

**KIFF AND TROKE
PARTNERSHIP**

**LAND TO THE SOUTH OF BURY CLOSE
COTTINGHAM**

**STATEMENT ON HERITAGE
CONSIDERATIONS**

July 2015

5 Bolton Street
London
W1J 8BA

Tel: 020 7493 4002
Fax: 020 7312 7548

www.montagu-evans.co.uk

CONTENTS

<u>Section</u>		<u>Page No.</u>
1	Introduction	1
2	Scope Of Expert Opinion And Involvement In The Project	2
3	Statutory Provision, Policy And Material Considerations	3
4	The Significance Of The Listed Building And The Contribution Of Setting To That Significance	9
5	Scheme Assessment	18
6	Signed Affirmation	22

APPENDICES

1	Miele Background, CV and List of Publications
2	English Heritage Consultation Letter
3	Conservation Areas Map and Listed Buildings (from planning authority)
4	Historic Map Sequence
5	Bury Hall (Cottingham Hall) List Description
6	Barnwell Decision

1.0 INTRODUCTION

- 1.1 I am instructed by to provide expert advice on the proposed housing development subject to this appeal.
- 1.2 I am a senior partner at Montagu Evans LLP, working in the planning and development team of our central London office. I have nearly 25 years of experience on historic environment matters and, prior to that, relevant academic experience and qualifications (MA and PhD) as an architectural historian.
- 1.3 I am a full member of the IHBC and a chartered town planner. I have additionally fellowship in the Royal Historical Society and Society of Antiquaries.
- 1.4 Within our practice I head up a dedicated historic environment team, and I have discharged instructions and achieved consents for developments that involve sensitive land and highly graded listed buildings.
- 1.5 Appendix 1.0 provides fuller background along with a list of my professional and academic publications.
- 1.6 I am regularly instructed as an expert witness on planning appeals, including public inquiries. My signed affirmation, Section 6 of this Statement, confirms that this statement has been prepared in conformity with the RTPI Code of Conduct for members providing expert opinions in such cases.

2.0 SCOPE OF EXPERT OPINION AND INVOLVEMENT IN THE PROJECT

- 2.1 The appellants' advisors contacted me in May 2015 after the refusal to see whether I could act in this matter.
- 2.2 As is my usual practice when providing expert services, I reviewed the scheme as described in the application materials and then visited the site before putting a formal proposal to the appellant.
- 2.3 I visited the site in the company of the appellants' planning advisors on 28TH May 2015. The weather was dry and clear, with good visibility. I walked the Jurassic Way as it runs towards the church, and then the appeal site land and publicly accessible routes above the Jurassic Way. I also had the opportunity to view the extent of the two settlements.
- 2.4 The proposal as refused comprised 57 houses. Given the specific reasons for refusal I advised my client that in order to support the scheme I would be more comfortable if the land to the south of the Hall was left open.
- 2.5 I did, however, suggest changes to the layout of the development that would entail a significant reduction in housing, and then provided further advice to the design team on the revised layout now before the Inspector.
- 2.6 I only accepted this instruction after the appellant confirmed to me that he would pursue my proposed new layout.
- 2.7 In this statement I explain why I have concluded this amended scheme causes no harm to the significance of any of the identified assets, and in particular preserves the setting and significance of the Grade II* listed Cottingham Hall.
- 2.8 I also explain the two benefits I see arising from the proposals, which comprise:
- A scheme of management for the undeveloped land south of the listed hall, to be delivered out of the development's management charges. The details of this are reserved but can include planting and a management regime which serves the heritage interests of the site, reinforces local distinctiveness and amenity;
 - And on that last point, the provision of open space that adjoins the Jurassic Way and is accessible from it, providing an attractive amenity for the wider area with views over the settlement and to the valley beyond.
- 2.9 If the Inspector finds there is some harm, then this would be on the basis, I suggest, that such harm would be less than substantial and so fall to be considered on the balance of benefits, including those I have identified and others identified in the Appellant's submissions.

3.0 STATUTORY PROVISION, POLICY AND MATERIAL CONSIDERATIONS

- 3.1 In this section I consider the basis for the determination of this appeal, starting with section 66 (1) of the Planning (LBCA) Act 1990.

Section 66 (1) of the Planning (LBCA) Act 1990

- 3.2 The Inspector will be familiar with this provision, which requires the decision maker to pay special regard, in the exercise of planning powers, to the desirability of preserving the setting of a listed building.
- 3.3 Preservation in this context means the avoidance of harm.
- 3.4 This objective is one of considerable weight and importance, and the particular approach to be taken in discharging this duty has been clarified by the Court of Appeal recently (*East Northamptonshire DC v. Secretary of State for Communities and Local Government* [2013] EWHC 473 (Admin)). See Appendix 6.
- 3.5 This judgement confirms what I have always understood to be the case: that any development in the setting of a listed building which causes harm to that building's significance requires a clear and convincing justification.
- 3.6 The NPPF contains government's policy on the application of this statutory duty at paragraphs 132 to 134.
- 3.7 The section 66 (1) is often expressed negatively, the avoidance of harm.
- 3.8 But it follows that this duty should be discharged in the same terms in relation to works which enhance the special interest of a listed building by development in its setting. Thus, great weight should be attached to development which improves some aspect of a historic building's significance including our ability to appreciate that value from within its setting.
- 3.9 And the full discharge of this duty requires a judgment to be taken on the balance of all benefits, harmful and beneficial.
- 3.10 There is no corresponding provision on the setting of conservation areas but the terms of paragraph 132 of the Framework make clear the Government's intention for great weight to be attached to the avoidance of harm to its setting. Equally, improvements to setting attract particular weight.
- 3.11 I make this point, on the other side of the 'harm coin' because my evidence concludes benefits to the setting of the assets, enabling a better appreciation of their significance, and an improvement to the quality of the land and its use for public enjoyment.

The Development Plan

- 3.12 Under the terms of 38 (6) of the 2004 Act applications will be determined in accordance with the development plan unless material considerations indicate otherwise.

- 3.13 The development plan comprises the North Northamptonshire Core Spatial Strategy (adopted 2008). The decision notice cites its policies 1, 5, 9, 10 and 13, the NPPF and the 1990 P(LBCA) Act.

North Northamptonshire Core Spatial Strategy (or NNCSS, adopted 2008)

- 3.14 Policies 1, 9 and 10 of the NNCSS does not apply to my evidence.

- 3.15 Policy 5, Green Infrastructure, does. This states that:

“A net gain in green infrastructure will be sought through the protection and enhancement of assets and the creation of new multi-functional areas of green space that promote recreation and tourism, public access, green education, biodiversity, water management, the protection and enhancement of the local landscape and historic assets and mitigation of climate change, along with green economic uses and sustainable land management.”*

- 3.16 Policy 13 promotes sustainable development conforming to accepted principles.

- 3.17 Part 8 (h) is applicable inasmuch as it relates to the design of proposals, including landscaping, and that design has a bearing on the assessment of heritage impacts.

- 3.18 Likewise part 9 (g) promotes local distinctiveness and place making by, amongst other things, strengthening the ‘distinctive historic and cultural qualities and townscape of the towns and villages [of the district] through ... design, landscaping and the use of public art’.

Corby Local Plan (1979, saved 2007)

- 3.19 The reason for refusal does not cite the Corby Borough Council Local Plan even though it contains some relevant policies. I assume because it is out of date.

- 3.20 Relevant policies seek appropriate, locally distinctive landscaping, the protection of listed buildings and their settings, and of conservation areas and their settings at policies P1, P3 and P4. Emerging North Northamptonshire Joint Core Strategy (June 2015 Focused Changes to the Pre-Submission Plan)

North Northamptonshire Joint Core Strategy (emerging)

- 3.21 The new North Northamptonshire Joint Core Strategy is still emerging and in my judgment has limited weight only. Its Policy 2 relates to heritage and its Policy 3 deals with landscape.

- 3.22 These policies reflect the Framework’s approach, encouraging preservation and enhancement of heritage significance, as appropriate. There is a specific policy seeking the preservation of ‘key views’ of heritage assets, Policy 2, c, and a further part of that policy that require applications to demonstrate an appreciation of the particular significance of heritage assets, demonstrating how the opportunity has been taken to minimize harm.

- 3.23 That same policy deals with landscape character, seeking enhancement, the safeguarding of views and vistas, and the reinforcement of local distinctiveness.

SPD

- 3.24 The appeal site red line falls out with the Cottingham and Middletown Conservation Areas, but it is within a few metres of the edge of the Cottingham CA on the east side of the site. These CAs do not have Appraisals or Management Plans.
- 3.25 There is, then, no site or area specific guidance comprising a material consideration in this decision making process.

NPPF and Supporting Guidance

- 3.26 Given the date of policies, the general nature of adopted policies, and the status of emerging ones, I conclude that the Framework's historic environment policies have particular weight in this appeal.
- 3.27 The Inspector will be familiar fully with chapter 12 on this topic.
- 3.28 From that I highlight what I consider are the salient points applicable to this case.
- 3.29 First is the approach to setting. Section 66 (1) refers to the desirability of preserving setting and policy advises this should be taken in this way: to avoid harm to the significance of a listed building through inappropriate development in its setting.
- 3.30 Read as a whole, taking the definitions in the Glossary into account, the Framework advises that setting is not in itself an asset. Setting is sensitive to the extent it enables the appreciation of significance (a point drawn out in the NPPG).
- 3.31 Setting can make a positive contribution to significance, detract from it or have no effect whatsoever on significance.
- 3.32 Changes to setting can better reveal significance, by mediating public understanding of an asset's interest or by providing better access to it.
- 3.33 The NPPF requires applicants to describe the significance of an asset sufficient to understand the nature of a proposed development's effect on it.
- 3.34 It encourages the conservation of that significance, conservation meaning the positive management of change in accordance with principles of sustainable development generally.
- 3.35 Any harm to significance of a designated asset attracts great weight, but harm may be justified if there is a clear and convincing justification for it, for example, that the harmful development delivers countervailing public benefits that outweigh the harm.
- 3.36 The Framework furthermore distinguishes between works entailing substantial harm to or loss of cultural significance and those that cause less than substantial harm.
- 3.37 There is no allegation of harm in this case – see for example the letter from English Heritage/Historic England. The response from them alleges that the submitted proposals (now extensively revised) would cause less than substantial harm. That category is not absolute, but entails a range from very limited harm to a considerable amount stopping short, however, of substantial harm which is so great that it

essentially vitiates the reason for designation (see *Bedford Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin), Jay J).

3.38 National and best practice guidance comprising the NPPG and GPA3 published by English Heritage/Historic England advise a staged approach to assessing whether, how and to what degree development in the setting of a listed building causes harm to its significance.

3.39 The stages are broadly these:

- Identify the significance of the asset
- Consider the contribution setting makes to that significance or to the appreciation of that significance – there are advised criteria
- Assess the impact on significance – there are again advised criteria
- Consider the steps taken to minimize harm and maximize benefit

3.40 That last step is pertinent particularly to me evidence, because I advised on the revisions to the scheme, reducing the impact on significance through siting and landscaping. My involvement with the revised landscape proposals entailed the maximization of benefit as well, which I will explain in my formal assessment section.

Related Landscape Considerations

3.41 Heritage setting considerations often overlap with landscape matters. The approaches are different, but each generally has some regard to the other.

3.42 For that reason, and given the nature of the setting impacts I consider, I set out below some landscape considerations deriving from published studies prepared by and for the Council

3.43 The Northamptonshire Landscape Characterisation Study based on a study undertaken in 2003 and which looks at this area which it identifies as 'Fragmented Parliamentary Enclosure' (area 6c, Welland Valley: Middleton - Rockingham).

3.44 The study notes that these areas tend to occupy high ground overlooking river valleys or in the valleys themselves. The appeal site has characteristics of such an area which include:

- Areas overlook the major valleys of the Welland, Nene and Tove as well as the tributary streams of the Ise and Willow Brook
- Areas contain a number of defended medieval sites
- A number of large historic landscape parks
- Canalscapes

3.45 The first characteristic applies to the setting experience considered in this evidence.

- 3.46 The HCLA's assessment of its sub-Character Area 6a, which includes the application site, notes that the area as a whole is dominated by Rockingham Castle and the associated forest, which contains areas of ancient woodland.
- 3.47 The valley here is very steep, rising up to a plateau in the southern part of the area. Both Cottingham and Middleton were enclosed under an Act of 1815, but the parliamentary enclosure layout is not complete, with Rockingham Park (to the east of the application site) and areas of earlier enclosures intruding into the pattern.
- 3.48 The best preserved Parliamentary enclosure is in the Welland Valley floor to the north of Cottingham and Middleton villages, and in Gretton.
- 3.49 It also notes that the settlements at Cottingham and Middleton have grown since the late nineteenth century so that they are now almost co-joined. The Hall lies at this join, and so appears now part of a single, larger and partly linear settlement along a valley bottom.
- 3.50 The CBC Landscape Sensitivity and Capacity report (2014), commissioned by the local authority as part of its assessment of the application, looked at all the open land around Cottingham and Middleton and assessed its suitability for development.
- 3.51 The application site falls partly in Parcel 9 (eastern portion) and partly in Parcel 10 (western portion). Parcel 9 is assessed in the report (p.45) as being in 'a prominent location with an important landscape and visual association within the Welland Valley', and it argues that 'Development would create a prominent impact both within the Parcel and within the wider landscape of the Welland Valley, with limited scope for providing adequate mitigation'.
- 3.52 Consequently, this parcel is assessed as having a 'Low capacity for accommodating residential development, and is not suitable for development.' In the revised proposals this part is not materially affected.
- 3.53 Parcel 10, although considered broadly similar to Parcel 9, was deemed to be less sensitive.
- 3.54 The report suggests (p.47) that 'changes would have a prominent but localised impact on an area of important local landscape character. The effect is limited by the containment provided by the mature vegetation, which also provides some scope for mitigation'.
- 3.55 Consequently, Parcel 10 was deemed to have a somewhat higher capacity for development. The report states that 'The Parcel has a Medium-Low capacity for accommodating residential development', subject to density and location. Notwithstanding that, the characterization study seeks to conclude that this parcel is inappropriate for development.
- 3.56 Such a document cannot, in effect, function as a land use allocation, even if it is material to the consideration of any application. Moreover, this is a landscape analysis not a heritage setting analysis. Landscape falls to another expert providing an expert opinion.

- 3.57 From my perspective what this assessment demonstrates is the difference in sensitivity between the two parts of the appeal site, a difference that has informed the revised layout taking into account particular heritage considerations.
- 3.58 On any basis, landscape or heritage, the reduction in coverage or extent of development has materially reduced the impact of the layout that was originally proposed.

