

**FIVE10TWELVE'S COMMENTS ON  
AND  
QUESTIONS RAISED ON  
Applicant's Responses to the Examining Authority's First Written Questions submitted for  
Examination DEADLINE 3**

**Dated: 4 MARCH 2019 for Deadline 4**

**FOREWORD**

In an effort to aid the ExA we are submitting comments with evidence in the form of a row under each of the answers provided by the Applicant on a section by section basis. We would respectfully request the questions in red below the comments are asked of Applicant.

Comment or question (or lack of) does not mean agreement with or support for Applicant.

Ref No.	Respondent	Question
LV.1 Landscape and Visual		
LV.1.1	The Applicant	Landscape - Contribution and enhancement

Ref No.	Respondent	Question
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		<p>Table 11.11 sets mitigation measures that have been incorporated into the Proposed Development in order to avoid, reduce or compensate for potential adverse landscape and visual effects.</p> <p>However, Table 11.1 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] quotes the draft 2018 NPPF as stating that:</p> <p>The planning system should contribute to and enhance the natural and local environment, protecting and enhancing valued landscapes (Paragraph 168).</p> <p>The ExA notes that the final 2018 NPPF states at paragraph 170 that:</p> <p>“Planning policies and decisions should contribute to and enhance the natural and local environment by ... protecting and enhancing valued landscapes ... recognising the intrinsic character and beauty of the countryside.”</p> <p><b>Demonstrate how the proposal, taken as a whole enhances both the natural and local environment and valued landscapes and recognises the intrinsic character and beauty of the countryside.</b></p>
		<p>Applicant's Response:</p> <p>The LVIA process established that there are no local or national landscape designations within the study area. However, published landscape character assessments define character areas across the study area, and recognise the intrinsic character of the countryside; each landscape character area has its own key characteristics and sensitivities that were reviewed and documented as part of the baseline.</p> <p>A number of mitigation measures have been employed to reduce potential effects on landscape character. These include locating the built form back from the edge of the chalk plateau with the southern edge of the plateau cited as a key sensitivity as the skyline and backdrop to the lower lying landscape to the south. Elsewhere the scheme introduces planting to soften the role of the built form.</p>

		<p><b>COMMENT</b></p> <p><b>Setting of Heritage Assets</b></p> <p>A. <b>Setting</b> is defined in the <b>National Planning Policy Framework</b> as the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the assets and its surroundings evolve. Elements of a setting may make a positive or negative contribution to to the significance of the asset, may affect the ability to appreciate that significance or may be neutral<sup>1</sup>.</p> <p>B. Ramsgate's Royal Harbour the only Royal Harbour in the UK which the HE Colliers Report of October 2018 describes as "the defining visual and historical architectural feature of the town"<sup>2</sup></p> <p>C. 'Development further afield may also affect significance, particularly where it is <b>large scale, prominent or intrusive</b><sup>3</sup>'.</p> <p>D. In this instance, '<b>large scale</b>' may reasonably include a development being examined as a Nationally Significant Infrastructure Project (NSIP) and '<b>intrusive</b>' may reasonably include lowflying aircraft as a result of the "<b>implications of development affecting the setting of heritage assets</b>"<sup>4</sup>.</p> <p>E. "Evaluation may need to extend to <b>cumulative and complex impacts</b> which may have as great an effect on heritage assets as largescale development and which may <b>not solely be visual</b>"<sup>5</sup></p> <p>F. '... assessment should address the attributes of the proposed development in terms of its .. <b>wider</b></p>
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<sup>1</sup> Annex 2: Glossary, [National Planning Policy Framework](#), Department for Communities and Local Government

<sup>2</sup> Creative Industries in Historic Buildings and Environments, Colliers, October 2018, pg. 76, para 3.7.1(**Appendices LV-001**)

<sup>3</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 5

<sup>4</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 8, para 17

<sup>5</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 12, para 32

		<p><b>effects<sup>6</sup></b></p> <p>G. <b>“Wider effects of the development (includes) Economic viability<sup>7</sup>”</b></p> <p>H. <b>‘Cumulative and complex impacts’ and “wider effects” of a development may reasonably include low flying aircraft at 400ft 500ft above the conservation area/HAZ as a result of the development.</b></p> <p>I. <b>Views</b> which contribute more to <b>understanding the significance of a heritage asset</b> include: Those with <b>historical associations, including viewing points</b> and the topography of battlefields<sup>8</sup>.</p> <p>J. <b>‘Historical associations</b> might also reasonably include the designation of Ramsgate as a Royal Harbour by King George IV in 1821 as well as its role in the ‘Little Ships’ evacuation of Dunkirk.</p> <p>K. <b>“Those with cultural associations, including landscapes known historically for their picturesque and landscape beauty, those which became subjects for paintings of the English landscape tradition, and those views which have otherwise become historically cherished and protected<sup>9</sup>”</b></p> <p>L. <b>“An assessment of the contribution to significance of a view does not depend alone on the significance of the heritage assets in the view but on the way the view allows that significance to be appreciated. The view may be part of a landscape, townscape or other design intended to allow a particular attribute of the asset to be enjoyed ... Composite or fortuitous views which are the cumulative results of a long history of development, particularly in towns and cities, may become cherished and may be celebrated in artistic representations<sup>10</sup>”.</b></p>
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<sup>6</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 12, para 33

<sup>7</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 13

<sup>8</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 6 Paragraph 11

<sup>9</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 6 Paragraph 11

<sup>10</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LLV-002**) Page 11 Paragraph 30

		<p>M. Three of many examples: Thanet's skies minus aircraft are a key contributing factor to the setting of the HAZ, with JMW Turner immortalising them in numerous works in the English landscape tradition and famously writing 'the skies over Thanet are the loveliest in all Europe'. Ramsgate Sands, with the Eastcliff section of the conservation area, (which has hardly changed since the original painting) as a backdrop, are the subject of Frith's 'Life at the Seaside' in the Royal Collection and Royal Road, Ramsgate, is the subject of a pencil sketch by Van Gogh during his residency in the town in 1876.</p> <p>N. "A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it<sup>11</sup>"</p> <p>O. "The way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration<sup>12</sup>"</p> <p>P. "Need to consider the fact that <b>developments which materially detract from the asset's significance may also damage its economic viability now, or in the future, thereby threatening its ongoing conservation<sup>13</sup></b>".</p> <p><b>RESPECTFULLY REQUEST OF EXAMINING AUTHORITY</b></p> <p>1. Applicant should evidence how it has met Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>14</sup> and Section 66(1) of the 1990 Act<sup>15</sup> as well as relevant case law <i>Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council and Others</i> CA Feb</p>
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<sup>11</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LV-002**) Page 2

<sup>12</sup> Ibid

<sup>13</sup> Historic England (2017) The Setting of Heritage Assets- Historic Environment Good Practice Planning Note 3 (Second Edition) (**Appendices LLV-002**) Page 2

<sup>14</sup> Planning (listed Buildings and Conservation Areas) Act 1990 (**LV-003**)

<sup>15</sup> Planning (listed Buildings and Conservation Areas) Act 1990 (**LV-003**)

		<p>2014<sup>16</sup>.</p> <ol style="list-style-type: none"> <li>2. The cited statute and case law requires a decision-maker to give desirability of preserving the building or its <b>setting</b> not merely careful consideration but <b>considerable importance and weight</b> when balancing the advantages of the proposed development against any harm from operational noise and cargo, passenger and training flights.</li> <li>3. Applicant should provide an assessment of the impact on setting in relation to such heritage assets in Ramsgate including (but means not limited to) A designated Registered Park and Garden, Albion Place Gardens in Ramsgate, The presence of significant historical technical innovation Albion Place Garden Grade II, A number of highly significant Grade I, or II* listed buildings including St Augustine's and Sir Moses Montefiore Synagogue in Ramsgate, Ellington Park, The Grange (Ramsgate) the first modern house and Grade I listed designed and lived in by Augustus Pugin who designed the interiors of the Houses of Parliament, Ramsgate Royal Harbour, designated in 1821, has a number of Grade II and Grade II* listed buildings and structures ranging from the Customs House and Clock tower, harbour inner basin walls and Jacob's Ladder to rare seaside structures such as the East Cliff lift. Ramsgate, has also, been home to the romantic poet Samuel Taylor Coleridge, Vincent Van Gogh, Wilkie Collins etc and the subject of great painters including Joseph Tissot, JM Turner and William Powell Frith's Ramsgate Sands held in the Royal Collection Trust.</li> <li>4. Given that Ramsgate has been "assessed at risk by the Council and Historic England<sup>17</sup>" - Applicant should provide an assessment of the impact on setting in relation to the largest conservation area<sup>18</sup> in Kent; Ramsgate.</li> </ol>
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<sup>16</sup> Weekly Law Reports (ICLR)/2015/Volume 1 / \*East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another - [2015] 1 WLR 45 (**LV-004**)

<sup>17</sup> Creative Industries in Historic Buildings and Environments, Colliers, October 2018, pg. 76, para 3.7.1(**Appendices LV-001**)

<sup>18</sup> Thanet District Council Map of the Conservation Area of Ramsgate (**Appendices LV-005**)



