitive

restoration of ancient woodland areas used for plantation can be a very valuable way to encourage the recovery of fragile ecosystems.

An Inventory of Ancient Woodland is available online from Natural England, but does not record sites under 2 ha.

¹⁸ Guidelines for Landscape and Visual Impact Assessment 3rd Edition, Landscape Institute, 2013

Ancient woodland is a very important planning constraint and this is recognised by the NPPF, which indicates that development should be refused if it would result in loss or deterioration of ancient woodland, unless the need for, and the benefits of, the development clearly outweigh the loss. Government guidance¹⁹ recognises their value, stating:

'England's 340,000 hectares of ancient woodlands are exceptionally rich in wildlife, including many rare species and habitats. They are an integral part of England's cultural heritage and act as reservoirs from which wildlife can spread into new woodlands'.

Often development close to ancient woodland can lead to their deterioration. Lighting can have an impact on woodland edge species and additional recreation pressure, as well as pressure from invasive species, can have a negative impact on woodland habitats. Natural England standing advice²⁰ emphasises that these habitats are irreplaceable and advises on the steps local planning authorities should follow when making decisions.

Some woodlands may benefit from a Tree Preservation Order which protects trees for the public's enjoyment. Tree Preservation Orders are made by a local planning authority and they prohibit the removal or damage of trees without consent.

Veteran Trees

Veteran or ancient trees can have a significant historical, cultural, aesthetic and landscape/amenity value and notable ecological importance. High densities can be found in parkland estates, they can be hidden within woodlands, or they can be single trees in prominent locations that might be mentioned in local historical documents, photographs and art. A tree might be considered veteran because of its great age, size, or other aesthetic, cultural or biological interest. As with ancient woodland, veteran trees are strongly protected by paragraph 118 of the NPPF if they are threatened by development. Expert advice is always essential. Although a veteran tree might be in substantial decline, this is itself not a reason to allow its removal. Depending on the species, this is a process that can take hundreds of years. Many generations to come will benefit from trees being identified as veteran.

Some veteran trees may benefit from a Tree Preservation Order which protects trees for public enjoyment. Tree Preservation Orders are made by a local planning authority and they prohibit the removal or damage of trees without consent.

¹⁹ Government Forestry and Woodland Policy Statement, Defra, 2013

²⁰ Ancient Woodland and veteran trees: protecting them from development, [GOV.UK](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/428222/ancient-woodland-and-veteran-trees-protecting-them-from-development.pdf), 2015



All hedgerows over 30 years old fall within the scope of the Regulation and cannot be removed without the submission of a Hedgerow Removal Notice to the local Planning Authority. They will issue a Hedgerow Retention Notice if the hedge is protected and must be kept. Hedgerow trees may even be protected by a Tree Preservation Order.

Removal of hedgerows is often a concern of local communities and it is important to be familiar with rules and best practice associated with the protection and maintenance. The CPRE document '*A little rough guide around the hedges*' gives further information and sources of information²¹.

Although hedgerows are not specified in the NPPF, their protection is also an important element of minimising impacts of development on biodiversity as specified at paragraph 117. They are priority habitats, important to landscape-scale biodiversity planning and ecological networks.

²¹ [A little rough guide around the hedges](#), CPRE, 2011

Useful questions: suggestions on how to assess proposals affecting heritage assets

The NPPF sets out a series of policy expectations of how ALL designated heritage assets will be treated when dealing with planning applications for development (paragraphs 128-134) and also non-designated heritage assets (135). It would be helpful if users of the guide 'held their local authority's feet to the fire' by getting them to follow this policy. The key points are:

- What are the heritage assets which would be affected by a proposed development, and what is their significance? Has the Historic Environment Record been consulted?
- What is the proposal's likely impact on the assets' significance?
- Where archaeological assets may be present, has a desk-based assessment or a field evaluation been carried out by the applicant?
- Is there evidence to demonstrate that the works are carefully evaluated and reviewed to represent the minimum necessary intervention possible before the significance of the residual harm is assessed? - to ensure that effects of the proposal on the character of the asset have been minimised.
- Will the proposed development cause either no harm, or less than substantial harm or substantial harm to the significance of the heritage asset(s)? Note: this can include harm to their settings.
- Has consideration been given to means of avoiding or minimising conflict through mitigation (between the heritage assets' conservation and any aspect of the proposal)?
- 'Great weight' must be given to conserving the heritage assets when considering the impact of the proposed development (proportionate to the assets' importance): what does that mean for the decision on the planning application?
- If the benefits of a proposal are to outweigh the heritage interest, whether substantial harm OR less than substantial harm would be caused, then the local authority must be satisfied that the harm has been minimised and the applicant has provided 'clear and convincing justification' for that view: can such a case be made?