4.0 THE SIGNIFICANCE OF THE LISTED BUILDING AND THE CONTRIBUTION OF SETTING TO THAT SIGNIFICANCE

Cottingham Hall: History and Significance

Introduction

- 4.1 Cottingham Hall (also known as Bury House) is listed Grade II* and is in the Cottingham Conservation Area (see Appendix 5).
- 4.2 I reproduce a map of the CA that includes listed buildings as my Appendix 3.
- 4.3 The house is said to have a late seventeenth century core that includes a seventeenth-century well stair, with eighteenth and early nineteenth-century alterations. The main facades face north and west, with the service wing, stables and other ancillary buildings to the north and east.
- 4.4 I take these internal characteristics as read, and in preparing this evidence did not consider I needed to inspect them because no works on the application site could in any way diminish the significance of internal features such as these, which derive from their intrinsic quality and interaction with the plan form of the building.
- 4.5 I take as read, too, that the building as a whole is one of very high quality architecturally and historically interesting. This is expressed particularly through its high grading, at II*, a grading reserved for buildings of very considerable interest in a national context. I have no reason to doubt that assessment based on the information I have seen and external inspections.
- 4.6 The majority of the application site has been associated with the house since at least the early nineteenth century and probably well before that date.
- 4.7 The history of the house and land is discussed in more detail in the Archaeological Desk-Based Assessment (DBA) prepared by Iain Soden Heritage Services in July 2014 and submitted with the application.

Cottingham Hall: History

- 4.8 Cottingham Hall was the manor house of the parish, and its other name, Bury House is derived from the Anglo-Saxon 'burh', an enclosed or fortified house. The manor was held by Peterborough Abbey in the middle ages, and the DBA suggests that there has been a house on this site since at least the fifteenth century.
- 4.9 At the Dissolution, Cottingham manor was sold and passed through various hands before being bought by Thomas Medlycott in 1720, at which date it was known as Burystead. The early eighteenth-century work on the house is probably associated with its purchase by Medlycott.
- 4.10 In the early nineteenth century, the house was owned by Barbara Medlycott. She commissioned major works to the house (c.1835), plans for which are reproduced in the DBA. These works included extensive renovations to the service wing at the south and alterations to the west façade facing the garden.

- 4.11 The estate map of 1834 shows the house with an enclosed formal garden to the west of the house, but it was otherwise surrounded by pasture with arable to the south, beyond the footpath that bounds the application site. A similar, though less clearly defined, arrangement is shown on the Tithe Map of 1843.
- 4.12 Until the mid-nineteenth century, the house appears to have been little more than a substantial farmhouse. As the DBA notes (p.20), there is nothing to indicate that it had a park or other wider landscape associated with it beyond the immediately adjacent garden.
- 4.13 This is an important point. The red line land was not, insofar as I can determine (and based on my inspections), ever parkland to the house. By 'parkland' I mean a wider land designed specifically for the enjoyment of the house, for amenity and aesthetic reasons. Parkland can of course include pasture or arable land, as a matter of fact, but then in a controlled environment and as something distinct from farmland in the general sense. It can sometimes be difficult to distinguish the two, but in this case I think there can be no doubt that the land in question was not 'parkland' in the cultural sense.
- 4.14 By the time of the 1st OS map in 1887, house appears to have increased in status somewhat and was approached from High Street to the north via a sweeping drive. The enclosed garden to the west had disappeared, and it and the pasture around the house to the north had been converted to large gardens and lawns, with numerous paths.
- 4.15 To the south of the house, a square enclosure on a terraced area had been created. This may have been a tennis court, croquet lawn or perhaps a bowling green. The sloping hillside to the south of this terrace had trees and may have been an informal meadow section of the gardens and provided a transition between the formal gardens and the agricultural landscape beyond.
- 4.16 As will be clear to the Inspector from the site visit, this three-sided, terraced enclosure is not visible from the Jurassic way which cuts across the slope above the house, but once in the lower part of the land it is a very noticeable and substantial engineered bank, and not in any way naturalistic. It comprises a kind of enclosed pleasure ground, but not one enjoying wider views (which are physically impossible for someone within it).
- 4.17 An avenue of trees along the eastern border of the property had also been planted by 1887. The DBA suggests that these and other trees to the south and east of the house were intended to screen it from the quarries that had been opened to the south east of the village in the nineteenth century. I do not agree with that assessment.
- 4.18 The formality of the avenue, and the fact that it is a double line of trees, suggests that it was an avenue that lead the walker or rider out into the countryside beyond. These trees were elms that died in the late twentieth century and have recently been replaced with limes.
- 4.19 This goes to establishing the nature of that land. The avenue was there, I consider, to provide a sheltered walk out from the house, across a field, to the wider landscape, not as an ornamental avenue from which to contemplate the landscape or the house – neither of which it would have allowed particularly.

- 4.20 To the east of the house was a large range of outbuildings and stables with enclosed yards, and there were a number of other small buildings that presumably included the tied workers' cottages mentioned in local memoirs of the house.
- 4.21 In 1900, the OS map shows the gardens and outbuildings with much the same arrangement, except on the terraced area to the south, which no longer appears to have been fully enclosed.
- 4.22 The house appears to have changed hands several times in the early twentieth century before being bought by Captain George Lucas in 1929. Lucas was joint master of the Woodland Pytchley Hunt.
- 4.23 According to his memoirs, Lucas and his wife were attracted to the house by the opportunity to restore its gardens, which he described as "almost derelict". The 1938 and 1952 OS maps show the gardens with a broadly similar complex system of paths and lawns, especially to the north of the house, suggesting that the Lucases restored the Victorian arrangement rather than creating something wholly new.
- 4.24 In the early 1960s, the house was sold, and the houses in Bury Close were built to the north. The 1962-4 OS map shows the beginnings of this process, with the new road laid out in the former garden and the first houses built along it.
- 4.25 As part of the early 1960s work, the former stables and outbuildings to the east of the main house were also converted to a hotel known as Hunters Lodge or the Hunting Lodge. At some point, ownership of the house and the hotel were separated and passed into different hands, with the house remaining in private use.
- 4.26 In the early 1970s, a large modern extension was added to the hotel complex, which is shown on the late 1970s OS map.
- 4.27 The hotel changed hands in 1995, and there were extensive alterations and extensions in the 1990s and early 2000s. The hotel closed c.2012 and 2013, permission was granted for change of use and conversion to 18 residential units (13/00033/COU).
- 4.28 These works, over time, have changed the setting of the historic house markedly, just as has the construction of a large swimming pool in the garden area adjoining the red line application land.
- 4.29 The 1960s settlement extension is a noticeable feature in the setting of the hall, which is now absorbed in the general built up area of the settlement, and lacks the extensive area of outbuildings which would have formed part of its historic curtilage and communicated its status. The fineness of the architecture and scale of the building, however, continues to communicate that status.

Application Site: History

- 4.30 The application site lies to the south of Cottingham Hall, and sits between the modern villages of Middleton and Cottingham. Middleton was originally a hamlet of Cottingham and was a linear settlement along the road to the east of the main, nucleated settlement.

- 4.31 Part of the application site was an old enclosure associated with Cottingham Hall and later used as part of its outer gardens, and part was an early nineteenth-century enclosure of the villages' open field system.
- 4.32 Cottingham village had seven open fields to the north, north-east and south of the village, and Middleton had four to the northwest, north and south. These fields, and the associated agricultural system that saw them farmed in common, survived until the early nineteenth century.
- 4.33 Ridge and furrow, which resulted from medieval and early modern ploughing techniques, is commonly associated with the remains of open fields. There is no surviving ridge and furrow within the application site, but some survives to the north and northwest of the villages, and there is also some further to the east and south of the application site.
- 4.34 Cottingham and Middleton's open fields were enclosed (or enclosed) and divided up for private ownership through an Act of Parliament in 1815. A map of 1825 shows the enclosures around the application site. Parliamentary enclosure was notable for its straight field boundaries, which create a characteristic grid pattern in the landscape, and these are clearly seen on the 1825 map and remain visible in the landscape today, especially to the south of the application site. Older enclosures tended to have more sinuous, curving boundaries that followed landforms or the line taken by early ox ploughs.
- 4.35 The Cottingham Enclosure Map of 1825 shows the existing enclosures around the village in a light colour and the newly enclosed lands in a darker colour. The sinuous southern boundary of Plot 4 on the Enclosure Map (plot 5 on the 1834 estate map) is typical of an old enclosure boundary. It was part of the lands associated with Cottingham Hall (then called Berry House) and was owned by the Medlycotts. By 1834, this field was called "Fountain Close", possibly relating to springs in the area, and "close" also being suggestive of old enclosure. A memory of this curved boundary is preserved within the application site as a curving line of trees.
- 4.36 By the late nineteenth century, this field was apparently associated with the outer gardens of Cottingham Hall, and had a terraced area with an enclosure for a tennis court or other lawned playing field, in its northern part (see OS maps of 1887 onwards). It is not clear how the rest of the field was used, but it appears to have been open with some trees.
- 4.37 The line of trees that marked the old enclosure boundary is clearly visible on the 1880s OS, and there was a double line of trees along the eastern boundary of the field. The curved line of trees is not shown on the 1900 map, although maps of that era are noted for showing less detail of planting. They reappear in the same place in 1938 and are still visible on the site today. The double line of trees, which were elms, died in the twentieth century, but some new lime trees have recently been planted.
- 4.38 This part of the application site is now proposed to be left as open land.
- 4.39 Unlike the larger eastern part of the application site, the westernmost part of the application site (where the majority of the proposed houses will be situated) was a small, rectangular field belonging to John Lambert Jnr, that was apparently created

from the open fields as part of the 1825 enclosure process. John Lambert Senior owned a property on Main Street, Middleton just to the north of this field. This field, like its neighbours to the west, appears to have been an extension of existing plot boundaries into the open fields.

- 4.40 There does not appear to have been any historic association between this part of the application site and Cottingham Hall.
- 4.41 An application for planning permission (06/00094/OUT) to develop the application site was refused in May 2006.

The Setting of Cottingham Hall

- 4.42 The setting of Cottingham Hall was originally isolated from the rest of the village development by the fields and gardens around it on all sides.
- 4.43 This open setting has been altered in recent years, especially with the construction from the 1960s onwards of the former hotel on the site of its stables and outbuildings to the east, and also with the construction of the houses around Bury Close in the 1960s. The wider development of the village, including development to the north of the main road, has also altered the setting of the house.
- 4.44 Nonetheless, Cottingham retains its open setting at the rear, including the application site, and there are good views towards the house from the Jurassic way across the application site. In particular, there is a view down the slope available to someone walking the Jurassic Way, from the south. There one sees the polychromatic facing gable of the early house, set amongst trees in the context of the larger valley. This view changes as one moves along the public footpath, and from further south, looking back, one is aware of the later settlement in the context of the hall.
- 4.45 The important change is, as noted, the incorporation of the hall into the wider settlement. Its historic context has, then, changed fundamentally but is still apparent in certain parts.
- 4.46 As the discussion above demonstrates, the majority of the application site has been associated with Cottingham Hall since at least the early nineteenth century, if not well before. At first, as pasture, it provided first an agricultural backdrop to the house. From the mid to late nineteenth century it was part of the house's outer gardens. It continues to provide an open backdrop to the historic building.

Significance of Cottingham Hall

- 4.47 Cottingham Hall is listed Grade II*, a high level designation used for only a small percentage of listed buildings.
- 4.48 English Heritage (now Historic England) published its *Conservation Principles: Policies and Guidance* in 2008. This document sets out a framework of four inter-related key values for assessing the significance of historic buildings and places. These are evidential (archaeological), historical, aesthetic (or architectural), and communal, the latter normally reserved for public buildings such as churches.

- 4.49 Cottingham has a high level of architectural significance as a well preserved example of small manor house dating back to the seventeenth century with eighteenth-century and later alterations. It is an attractive building and retains historic features internally. It also has historical significance for the history of the development of Cottingham, and it may have some evidential (archaeological) potential if remains of an earlier house survive on the site. It has no particular communal significance, as this type of significance is usually associated with public buildings like churches or sporting venues.

The Contribution of Setting to Significance

- 4.50 English Heritage (now Historic England) produced its *Good Practice Advice Note: The Setting of Heritage Assets* in March 2015, replacing the 2011 *Setting of Heritage Assets*. This document is in line with the NPPF and notes that

“Setting is not a heritage asset, nor a heritage designation, though land within a setting may itself be designated.... [Setting’s] importance lies in what it contributes to the significance of the heritage asset.”

- 4.51 Cottingham Hall’s setting contributes to its significance by providing an open backdrop against which the architecture of the house can be appreciated. It also provides a rural, agricultural context for the house, despite the encroachment of modern development that allows the house to be understood as a small manor house that functioned primarily as a farmhouse. This rural, agricultural context can be understood both from within the house looking out and also looking down at the house from further up the slope from vantage points such as the Jurassic Way.
- 4.52 One is aware of the historic parish church from different points along this footpath, but I do not think it possible to contemplate and appreciate both historic buildings in the same view.
- 4.53 Understanding has a role to play in setting matters, even if visual considerations are the most important.
- 4.54 One does understand something of the whole shape of the settlement from this upper level view and its wider landscape setting. The historic nature of the settlement is not, in my judgment, evident in this view sequence, apart from the hall and later the church. Neither is the conservation area as such.
- 4.55 I do not see any potential impact on any other heritage asset. Accordingly, I focus my analysis on the Hall.
- 4.56 I should add that there are no places to stop along this part of the route, areas to sit out informally for example, but there is an area of land near the church off the footpath further south. This does not offer the same extensive landscape views as are available from the part of the route that bounds the appeal site, however.
- 4.57 Thus, in my analysis, the appeal site has the potential for significant enhancement for public use and access, and in an appropriate location providing extensive and attractive landscape views.

4.58 What do the physical attributes of the setting contribute to an appreciation of the Hall's architectural significance and an appreciation of its age?

4.59 With reference to the GPA3 criteria, I highlight the following:

- Largely it is a matter of topography as appreciated in longer views: the sloping landscape terminates in the hall, which is in turn set against a mature backdrop of trees, both in turn seen as the foreground to a very expansive valley view.
- Thus the heritage asset is seen and appreciated in a very large landscape context, a backdrop to it.
- The foreground of that context is, however, enclosed, bounded to either side by landscape and existing development, a kind of landscape 'pocket'.
- The use of the land, for grazing, communicates the original status of the building, a large farmhouse really.
- Mature trees provide a dense visual band within which features of the house are appreciated as one leaves the enclosed part of the Jurassic Way from the South.
- The foreground landscape is bounded and enclosed, as already noted, as a kind of pocket on one side, with arms of landscape elements rising up the slopes.
- The setting has changed considerably over time, such that the Hall is not part of a settlement, and associated with more recent extensions of it. In effect it lies in the spot where the two older settlements have coalesced in a band at the valley bottom.
- Its integrity as a setting, then, has been compromised.