Ref No.	Respondent	Question
		<p>In terms of the proposal enhancing both the natural and local environment, the published landscape character assessment explains that the airport “comprises a barren landscape of derelict terminal buildings and unmanaged grassland”. The proposed scheme would introduce a sense of coherence and framework of new land uses within the current derelict landscape.</p> <p>The Proposed Development provides a number of opportunities for enhancement of an already degraded landscape. Furthermore, a modern facility would be much better than a derelict airfield and will result in an enhancement of the natural and local environment, and design principles that facilitate this will be included in the Design Guide submitted at Deadline 4, some of which are outlined below:</p> <p>The proposals are set within a generous landscape setting, enhancing the limited existing green infrastructure that depicts the established site boundaries and neighbouring field patterns whilst providing new native long-term structure planting throughout the development. The existing vegetation cover is currently sparse, with much of the boundary planting being degraded, or in decline, through poor management and lack of replacement planting and as such opportunities to enhance the landscape setting exist in parts of the site that are not limited by aviation safety requirements. The main opportunities to enhance the existing setting in the context of the natural environment offer sensitive landscaping exist on the site boundaries and within the Northern Grass area.</p> <p>The site lends itself to enhancement through new buffer planting, between neighbouring residential properties and the surrounding highway network, which will provide a degree of visual containment of the proposals and important green corridors through and around the site, linking it to the wider countryside. Boundary planting is proposed to be elevated on bunding to offer more immediate containment of the site and provide some visual interest across what is predominantly a flat site, The proposals also seek wherever possible to recognise the intrinsic beauty of the countryside through the use of techniques that make reference to (for example) ancient hedgerow planting methods. Screen planting and bunding is proposed, to contain features such as the car park from views across the open fields to properties in the east,. Significant structural planting within the business park provides screening from large scale industrial buildings for low lying properties in the north.</p>



Ref No.	Respondent	Question
		New planting is proposed to reinforce the site's infrastructure and enhance legibility throughout the site, as well as to provide screening of the built form which does not exist in the site's current situation. Street planting in the north is of a scale to reflect the building mass and large swathes of screen planting in the north east corners provide a generous buffer between adjacent properties.
LV.1.2	The Applicant	<p><b>Landscape – Masterplan</b></p> <p>Table 11.11 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] references a landscape masterplan.</p> <p><b>Either</b></p> <p><b>i. Show where this is to be found in the submitted documentation; or</b></p> <p><b>ii. Provide a copy.</b></p> <p>Applicant's Response:</p> <p>Please see drawings at Appendix LV.1.2 in TR020002/D3/FWQ/Appendices.</p> <p>Landscaping masterplan drawings have been prepared in accordance with the Masterplan [APP-079]. These are considered to be live documents which will be developed as part of the ongoing detailed design. The enclosed drawings are by necessity at an indicative stage until the detailed design of the site is undertaken.</p> <p>The landscaping design will be developed by the landscape architect working as part of a multi-disciplinary team in conjunction with the detailed design progression of the site and will be approved under requirement 10 of the DCO.</p>

Ref No.	Respondent	Question
LV.1.3	TDC	<p><b>Landscape and Visual Impact - Thanet Local Plan</b></p> <p>Table 11.1 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] quotes relevant policies from the Thanet Local Plan(2006) Saved policies.</p> <p><b>State the effects that the new deposited local plan policies would have in this respect.</b></p> <p>Applicant's Response:</p> <p>N/A</p>
LV.1.4	The Applicant	<p><b>Landscape – Trees and hedgerows</b></p> <p>The Environmental Statement (Environmental Statement Volume 2: Main Text – Chapter 11 – 11.4.8) [APP-034] states that 'vegetation within the site is minimal', but includes:</p> <p>An Avenue of tree planting along sections of B2190 Spitfire Way (inside the site boundary and immediately outside but adjacent to the boundary on the grass verge outside the perimeter fence);</p> <p>A Short avenue of trees in the south-east corner of the site, within the site boundary and does not appear to mention hedgerows within the site.</p> <p>Article 34 of the dDCO [APP-006] deals with Felling or lopping of trees and removal of hedgerows.</p> <p>The ExA were informed at the ISH on the dDCO held on 10 January 2019 that there would not be any felling or lopping of trees or removal of hedgerows.</p>

Ref No.	Respondent	Question
		<p>However, the ExA notes that the Register of Environmental Actions and Commitments [APP-010] references “new tree planting to be undertaken to replace that lost.”</p> <p><b>Confirm this and, if so, show where this commitment is secured in the dDCO or in any of the documents secured through Schedule 10.</b></p> <p>Applicant's Response:</p> <p>During the assessment stage it was understood that no felling or lopping of trees or removal of hedgerows would be required however it is now understood that this statement only referred to the airfield itself. Since the assessment was completed it has been possible to gain access to the site under the powers granted by Section 53 and as such further observations have been possible alongside the surveys being carried out for certain specific faunal species. The Applicant therefore takes the opportunity to note that Wood's ecologists, the Applicant's environmental consultants, have confirmed that some of the above referenced trees do in fact appear to conflict with the current masterplan and may need to be removed. These trees are close to the boundary, on the Northern Grass. They are relatively young and not considered likely to perform a critical ecological function although this will be confirmed as the surveys progress.</p> <p>It is also understood that there are some trees or shrubs located around the existing fuel farm, which may also need to be maintained or felled completely depending on the final design of that facility.</p> <p>As such, the Applicant feels that it would be appropriate to maintain the commitment relating to new tree planting in the event of any loss.</p> <p>The planting proposed elsewhere within the application site (along the eastern and western boundaries of the northern grass area and south of Spitfire Way) should more than compensate for vegetation that is lost.</p>
LV.1.5	The Applicant	<b>Landscape - Planting scheme</b>

Ref No.	Respondent	Question
		<p>Para 11.1.9 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that:</p> <p>“Some fixed areas of planting are proposed [...] Elsewhere in the ‘Northern Grass’ area, planting will be introduced as part of the final layout of this area. However, this planting has not been defined within the broad zones to allow for future flexibility in the design.”</p> <p>Given this:</p> <p><b>i. Comment on whether, if any planning scheme is to be relied on for screening, there should be a requirement that this is provided in advance of the date of opening.</b></p> <p><b>ii. Show how any planning, if not yet defined, has been taken into account in any assessment of the visual impact of the proposed development.</b></p> <p>Applicant's Response:</p> <p>i. The revised dDCO submitted for Deadline 3 [TR020002/D3/2.1] now includes a requirement for the submission and approval of a landscaping scheme prior to the commencement of the relevant part of the authorised development. That landscaping scheme will require planting to be provided along the western and eastern perimeters of the business park and east of Spitfire Way/south of Manston Road. This planting has been relied upon as mitigation in the LVIA by filtering views of the large-scale built form within the airport or in the case of the business park, to prevent the built form from becoming overbearing. The assessment has been carried out on the assumption that the western and eastern perimeter planting around the business park would be undertaken in Year 1 and planting east of Spitfire Way/south of Manston Road would be implemented by Year 10.</p> <p>ii. Any additional planting within the Northern Grass Area (i.e. not that along the eastern and western boundaries) which has not yet been defined has not been taken into account in the visual assessment. The exception to this is in relation to the assessment for Viewpoint 7 (Appendix 11.3 of the Environmental Statement [APP-057]) which states for the Year 20 assessment that “Although not shown on the masterplan so as to allow for flexibility in the layout of the northern business</p>

Ref No.	Respondent	Question
		development, planting is highly likely to be introduced along the northern boundary of the site and this may begin to soften the lower facades of the units and break up their visual mass". Whilst this statement is made in the rationale, the planting has not influenced the predicted magnitude of visual change on the basis that it is not fixed.
LV.1.6	The Applicant	<p><b>Landscape - Planting scheme</b></p> <p>Para 11.1.9 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that:</p> <p>"Some fixed areas of planting are proposed, Elsewhere in the 'Northern Grass' area, planting will be introduced as part of the final layout of this area. However, this planting has not been defined within the broad zones to allow for future flexibility in the design."</p> <p>Given this:</p> <p>i. <b>Comment on whether, if any planning scheme is to be relied on for screening, there should be a requirement that this is provided in advance of the date of opening.</b></p> <p>ii. <b>Show how any planning, if not yet defined, has been taken into account in any assessment of the visual impact of the Proposed Development.</b></p> <p>Applicant's Response:</p> <p>This is the same question as LV.1.5. The Applicant's response is therefore the same as that provided for question LV.1.5.</p>
LV.1.7	The Applicant	<b>Landscape - Assessment of Landscape Effects</b>