In the case of planning applications affecting non-designated heritage assets, the direct or indirect effect of the proposal on the significance of the heritage assets must similarly be taken into account; regard must be had to the scale of any harm or loss and the significance of the heritage asset: what does this mean for the decision on the proposal?

The following questions are as useful things to consider when preparing your response to a development proposal.

Conservation Area

- Does the development respond appropriately to guidance in a Conservation Area Appraisal?
- Does the development preserve or enhance the character and appearance of the area?
- Is the development sympathetic to the characteristic built form?
- Does the development protect or reveal important views within, into and out of the area?
- Does the development avoid the introduction of pollution, such as lighting, noise, or smells which would be detrimental to the character of the area?
- Are trees, hedgerows and other landscapes features which are important to the character of the Conservation Area protected?

- Does the scale, form, height, roof-scape, materials and detailing of the development respect the characteristics of neighbouring buildings in the area?
- Does the development introduce additional traffic into an area that would be detrimental to its character and appearance?
- Does the development understand the importance of spaces, gaps and views in the Conservation area?

Listed Buildings

- Does the application provide sufficient information to assess the impact of the proposal on the listed building, or its setting?
- Do the proposed changes preserve the listed building or its setting and any features of special architectural or historic interest it possesses?
- Does the proposed development affect the relationship between the listed building(s) and its setting?
- Are views to (or from) the development an essential component of the setting of the listed building and would these views be harmed or disrupted by the development?
- Will the proposed development undermine (or improve) the ability to appreciate the significance of the listed building?
- Does the fragmentation of the site (or conversion of outbuildings) amount to substantial harm to the significance of the listed building?

Archaeology

- Has sufficient assessment been carried out of the potential archaeological interest of the site and of the likely impact of the proposed development on any potential archaeology?
- Have the archaeological potential/assets been assessed by an appropriate expert?
- Does the proposal demonstrate that the development can take place without having a significant and detrimental impact on a Scheduled Monument, or other nationally important archaeological resource?
- Would the proposal conflict with local and national policies to safeguard archaeology sites?
- Should development be refused because of inadequate assessment of archaeological implications?
- Is archaeological investigation, secured by condition, sufficient to safeguard identified potential interest?

Parks and Gardens

- Do views to and from the countryside beyond the park or garden contribute to its significance as a heritage asset?
- Would severance of uninterrupted long views be harmful to the significance of the registered park / garden.
- Can views from the park/garden to the development be largely screened in both summer and winter?
- Would the proposal have a detrimental impact to (or result in enhancement of) the setting of the park?
- Would noise, traffic movements, or lighting associated with a development have an impact on the character amenities or setting of the park or garden?

- Does the proposal protect important features of a registered park or garden?
- Would the proposal cause significant harm to the appreciation of the gardens?

General

1. Would the significance of the heritage asset, or its setting, be harmed by the extra traffic that would be generated by a development?
2. Would the significance of the heritage asset be harmed by noise, light, smell or other disturbance associated with the development?
3. Would the harm to landscape or wildlife habitats be detrimental to the significance of a heritage asset through changes to its character and setting?
4. Would the loss of trees (especially ancient woodland, veteran trees or historic hedgerows/field boundaries) be detrimental to the significance of a heritage asset through changes to its character and setting?
5. Would new buildings or structures
 - Materially harm the heritage significance?
 - Adversely impact on the ability to appreciate the significance?
 - Introduce a pattern/design/scale of development that would be unsympathetic to the heritage asset?
 - Adversely affect the character and appearance of a conservation area?
6. Would excavation / or other change in topography have a significant impact on landscape features?
7. Would the removal of a feature/boundary/building affect the integrity of the original design of a place?

Using the language – what does it mean?

The National Planning Policy Framework (NPPF) and Historic England have set out helpful definitions relating to heritage in planning. Look in *Annex 2 – Glossary of the NPPF* or search on-line for ‘*Heritage Definitions Historic England*’.