4.60 The next step in the assessment is to consider how the experience of setting influences an appreciation of significance. This consideration, advised in the guidance, can overlap to some extent with the first part of the setting assessment since physical characteristics inevitably influence your experience of an asset's significance.

4.61 The experiential component comprises:

- One appreciates the Hall in the context of the settlement, and more modern development forms part of its setting to either side;
- The views of the asset from the footpath on the middle slope is the most important experience contributing to an appreciation of setting. The views are changeable but include a particularly fine set of views at the southern end of the Jurassic Way, where the older part of the house, the polychrome gable, is

set in mature trees and appreciated in the wider landscape context already described.

- I would not describe the house as a focal point in the view, but rather an interesting accent in it, because the scale of that view over the valley is long and expansive. The experience is picturesque in the traditional meaning of the word, pretty and irregular, and combining natural and manmade elements, from landform to land use/buildings (farming and houses).
- The presence of the Hall in the view, thus, enhances it and vice versa.
- There is no evidence that this view is intentional. It appears rather fortuitous. There is no evidence of self-conscious landscape design.
- Part of the pleasure in the view is the contrast between its relatively enclosed character on one side, the footpath side, and its open character outside the village. The eye, and focus of attention, moves from middle ground to distant in a way that is inherently pleasing.
- The view is inviting, but movement down into it is not permitted and is in any event difficult because the appeal site land is unkempt field with no paths.

4.62 Therefore, I conclude, that the landscape setting on the east side of the Hall contributes to an appreciation of its special interest. Because of distance, that appreciation is of a general nature, of an older building of some obvious status sitting in a traditional landscape complex and also in a settlement.

4.63 The expansive farmland setting does not survive.

4.64 Nearer to the listed building, walking on currently private land, one becomes aware of the large swimming pool in its grounds and other paraphernalia associated with a large residential curtilage. Nearer to one appreciates the later housing development which has not been designed with any awareness of its proximity to an important historic building. This is reflected in its building form and the lack of any deliberate landscape structure to mitigate the impact of proximity.

4.65 There is, then, the opportunity to use the new scheme to mask some of these features and present a better resolved landscape edge in closer proximity to the listed building, and that has been taken by the proposals.

Summary

4.66 Cottingham Hall was the local manor house, and there has probably been a house on the site since at least the fifteenth century. The present house dates to the seventeenth century, and retains a seventeenth-century core including a well stair. The house was altered in the eighteenth and nineteenth centuries and is now primarily Georgian in appearance. It was listed Grade II* in 1951.

4.67 In the 1960s, the stables and outbuildings to the east were converted to a hotel (now itself converted to residential units), and houses were also built in Bury Close in what had been its gardens.

- 4.68 The setting of Cottingham Hall was originally isolated from the rest of the village development by the fields and gardens around it on all sides. This setting has been altered in recent years with the construction of the houses and the hotel. The wider development of the village, including development to the north of the main road, has also altered the setting of the house.
- 4.69 The majority of the application site, except for the western portion, to the west of the hedge, has been associated with Cottingham Hall since at least the early nineteenth century and probably long before. As documents related to nineteenth-century enclosure and estate maps show (see Appendix 4 and the submitted Desk Based Archaeological Assessment), the application was used as pasture until the late nineteenth century, when it became part of the house's outer gardens. There is no evidence that it was ever a park in the medieval or early modern sense of the word.
- 4.70 Cottingham Hall has a high level of architectural significance as a well preserved example of small manor house dating back to the seventeenth century with eighteenth-century and later alterations. It is an attractive building and retains historic features internally. It also has historical significance for the history of the development of Cottingham village, and it may have some evidential (archaeological) potential if remains of an earlier house survive on the site. It has no particular communal significance, as this type of significance is usually associated with public buildings like churches or sporting venues.

5.0 SCHEME ASSESSMENT

- 5.1 In this section of my statement I will consider the impact of the proposals on the setting of the listed hall and any consequent effects on its significance, positive, negative or neutral.
- 5.2 I distinguish between impact on setting and impact on significance because it does not follow that harm to the first causes harm to the second.
- 5.3 To assist in this assessment I will use the criteria advised in GPA3, which is accepted best practice amongst professionals specialising in this area.
- 5.4 Because my involvement came after submission, I will start with step 4 in the process: the steps taken to minimise harm and maximise enhancement.
- 5.5 Essentially, and as I have explained in section 2.0, I was invited to support the proposals as an expert in an appeal context, and was shown two proposals.
- 5.6 First was the refused scheme and second was an initial revision for a reduced layout.
- 5.7 I advised the appellant that my evidence would conclude some but less than substantial harm. I considered that the site could, however, accommodate some development which, depending on layout, scale and landscape treatment, would preserve the setting and significance of the Grade II* Hall.
- 5.8 I had with me on site, on my visit, the submitted scheme and a revised sketch that pulled the line of development back towards the western 'pocket' of land and out of the line of sight of the building.
- 5.9 I then advised on two further revisions to that scheme, leading to the current submission, which I concluded is acceptable in its impact on the listed building's setting, causing no harm.
- 5.10 I will now explain why I conclude that, using the assessment criteria advised in step 3 of GPA3. I comment only the ones that are relevant to this facts of this case.

Location and Siting of Development

- 5.11 Proximity: the development is pulled away from the main landscape facing side of the listed building and its west elevation. That separating distance is significant, and the nearest house (House 25) is some 78 metres away from the listed Hall across an area of landscape screening.
- 5.12 To the extent this relationship is perceived, from very limited locations, decreasing markedly over time as the landscape matures, it is seen in the context of the larger part of the former land associated with the hall. This is left open.
- 5.13 Position in relation to landform: the development is set outside the extent of the field historically associated with the house, and in a landscape 'pocket', a discrete area that runs away from the line of the former boundary. The housing is set well below the level of the Jurassic Way, on land sloping down significantly, such that the ridges of most of the development would be below the line of sight from the ridge.

- 5.14 The landform, thus, has a significant effect, reducing the visual impact of the proposals.
- 5.15 Degree to which the development location will isolate the asset from its setting: the original field associated with the house will be left largely open, and the development will be set largely within adjoining fields formed during Parliamentary Enclosure in the early C19. The Hall will, thus, not be isolated at all from the open, rising land to the east.

The Form and Appearance of the Development

- 5.16 The form and appearance of the development: the proposals are offered in outline, with access and layout fixed. The irregular plot arrangement will present an open edge to the lower corner of the boundary with the retained agricultural land east of the Hall. This open arrangement and the angled plot arrangements reduce visual impact further, enabling the creation of what is sometimes called an open or feathered urban edge not a continuous line of development which would have a strong urbanising influence.
- 5.17 The DAS proposes natural materials and traditional building forms, and if the appeal is allowed this authority can require that treatment, as set out in the DAS, as a reserved matter.
- 5.18 The position of the buildings, their number and scale are such that I am satisfied there is an appropriate detailed solution which will potentially enhance the urban edge at this point when compared with the existing 1960s housing.
- 5.19 Position in relation to key views: the significant view of the house from the opening up of the Jurassic Way, as one walks east on rising ground, will be preserved because the line of development has been pulled back, and development has been removed from the area of land nearest the footpath. There will, in my judgment, be no material intrusion into this view.
- 5.20 As a result, the picturesque landscape view in which the gabled end of the Hall features will be preserved.
- 5.21 In views approaching from the east, looking back, landscape screening, the position of the houses and land form, will reduce visual impact. There will be some visibility, albeit very limited and filtered. The Hall is already appreciated in the context of the settlement from this and similar viewing directions, including on the private land forming the appeal site.
- 5.22 Accordingly, here too I see no harmful visual impact. Accordingly, I conclude the development will not dominate the scene or distract from an appreciation of the building itself and seen in relation to its setting.
- 5.23 The traditional, residential scale of the proposals is consistent with houses that already form part of the Hall's setting. The new houses are markedly smaller than the Hall and so will undermine the hierarchy of importance between the Hall and its surrounding settlement.

- 5.24 The open and irregular boundary towards the retained open land will ensure there is 'visual permeability' on the boundary, reducing the perception of the development, along with landscaping.
- 5.25 The visual effects will naturally vary seasonally, but I see no reason why a landscape scheme involving evergreen understory planting and varied species and hedges should not result in a development which is screened even in winter.
- 5.26 As for the architectural design of the proposals, this is left for a reserved matters application. If the appeal is allowed, I would hope that the Council and developer would work together on detailed designs that are traditional in character and use locally distinctive materials, complementing the Hall. This is most important on the houses to the eastern edge. If the Inspector is minded to allow the appeal, any comment in the decision letter endorsing this would be of assistance (assuming the Inspector takes this point and agrees).

Other Effects of the Development

- 5.27 The general character of the Hall's setting – a mix of urban and rural – will not be changed materially. The balance will be adjusted and the impact mitigated through landscape.
- 5.28 The reserved landscape matters are very important in this case, and I have advised the appellant to instruct his landscape consultant to provide a fair degree of detail to the Inspectorate because I think that is important to the overall success of the development, generally and in relation to my topic area.
- 5.29 A very significant additional effect of the proposals is, of course, to improve the landscape, which is retained as open, and make it publicly accessible.
- 5.30 That landscape is in poor condition, and the development would create a management company with responsibility for its care over time. There is no such arrangement at the moment, so that, for example, the views that I have identified from the Jurassic Way could over time be lost through boundary planting or lack of maintenance.
- 5.31 Access to the public from Jurassic Way would represent a major contribution to the amenity of the way, providing walkers and families with land to use informally, enjoying the view. There is no land currently accessible from the Way which would offer this quality of visual experience.
- 5.32 The effects of the development are permanent, and that includes the creation of publicly accessible open space and routes associated with the development.
- 5.33 In absolute terms, part of the Hall's setting, as open residential landscape, is harmed by the change to residential land.
- 5.34 This is because the loss of open landscape outside a settlement boundary is deemed to be harmful in itself.
- 5.35 But as policy makes clear, the issue is not harm to setting but harm to significance, and on the basis of the detailed assessment above I find none.

Conclusions

- 5.36 In conclusion, then, I find:
- a) The location, form and position of the development, taken together with landscape proposals will not undermine our appreciation of the asset in its context;
 - b) The new public access off the footpath, providing leisure opportunities and a splendid distant view, are a very significant benefit, secured in perpetuity. This is a general public benefit and a benefit to the listed building. The land will be positively managed for its attractiveness and general amenity, enhancing the public's appreciation of the Hall in its setting.
- 5.37 Although the development is close to a Conservation Area, the views of the area from across the development site do not reveal its significance, and hence I see no harm to its special interest.
- 5.38 As reconfigured, the proposals are distant from the listed parish church and screened, and so, accordingly, I see no impact on its significance.
- 5.39 For these reasons, turning to statute and policy, I have formed the following conclusions:
- a) The special interest of the listed building is preserved, such that allowing the appeal discharges the section 66 (1) duty;
 - b) Accordingly, all consequent NPPF policy is satisfied, indeed exceeded since the opportunity has been taken to enhance the setting of a listed building, improving public access to it and, consequently, public appreciation of its significance;
 - c) The NNCSS policy on green infrastructure, 5, is achieved, see for example parts 8 (h) and 9.
 - d) Furthermore, the way the area functions will be improved by providing new publicly accessible landscape managed for amenity and leisure purposes, in association with a major public footpath.
- 5.40 On my evidence, then, there is no sustainable reason to refuse the revised scheme on heritage grounds.

6.0 SIGNED AFFIRMATION

- 6.1 I confirm that, insofar as the facts stated in my statement are within my own knowledge, I have made clear which they are and that I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion.
- 6.2 I confirm that my statement includes all facts which I regard as being relevant to the opinions that I have expressed and that attention has been drawn to any matter which would affect the validity of those opinions.
- 6.3 I confirm that my duty to the Inspector and the Secretary of State as an expert witness overrides any duty to those instructing or paying me, that I have understood this duty and complied with it in giving my evidence impartially and objectively, and that I will continue to comply with that duty as required.
- 6.4 I confirm that I am neither instructed, nor paid, under any conditional fee arrangement by the appellant.
- 6.5 I confirm that I have no conflicts of interest of any kind other than any already disclosed in my Proof of evidence.
- 6.6 I confirm that my statement complies with the requirements of the Royal Town Planning Institute, as set down in the revised Royal Town Planning Institute "Chartered Town Planners at Inquiries – Practice Advice Note 4".



Dr Chris Miele MRTPI IHBC FRHS FSA
Senior Partner, Montagu Evans LLP

Appendix 1

Miele Background, CV and List of Publications

Chris Miele *BAHons MA PhD MRTPI IHBC FRHSFSA*



Position

Partner

At Montagu Evans since
2006

Date & Place of Birth

6th November 1961, Washington DC

Main Areas of Expertise

Planning & the Historic Environment

Professional Affiliation

Member, Royal Town Planning Institute

Member, Institute of Historic Buildings Conservation

Fellow, Royal Historical Society

Fellow, Society of Antiquaries, London

Key Commercial Clients

CIT, Land Securities, Chelsfield LLP, National Grid Property, Delancey, Berkeley Homes, Barretts, Fairview New Homes, Gladedale Properties, Dalia Wanda (China), Telford Homes, Bloor Homes, Hallam Land Management, Galliard, Meyer Bergman

Key Public Clients

Trustees of the South Bank Centre, Trustees of the British Museum, University of Oxford, Sheffield University, Dean and Chapter of Westminster Abbey, University College London, the Architectural Association, Greater London Authority, City of Westminster, Transport for London. Trustees of the Southbank Centre& other Public

.

Key Projects

- Admiralty Arch, Prime Investors
- United States Embassy, Grosvenor Square
- British Museum
- Commonwealth Institute
- South Bank Centre (over 12 years)
- Elizabeth House
- One Nine Elms
- Ram Brewery
- Fleet Marston Sustainable Urban Extension, Aylesbury
- Bow Street Magistrates' Court and Police Station

Professional Experience Includes:

- 2004-2005, Senior Planning Director, RPS Planning. Experience included major infrastructure projects, expert evidence at complex planning inquiries, and other development projects of a significant scale, for a range of private and some public clients.