Ref No.	Respondent	Question											
		<p>Section 11.8 Assessment of Landscape Effects in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] shows a significant effect for a number of receptors summarised in Table 11.133.</p> <p>The Register of Environmental Actions and Commitments [APP-010] sets out some mitigation in the form of, for example, landscaping and local bunding.</p> <p><b>Provide a table showing how these mitigation actions will serve to reduce the significant effects for specific receptors listed in table 11.133.</b></p>											
		<p>Applicant's Response:</p> <table> <tr> <th>Incorporated Measure (from the Register of Environmental Actions and Commitments)</th><th>Receptor</th><th>Commentary</th></tr> <tr> <td><b>Planting within the 45m wide buffer zones along the western perimeter of the business park (Northern Grass Area)</b></td><td>Residential Receptor Group 25: Preston Road properties, Preston Farm and Coldswood Farm</td><td>The planting proposed along the eastern perimeter of the business park will soften and filter/screen views of the business park units by Year 20 thereby reducing the magnitude of visual change with a corresponding change from a significant to not significant visual effect.</td></tr> <tr> <td rowspan="2"><b>Planting within the 45m wide buffer zones along the eastern perimeter of the business park (Northern Grass Area)</b></td><td>Residential Receptor Group 38: Terraced and semi-detached properties on the eastern side of Manston Court Road</td><td>Whilst the proposed planting itself would foreshorten existing open views from this group of properties (and would contribute to the predicted high magnitude of visual change), the introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.</td></tr> <tr> <td>Residential Receptor Group 39: Properties</td><td>Whilst the proposed planting itself would foreshorten existing open views from the two northern most properties</td></tr> </table>	Incorporated Measure (from the Register of Environmental Actions and Commitments)	Receptor	Commentary	<b>Planting within the 45m wide buffer zones along the western perimeter of the business park (Northern Grass Area)</b>	Residential Receptor Group 25: Preston Road properties, Preston Farm and Coldswood Farm	The planting proposed along the eastern perimeter of the business park will soften and filter/screen views of the business park units by Year 20 thereby reducing the magnitude of visual change with a corresponding change from a significant to not significant visual effect.	<b>Planting within the 45m wide buffer zones along the eastern perimeter of the business park (Northern Grass Area)</b>	Residential Receptor Group 38: Terraced and semi-detached properties on the eastern side of Manston Court Road	Whilst the proposed planting itself would foreshorten existing open views from this group of properties (and would contribute to the predicted high magnitude of visual change), the introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.	Residential Receptor Group 39: Properties	Whilst the proposed planting itself would foreshorten existing open views from the two northern most properties
Incorporated Measure (from the Register of Environmental Actions and Commitments)	Receptor	Commentary											
<b>Planting within the 45m wide buffer zones along the western perimeter of the business park (Northern Grass Area)</b>	Residential Receptor Group 25: Preston Road properties, Preston Farm and Coldswood Farm	The planting proposed along the eastern perimeter of the business park will soften and filter/screen views of the business park units by Year 20 thereby reducing the magnitude of visual change with a corresponding change from a significant to not significant visual effect.											
<b>Planting within the 45m wide buffer zones along the eastern perimeter of the business park (Northern Grass Area)</b>	Residential Receptor Group 38: Terraced and semi-detached properties on the eastern side of Manston Court Road	Whilst the proposed planting itself would foreshorten existing open views from this group of properties (and would contribute to the predicted high magnitude of visual change), the introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.											
	Residential Receptor Group 39: Properties	Whilst the proposed planting itself would foreshorten existing open views from the two northern most properties											

Ref No.	Respondent	Question		
			around Manston Court on eastern side of Manston Court Road	in this group (and would contribute to the predicted high magnitude of visual change), the introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.
			Residential Receptor Group 40: Northern semi-detached properties on western side of Manston Court Road	The proposed planting would in itself foreshorten the existing open views available to residents from the rear upper storey windows of these properties hence the predicted significant visual effects. The introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.
			Residential Receptor Group 41: Southern terraced properties on western side of Manston Court Road	The proposed planting would in itself foreshorten the existing partial open views available to residents at these properties hence the predicted significant visual effects. The introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.
		<b>Planting within the 45m wide buffer zones along the western perimeter of the business park (Northern Grass Area)</b>	Residential Receptor Group 47: Properties west of Manston Road	The proposed planting would in itself foreshorten the existing open views available to residents from the rear windows and gardens of these properties hence the predicted significant visual effects. The introduction of the planted buffer zone would ensure that the built form introduced within the business park would not become overbearing.
		<b>Planting along Spitfire Way</b>	Residential Receptor Group 36: Properties on Bell Davies Drive	The tree and shrub planting along the southern side of Spitfire Way would soften and filter views of the large-scale structures within the western part of the Site by Year 20 thereby reducing the magnitude of visual change with a corresponding change from a significant to not significant visual effect.

Ref No.	Respondent	Question			
					Note: there is an <b>error</b> in Table 11.133 and significant visual effects are predicted for Year 1 and Year 10, not just Year 1 as stated in Table 11.133.
LV.1.8	The Applicant	<p><b>Design – Principles</b></p> <p>The 2018 Airports NPS, which is an important and relevant consideration in the examination of this application, states in paragraph 4.30 that:</p> <p>“Visual appearance should be an important factor in considering the scheme design, as well as functionality, fitness for purpose, sustainability and cost. Applying ‘good design’ to airports projects should therefore produce sustainable infrastructure sensitive to place, efficient in the use of natural resources and energy used in their construction, and matched by an appearance that demonstrates good aesthetics as far as possible.”</p> <p><b>Describe how the design approach set out in the Design and Access statement (Part 4) [APP-084] fulfils the four characteristics of:</b></p> <ul style="list-style-type: none"> <li>• <b>Being sensitive to place;</b></li> <li>• <b>efficient in the use of natural resources;</b></li> <li>• <b>efficient in energy used in their construction; and</b></li> <li>• <b>an appearance that demonstrates good aesthetics as far as possible.</b></li> </ul>			
		<p>Applicant's Response:</p> <p>A Design Guide that expands on the design principles described in the Design and Access Statement [APP-081-084] will be submitted at Deadline 4. In the meantime, the Design and Access Statement addresses these characteristics as follows.</p>			



Ref No.	Respondent	Question
		<p><u>Being sensitive to place:</u></p> <ul style="list-style-type: none"> <li>• Landscaped boundaries to sensitive areas of the site i.e. 45m clearance zone to the first building from the site boundary in sensitive areas of the Northern Grass area.</li> <li>• Protecting the historic aviation usage of the site by safeguarding the existing memorial gardens and museums..</li> <li>• Referencing and enhancing the aviation usage of Manston Airport through any new proposals.</li> <li>• Tasteful and subtle use of colour on proposed buildings within the site.</li> <li>• Maximum height restrictions to sensitive areas through zone specific parameters on the site in order to reduce the visual impact of the proposal within the area.</li> <li>• Use of new landscaping to filter views into the development.</li> </ul> <p><u>Efficient in the use of natural resources:</u></p> <ul style="list-style-type: none"> <li>• Recycled aggregates.</li> <li>• Travel plan to promote sustainable access where applicable.</li> <li>• Maximum Car Parking Capacity.</li> <li>• Promotion of public transport accessibility.</li> </ul> <p><u>Efficient in energy used in their construction: and</u></p> <ul style="list-style-type: none"> <li>• CEMP (Construction Environmental Management Plan) will be put in place which will set out how construction workers travel to site, including the use of sustainable transport modes.</li> <li>• Earthworks construction waste could be minimised by balancing the cut and fill operations for the new aircraft cargo stands and warehousing.</li> </ul> <p><u>An appearance that demonstrates good aesthetics as far as possible.</u></p> <ul style="list-style-type: none"> <li>• The establishment of a Design Guide for the site which will ensure the consistent application of good aesthetic and design throughout the development.</li> <li>• The use of high quality materials.</li> </ul>

Ref No.	Respondent	Question
		<ul style="list-style-type: none"> <li>• Promoting design which references the historic aviation context and use of the airport.</li> <li>• Colours used within the proposed development will remain neutral and unobtrusive (e.g. whites greys and anthracite) in order to reduce the visual impact of the proposed development.</li> <li>• The Applicant will prepare a Design Guide which will set out in further detail, with reference to the 2018 Airport NPS, where the development will fulfil the characteristics of: <ul style="list-style-type: none"> <li>○ Being sensitive to place and the site's historic context;</li> <li>○ Designing sustainably and being efficient in the use of natural resources;</li> <li>○ Building sustainably during construction; and</li> <li>○ The proposed aesthetic quality, including character and place making, of the future development.</li> </ul> </li> </ul>
LV.1.9	The Applicant	<p><b>Design – Principles</b></p> <p>The 2018 Airports NPS, which is an important and relevant consideration in the examination of this application, states at paragraph 4.34 that:</p> <p>“There may be opportunities for the applicant to demonstrate good design in terms of siting and design measures relative to existing landscape and historical character and function, landscape permeability, landform, and vegetation.”</p> <p>The Relevant Representation from Historic England [RR-0676] states that:</p> <p>“We think that the open grassland character evokes the wartime airfield use, constitutes an historic area in its own right and contributes to the heritage significance of the wartime buildings, the museums and the memorial garden. The proposed development would be very harmful to historic character so we think that the potential to reduce harm by amending the design should be explored.”</p> <p><b>Describe how the design approach to the development of open grassland, including in the Northern Grass, has sought to reflect the historic character of the site.</b></p>