We have reproduced some of the more relevant definitions below, referencing them to either Historic England (HE) or the NPPF.

Conservation – The process of maintaining change to a heritage asset in a way that sustains and, where appropriate, enhances its significance (NPPF)

Context – Any relationship between a place and other places, relevant to the values of that place (HE)

Curtilage – Curtilage can be defined, for the purposes of the listed building legislation, as an area of land around a listed building within which other buildings pre-dating July 1948 may potentially be considered listed. Not all buildings will have a curtilage. With those that do there will be cases where the extent of the curtilage will be clear (such as a garden boundary) but in others it may not be as clear each case will always be a question of fact and degree. A decision taker may take the following factors into account in assessing the matter: i) the physical layout of the listed building and the building; ii) their ownership past and present; and their use or function past and present specifically whether the building was ancillary (i.e. subordinate to and dependent on) the purposes of the listed building at the date of listing. (HE)

Designated Heritage Asset – A World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under the relevant legislation. (HE)

Heritage asset – 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 asset includes designated heritage assets and assets identified by the local planning authority (including local listing). (NPPF)

Historic environment – All aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora. (NPPF)

Historic Environment Records – Information services that seek to provide access to comprehensive and dynamic resources relating to the historic environment of a defined geographic area for public benefit and use. (HE)

Setting:

(1) 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. (NPPF)

(2) The surroundings in which a place is experienced, its local context, embracing present and past relationships to the adjacent landscape. (HE)

(3) The setting of a heritage structure, site or area is defined as the immediate and extended environment that is part of, or contributes to, its significance and distinctive character. Beyond the physical and visual aspects, the setting includes interaction with the natural environment; past or present social or spiritual practices, customs, traditional knowledge, use or activities and other forms

of intangible cultural heritage aspects that created and form the space as well as the current and dynamic cultural, social and economic context. (HE)

Significance:

(1) The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. (NPPF)

(2) The sum of the cultural and natural heritage values of a place, often set out in a statement of significance. (HE)

Where can I find more information?

An ever-growing body of information is available online.

Historic England provides extensive advice on planning issues and on heritage protection (search online for 'Historic England'). Their Advice Notes are particularly relevant, as is their National Heritage List for England, and their 'Heritage at Risk' listings:

- GPA1 - Local Plan Making
- GPA2 - Managing Significance in Decision-Taking in the Historic Environment
- GPA3 - Setting and Views

Other useful resources are:

- National Planning Policy Framework, March 2012, DCLG
- National Planning Practice Guidance, March 2014 (only available online and frequently updated, DCLG)

Information on internationally important heritage assets including World Heritage Site Management Plans is available from UNESCO.

Local sources of information:

- Kent Downs AONB Farmstead Guidance, 2012, Kent Downs AONB Unit
- High Weald AONB Kent Farmsteads Guidance, 2014
- Your Local Plan (available from your Local Authority)
- Your Neighbourhood Plan (if one exists, this will be available from your parish council or neighbourhood forum)
- Historic Environment Record (Kent County Council)
- Local Authorities will have information on Conservation Area Appraisals and Conservation Area Management Plans, and Local Lists
- Local amenity societies (many will be members of Civic Voice who will list contact details, or details will be available locally)
- Kent History and Library Centre
- Kent Gardens Compendium (KCC in conjunction with the Kent Gardens Trust): a register of historic parks and gardens in Kent

Case Studies

The recent growth in interest in the importance of heritage assets within the planning system has come about as the result of a series of significant planning decisions, some of which are referenced in the preceding text, and which are helping to shape case law.

High Court Decisions

1. Barnwell Manor²²

Barnwell Manor is the name of the wind energy company that applied for permission to site four large wind turbines 1-2 km from Lyveden New Bield in Northamptonshire, an unfinished C17 lodge now Grade I Listed and owned by the National Trust. The energy company went to appeal on the grounds of non-determination of their application. The Inspector acknowledged that while the visual impact of the turbines would clearly cause harm to the setting of the lodge, that harm was not sufficient to justify refusal, and granted planning permission in 2012. The Local Authority in partnership with the National Trust undertook a Judicial Review to challenge the lawfulness of that decision, and in 2013 a High Court Judgment overturned that planning permission. Barnwell Manor challenged that decision the Court of Appeal in 2014, but the High Court judgment was upheld and the permission remains quashed.