- 1998- 2004 Director, Alan Baxter& Associates, Advising on planning and related urban design matters affecting the historic environment, to inform emerging design proposals; masterplanning, conservation plans and urban design studies; drafting planning policy guidance for historic sites

- 1991-1998 Historic Buildings Advisor, English Heritage. Experience included providing advice on listing and in support of English Heritage's statutory role in relation to listed building and conservation area consents and planning applications. Advice to local authorities on conservation area designations.

Areas of Expertise

All aspects of PLANNING, URBAN DESIGN & THE HISTORIC ENVIRONMENT with particular expertise in:

- Concept design and detailed approach to historic buildings and new development in historic areas; conservation and management plans; conservation area appraisals, heritage assessments; expert witness work; historic landscape analysis; historic building analysis and recording; masterplanning/development frame works in the historic environment; heritage impact assessments; representations and advice spot listings, delistings and certificates of immunity from listing; experience of scheduled monument consents; historic landscape and urban characterisation; historical research.
- Experience of educational, museum and gallery; hotel and restaurant; residential; mixed use town centre schemes.

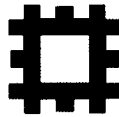
Chris Miele BAHons MA PhD MRTPI IHBC FRHSFSA

Published Works

- 'Scenes of Clerical Life: the Young Scott', in G G Scott RA, ed by P Barnwell (Shaun Tyas, forthcoming).
- 'Community Heritage' and other Victorian Myths: Reflections on the English Experience', ed. Melanie Hall, The History of Preservation: International Perspectives (Ashurst, 2013).
- *Forgotten, Lost and Restored*, joint author (Hackney Society, 2012)
- 'Gothic Sign. Gothic Realia: Reflections on the Holy Sepulchre', in *Architectural History*, 2010.
- 'Architectural Representation', Celebrating a Century of the Victorian Society: Essays and The Anatomy of a Georgian Villa, Danson House, author (English Heritage 2009)
- The Supreme Court of the United Kingdom: History, Art, Architecture (Hardcover) , editor and contributor (2010)
- From William Morris: Conservation and the Arts and Crafts Cult of Authenticity, editor and contributor (2005)
- "English Antiquity: Saxonism and the Construction of National Architectural Identities". In *Architecture and Englishness*, Con. Proceedings Society of Architectural Historians. (2005), ed. I. Dungavell and D. Crellin.
- Designing the World: Engineering, Architecture and the Royal Navy", *Architectural History* (Jrof the Society of Architectural Historians, UK), vol. 49, 2006.
- "Conservation", in *The Oxford Dictionary of Architecture*, 2005.
- "Conservation and the Development Process", *Journal of Architectural Conservation*, July 2005.
- "Danson House Restored", *Country Life*, 24 March 2005.
- "The Value of Conservation Plans?", *IHBC Yearbook*, 2005.
- "Love, Marriage and the Painted Georgian Interior", *English Heritage Collections Review*, (2001).
- "Re-presenting the Church Militant. The Camden Society and the Round Church", in *A Church As It Should Be*, ed C Webster and J Elliott (Stamford, 2000), pp 257-294.
- "Victorian Internationalism", in *The Gothic Revival. Religion, Architecture and Style in Western Europe, 1815-1914*, ed J de Maeyer and L Verpoest (Leuven/Louvain, Belgium, 2000), pp. 209-220.
- London Suburbs, gen ed. C Miele, technical ed. Kit Wedd, introduced by A Saint. Also contributor to first chapter: 'From Aristocratic Ideal to Middle-Class Idyll', (English Heritage, 1999), pp. 31-60.
- "The Battle for Westminster Hall", *Architectural History* (British Society of Architectural Historians) vol. 41 (1998), pp. 220-244.
- 'Robert Adam, Marlborough House and Mrs Fitzherbert: "The First Architect of the World in Brighton"', *Sussex Archaeological Collections*, vol. 136 (1998), pp. 149-175.
- "Real Antiquity and the Ancient Object", in *The Study of the Past in the Victorian Age*, ed. V Brand, intro. By Chris Brooks, *Oxbow Monographs* no. 73 (1998), pp. 103-125.
- *Morris on Architecture*, ed by C Miele (Sheffield, 1997). A collection of William Morris' lectures on building and architecture, with a critical introduction and annotations.
- "The First Conservation Militants", in *Preserving the Past*, ed M Hunter (Stroud, Gloucs., 1996), pp. 17-37.
- "Art or Craft? Morris & Co Revisited", *The Victorian Society Annual*, 1996, pp. 15-21.
- "The Conservationist", in *William Morris*, ed by Linda Parry (Victoria & Albert Museum, Exhibition Catalogue, 1996), pp. 72-90.
- "Their Interest and Habit. Professionalism and the Restoration of Medieval Churches", in A Saint and C Brooks (Manchester, 1995), pp 151-171.
- "A Small Knot of Cultivated People: The Ideologies of Protection", *The Art Journal* (American College Art Association: special issue on Conservation and Art History), vol. 54 (Summer 1995), pp. 73-80.
- "The Restoration of the West Front of Rochester Cathedral: Antiquarianism, Historicism and the Restoration of Medieval Buildings", *The Archaeological Journal*, vol. 151 (1994), pp. 400-419.
- *Hoxton* (Hackney Society Publication, London, 1993)

Appendix 2

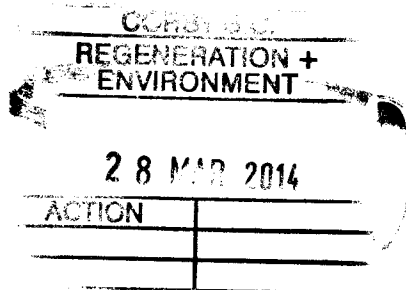
English Heritage Consultation Letter



ENGLISH HERITAGE

EAST MIDLANDS OFFICE

Mr Gavin Ferries
Corby Borough Council
Deene House
New Post Office Square
Corby
NN17 1GD



Direct Dial: 01223 323452

Direct Fax: -

Our ref: P00382670

26 March 2014

Dear Mr Ferries

**Notifications under Circular 01/2001, Circular 08/2009 &
T&CP (Development Management Procedure) Order 2010
LAND OFF BURY CLOSE, COTTINGHAM, NORTHAMPTONSHIRE
Application No 14/00094/OUT**

Thank you for your letter of 4 March 2014 notifying us of the application for planning permission relating to the above site. We do not wish to comment in detail, but offer the following general observations.

English Heritage Advice

As the proposal affects the setting of listed building (including Cottingham Hall Grade II* and The Church of St Mary Magdalene, Grade I), and a conservation area, the statutory requirements to have special regard to the desirability of preserving the building and its setting (s.16, Planning (Listed Building and Conservation Areas) Act 1990) and to pay special attention to the desirability of preserving and enhancing the character and appearance of the conservation area (s.72, Planning (Listed Building and Conservation Areas) Act 1990) must be taken into account by your authority when making its decision.

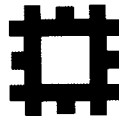
We note however that while there is passing reference to Cottingham Hall at paragraph 2.2.3, there is no proper heritage impact assessment, which identifies nearby heritage assets and establishes their significance, and in turn assesses the impact of the development upon the assets and their settings, in particular Cottingham Hall. The setting of the hall to the south has historically included open fields, as indicated on historic maps, and any Heritage Assessment should consider how the loss/erosion of this openness will impact upon the setting and significance of Cottingham Hall. In the absence of this important information it is difficult to make an accurate judgement as to the level of harm that might result to heritage assets from the proposal.

Your authority should therefore seek further detailed information with which to



44 DERNGATE, NORTHAMPTON, NN1 1UH
Telephone 01604 735 400 Facsimile 01604 735 401
www.english-heritage.org.uk

English Heritage is subject to the Freedom of Information Act, 2000 (FOIA) and Environmental Information Regulations 2004 (EIR). All information held by the organisation will be accessible in response to an information request, unless one of the exemptions in the FOIA or EIR applies.



ENGLISH HERITAGE

EAST MIDLANDS OFFICE

understand and assess the impact of the proposal upon the significance of the nearby heritage assets, pursuant to paragraph 128 of the National Planning Policy Framework (NPPF). This might include photomontages or other graphical representations showing views to and or from the hall.

In determining this application your authority should take account of the need to sustain and enhance the significance of heritage assets [NPPF 131] and that when considering the impact of a proposed development on the significance of a designated heritage asset (which includes the significance it derives from its setting), great weight should be given to the asset's conservation. The NPPF is clear that any level of harm to significance requires clear and convincing justification - in the case of harm which is less than substantial the harm must be weighed against the public benefits of the proposal [NPPF 132 & 134]. For further technical advice on setting issues, we would refer you to our published guidance, 'The Setting of Heritage Assets' (English Heritage 2011) which can be downloaded from our website <http://www.english-heritage.org.uk/publications/setting-heritage-assets/>

Recommendation

We would urge you to address the above issues, and recommend that the application should be determined in accordance with national and local policy guidance, and on the basis of your specialist conservation advice. It is not necessary for us to be consulted again. However, if you would like further advice, please contact us to explain your request.

Yours sincerely

Neville Doe

Assistant Inspector of Historic Buildings and Areas

E-mail: neville.doe@english-heritage.org.uk



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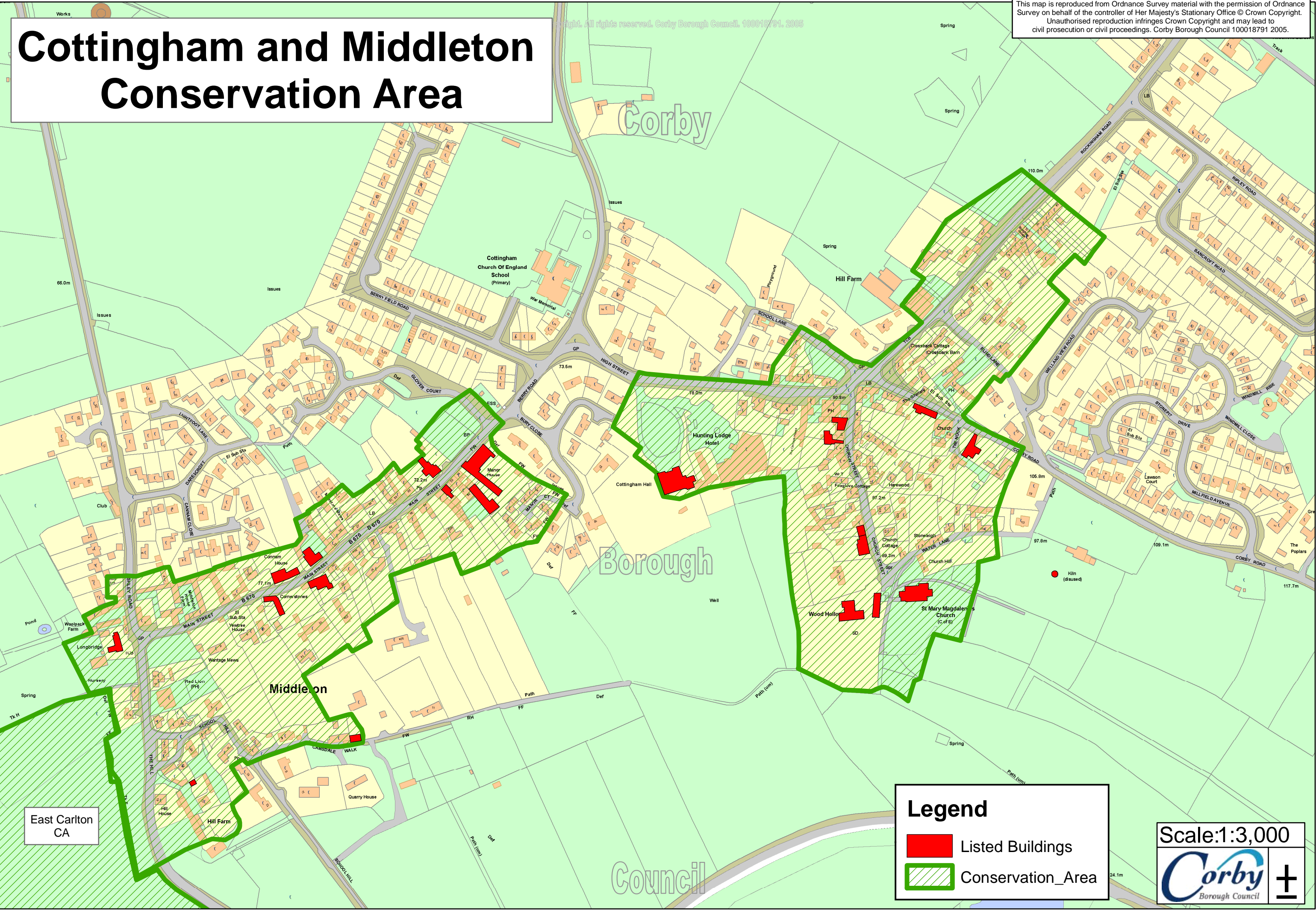
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Appendix 3

Conservation Areas Map and Listed Buildings (from planning authority)