Ref No.	Respondent	Question				
		<p>Applicant's Response:</p> <p>The design approach reflects the historic aviation usage of the site by continuing the aviation functionality of the site and safeguarding historical assets such as the museum and memorial garden to protect or enhance them. The memorial garden and museums are safeguarded within a 3ha area in the proposed masterplan [APP-079].</p> <p>The design maintains areas of grassland within the Northern Grass area. A 45m buffer zone between site boundary and new buildings has been allowed for in the masterplan. This significantly reduces the developable area available but has been committed to in part to ensure the development is sympathetic to the local area.</p> <p>The historic usage of the site will be reflected in the proposal for airport related facilities on the Northern Grass area.</p> <p>The Design Guide to be supplied at Deadline 4 will set out, with reference to Historic England's Historic Military Aviation Sites Conservation Guidance (2016), the ways in which the development seeks to preserve the historic character of the site while securing its continued use as an airfield through durable and functional regeneration. This will make specific reference to the retention of historic existing site features and building -e.g. Royal Observer Corps Listening Post, RAF Battle HQ and Runway. The Applicant is retaining the following (unlisted) existing structures of historic significance:</p> <table><tr><td><b>TR 36 NW 894</b></td><td>Royal Observer Corps Listening Post</td></tr><tr><td><b>TR 36 NW 888</b></td><td>RAF Battle HQ</td></tr></table>	<b>TR 36 NW 894</b>	Royal Observer Corps Listening Post	<b>TR 36 NW 888</b>	RAF Battle HQ
<b>TR 36 NW 894</b>	Royal Observer Corps Listening Post					
<b>TR 36 NW 888</b>	RAF Battle HQ					
LV.1.10	The Applicant	<p>Paragraph 11.1.9 in Chapter 11 Landscape and Visual, in Environmental Statement volume 2 [APP-054] states that:</p>				

Ref No.	Respondent	Question
		<p>“The ‘Northern Grass’ area has been presented through a zonal approach whereby broad zones of building heights have been established without fixed building footprints being defined.”</p> <p><b>Given this approach, how has the visual impact of this part of the proposed scheme been assessed?</b></p>
		<p>Applicant's Response:</p> <p>The visual assessment has been conducted based upon the maximum building heights within the parameters for each zone.</p>
LV.1.11	The Applicant	<p><b>Design - Principles</b></p> <p>Table 11.4 states that:</p> <p>“The design principles set out in the Design and Access Statement will be used to ensure that all elements of the Proposed Development, including materials and colour are designed to a high standard as detailed design progresses.”</p> <p>The ExA assumes that the design principles are those contained in section 7.0 of the Design and Access Statement (Part 4) [APP-084].</p> <p><b>Show where the design principles ensure that colour is designed to a high standard and where this is reflected in, for example, the Visualisations in Part 8.0 of the Design and Access Statement (Part 4) [APP-084].</b></p>
		<p>Applicant's Response:</p> <p>The Applicant is committed to the principals as described in the Design and Access Statement [APP-081-084].</p> <p>The Applicant has committed to producing a Design Guide as part of the detailed design of the Proposed Development which will follow the above principles. This will be submitted at Deadline 4.</p>

Ref No.	Respondent	Question
		Requirement 4 of the dDCO, submitted for Deadline 3 [TR020002/D3/2.1], has been amended to require design to be in accordance with the Design Guide.
LV.1.12	The Applicant	<p><b>Design – Principles</b></p> <p><b>With reference to para 7.15.1 of the Design and Access Statement [APP-084] set out what is meant by a “consistent contemporary and light industrial aesthetic.”</b></p>
		<p>Applicant's Response:</p> <p>By consistent it is meant that a comprehensive high level design guide (as initially established in the Design and Access statement) will be applied to buildings in the proposal to ensure that all buildings within the site relate to and complement each other. This is proposed to be achieved through methods such as agreed material palettes, zone specific height parameters in sensitive areas and a development wide design guide to promote future consistency.</p> <p>By contemporary it is meant that building will reflect modern design techniques and high quality modern design. Attention will still be paid to the historic context of the site through contemporary interpretation rather than replication. An example of this could be the proposed curved roof proposal of the cargo facility and terminal building which evokes the curved aerofoil profile of a plane's wing through high quality modern materials and construction techniques.</p> <p>By light industrial it is meant that the buildings will be produced using contemporary materials which are high quality but still functional and cost effective. By light specifically it is meant that materials and forms will not be bulky or obtrusive in form and design will be as far as practicable elegant and attractive. Attention will also be paid to natural lighting within buildings including roof lights or polycarbonate panels.</p>

Ref No.	Respondent	Question
		By industrial aesthetic it is meant that the design guide of the proposal will promote building forms, material treatments and details which promote and evoke an aesthetic and form which follows the proposal's function as a modern cargo airport – i.e. the proposals will be related to and inspired by industrial and aviation design.
LV.1.13	The Applicant	<p><b>Design – Principles</b></p> <p><b>With reference to paragraph 4.31 of the 2018 Airports NPS explain how good design has been used to meet the principal objectives of the scheme by eliminating or substantially mitigating the adverse impacts of the development.</b></p> <p>Applicant's Response:</p> <p>Paragraph 4.31 of the Airports NPS states:</p> <p>A good design should meet the principal objectives of the scheme by eliminating or substantially mitigating the adverse impacts of the development, for example by improving operational conditions. It should also mitigate any existing adverse impacts wherever possible, for example in relation to safety or the environment. A good design will also be one that sustains the improvements to operational efficiency for as many years as is practicable, taking into account capital cost, economics and environmental impacts.</p> <p>The design has incorporated these objectives as follows. The concept design of Taxiways and Runway have avoided use of maximum gradients, this provides flexibility for detailed design to accommodate varying site levels. This substantially mitigates the adverse impact of accommodating changes to taxiway vertical profiles during design development.</p> <p>The layout of the masterplan positions stands closer to the runway than the cargo facility; this avoids impact on the Runway Obstacle Limitation Surface. This assists in mitigating adverse impacts on safety.</p> <p>The existing airport site has a steady 2-3% fall north, away from the runway. This creates a challenge for providing compliant gradients for Taxiways (1.5%) and Aprons (1%). The design utilises a Macro earthworks cut/fill balance and by locating the</p>

Ref No.	Respondent	Question
		<p>cargo stands in the middle of this area this challenge has been overcome. This substantially mitigates adverse impacts on the environment.</p> <p>Utilising the cut/fill balance also mitigates the generation of surplus material that would need to be transported off site. This will be further refined as the scheme develops, further mitigating adverse impacts on the environment.</p> <p>The existing airport pavement infrastructure has been re-used where possible. For example the existing runway is being overlaid. The passenger apron and taxiway are also retained in the masterplan design. This mitigates the scheme's environmental impact by reducing the requirement to create new infrastructure and reduces generation of waste.</p> <p>The site fuel farm is located on an existing fuel site. This maintains the fuel farms extant use and avoids creating a new fuel farm on the site. The site's location with airside access also increases operational efficiency.</p> <p>The site radar makes use of a previous radar installation location. This maximises use of existing infrastructure, takes advantage of existing operational efficiency and assists in mitigating adverse environmental impacts by reusing existing infrastructure.</p> <p>The attenuation ponds are located at the site's natural low point. This allows for maximum use of gravity feeds to the pond storage and minimises reliance on pumping to remove water from critical infrastructure areas. This improves operational efficiency of the network and provides increased safety from the impacts of failure in the pumping network.</p> <p>The passenger car parking has been centralised to the east of the site with its own site access. This separates passenger and cargo movements. This helps to mitigate safety concerns related to HGV and Passenger movements and also provides operational efficiency in the location of services and controls.</p> <ul style="list-style-type: none"> <li>• The use of sustainable urban drainage systems (SUDs) to mitigate impact of development on surface water (see the proposed attenuation ponds) helps to mitigate environmental impact of the scheme.</li> <li>• Airfield layout design to minimise times taxiing and holding providing additional operational efficiency.</li> </ul>

Ref No.	Respondent	Question
		<ul style="list-style-type: none"> <li>Habitat creation on-site south of the current southern perimeter fence and within land parcel 1362 - Created habitat will be specifically designed with diverse features to encourage invertebrates, including features typical of open mosaic habitat. This helps to mitigate the adverse environmental impact of the scheme.</li> <li>Off-site habitat provision in the c.36ha land parcel 1362 for ground nesting farmland birds e.g. skylark and grey partridge. Created habitats, improving the quality of that lost on site, to have particular species-specific measures and managed for farmland birds. This helps to mitigate the adverse environmental impact of the scheme.</li> <li>The use of, where practicable, sustainable materials in the building construction (i.e. recycled aggregates) This will help to mitigate the adverse environmental impact of the scheme.</li> <li>The use of, where practicable, renewable energy on site – (i.e solar panels PVs, roof lights, storm water recycling etc.) This will help to mitigate the adverse environmental impact of the scheme.</li> <li>The use of planting within the development as shown by the landscaping scheme which filters views into the development, provides relief to the built form, reduces surface water runoff, filters noise and absorbs air borne particulates. This helps to mitigate the adverse environmental impact of the scheme.</li> <li>The application of landscaping boundaries to sensitive visual areas of the development to reduce the visual impact of the development– i.e. 45m buffer to the Northern Grass areas This helps to mitigate the adverse environmental impact of the scheme.</li> <li>The application of height constraints and zone specific parameters to develop a hierarchy of sensitive areas (i.e. buildings closer to the site boundary have a lower maximum height to reduce visual impact) This helps to mitigate the adverse environmental impact of the scheme.</li> </ul> <p>Taken together the elements of design described above substantially mitigate the adverse impacts of development.</p>