This set an important precedent. In the months that followed, the (then) Secretary of State Eric Pickles turned down several applications for onshore wind farms, in some cases doing so against the advice of Planning Inspectors, ruling that inadequate weight had been given to the harm to heritage assets or their setting.

2. Forge Field²³

The second important precedent related to the grant of planning permission for six affordable homes in Peshurst, Sevenoaks in 2012. The Forge Field Society, a local action group, sought judicial review and the permission was quashed by a judgment that cited that inadequate weight had been given to the harm caused to the setting of listed buildings and a conservation area in an AONB.

3. Forest of Dean²⁴

A speculative application for 85 homes on the edge of a village in Newent, next to a Grade II listed farmhouse was refused in 2015. The applicant appealed the refusal, and was granted permission on the grounds that Forest of Dean District Council could not demonstrate that it had a five-year supply of housing land available (one of the core requirements of the NPPF). The council challenged the Inspector's decision in the High Court where it was ruled that the permission be quashed. The judgment considered that the Inspector had given inadequate weight to the degree of harm to the setting of the heritage asset, even in the absence of a five-year supply of housing land.

²² Barnwell Manor Wind Energy Ltd v East Northants DC and others [2014] EWCA Civ 137
<http://www.bailii.org/ew/cases/EWCA/Civ/2014/137.html>

²³ Forge Field Society v Sevenoaks District Council [2014] EWHC 1895 (Admin), Lindblom
<http://www.bailii.org/ew/cases/EWHC/Admin/2014/1895.html>

²⁴ Forest of Dean District Council v Secretary of State for Communities & Local Government & Anor [2016] EWHC 421 (Admin)
<http://www.bailii.org/ew/cases/EWHC/Admin/2016/421.html>

Planning Appeal Decisions

Planning Appeal Decisions

4. **Partridge Green**²⁵ 13/05/2015

Development proposal – 58 residential buildings – Rydon Homes Ltd

Appeal dismissed – the appeal proposal would assist in the provision of much needed housing but at significant cost to the intrinsic character of the countryside and its green, open, pastoral appearance; and would not preserve the setting of listed buildings, thereby unacceptably harming their significance.

5. **Waterside Park**²⁶ 23/07/2015

Development proposal – new industrial estate of B1, B2 and B8 storage and distribution uses – Gallagher Properties Ltd

Appeal dismissed – the environmental harm would be greater than the identified economic advantages and the adverse impacts would significantly and demonstrably outweigh the benefits.

Neither of the above proposals amount to sustainable development as defined in the NPPF due to the extent that they would conflict with environmental policies, particularly in relation to the landscape character and the setting of heritage assets.

6. **Melksham**²⁷ – 10/10/2016

Development proposal – Demolition of existing structures and construction of up to 263 dwellings – Gladman Developments Ltd

Appeal dismissed – in spite of policies being out of date by virtue of the 5-year-housing supply the combined harm to the heritage assets attract considerable weight and is not outweighed by the public benefits identified. The proposal does not represent sustainable development.

7. **Moor Street Rainham**²⁸ – 02/08/2016

Development proposal – residential development of up to 200 dwellings - Gladman Developments Ltd

Appeal dismissed – the presumption in favour of sustainable development is not triggered unless the proposal can first pass the simple balancing exercises in paragraph 133 of the NPPF (in cases where any harm to the significance of a designated asset is judged to be substantial) or paragraph 134 (where any harm is less than substantial). The decision sequence is to first assess whether any harm is caused to the significance of the designated heritage assets affected; then the degree of harm needs to be defined; and then balanced against the public benefits of the proposal. If the public benefits do not outweigh the harm, then planning permission should be refused.

²⁵ Appeal ref: APP/Z3825/A/14/2219076 Land East of Littleworth Lane, Partridge Green, West Sussex RH13 8JB

²⁶ Appeal ref: APP/U2235/A/14/2224036 Land South of the A20/M20 Link Road Roundabout (Waterside Park) Ashford Road Hollingbourne, Kent ME17 1RE

²⁷ Appeal ref: APP/Y3940/W/15/3132915 Land to the West of A365 Shurnhold, Melksham, Wiltshire – Gladman Developments Ltd

²⁸ Appeal Ref: APP/A2280/W/15/3012034 Land North of Moor Street, Rainham