Cottingham and Middleton Conservation Area

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Legend

- Listed Buildings
- Conservation_Area

Scale:1:3,000

Corby
Borough Council

±

East Carlton
CA

Appendix 4

Historic Map Sequence

Cottingham Hall: Historic Maps



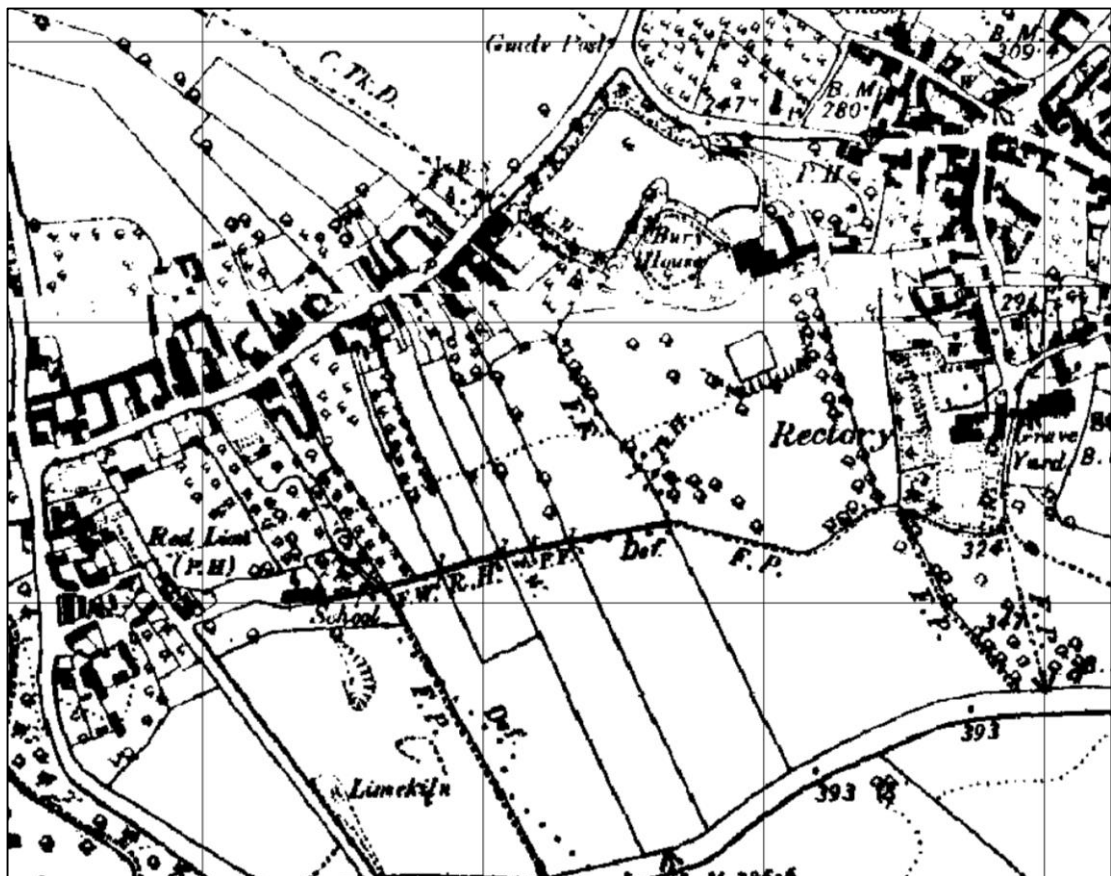
1. Cottingham and Middleton Enclosure Map, 1825



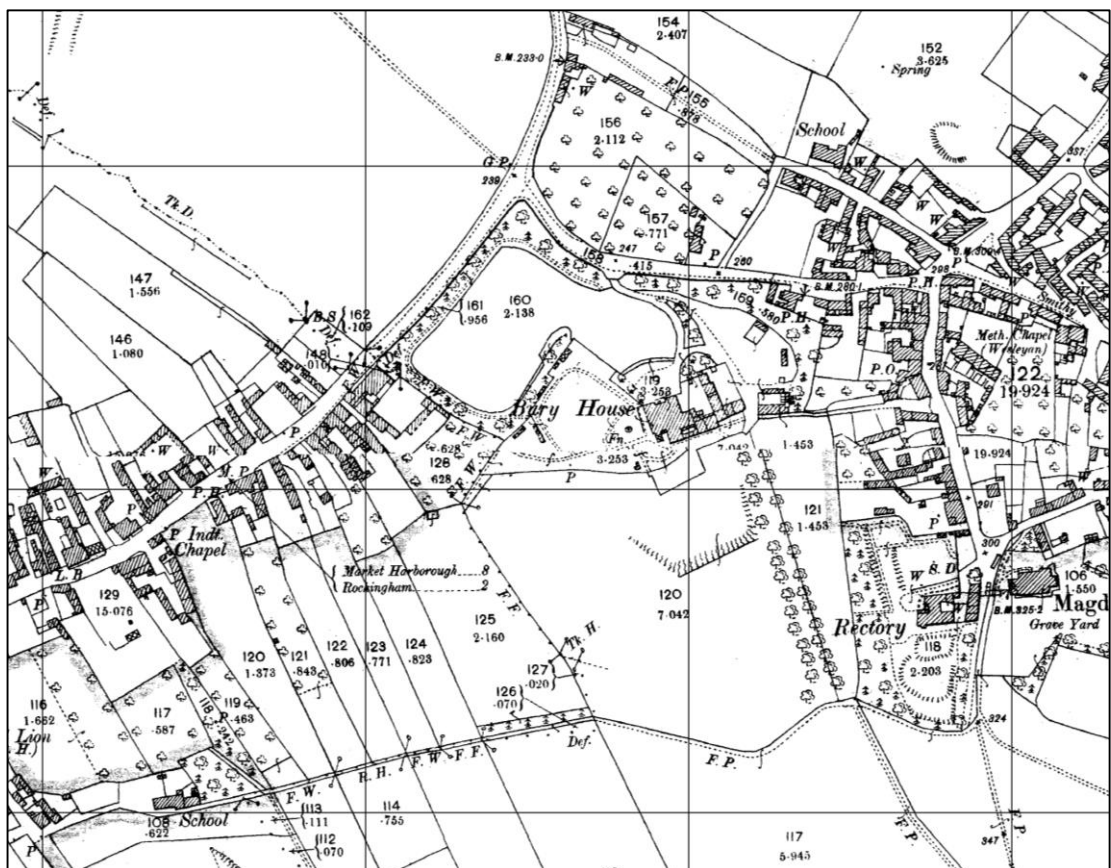
2. Estate map of 1834



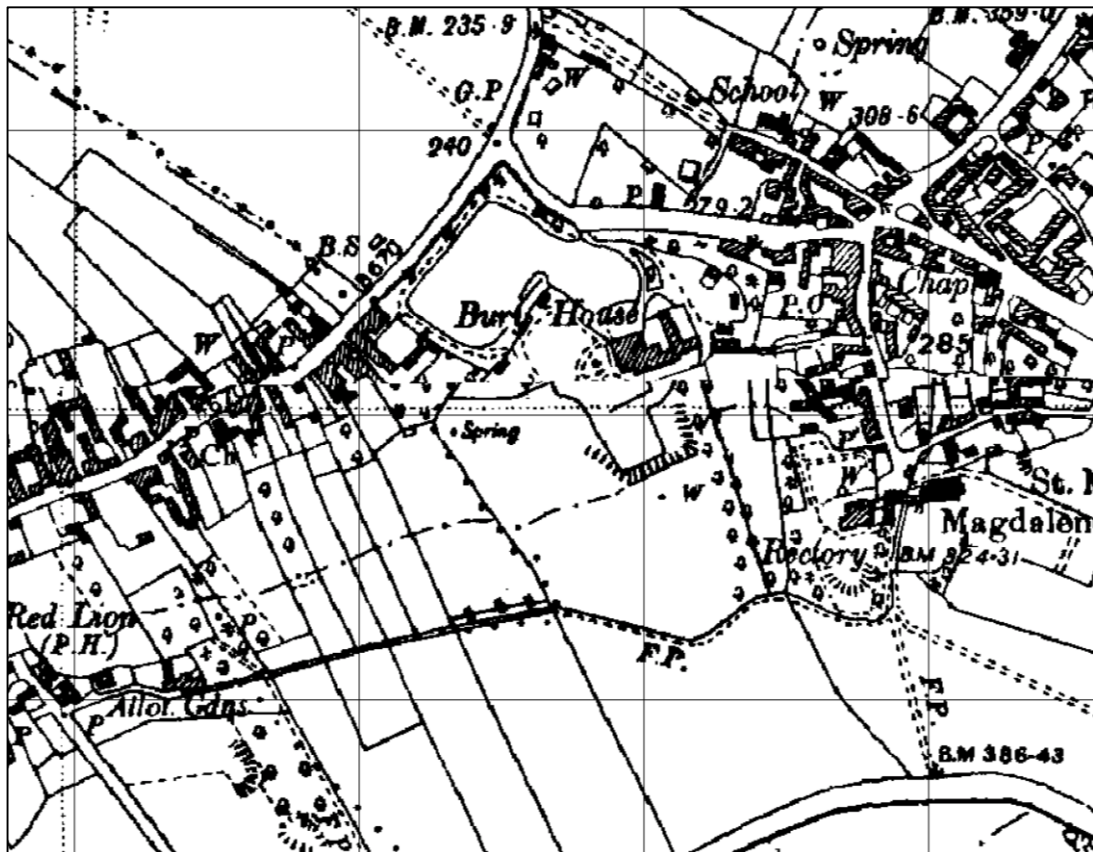
3. Cottingham and Middleton Tithe map, 1843 (site shown in red, relationship to historic boundaries may not be exact)



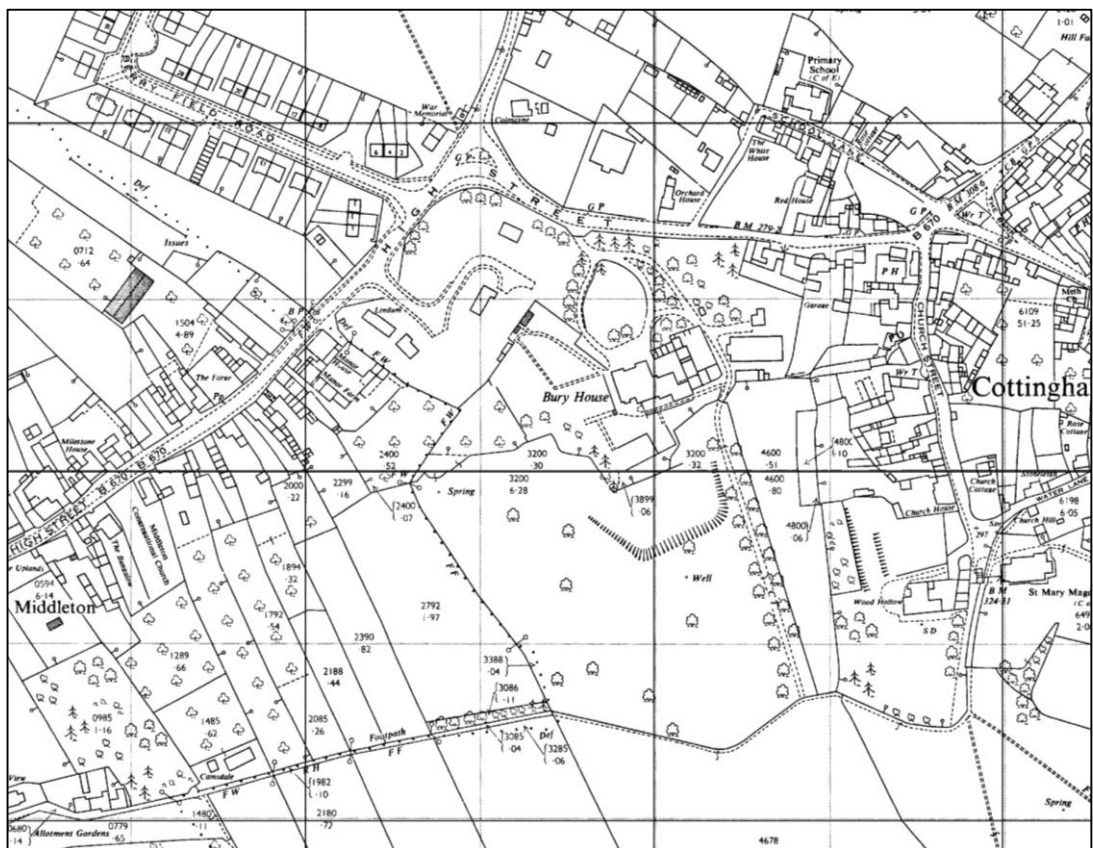
4. OS Map 1887



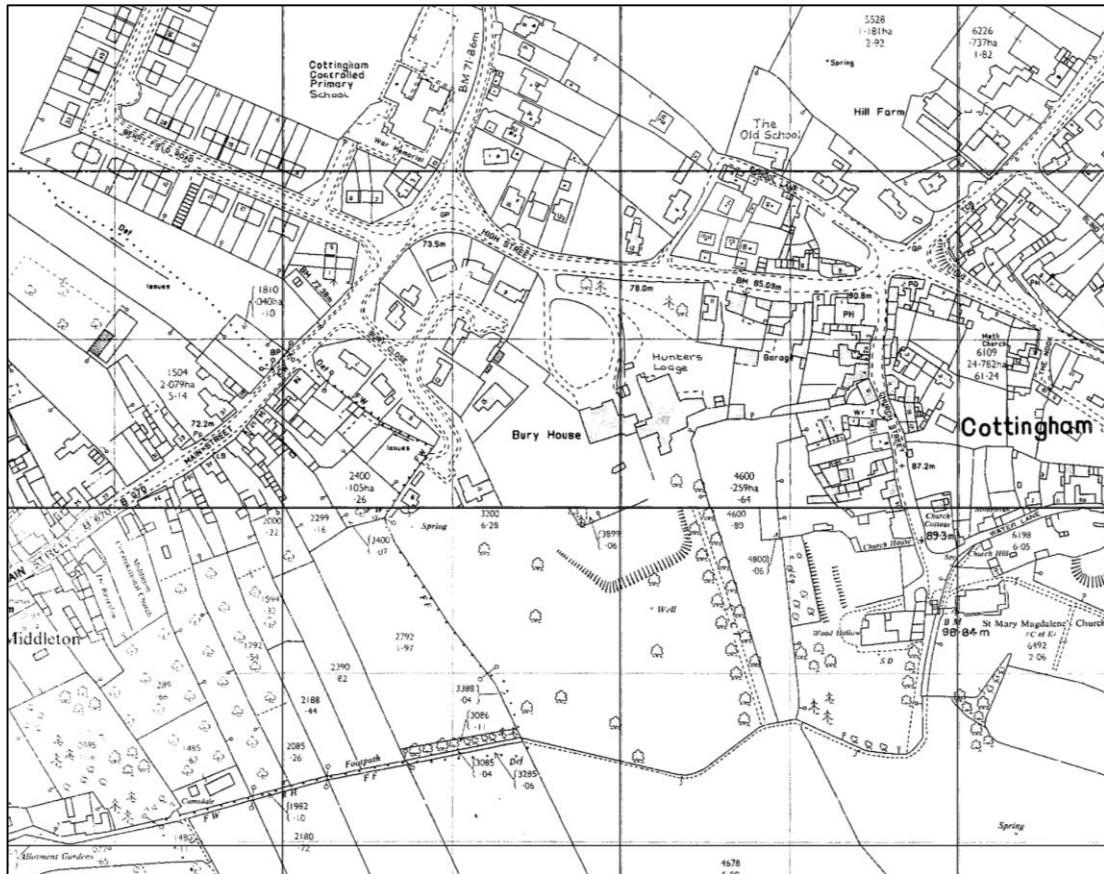
5. OS map of 1900



6. OS map of 1938



7. OS map of 1962-64



8. OS map of 1977-86

Appendix 5

Bury Hall (Cottingham Hall) List Description

List Entry Summary

This building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for its special architectural or historic interest.

Name: THE BURY HOUSE

List Entry Number: 1372572

Location

THE BURY HOUSE, HIGH STREET

The building may lie within the boundary of more than one authority.