Ref No.	Respondent	Question
LV.1.14	The Applicant	<p data-bbox="622 341 869 368"><b>Design – Principles</b></p> <p data-bbox="622 413 2067 480"><b>With reference to 4.33 of the Airports NPS show how the design of the scheme contributes to the quality of the area in which it would be located</b></p> <hr data-bbox="611 507 2078 510"/> <p data-bbox="622 555 887 582">Applicant's Response:</p> <p data-bbox="622 627 1249 654">Paragraph 4.33 of the Airports NPS states as follows:</p> <p data-bbox="622 699 2067 842">The scheme should take into account, as far as possible, both functionality, including fitness for purpose and sustainability, and aesthetics, including the scheme's contribution to the quality of the area in which it would be located. The Applicant will want to consider the role of technology in delivering new airports projects. Professional, independent advice on the design aspects of a proposal should be undertaken to ensure good design principles are embedded into infrastructure proposals.</p> <p data-bbox="622 887 1301 914">These principles have been taken into account as follows.</p> <p data-bbox="622 959 1070 986"><u>Functionality and Fitness for Purpose:</u></p> <ul data-bbox="622 1031 2067 1246" style="list-style-type: none"> <li data-bbox="622 1031 2067 1098">•The proposed masterplan [APP-079] responds to the market need for further aviation cargo facility capacity as well as the need for MRO and aircraft breakdown areas.</li> <li data-bbox="622 1142 2067 1246">•The proposed masterplan also includes a phasing strategy which can be implemented and expanded in direct response to the demands of the markets and industry. This will prevent the scheme building more than is required and therefore maintain its fitness for purpose across the lifespan of the airport.</li> </ul> <p data-bbox="622 1291 790 1318"><u>Sustainability:</u></p>

Ref No.	Respondent	Question
		<ul style="list-style-type: none"> <li>•The scheme proposes to build upon the current infrastructure available at the airport and make use of suitable existing assets such as the runway, passenger apron and fuel farm mitigating the impact of constructing new assets.</li> <li>•The proposed masterplan includes an aircraft breakdown area which meets the global need for aircraft recycling and will mitigate the adverse environmental impact or current aircraft retirement procedures.</li> </ul> <p><u>Aesthetics and Quality of the Area</u></p> <ul style="list-style-type: none"> <li>• The scheme will include a design guide which will set out the principles for good aesthetics across the airport and secure consistently good design throughout the whole site. The Design Guide is to be provided at Deadline 4, and contains a dedicated section related to the quality and character of the development and how that will contribute to the surrounding area with reference to Para 4.33 of the Airport NPS. This will include sensitivity to place; the quality and character of the development and how this will be secured through a set of design principles that future development at the airport will be guided by and committed to follow.</li> <li>• The design of scheme will make reference to the historic character and identity of the area- particularly the RAF and wartime heritage of the airport. This will be secured through the use of building forms, through subtle references (use of historical RAF colour insignia across way-finding at the site) and public accessible memorials and public art and sculpture which will pay tribute to the military history of the site and the Manston area as a community.</li> </ul> <p><u>Role of Technology</u></p> <ul style="list-style-type: none"> <li>• The execution of the scheme will make use of modern technology such as BIM (Building Information Modelling) during the design stage. This will reduce waste during construction through better coordination of the design team. It will also help in the maintenance of built assets after construction through having greater control, through accurate 3D modelling, in the post-occupancy operations phase.</li> <li>• The design of the scheme contributes to the quality of the area in which it would be located by continuing and enhancing the historic aviation usage of Manston Airport.</li> </ul>

Ref No.	Respondent	Question
		<ul style="list-style-type: none"> <li>The scheme protects and allows for the enhancement of existing related functions of the area including the memorial garden and existing aircraft museums</li> <li>The scheme will reflect and continue Manston Airport's aviation history through contemporary high quality new facilities and buildings which maintains and progresses Manston's history as an aviation site.</li> </ul> <p>The Applicant proposes to produce a <b>Design Guide</b> to be provided at Deadline 4, which will contain a dedicated section related to the quality and character of the development and how that will contribute to the surrounding area with reference to Para 4.33 of the Airport NPS. This will include sensitivity to place, the quality and character of the development and how this will be secured through a set of design principles that future development at the airport will be guided by and committed to follow. Compliance with Design Guide will be secured through requirement 4 of the dDCO.</p>
LV.1.15	The Applicant	<p><b>Design - Tranquillity and dark skies</b></p> <p>Paragraphs 11.4.39 to 11.4.44 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] reference CPRE Tranquillity and Night Blight Mapping.</p> <p><b>Show how the use of these documents has influenced scheme proposals as submitted.</b></p> <p>Applicant's Response:</p> <p>The Applicant has been aware of CPRE Tranquillity and Night Blight Mapping, but they do not provide information at a scale suitable to inform scheme proposals, which were instead informed by direct field observation. Both data sets are referenced in the LVIA in order to provide contextual information regarding these perceptual aspects of the site in relation to surrounding areas.</p> <p>An understanding of patterns of relative tranquillity and night-time lighting across the LVIA study area contextualised field observations and informed the Landscape Character Area sensitivity assessments provided in Appendix 11.2 and the impact</p>

Ref No.	Respondent	Question
		assessments for the LCAs provided in Tables 11.20 through 11.33 of Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 (APP-034). Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 predicted that no significant adverse effects would be sustained by any LCA as a result of the development and the CPRE documents therefore influenced the proposals indirectly by helping to demonstrate that the proposals are acceptable in terms of impact on landscape character.
LV.1.16	The Applicant	<p><b>Design - Museums</b></p> <p>Table 11.3 states that the two museums are being retained as part of the Proposed Development.</p> <p>The ExA received evidence from Mr Russell at the Open Floor Hearing held on 11 January 2019 that there are proposals to move the museums.</p> <p><b>i. Indicate the status of any proposals to move the Museums; and</b></p> <p><b>ii. state whether these proposals have been incorporated into the design process for the proposed scheme.</b></p> <p>Applicant's Response:</p> <p>i. Statements of Common Ground have been agreed with both museums which include proposals to re-locate the museums to another location on the Northern Grass within the museum safeguarded area. No move will take place without the consent and approval of the two museums and in the event that it did occur it would be subject to a planning application by the respective museums to the local planning authority.</p> <p>ii. The museum safeguarding area is part of the masterplan (APP-079) and the dDCO includes no powers to carry out any works within that area.</p>

Ref No.	Respondent	Question
LV.1.17	The Applicant	<p><b>Visual Impact – Study area</b></p> <p>Figure 11.1 and paragraph 11.6.5 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] shows the Landscape and Visual Impact Assessment (LVIA) study area as being within 5km of the site.</p> <p><b>Justify the choice of this boundary.</b></p>
		<p>Applicant's Response:</p> <p>A LVIA study area of 5km was initially identified based upon the criteria set out in Paragraph 11.3.2 of the Environmental Statement [APP-034]. The 5km LVIA study area was included in the Scoping Report issued to consultees including Thanet District Council and Kent County Council to give them the opportunity to suggest a more appropriate study area based upon their local knowledge. No change to the LVIA study area was requested by any consultee.</p> <p>The study area was tested through the viewpoint assessment and had any significant visual effects been identified at or close to 5km boundary then at that time the study area would have been reviewed accordingly.</p>
LV.1.18	The Applicant	<p><b>Visual Impact – Study area</b></p> <p><b>Justify the boundaries of in the Zone of Theoretical Visibility (ZTV) as set out in ES Volume 4: Figures [APP-041] given the statement made in the ISH on the dDCO held on 10<sup>th</sup> January 2019 that there is uncertainty as to the existing levels within areas of the Order Limits.</b></p>
		<p>Applicant's Response:</p> <p>The ZTVs included in ES Volume 4: Figures [APP-041] illustrate the potential visibility of proposed structures based upon the maximum height parameters for those structures in meters above ordnance datum (m AOD) not in meters above ground</p>

Ref No.	Respondent	Question
		level (m AGL). As such, the height of structures modelled in the ZTV is absolute rather than relative to ground levels and any uncertainty regarding ground levels within areas of the Order Limits has no impact upon the ZTV boundaries.
LV.1.19	The Applicant	<p><b>Visual Impact – Study area</b></p> <p>Para 11.3.2 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states the study area has been selected with regard to previous experience of undertaking LVIAs for similar types of development.</p> <p><b>Reference the similar types of development to Manston Airport used in the definition of the study area.</b></p>
		<p>Applicant's Response:</p> <p>Wood, the Applicant's environmental consultants who prepared the LVIAs, has prepared LVIAs for proposed development at Bristol Airport as well as several LVIAs for developments which include large-scale industrial buildings (e.g. Encirc in Cheshire, distribution warehouses in South London, Northamptonshire and Suffolk).</p>
LV.1.20	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Para 11.3.9 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that ZTVs for aircraft approaching, moving along and departing from the runway have not been modelled.</p> <p>It justifies this, in part, by stating that it is not considered likely that overflying of aircraft in the sky could give rise to significant visual effects due to the intermittent, transitory and small-scale nature of the changes that would arise in views. This is repeated in paragraphs 11.6.2. and 11.6.16.</p> <p><b>Given, inter alia, the number of ATMs proposed, justify the implication that the frequent presence of aircraft overhead would not alter the visual perception of any locations within the study area.</b></p>