County: Northamptonshire
District: Corby
District Type: District Authority
Parish: Cottingham

National Park: Not applicable to this List entry.

Grade: II*

Date first listed: 25-Oct-1951

Date of most recent amendment: Not applicable to this List entry.

Legacy System Information

The contents of this record have been generated from a legacy data system.

Legacy System: LBS

UID: 229817

Asset Groupings

This List entry does not comprise part of an Asset Grouping. Asset Groupings are not part of the official record but are added later for information.

List Entry Description

Summary of Building

Legacy Record - This information may be included in the List Entry Details.

Reasons for Designation

Legacy Record - This information may be included in the List Entry Details.

History

Legacy Record - This information may be included in the List Entry Details.

Details

COTTINGHAM HIGH STREET SP8490 (South side) 13/34 The Bury House 25/10/51

- II*

Country house. Late C17, mid C18 and mid C19. Squared coursed limestone and ironstone with ashlar facades and Swithland slate roofs. Double-depth plan. 3 storeys. Main front of 5-window range with flanking 2 bays breaking forward. Central 6-panel double doors with moulded stone architraves. Sash windows, reducing at second floor, all with glazing bars and moulded stone architraves. Some second floor windows are blind. Plain eaves parapet and hipped roofs. Brick and stone stacks at ridge and end. Elevation set back to left of main front is probably early C18 and has C19 casements with glazing bars and C19 lean-to porch. Garden front to right of main front is 4-window range similar to main front. Rear elevation has early C18 gable with banded ironstone and limestone and similar gabled staircase projection adjacent. Interior: panelled hall probably early C19 with bolection moulded stone fireplace. C18 eight-panelled doors with bolection moulded surrounds. Panelled window reveals. Drawing room has reset C18 marble fireplace with detailed columns. Late C17 staircase with turned balusters and quarter-landing and mid C19 staircase around open well.

Listing NGR: SP8439490053

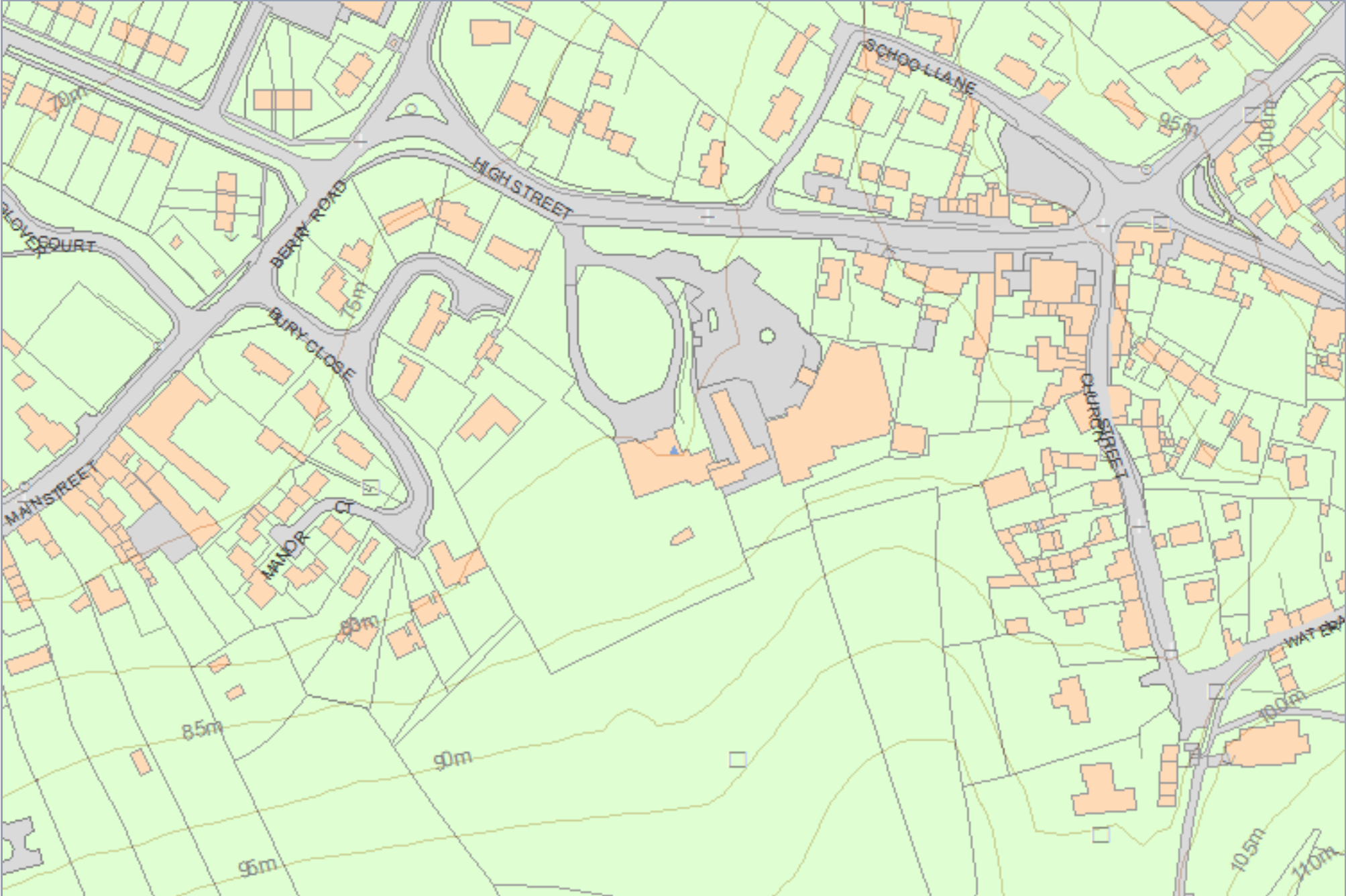
Selected Sources

Legacy Record - This information may be included in the List Entry Details

Map

National Grid Reference: SP 84394 90053

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Appendix 6

Barnwell Judgement



Neutral Citation Number: [2013] EWHC 473 (Admin)

Case No: CO/4231/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 08/03/2013

Before :

THE HONOURABLE MRS JUSTICE LANG DBE

Between :

(1) EAST NORTHAMPTONSHIRE DISTRICT COUNCIL

Claimants

(2) ENGLISH HERITAGE

(3) NATIONAL TRUST

- and -

(1) SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT

Defendants

(2) BARNWELL MANOR WIND ENERGY LIMITED

Morag Ellis QC and Robin Green (instructed by **Sharpe Pritchard**) for the **Claimants**
David Hardy (Solicitor Advocate from **Eversheds LLP**) for the **2nd Defendant**
1st Defendant was not in attendance and was unrepresented

Hearing dates: 20th and 21st February 2013

Approved Judgment

MRS JUSTICE LANG:

1. The Claimants have applied under section 288 of the Town and Country Planning Act 1990 (“TCPA 1990”) for an order quashing the decision of Mr P. Griffiths, an Inspector appointed by the First Defendant, dated 12th March 2012, who held an Inquiry and allowed an appeal by the developer, the Second Defendant, against the decision of East Northamptonshire District Council and granted planning permission for a wind farm development on farmland in Sudborough, Northamptonshire.
2. Initially the proposed development comprised 5 wind turbine generators, sub-station, access road, 80 metre anemometer, underground cabling and temporary construction facilities. In the course of its appeal, the Inspector permitted the Second Defendant to remove from its proposal the wind turbine which was closest to Lyveden New Bield, arguably the most significant heritage asset affected. He then granted permission for the development with 4 wind turbines.
3. East Northamptonshire District Council refused the application, on 24th January 2011, on the following grounds (among others):

“1. It is considered that the proposed development site is not suited to accommodating wind energy infrastructure, due to the significant immediate visual and landscape impacts at location of public access and recreation, through the introduction of ‘dominant’ additional features in the skyline and viewpoints, This is especially pertinent given the presence of cultural heritage features and the relative absence of any other existing modern structures. The proposal is therefore considered contrary to PPS1, objective 5, paragraphs 17, 18, 20, paragraphs 14 and 16 of PPS7, paragraphs 9 and 11 of PPS22, policies 26, 31 and 40 of the Regional Plan, policy 13(o) of the North Northants Core Spatial Strategy and policies EN8, EN9 and EN20 of the saved Local Plan.

2. It is considered that the proposed wind turbines will result in an unacceptable harm to the setting of Lyveden New Bield (Scheduled Monument, Grade 1 Listed Building, Grade 1 Registered Park and Garden) and to St Andrews Church Brigstock (Grade 1 Listed Building), and an insufficient assessment of the effects of the development on the setting of Drayton House (Grade 1 Listed Building) and its Grade 1 Registered Park and Garden. The proposal is therefore considered to conflict with the aims of historic environment planning policy and guidance expressed in PPS5, PPS22 (para 11), East Midlands Regional Plan (policies 26, 27, 31). North Northamptonshire Core Spatial Strategy (policy 13(o)).”

4. On appeal, the Inspector identified the main issues, at paragraph 9 of the Appeal Decision, as:

“whether any benefits of the proposal are sufficient to outweigh any harm caused to the setting of heritage assets, the character

and appearance of the surrounding landscape, the enjoyment of the area and the many rights of way within it, by walkers, cyclists and horse riders, ecology and other matters”

5. He concluded, at paragraphs 84 to 86, Appeal Decision:
 - a) There would be no significant adverse impact on users of public rights of way, no appreciable devaluation of the visitor experience to the area and no harm in ecological terms, and some enhancement.
 - b) The proposed development would harm the setting of a number of designated heritage assets, however, the harm would in all cases be less than substantial and reduced by the temporary nature of the planning permission (25 years) and its reversibility. The proposal would also cause harm to the landscape.
 - c) The benefits that would accrue from the wind farm – a 10 MW contribution to the 2020 regional target for renewable energy – attracted significant weight in favour of the proposal.
 - d) The significant benefits of the wind farm outweighed the harm it would cause to the setting of designated heritage assets and the wider landscape.
6. It was not disputed that the three Claimants had standing to bring the claim, as persons aggrieved under section 288(1)(b) TCPA 1990.
7. English Heritage has a statutory obligation under the Heritage Act 1983 to preserve historic buildings and promote public enjoyment and knowledge of them. In the present case it was a statutory consultee, an objector and their representative gave evidence at the Inquiry.
8. The National Trust is a charitable organisation incorporated under the National Trust Acts 1907 to 1971 and administered in accordance with the Charities (National Trust) Order 2005. It was established for the purposes of promoting the permanent preservation of buildings and lands for the benefit of the nation. It objected to the grant of planning permission and its representatives gave evidence at the Inquiry.
9. The National Trust owns the site of Lyveden New Bield, arguably the most important heritage asset affected by the proposed development. Lyveden New Bield is said to be the finest surviving example of an Elizabethan garden, and also of significance because it was designed to be a testament to the Catholic faith in an era of religious persecution. It is Grade 1 listed, and the Inspector found “this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude” (paragraph 45, Appeal Decision).
10. The First Defendant conceded that the Inspector’s decision should be quashed and took no further part in the proceedings.

Grounds of challenge

11. The issues in dispute on this application were as follows:

- a) Did the Inspector give special regard to the desirability of preserving the settings of listed buildings as required by section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990 (“P(LBCA)A 1990”)?
 - b) Did the Inspector correctly interpret and apply planning policy on the effect of development on the setting of heritage assets?
 - c) Did the Inspector give adequate reasons for his decision?
12. Mr Hardy complained that there were differences in the formulation of the Claimants’ grounds, as between the Claim Form and the Skeleton Argument. I did not consider that these were significant and the Second Defendant was not unfairly prejudiced by them.

Principles of law

13. In considering these issues, I have applied the following principles of law.
14. The exercise of planning judgment and the weighing of the various issues are entirely matters for that decision-maker and not for the Court: *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28 and *Tesco v Secretary of State for the Environment* [1995] 1 W1.R 759, at 780. In the latter case Lord Hoffmann said “If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State”.
15. In *Newsmith v Secretary of State for the Environment, Transport and the Regions* [2001] EWHC Admin 74 (a case concerning a challenge to a planning inspector's decision) Sullivan J. said at [6] – [8]:

“An application under section 288 is not an opportunity for a review of the planning merits of an Inspector's decision. An allegation that an Inspector's conclusion on the planning merits is *Wednesbury* perverse is, in principle, within the scope of a challenge under section 288, but the court must be astute to ensure that such challenges are not used as a cloak for what is, in truth, a rerun of the arguments on the planning merits.

In any case, where an expert tribunal is the fact finding body the threshold of *Wednesbury* unreasonableness is a difficult obstacle for an applicant to surmount. That difficulty is greatly increased in most planning cases because the Inspector is not simply deciding questions of fact, he or she is reaching a series of planning judgments. For example: is a building in keeping with its surroundings? Could its impact on the landscape be sufficiently ameliorated by landscaping? Is the site sufficiently accessible by public transport? et cetera. Since a significant element of judgment is involved there will usually be scope for a fairly broad range of possible views, none of which can be categorised as unreasonable.

Moreover, the Inspector's conclusions will invariably be based not merely upon the evidence heard at an inquiry or an informal hearing, or contained in written representations but, and this will often be of crucial importance, upon the impressions received on the site inspection. Against this background an applicant alleging an Inspector has reached a *Wednesbury* unreasonable conclusion on matters of planning judgment, faces a particularly daunting task ...”

16. In *Tesco Stores v. Secretary of State for the Environment & Ors* [1995] 1 WLR 759, Lord Hoffmann said, at 780F-H, that the weight to be given to a material consideration was a question of planning judgment for the planning authority.
17. In *Tesco Stores Limited v Dundee City Council* [2012] UKSC 13, Lord Reed (with whose judgment Lord Brown, Lord Hope, Lord Kerr and Lord Dyson agreed) said, at [17]:

“It has long been established that a planning authority must proceed upon a proper understanding of the development plan: see, for example, *Gransden & Co Ltd v Secretary of State for the Environment* (1985) 54 P & CR 86, 94 per Woolf J, *affd* (1986) 54 P & CR 361; *Horsham DC v Secretary of State for the Environment* (1991) 63 P & CR 2319, 225-226 per Nolan LJ. The need for a proper understanding follows, in the first place, from the fact that the planning authority is required by statute to have regard to the provisions of the development plan: it cannot have regard to the provisions of the plan if it fails to understand them. It also follows from the legal status given to the development plan by section 25 of the 1997 Act. The effect of the predecessor of section 25, namely section 18A of the Town and Country (Planning) Scotland Act 1972 (as inserted by section 58 of the Planning and Compensation Act 1991), was considered by the House of Lords in the case of *City of Edinburgh Council v Secretary of State for Scotland* 1998 SC (HL) 33, [1997] 1 WLR 1447. It is sufficient for present purposes to cite a passage from the speech of Lord Clyde, with whom the other members of the House expressed their agreement. At p.44, 1459, his lordship observed:

“In the practical application of sec. 18A it will obviously be necessary for the decision-maker to consider the development plan, identify any provisions which are relevant to the question before him and make a proper interpretation of them. His decision will be open to challenge if he fails to have regard to a policy in the development plan which is relevant to the application or fails properly to interpret it.”

18. Lord Reed rejected the proposition that each planning authority was entitled to determine the meaning of development plans from time to time as it pleased, within

the limits of rationality. He said, at [18], that development plans should be “interpreted objectively in accordance with the language used, read in its proper context”. They are intended to guide the decisions of planning authorities, who should only depart from them for good reason.

19. Lord Reed re-affirmed well-established principles on the requirement for the planning authority to make an exercise of judgment, particularly where planning policies are in conflict, saying at [19]:

“That is not to say that such statements should be construed as if they were statutory or contractual provisions. Although a development plan has a legal status and legal effects, it is not analogous in its nature or purpose to a statute or a contract. As has often been observed, development plans are full of broad statements of policy, many of which may be mutually irreconcilable, so that in a particular case one must give way to another. In addition, many of the provisions of development plans are framed in language whose application to a given set of facts requires the exercise of judgment. Such matters fall within the jurisdiction of planning authorities, and their exercise of their judgment can only be challenged on the ground that it is irrational or perverse (*Tesco Stores Ltd v. Secretary of State for the Environment* [1995] 1 WLR 659, 780 per Lord Hoffmann).”

20. An Inspector’s decision letter must be read (1) fairly and in good faith, and as a whole; (2) in a straightforward down-to-earth manner, without excessive legalism or criticism; (3) as if by a well informed reader who understands the principal controversial issues in the case: see Lord Bridge in *South Lakeland v Secretary of State for the Environment* [1992] 2 AC 141, at 148G-H; Sir Thomas Bingham MR in *Clarke Homes v Secretary of State for the Environment* (1993) 66 P & CR 263, at 271; *Seddon Properties v Secretary of State for the Environment* (1981) 42 P & CR 26, at 28; and *South Somerset District Council v Secretary of State for the Environment* (1993) 66 P & CR 83.
21. The Inspector was required to give adequate reasons for his decision: see the Town and Country Planning Appeals (Determination by Inspectors) (Inquiries Procedure) (England) Rules 2000, rule 19(1). The relevant principles in relation to the adequacy of reasons were summarised by Lord Brown in *South Bucks District Council and another v Porter (No 2)* [2004] 1 W.L.R. 1953, at [36]:

“35 It may perhaps help at this point to attempt some broad summary of the authorities governing the proper approach to a reasons challenge in the planning context. Clearly what follows cannot be regarded as definitive or exhaustive nor, I fear, will it avoid all need for future citation of authority. It should, however, serve to focus the reader’s attention on the main considerations to have in mind when contemplating a reasons challenge and if generally its tendency is to discourage such challenges I for one would count that a benefit.

36 The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached on the principal important controversial issues, disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision. The reasoning must not give rise to a substantial doubt as to whether the decision-maker erred in law, for example by misunderstanding some relevant policy or some other important matter or by failing to reach a rational decision on relevant grounds. But such adverse inference will not readily be drawn. The reasons need refer only to the main issues in the dispute, not to every material consideration. They should enable disappointed developers to assess their prospects of obtaining some alternative development permission, or, as the case may be, their unsuccessful opponents to understand how the policy or approach underlying the grant of permission may impact upon future such applications. Decision letters must be read in a straightforward manner, recognising that they are addressed to parties well aware of the issues involved and the arguments advanced. A reasons challenge will only succeed if the party aggrieved can satisfy the court that he has genuinely been substantially prejudiced by the failure to provide an adequately reasoned decision."

Planning Policies

22. The national planning policies relevant to this application were 'Planning Policy Statement 5: Planning for the Historic Environment' ("PPS5") and 'Planning Policy Statement 22: Renewable Energy' (PPS22). PPS5 has to be read together with the Government practice guidelines: 'PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide' ("the Practice Guide").
23. These policy documents establish the following (among other) principles:
 - a) The "significance" of a heritage asset is the "value of that asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. The accompanying Practice Guide expands on how one can analyse the public's interest in heritage assets by sub-dividing it into aesthetic, evidential, historic and communal values. This is not policy, but a tool to aid analysis" (PPS5, Annex 2, Terminology & footnote 18).
 - b) The "setting" of a heritage asset comprises the "surroundings in which the 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." (PPS5, Annex 2, Terminology).

- c) The contribution that setting makes to the significance of a heritage asset does not depend on there being an ability to access or experience the setting (PPS5 Practice Guide, para 117).
- d) A proper assessment of the impact on setting will take into account, and be proportionate to, the significance of the asset and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate the asset (PPS5 Practice Guide, para 122).
- e) There is a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be (PPS5, Policy HE9.1).
- f) Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting (PPS5, Policy HE9.1).
- g) Loss affecting any designated heritage asset requires clear and convincing justification (PPS5, Policy HE9.1).
- h) Substantial harm to designated heritage assets of the highest significance should be wholly exceptional (PPS5, Policy HE9.1).
- i) Where the application will lead to substantial harm to or total loss of significance local planning authorities should refuse consent unless it can be demonstrated (inter alia) that the substantial harm to or loss of significance is necessary in order to deliver the substantial public benefits that outweigh that harm or loss (PPS5, Policy HE9.2).
- j) Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should (i) weigh the public benefit of the proposal and (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss (PPS5 Policy HE9.3).
- k) When considering planning applications that do not preserve those elements of the setting that contribute to the significance of a heritage asset, any such harm should be weighed against the wider benefits of the application (PPS5, Policy HE10.1).
- l) The Government has set a target to generate 10% of UK electricity from renewable energy sources by 2010 and to double that figure by 2020. This can contribute to meeting energy needs, protecting the environment, reducing reliance on fossil fuels and economic growth and employment (PPS22 “The Government’s Objectives”).
- m) Renewable energy developments should be capable of being accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily (PPS22, Key Principle 1(i)).

- n) The wider environmental and economic benefits of proposals for renewable energy projects are material considerations that should be given significant weight in determining whether proposals should be granted planning permission (PPS22, Key Principle 1(iv)).
 - o) Planning permission for renewable energy projects affecting sites with nationally recognised designations should only be granted where it can be demonstrated that the objectives of designation will not be compromised by the development, and any significant adverse effects on the qualities for which the site has been designated are clearly outweighed by the environmental, social and economic benefits (PPS22, para 11).
24. Other relevant policies to be taken into account were English Heritage Guidance: ‘The Setting of Heritage Assets’; ‘Wind Energy and the Historic Environment’; ‘Conservation Principles Policies and Guidance for the Sustainable Management of the Historic Environment’.

The statutory duty under section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990

25. Section 66(1) P(LBCA)A 1990 provides:
- “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.”
26. The Claimants submitted that the Inspector failed to discharge his duty under section 66(1). The Second Defendant’s response was that the Inspector had discharged the section 66(1) duty by paying special regard to the desirability of preserving the setting of the listed buildings.
27. In my judgment, it is necessary to consider the way in which the section 66(1) duty fits into the overall consideration of a planning application.
28. The determination of an application for planning permission, and any appeal, is to be made in accordance with the development plan, unless material considerations indicate otherwise: section 38(6) Planning and Compulsory Purchase Act 2004, read together with sections 70(2), 77, 78 TCPA 1990.
29. In *Edinburgh City Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447, the House of Lords held that the effect of the Scottish equivalent of this provision was that the development plan has “priority” in the determination of planning applications (per Lord Clyde at 1458B), but if there are considerations indicating the plan should not be followed, a decision contrary to its provisions can properly be made (per Lord Clyde at 1458F). The decision maker has to assess the facts and weigh the material considerations and decide “whether there are considerations of such weight as to indicate that the development plan should not be accorded the priority which the statute has given to it” (per Lord Clyde 1459D-H).

30. In this application, the development plan comprised the East Midlands Regional Plan (EMRP), the North Northants Core Spatial Strategy (CSS) and the Local Plan. The Council found that the proposed development was contrary to the EMRP and the CSS, as set out in paragraph 3 above. The Inspector concluded, in paragraph 85, that the proposed development failed to accord with policies in the EMRP and CSS.
31. The statutory term ‘material considerations’ has been broadly construed to include any consideration relevant in the circumstances which bears on the use or development of land: *Cala Homes (South) Ltd v Secretary of State for Communities and Local Government & Anor* [2011] EWHC 97 (Admin); [2011] 1 P. & C.R. 22, per Lindblom J. at [31].
32. The ‘material considerations’ in this application included the Government planning policies and the English Heritage policies, listed above.
33. As the proposed development affected the setting of listed buildings, consideration of the grant of planning permission had to be made in accordance with the statutory duty under section 66(1) P(LBCA)A 1990.
34. In a case where the preservation of a listed building or its setting might conflict with the development plan, which has been given statutory priority, the duty under section 66(1) has been characterised “at its lowest” as a ‘material consideration’ “to which considerable weight should be attached” (per Deputy Judge Keene in *Heatherington (UK) Ltd v Secretary of State for the Environment & Anor* 69 P. & C.R. 374, at 383). He distinguished, to some extent, the earlier case law which pre-dated the change in the law in 1991 which gave priority to the development plan over other material considerations.
35. However in this application, the preservation of the setting of a listed building was not in conflict with the development plan. It was potentially in conflict with other ‘material considerations’, such as national planning policies, which are not given the same statutory priority as the development plan.
36. It is therefore relevant to consider the two cases cited in *Heatherington* about the similar statutory duty in what is now section 72 P(LBCA)A 1990 in respect of planning decisions within Conservation Areas which provides:

“Special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”
37. In *South Lakeland District Council v Secretary of State for the Environment & Anor* [1992] 2 AC 141 the House of Lords held that the intention of the equivalent provision in the Town and Country Planning Act 1971 was to “give a high priority” to the statutory objective (per Lord Bridge at 146F-G).
38. In *Bath Society v Secretary of State for the Environment* [1991] 1 WLR 1303, Glidewell LJ held that the desirability of preserving or enhancing the conservation area was, in formal terms, a material consideration but added at 1318F; “[s]ince .. it is a consideration to which special attention is to be paid as a matter of statutory duty, it must be regarded as having considerable importance and weight”.

39. In my judgment, in order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the “desirability of preserving ... the setting” of listed buildings when weighing this factor in the balance with other ‘material considerations’ which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann’s statement in *Tesco Stores v. Secretary of State for the Environment & Ors* [1995] 1 WLR 759, at 780F-H, that the weight to be given to a material consideration was a question of planning judgment for the planning authority.
40. Turning then to the Appeal Decision in this case, under the heading “The Impact on the setting of Heritage Assets”, at paragraph 17, the Inspector stated that the assessment of the impact of the proposal on the heritage assets had to be made “against the background of a series of statutory and policy documents”. The first of those listed was section 66(1).
41. In paragraph 22, he found that the wind farm would affect the setting of the heritage assets, which had wide implications for section 66(1). The Inspector concluded his section on the impact on the setting of heritage assets at paragraph 57, saying:
- “To summarise, the proposal would cause harm to the setting of a range of designated heritage assets. At its worst, that harm would not reach the level of substantial. Nevertheless, that there would be some harm means that the proposal does not accord with EMRP Policies 26 and 27 or CSS Policy 13 criterion (o). It is relevant to note that, subject to suitable conditions, the harm would disappear once the 25 year period of the planning permission expires. Moreover, the LIDAR survey would provide a small benefit in terms of recording. All that needs to be fed into the balancing exercise implicit in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and explicit in PPS5 Policies HE9.4 and HE10.1. I return to that below.”
42. The Inspector returned to the “balancing exercise”, at paragraphs 84 to 86. In paragraph 85, he re-stated that the proposal would not accord with the development plan. In paragraph 86 he referred again to PPS5 Policies HE9.4 and HE10.1 saying that they required him to balance the identified harm to the heritage assets against the benefits the proposal would provide. He concluded that the benefits, in terms of renewable energy, outweighed the harm which would be caused to the setting of designated heritage assets.
43. However, he did not refer again to section 66(1). In my view, given that he had previously referred to section 66(1), and clearly had it in mind, his failure to refer to it again did not of itself indicate an error of law, provided he applied it properly, and did not merely pay lip-service to it. However, in my judgment, he did fail to give proper effect to section 66(1) in the balancing exercise.

44. Under PPS5 HE9.4 he was required to “weigh the public benefit of the proposal against the harm”. Under PPS5 HE.10, he was required to “weigh any such harm against the wider benefits of the application”. This is what he did in these paragraphs.
45. Although “harm” is not the test in s.66(1), one of the meanings of “preservation” is to keep safe from harm and so the concepts are closely linked (see *South Lakeland District Council v Secretary of State for the Environment & Anor* [1992] 2 AC 141, per Lord Bridge at 150). However, in my view, the addition of the word “desirability” in section 66(1) signals that “preservation” of setting is to be treated as a desired or sought-after objective, to which the Inspector ought to accord “special regard”. This goes beyond mere assessment of harm.
46. In my judgment, the Inspector did not at any stage in the balancing exercise accord “special weight”, or considerable importance to “the desirability of preserving the setting”. He treated the “harm” to the setting and the wider benefit of the wind farm proposal as if those two factors were of equal importance. Indeed, he downplayed “the desirability of preserving the setting” by adopting key principle (i) of PPS22, as a “clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided” (paragraph 86). In so doing, he applied the policy without giving effect to the section 66(1) duty, which applies to all listed buildings, whether the “harm” has been assessed as substantial or less than substantial.
47. For the reasons set out above, I have concluded that the Inspector erred in law by not giving effect to the duty under section 66(1) P(LBCA)A 1990 when carrying out the balancing exercise.