Ref No.	Respondent	Question
		<p>Applicant's Response:</p> <p>The Applicant's position is not that overflying aircraft will have no effect on the visual perceptions of any locations within the study area nor that the effect of overflying of aircraft would not be significant. It is anticipated that at Year 10, there would be approximately two incidents of overflying aircraft an hour between the hours of 0700 – 2300 rising to approximately four ATMs an hour in Year 20. The intermittent and transient nature of the presence of overflying aircraft would not equate to visual changes that are of a long duration and so are not considered to be significant.</p>
		<p><b>COMMENT</b></p> <p>A. Applicant has identified there will be a “significant adverse effects have been identified as being likely as a result of an increase in noise” in Ramsgate, Manston, Wade, West Stourmouth and Pegwell Bay. Applicant also has stated that “aircraft noise would increase to a point where there would be a perceived change in the quality of life for occupants of buildings in these communities<sup>19</sup>”.</p> <p>B. Yet, Applicant paints a picture of a brief moment of noise and passing quickly planes.</p> <p>C. Given the location of many of our heritage assets aircraft will be visible and heard over a long period of approach and landing.</p> <p>D. Lest there be any doubt as to the impact on the setting and appreciation of the Ramsgate HAZ and conservation area of the proposed development, we invite you again to watch the videos taken from within the Ramsgate conservation area of previous airport operations below. The proposed development would see an increase in aircraft flight to an average of at least 3-4 flights per hour, with flights operation 24 hours per day.</p> <p>Flights over Southwood Gardens:  <a href="https://www.youtube.com/watch?v=4ubPILLb4">https://www.youtube.com/watch?v=4ubPILLb4</a></p>

<sup>19</sup> APP-034 Paragraph 12.7.2

		<p>Flights over Ramsgate Harbour, taken from pier (watch from 19 seconds in)  <a href="https://www.youtube.com/watch?v=VQkFhyklbCI">https://www.youtube.com/watch?v=VQkFhyklbCI</a></p>
LV.1.21	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Paragraph 11.6.18 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that visual effects during the construction phase of the Proposed Development could lead to effects on human receptors</p> <p>However, paragraph 11.3.9 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that ZTVs for the construction phase, including two 40m mobile cranes have not been modelled.</p> <p>One justification for this is that there would be a temporary presence of the cranes.</p> <p>However, Section 11.8 Assessment of Landscape Effects in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] does appear to assess the impact of the construction phase on receptors.</p> <p><b>Given that Table 6.2 in the ES Volume 15 [APP-061] shows that there will still be construction activity in 2037 and given the statement in paragraph 11.6.18 and given the description of Year 1 impacts in Section 11.8, justify the statement in paragraph 11.3.9.</b></p> <p>Applicant's Response:</p>



Ref No.	Respondent	Question
		<p>The absence of a ZTV for the mobile cranes does not mean that there has been no assessment of this component of the development.</p> <p>An assessment of visual effects on receptors which lie within the ZTV includes consideration of the temporary deployment of mobile cranes throughout the construction of the development. For receptors located outside of the ZTV, the temporary presence of cranes in their views has been tested through the viewpoint assessment in Appendix 11.3 [APP-057]. Viewpoints 9, 11 and 19 lie outside of the ZTV and the visual assessment for these viewpoints considers the presence of cranes and demonstrates that receptors would not experience significant visual effects as a result of cranes on their own. As a consequence, the absence of a ZTV does not result in the failure to identify any receptors who may experience significant visual effects.</p>
LV.1.22	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Table 11.5 states, in response to a consultation request from Stone Hill Park Ltd that:</p> <p>“Viewpoint photography has not been included from the PRoWs close to the eastern boundary as this will require a diversion as part of the proposals.”</p> <p><b>Justify this statement, given that the diversion will also follow the Eastern Boundary.</b></p> <p>Applicant's Response:</p> <p>Viewpoint 6 (Figure 11.13) [APP-041] is located approximately 500m to the east of the proposed diverted footpath and is considered to be representative of the view which would be available from the diverted PRoW. An assessment of the visual effects from this diverted PRoW is included in Table 11.105 in the Environmental Statement [APP-034]. The Applicant considers that whilst there is no viewpoint photography from this PRoW, the effects on receptors on the PRoW have been considered in the assessment and are illustrated in the baseline photograph and wireline for Viewpoint 6.</p>

Ref No.	Respondent	Question
LV.1.23	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Landscape Institute Advice Note 01/11 on Photography and photomontage in landscape and visual impact assessment recommends that the viewpoint's height above ground level and OS grid coordinates are recorded. The wirelines set out in Appendix 11.1 in Environmental Statement, Volume 12: Appendices 10 .1, Appendix B – 12.14 [APP-057] record height above OD rather than ground level.</p> <p><b>Either provide a table showing the heights of the viewpoints in figures 1 to 26 in Appendix 11.1 above ground level or confirm that all viewpoints were taken at ~1.8m above ground level as recorded in ES Volume 4: Figures [APP-041].</b></p>
		<p>Applicant's Response:</p> <p>All viewpoint photographs were taken at an elevation of 1.5m above ground level (AGL). The elevation of 1.8m AGL stated in ES Volume 4: Figures [APP-041] is incorrect. The Viewpoint height provided on figures 1 to 26 in Appendix 11.1 refers to camera height at the viewpoint based upon ground level elevation (as derived from a digital terrain model) plus 1.5m and rounded to the nearest 0.5m. The 0.3m difference in level does not affect the assessment.</p>
LV.1.24	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Figure 1 in Appendix 11.1 in Environmental Statement, Volume 12: Appendices 10 .1,Appendix B – 12.14 [APP-057] shows "Proposed spitfire and hurricane [sic] memorial museum". This proposal is not shown in Schedule 1 of the dDCO [APP-006] or shown on the Works Plans [APP-018].</p> <p><b>Explain this discrepancy.</b></p>

Ref No.	Respondent	Question
		<p>Applicant's Response:</p> <p>This is a labelling <b>error</b>. The line shown in the wirelines is correct but the label referring to the museum is incorrect. This <b>error</b> has been corrected in the revised wirelines provided as Appendix CA.1.4 in TR020002/D3/FWQ/Appendices.</p>
LV.1.25	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>i. Explain what Figures 6, 8, 13, 15, 19, and 20 in Appendix 11.1 in Environmental Statement, Volume 12: Appendices 10.1, Appendix B – 12.14 [APP-057] actually show.</p> <p>ii. Would any of the Proposed Development be visible from these viewpoints?</p> <p>Applicant's Response:</p> <p>i. The figures listed in Question LV.1.25 in Appendix 11.1 of the Environmental Statement show that the built components of the Proposed Development would be screened by intervening landform/vegetation or built form.</p> <p>ii. The built components would not be visible from the viewpoints listed in Question LV.1.25.</p>
LV.1.26	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Paragraph 11.3.7 9 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that:</p> <p>“...a ZTV for the operational phase has been modelled to demonstrate the potential visibility of aircraft stationary at the stands. This has utilised a maximum height of a tail fin of 19.5m...”</p>

Ref No.	Respondent	Question
		<p>Appendix 11.1 in Environmental Statement, Volume 12: Appendices 10 .1, Appendix B – 12.14 [APP-057] does not show any tail fins as being potentially visible from any of the viewpoints chosen.</p> <p><b>Will tail fins be visible?</b></p>
		<p>Applicant's Response:</p> <p>Tails fins will be visible from some of the viewpoints. Whilst a ZTV has been prepared to inform that assessment, tail fins are not shown on the wirelines in Appendix 11.1 which illustrate that built components of the development only. Tail fins of aircraft would not be static and would move between aprons and along the taxiways/runways and to capture them at a specific location in a static wireline would be misleading.</p>
LV.1.27	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Figure 7 in Appendix 11.1 in Environmental Statement, Volume 12: Appendices 10 .1, Appendix B – 12.14 [APP-057] appears to show part of the indicative obscured business development zones as being above the level of the horizon.</p> <p><b>Explain by what this proposed development is obscured.</b></p>
		<p>Applicant's Response:</p> <p>This was an <b>error</b> on Figure 7 and has been corrected on the revised wireline for Viewpoint 4 (Appendix CA.1.4 in TR020002/D3/FWQ/Appendices). The viewpoint assessment contained within Appendix 11.3 of the Environmental Statement (APP-057) states that “there would be partial views of the roofs of a proportion of the business units.....”. This statement remains valid for the revised wireline and the magnitude of change assessed in the assessment for Viewpoint 4 is also unchanged in light of the revised wireline.</p>

Ref No.	Respondent	Question
LV.1.28	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Para 11.3.6 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] shows parameters for modelling potential visibility. With the exception of the radar tower, these heights cited do relate to the descriptions of the relevant Works set out in Schedule 1.</p> <p><b>Show where in the assessment of potential visibility:</b></p> <p><b>i. The general vertical upward deviation of 2 metres allowed for in Article 6(c); and</b></p> <p><b>ii. the maximum height for specified works allowed for in the table in Article 6(c) have formed the basis of modelling for potential visibility.</b></p> <p>Applicant's Response:</p> <p>i. The assessment is based on maximum parameters which relate to the heights of buildings and features described in Chapter 3 of the ES (APP-033). No upward deviation has been allowed for over and above the parameters assessed in the ES.</p> <p>ii. The Applicant confirms that the maximum heights in Article 6(c) have formed the basis of modelling for potential visibility.</p>
LV.1.29	The Applicant	<p><b>Visual Impact – Viewpoints and wirelines</b></p> <p>Figure 4 and 5 in Appendix 11.1 in Environmental Statement, Volume 12: Appendices 10 .1, Appendix B – 12.14 [APP-057] appears to show the same viewpoint (2) but from different directions. Both figures show the same 'Direction to site'.</p> <p><b>Explain.</b></p>

Ref No.	Respondent	Question
		<p>Applicant's Response:</p> <p>This was an <b>error</b>. Figures 4 and 5 have been revised with Figure 4 now stating south-south-east with regard to direction to site and Figure 5 stating south (Appendix CA.1.4 in TR020002/D3/FWQ/Appendices).</p>
LV.1.30	The Applicant	<p><b>Design – Customs, immigration and security</b></p> <p>The 2018 Airports NPS, which is an important and relevant consideration in the examination of this application, states in paragraph 4.32 that:</p> <p>“The Secretary of State will also need to be satisfied that extant security, customs and immigration measures are maintained or reprovided.”</p> <p>The Planning Statement at paragraph 4.15 states that:</p> <p>“The Masterplan allows for the required security, customs and immigration measures.”</p> <p><b>Either:</b></p> <p>i. <b>show where in the application documentation considerations of security and customs and immigration measures are considered in the design of the proposed scheme and where the masterplan and the design principles take these into account; or</b></p> <p>ii. <b>provide an explanation of how security and customs and immigration measures have been considered in the design of the proposed scheme and how the masterplan and the design principles take these into account.</b></p> <p>Applicant's Response:</p>

Ref No.	Respondent	Question
		<p>ii The Applicant has considered security and customs and immigration requirements as a part of the outline plan for example:</p> <p>Passenger Terminal: it is recognised that security issues are a key priority when designing and constructing new airport terminals, especially the need to incorporate terrorist attack mitigation measures. The outline design of the terminal has considered the guidance specified in the Department for Transport document 'Airport Security in Aviation Development (ASIAD)'. An important issue is terminal forecourt design to defeat hostile vehicle attacks. Therefore the terminal position allows for the required 30m clearance zone into which no unauthorised vehicle may enter. Space has been allowed to delineate this zone by installing Hostile Vehicle Mitigation (HVM) bollards to stop this unauthorised entry, or attack, by vehicles at speed. These bollards, which will supplement planters and hard landscaping elements, will be positioned parallel to the terminal frontage. HVM barriers will also be positioned at each end of the terminal frontage road. The barriers will be removable to allow entry and egress by emergency vehicles. These mitigation measures will be designed to comply with PAS 68 which is the latest Publicly Available Specification for vehicle security to assist in the prevention of terrorism and crime. It identifies vehicle criteria and impact tolerance that must be met in order to conform to the Specification.</p> <p>The bollards, barriers and secure zone will ensure that a vehicle bomb cannot penetrate the terminal; however, a detonation at the 30m stand-off range will still cause a blast wave to impact the terminal. This is mitigated in the design by designing the building frame to British and European standards plus to UK Building Regulations as buildings designed to these standards are generally capable of withstanding the blast without collapse. However, one objective of a terminal is to provide an open and attractive passenger environment and this is commonly provided through the use of glazed facades. This is particularly the case for the smaller terminal building, like Manston Airport, where glazed facades will assist with the light and open environment and not reduce the passenger experience. However, this construction can be a source of deadly fragments in a blast event. To mitigate this; the detail design will minimise the use of glazed facades without reducing the passenger experience. Plus the façade systems will use high strength laminated glass in deeply rebated frames to ensure under blast conditions the fragments remain attached to the plastic interlayer and not be projected into the terminal. The same protection will apply to the terminal doors.</p> <p>The building frame also has to withstand the blast. This frame can either consist of steel or reinforced concrete. To analyse the effects of a blast, dynamic modelling is used and this indicates a steel frame structure is better at withstanding the blast</p>

Ref No.	Respondent	Question
		<p>effects. The variety of steel sections also improves the architectural details allowing for the façade material to be easily incorporated and comply with the ASIAD requirements.</p> <p>The risk of a landside package or person-borne explosive detonation is accepted by the ASIAD guidance with measures applied to limit the effects and injuries from such an attack. These do not generally influence the space planning design and are more related to materials. For example; limit glazed balustrades and screens and provide securing constraints to suspend signs and ceiling panels.</p> <p>Within the masterplan the area specified for the terminal building is based on other terminal facilities that have a similar passenger throughput. In general, this is a two storey facility which will allow sufficient space to incorporate a passenger and baggage security screening facilities i.e. Hold baggage screening, individual passenger screening, cabin baggage screening, security staff control station. These facilities will be installed on a phased approach to comply with passenger demand. For example for passenger screening initially, two security lanes will be provided. Customs and Immigration facilities will be provided i.e. custom channels (red, green, blue), interview rooms, Immigration desks, queueing area, one way screens, CCTV, back of house offices in accordance with Border Force Requirements. The Applicant is aware that Border Force requirements could change after March 29 2019 although at this stage this is an unknown requirement, but given any changes will be imposed on all UK airports, it is considered that any such changes will be able to be incorporated into the design.</p> <p>A security gate will be provided to the south of the terminal for controlling airside access. This will be provided with an 'air-lock' facility. This is located near to the terminal so avoids deliveries direct to the terminal and reduces the vehicle risk.</p> <p>Parking facilities and structures are a potential vehicle bomb location and so these have been located outside of the 30m secure zone from the terminal in accordance with ASIAD design. Due to the area and proximity of the car parks the design does not require a customer interface area which would require glazed elements to be blast enhanced.</p> <p>Cargo Facilities: The floor area for the cargo facilities includes an area for the incorporation of Custom clearance facilities. The detailed requirements will be influenced by the cargo operators that will be based at Manston Airport. However, space has been allowed for security screening facilities within the building and the possibility of proving mobile screening units which again depends on the cargo operators and type of cargo being handled. The design therefore incorporates some</p>



Ref No.	Respondent	Question
		<p>flexibility depending on type of cargo operations. Security facilities for screening personnel with the building will be provided so they can access the Critical Part area. Management procedures for this process will be included in the Airport's Security Management System. Therefore, facilities and management procedures will ensure that a secure supply chain is maintained from the point of origin to the point of uplift.</p> <p>The detection of narcotics in cargo packages can be assisted through the use of narcotic detection dogs. The masterplan space planning exercise has considered the use of providing an area within the airport for a narcotic detection dog team. The exercise concluded that a mobile detection dog unit would be more effective at the initial development stages.</p> <p>A security gatehouse has been incorporated into the design to provide an initial security check point for the cargo facility. The design of this area incorporates security gates located in front of this security complex and linked to the security fence. If required, this allows the option of securing the facility if an extreme security event occurs. Design development has also considered incorporating HVM measures in the form of barriers. The masterplan has included space for the installation if these barriers if required.</p> <p>Perimeter Security: the majority of the site perimeter is provided with compliant airport security fencing. The ASIAD requirement is for fencing to comply the Standard BS 1722. A preliminary visual inspection indicates that this existing fencing is compliant. However, a detailed inspection will be undertaken and any areas on non-compliant fencing will be replaced. Also, compliant security fencing will be provided for those areas where new developments are proposed i.e cargo facilities. The masterplan has ensured that the development provides the required security clearance adjacent to perimeter fencing i.e. 3m gap. This eliminates the risk of providing a means to access over the security fence.</p> <p>Intrusion of the security boundary has also been considered in the design development stage. The Applicant has reviewed systems that are currently available i.e. sensors, video using analytics and radar. The Applicant has reviewed a radar system, which provides real time information, and is currently being operated at Liege Airport in Belgium. This highlighted the benefits of providing an automated wide area surveillance system. The conclusion was that these systems provide the optimum security coverage across a large perimeter and the Applicant is committed to providing this at Manston. As these systems can be installed at any time without affecting the infrastructure then it does not influence the design of the masterplan.</p>



Ref No.	Respondent	Question
		<p>Site wide security: A CCTV system will be installed within the staff and passenger car parks and at strategic landside locations. The system will be linked to a control room within the terminal. A similar system will be incorporated for the cargo facilities with the individual operators also operating their own company system. It will be possible for all the CCTV systems to be linked through a site wide underground fibre optic cable that is proposed will be incorporated around the airport.</p> <p>Perimeter airside roads adjacent to the site boundary are provided to allow for access and inspection of the secure perimeter.</p> <p>The design measures in the masterplan and subsequent detail design will be part of a larger counter-terrorist security strategy that will include the airport, police and security services. Effective security plans will be developed in tandem with detailed design to ensure that an effective strategy is enacted. Finally a Security Management System will be developed in accordance with CAA and DfT guidelines to manage security risks effectively and efficiently.</p>