Planning policies on the effect of development on the setting of heritage assets

48. The Claimants submitted that the Inspector failed correctly to interpret and apply planning policy on the effect of development on the setting of heritage assets. He assessed the potential harm to the setting solely or principally by reference to the extent to which the proposed development might affect an observer’s understanding of what the heritage asset was. That was an inadequate basis for an assessment of the effect of the proposed development on heritage assets. The Inspector had to assess:
- a) the significance of the heritage asset;
 - b) the contribution made to that significance by its setting;
 - c) the effect of the proposed development on the setting; and
 - d) the effect of the proposed development on the significance of the heritage asset and on the appreciation of that significance.
49. Consequently, the Claimants contended that the inspector erred in law in misconstruing relevant policy.
50. The Second Defendant’s response was that the Inspector had correctly applied the relevant policy tests (including English Heritage guidance on setting) in that he:
- a) identified each heritage asset;

- b) assessed the significance of each asset including any contribution made to significance by elements of setting;
- c) assessed the degree of impact that the turbines would have on those elements of setting that contributed to significance;
- d) assessed the degree of impact that the turbines would have on the ability of receptors to experience each heritage asset;
- e) formed a view on whether any harm to significance was substantial or less than substantial.

51. The Claimants focused their criticisms on the Inspector's assessment of the heritage assets listed below:

Titchmarsh; Church of All Saints, Aldwincle; Church of St Peter, Aldwincle; Church of St Michael and All Angels, Wadenhoe; Wadenhoe House; Wadenhoe Conservation Area; Church of St Mary, Lower Benefield; Lower Benefield Conservation Area.

52. The Inspector said, at paragraphs 28 to 31, Appeal Decision:

“28. Starting with the more distant heritage assets identified, Titchmarsh lies approximately 7 kilometres south-east of the appeal site. From the road that heads north-west towards the A605, there are panoramic views over the Nene valley, towards the appeal site, that take in the Church of All Saints and the Church of St Peter, in Aldwincle (both Grade I listed buildings) and the Church of St Michael and All Angels in Wadenhoe (Grade II*).

29. Along with Wadenhoe House (Grade II*) and the Wadenhoe Conservation Area, the Church of St Michael and All Angels (Grade II*) would also be visible with the proposed wind turbines in the background from points to the east-south-east of Wadenhoe, particularly when emerging from the churchyard at Achurch and the Nene Way public footpath. These listed buildings and the conservation area are designated heritage assets of national significance, clearly.

30. The wind turbines proposed would be an obvious and, at times, moving presence alongside the designated heritage assets in the views highlighted. However, any reasonable observer would understand the differing functions of a wind turbine and a church or a country house or a settlement and that the latter have a much greater archaeological, architectural, artistic or historic significance in themselves and as landmarks.

31. Coupled with the relatively significant degree of separation involved, this means that the presence of the wind turbines in these views would not erode from an understanding or appreciation of the significance of the designated heritage

assets at all. As such the proposed wind turbines would have no harmful impact on their settings. For the same reasons, I reach a similar conclusion in respect of the effect on the settings of the Church of St Mary in Lower Benefield (Grade II) and the Lower Benefield Conservation Area.”

Lowick Conservation Area, Church of St Peter, Lowick

53. The Inspector said, at paragraphs 35 to 36, Appeal Decision:

“35. A significant part of Lowick, a village to the north-east of Drayton House, makes up the Lowick Conservation Area. Within the conservation area is the Church of St Peter, a Grade I listed building. The church has a distinctive tower crowned with tall pinnacles and an octagonal lantern and is of the highest order of significance, nationally. From the southern end of the village and further south, there are places where the conservation area, with the church within it will form the foreground with the proposed wind turbines, sometimes turning, visible beyond. There are locations where the wind turbines proposed would be directly behind and rising above the church tower.

36. Again though, any reasonable observer would not be confused by the juxtaposition and would recognise the settlement and the church as features of historic, architectural and cultural significance, and the wind turbines as modern, large-scale, functional impositions designed to capture energy from the wind. There would be no confusion about the origins, or purpose of either, or both. The presence of the wind turbines would be something of a distraction but would not detract to any great extent from an understanding or appreciation of the significance of these heritage assets. As such, the harmful impact on the setting of the Lowick Conservation Area, and the Church of St Peter within it, would be much less than substantial.”

Lyveden New Bield

54. The Inspector said, at paragraphs 44 to 51, Appeal Decision:

“44. The site of Lyveden New Bield is owned and managed by the National Trust(NT) and is made up of the remains of a relatively large, formal landscape, with various earthworks and moats, and a roofless garden lodge known as the New Bield, all dating from towards the end of the 16th Century. There is also a later cottage on the site. The site is covered by a range of heritage designations. Lyveden New Bield (the garden lodge) is a Grade I listed building. Lyveden New Bield (the remains of the formal landscape) is included on the English Heritage Register of Parks and Gardens of Special Historic Interest at

Grade I. Lyveden New Bield (the garden lodge and part of the remains of the formal landscape) is a SAM. Lyveden Cottage is a Grade II listed building. Adjacent to the site of Lyveden New Bield, and outside the ownership of the National Trust, is Lyveden Old Bield and its attached outbuildings (formerly known as Lyveden Manor) a Grade I listed building. Along with its grounds, this formed part of the original formal landscape.

45. The intentions of Sir Thomas Tresham that lay behind the design of the formal landscape, and the processional route through it, are well documented, especially in the NT's Conservation Management Plan. It is not necessary to repeat all that. Suffice to say that the appellant's cultural heritage witness was content to acknowledge the group as probably the finest surviving example of an Elizabethan Garden, and that as a group, the heritage asset at Lyveden New Bield has a cultural value of national, if not international significance. I agree; this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude.

46. There was much discussion at the Inquiry about the setting of the group as heritage assets. References to the concept of 'immediate setting' are not helpful because advice in PPS5 and from EH is clear. The wind turbines proposed would be visible from all around the site, to varying degrees, because of the presence of trees. Their visible presence would have a clear influence on the surroundings in which the heritage assets are experienced and as such they would fall within, and affect, the setting of the group. Bearing in mind PPS5 Policy HE7, the central question is the extent to which that visible presence would affect the significance of the heritage assets concerned.

47. While records of Sir Thomas Tresham's intentions for the site are relatively, and unusually, copious, it is not altogether clear to what extent the gardens and the garden lodge were completed and whether the designer considered views out of the garden to be of any particular significance. As a consequence, notwithstanding planting programmes that the National Trust have undertaken in recent times, the experience of Lyveden New Bield as a place, and as a planned landscape, with earthworks, moats and buildings within it, today, requires imagination and interpretation.

48. At the times of my visits, there were limited numbers of visitors and few vehicles entering and leaving the site. I can imagine that at busy times, the situation might be somewhat different but the relative absence of man-made features in views across and out of the gardens compartments, from the prospect mounds especially, and from within the garden lodge,

give the place a sense of isolation that makes the use of one's imagination to interpret Sir Thomas Tresham's design intentions somewhat easier.

49. The visible, and sometimes moving, presence of the proposed wind turbine array would introduce a man-made feature, of significant scale, into the experience of the place. The array would act as a distraction that would make it more difficult to understand the place, and the intentions underpinning its design. That would cause harm to the setting of the group of designated heritage assets within it.

50. However, while the array would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the moated orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres, the turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site. Moreover, the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter). Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

51. On that basis, the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield and Lyveden Old Bield, or their relationship to each other. As a consequence, the effect on the setting of these designated heritage assets, while clearly detrimental, would not reach the level of substantial harm."

55. In my judgment, the Inspector did not adequately summarise the intrinsic significance of the first group of heritage assets at Titchmarsh, Aldwincle, Wadenhoe and Benefield. He merely identified them, described their listing and concluded that they were clearly heritage assets of national significance, listing the four categories (archaeological, architectural, artistic, historic significance) without deciding which applied and why. Nor did he identify the contribution made to the significance of the assets by their setting.
56. In my judgment, the Inspector's assessment of the significance of Lyveden New Bield, and its setting, was unsatisfactory. There was conflicting evidence before the Inspector as to whether the owner and designer of the site intended the views from the lodge and garden to be of significance. In paragraph 47, the Inspector found it was not "altogether clear" whether "the designer considered views out of the garden to be of any particular significance". However, in paragraph 50, he concluded that the

“turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge”. The Second Defendant submitted that, in paragraph 50, the Inspector found that there were no planned views. I am not sure whether or not that is a correct interpretation of the decision, in the light of his apparently contradictory statement at paragraph 47 that it was not “altogether clear” whether there were planned views. The Claimants submitted that the Inspector’s conclusion on planned views was perverse or unsupported by evidence. However, I am not satisfied that the Claimants have made out their case in this respect, in view of the possible alternative interpretation proffered by the Second Defendant. I have concluded that the Inspector failed to give adequate reasons for his conclusion on this important issue, and I deal with this further below.

57. In respect of each of the assets listed above, the Inspector’s assessment of the effect of the proposal on its setting and in turn, on its significance was, in my view, too limited. Although he correctly considered the separation distance between the assets and the turbines, he went on to emphasise one factor above all else, namely the ability of members of the public to understand and distinguish the assets from the wind turbines. He said:

“(a) any reasonable observer would understand the differing functions of a wind turbine and a church or a country house or a settlement and that the latter have a much greater ... significance” (assets at Titchmarsh, Aldwinckle, Wadenhoe, Benefield, paragraph 30);

(b) any reasonable observer would not be confused by the juxtaposition and would recognise the settlement and the church as features of historic, architectural and cultural significance, and the wind turbines as modern, large-scale, functional impositions designed to capture energy from the wind. There would be no confusion about the origins or purpose of either, or both.” (Lowick, paragraph 36);

(c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering or interpreting.” (Lyveden New Bield, paragraph 50)

58. In respect of Lyveden New Bield, the Inspector had already found:

- a) that the wind turbine array would act as a distraction that would make it more difficult to understand the place and cause harm to the setting (paragraph 49); and
- b) the array would be readily visible from the heritage asset site, at a separation distance of 1 to 2 kilometres, although it would not dominate the outlook (paragraph 50).

59. It appears, therefore, that the ability of the “reasonable observer” to distinguish “the modern array” from the “historic landscape or building” was the decisive factor for

the Inspector in reaching his conclusion in paragraph 51 that the effect on the setting would not reach the level of substantial harm.

- 60. I accept the Claimants' submission that the Inspector failed to have proper regard to the relevant planning policies, in particular that he limited his assessment to the ability of the public to understand the asset, and thus failed also to consider the contribution made by the setting to the significance of the asset.
- 61. In my judgment, the policies require a wider assessment to be taken, as indicated by the extracts set out below.
- 62. PPS 5, Annex 2 defines the "setting" of a heritage asset as:

"The surroundings in which the 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." (emphasis added).

- 63. PPS 5 Annex 2 defines the 'significance' of a heritage asset as:

"The value of that asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic."

- 64. PPS5 Practice Guide states:

- "115. Setting will, therefore, generally be more extensive than curtilage and its perceived extent may change as an asset and its surroundings evolve or as understanding of the asset improves."
- "116. The setting of a heritage asset can enhance its significance whether or not it was designed to do so. The formal parkland around a country house and the fortuitously developed multi-period townscape around a medieval church may both contribute to the significance."
- "117. The contribution that setting makes to the significance of a heritage asset does not depend on there being public rights or an ability to access or experience the setting. This will vary over time and according to circumstance."
- "119. Understanding the significance of a heritage asset will enable the contribution made by its setting to be understood. This will be the starting point for any proper evaluation of the implications of development affecting setting."
- "121 The design of a development affecting the setting of a heritage asset may play an important part in determining its impact. The contribution of setting to the historic significance of an asset can

be sustained or enhanced if new buildings are carefully designed to respect their setting by virtue of their scale, proportion, height, massing, alignment and use of materials. This does not mean that new buildings have to copy their older neighbours in details, but rather that they should together form a harmonious group.”

“122 A proper assessment of the impact on setting will take into account, and be proportionate to, the significance of the asset and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate the asset.” (emphasis added)

65. In my judgment, the Inspector failed properly to interpret and apply the relevant planning policies on the effect of development on the setting of heritage assets. I accept the Claimants’ submission that this error would probably have affected the balancing exercise which he was required to carry out. By failing properly to assess the contribution made by setting to the significance of the heritage assets, he may have failed properly to assess the overall magnitude of harm. On the balance of probabilities, it is likely therefore that the balancing exercise was flawed.

Reasons

66. The Claimants submitted that the Inspector failed to give adequate reasons for his decision in two respects:

- a) if in fact the Inspector properly considered the effect of the proposed development on the contribution made to the significance of heritage assets by their settings and discharged the duty under section 66, it is wholly unclear how he did so; and
- b) in the case of Lyveden New Bield, the Inspector failed to give adequate reasons in relation to the issue of planned views from the lodge and garden.

67. In the light of my earlier finding that the Inspector failed to give proper effect to section 66 P(LBCA)A 1990, it is not appropriate for me to address the reasons challenge under that head.

68. As I have already indicated, there was conflicting evidence before the Inspector as to whether the owner and designer of the site intended the views from the lodge and garden to be of significance. This was a controversial and important issue at the Inquiry. In paragraph 47, the Inspector found it was not “altogether clear” whether “the designer considered views out of the garden to be of any particular significance”. However, in paragraph 50, he concluded that the “turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge”.

69. Applying the test set out by Lord Brown in *South Bucks District Council and another v Porter (No 2)* [2004] 1 W.L.R. 1953, at [36], I consider that the Inspector should have given a clear conclusion, with reasons, on the important controversial issue as to whether or not there were planned views, before proceeding to assess the level of harm.

70. The Claimants contended that the contradiction between paragraphs 47 and 50 demonstrated that the Inspector erred in law, either by reaching a perverse conclusion in paragraph 50, or one which was not supported by the evidence. The Second Defendant submitted that, in paragraph 50, the Inspector found that there were no planned views. I am left with a substantial doubt as to the Inspector's reasoning and whether or not the Inspector did make an error of law.
71. I find that the failure to give adequate reasons contravenes rule 19(1) of the Rules, and prejudices the Claimants as they are not able to ascertain the Inspector's conclusions in relation to an important controversial issue, nor whether he has made an error of law.

Conclusions

72. The Claimants' application under section 288 TCPA 1990 succeeds for the following reasons. The Inspector:
- a) failed to give proper effect to the duty under section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990 when carrying out the balancing exercise;
 - b) failed properly to interpret and apply the relevant planning policies on the effect of development on the setting of heritage assets, which meant that the balancing exercise was flawed;
 - c) failed to give adequate reasons for his decision.

Remedy

73. Mr Hardy submitted that, even if the Claimants succeeded in establishing that the Inspector had erred in law, relief should be refused on the ground that the outcome would have been the same in any event, relying upon *Simplex Holdings v Secretary of State for the Environment* (1989) 57 P. & C.R. 306, where a factual error had been made.
74. In my judgment, it is not possible to predict what conclusion the Inspector would have come to if he had correctly applied section 66(1) P(LBCA)A 1990 and the relevant planning policies.
75. Therefore the decision ought to be quashed and the appeal re-considered, in the light of my judgment.