LV.1.31	The Applicant	<p><b>Design – Customs, immigration and security</b></p> <p>Paragraph 6.46 of the Planning Statement [APP-080] states that:</p> <p>“It is noted that the Examining Authority and Secretary of State will take into account the ultimate purpose of the infrastructure and bear in mind the operational, safety and security standards which the design has to satisfy.”</p> <p><b>Show:</b></p> <p><b>i. where these standards are set out in the application documentation; and</b></p> <p><b>ii. where is it demonstrated that the design has satisfied these standards.</b></p> <hr/> <p>Applicant's Response:</p> <p>i. These standards are not set out in the application documentation but the Examining Authority and Secretary of State can be satisfied that compliance with all relevant standards will be achieved through the Civil Aviation Authority (CAA) aerodrome</p>
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Ref No.	Respondent	Question
		<p>certification process. Granting of a CAA aerodrome licence will demonstrate the aerodrome has met the required operational, safety and security standards required.</p> <p>In order to achieve an aerodrome licence, the Applicant will be required to produce an Aerodrome Manual. The requirements for this document are described in the CAA's Civil Aviation Publication (CAP) 168 'Licensing of Aerodromes':</p> <p>An application for an aerodrome licence should be accompanied by an aerodrome manual produced in accordance with CAP 168. ... The manual will be regarded by the CAA as the primary indication of the standards likely to be achieved by the aerodrome operator</p> <p>Supported by the Safety Report, it is the safety assurance document for the CAA's licensing process, and a management tool for industry. The manual is the source document describing how operational procedures and their safe management will be delivered.</p> <p>As has been described in the CAA Interface Document [APP-086], a CAA licence application which includes an Aerodrome Manual is a key stage of the design process which takes place post DCO. The Applicant is committed to producing the required documentation and will need to do so in order to achieve a CAA License.</p> <p>ii: The aerodrome masterplan has been created in accordance with the CAP 168 and European Aviation Safety Agency (EASA) aerodrome licensing requirements to ensure the development complies with the licensing requirements. Examples include</p> <ul style="list-style-type: none"> <li>• Taxiway and runway widths and safety clearances.</li> <li>• Positioning of the aircraft stands and building heights have been checked to ensure they do not infringe the estimated obstacle limitation surfaces (an allowance made for changes in ultimate final geometry). For example a safeguarding process has been undertaken</li> <li>• A check to ensure that sufficient space exists for Runway End Safety Areas (RESA's).</li> <li>• Design of the vertical and horizontal geometry for the new aprons and taxiways to ensure compliance is achieved.</li> </ul>

Ref No.	Respondent	Question
		<ul style="list-style-type: none"> <li>A preliminary check that the alignment of existing aircraft pavements are compliant and assessment of any remedial required. A final assessment will be undertaken during the detail design process.</li> </ul> <p>Ensuring that the design complies with CAA and EASA requirements demonstrates that the new and existing infrastructure will provide the required operational and safety standards required for an operational airport.</p> <p>Reference to aerodrome licensing requirements have been integral to the creation of the masterplan but have not been exhaustively listed in the application document. Ultimately an aerodrome license will only be granted if the relevant standards are met which can only be checked once detailed design is undertaken.</p> <p>Within the application, documents providing further information regarding the licensing process can be found in the CAA Interface Document (APP-086).</p>
LV.1.32	The Applicant	<p><b>Design – Customs, immigration and security</b></p> <p>Paragraph 3.49 of the Planning Statement [APP-080] states that suitable security, customs and border check point facilities would be constructed at the site access points and at cargo building facilities.</p> <p><b>i. Show where these are included in the masterplan, engineering drawings, or in the Design and Access statement.</b></p> <p><b>ii. Show how the positioning of these has influenced the design of proposals for the internal road network.</b></p> <p>Applicant's Response:</p> <p>i. A main site gatehouse is required to control access to the site from the public highway, this is shown on the works plans as Work 14 on Works Plan 2 of 5 (APP-018). The security gatehouse has been incorporated into the design to provide an initial security check point for the cargo facility. The design of this area incorporates security gates located in front of this security complex and linked to the security fence. If required, this allows the option of securing the facility if an extreme</p>

Ref No.	Respondent	Question
		<p>security event occurs. Design development has also considered incorporating HVM measures in the form of barriers. The masterplan has included space for the installation if these barriers if required.</p> <p>A 'perimeter road' is shown on the masterplan following the site boundary. This is not included in the work plans as this will be an access track of limited width which is used for patrol vehicles to ensure the integrity of the site boundary fencing. The European Aviation Safety Agencies Certification Specifications and Guidance Material for Aerodromes Design CS-ADR-DSN Issue 4 Dec 2017 is effectively the 'design manual' for modern aerodromes in the UK. GM1 ADR-DSN.T.900 (7) &amp; (8) state:</p> <p>(7) To facilitate the control and maintenance of the fencing, a perimeter service road should be constructed inside the aerodrome fencing.</p> <p>(8) Perimeter service road is also used by security patrols.</p> <p>The perimeter road shown on the masterplan acknowledges this requirement. Further design to ensure that security measures are sufficient will take place at Detailed Design.</p> <p>Intrusion of the security boundary has also been considered in the design development stage. We have reviewed systems that are currently available i.e. sensors, video using analytics and radar. We have reviewed a radar system, which provides real time information, and is currently being operated at Liege Airport in Belgium. This highlighted the benefits of providing an automated wide area surveillance system. Our conclusion was that these systems provide the optimum security coverage across a large perimeter and we are committed to providing this at Manston. As these systems can be installed at any time without affecting the infrastructure then it does not influence the design of the masterplan.</p> <p>The design measures in the masterplan and subsequent detail design will be part of a larger counter-terrorist security strategy that will include the airport, police and security services. Effective security plans will be developed in tandem with detailed design to ensure that an effective strategy is enacted.</p>

Ref No.	Respondent	Question
		<p>A security zoning plan has been developed to show the planned security zoning of the development. This is a live document as correct security zoning must reflect operational realities; the current security zoning map has been included as Appendix LV.1.32 at TR020002/D3/FWQ/Appendices.</p> <p>Finally a Security Management System (SeMS) will be created for the site the guiding principles of this document are described in the Civil Aviation Publication (CAP) 1273.</p> <p>The purpose of a Security Management System (SeMS) is to enable an entity to identify and manage its security risks and be assured right up to Board level that the security measures taken to manage those risks are effective.</p> <p>CAP 1273 goes on to say:</p> <p>To realise that concept, the SeMS requires several practical components to be in place. Many of these may already exist within an entity, but may need to be made more rigorous, reliable, consistent, repeatable, and effective. The SeMS project discussed below is a practical approach to assessing these components and removing loop-holes, weaknesses, gaps and duplications.</p> <p>ii. The Internal access road from the main gatehouse is positioned such that it remains landside with connections shown on the masterplan to access the ATC and Apron areas.</p> <p>The perimeter track is positioned to follow the proposed site boundary fence. This access track will be developed in tandem with the specific requirements of the site perimeter fencing. Passing places, elevation and site lines will be developed such that the integrity of the perimeter can be maintained.</p> <p>The Application acknowledges that the perimeter road is integral to the security of the site and hence it's inclusion in the application masterplan.</p>
LV.1.33	The Applicant	<b>Design – Customs, immigration and security</b>



Ref No.	Respondent	Question
		<p>Paragraph 6.53 of the Planning Statement [APP-080] states that paragraph 4.64 of the Airports NPS recognises that the nature of the aviation sector as a target for terrorism means that security considerations will likely apply in the case of the infrastructure project for which development consent may be sought under the Airports NPS.</p> <p>The ExA notes the statement in table 14.4 of the ES Volume 3:Main Text – Chapters 17 – 18 [APP-035] that Airport security and resilience is fundamental to EASA licensing and that Relevant CAP and CAA guidelines will be followed including those of security.</p> <p><b>Explain how this consideration has been built into the design of the proposed scheme.</b></p>
		<p>Applicant's Response:</p> <p>The development of the Proposed Development at the detailed design stage will comply with all relevant CAA and CAP guidance related to security and terrorism prevention.</p> <p>At the level of design development within the DCO application, consideration of security measures have resulted in the following:</p> <ul style="list-style-type: none"> <li>• An area allowed for construction of a vehicle free zone in advance of the passenger terminal (see illustrative drawing RPS-MSE-XX-DR-C-2083 entitled 'Design Drawings – Proposed Terminal' at APP-031).</li> <li>• Perimeter roads to maintain security of the perimeter fence.</li> <li>• Identification of a security 'Critical area' around the passenger stands.</li> </ul> <p>All security measures will be reviewed and developed as the scheme progresses through outline and detailed design stages as described in the planning statement and through submissions to the CAA for aerodrome licensing.</p>
LV.1.34	The Applicant	<b>Design – Customs, immigration and security</b>

Ref No.	Respondent	Question
		<p>Paragraph 6.53 of the Planning Statement [APP-080] states that paragraph 4.65 of the Airports NPS states that where national security implications have been identified, the applicant should consult with relevant security experts from the Centre for the Protection of National Infrastructure and the Department for Transport to ensure that physical, procedural and personnel security measures have been adequately considered in the design process, and that adequate consideration has been given to the management of security risks.</p> <p><b>i. Confirm if national security implications have been identified.</b></p> <p><b>ii. State whether discussions took place with the Centre for the Protection of National Infrastructure in advance of the application for a DCO being made.</b></p> <p><b>iii. Show how any such discussions influenced the design of the proposed scheme.</b></p> <p><b>iv. State whether you consider that the scheme, if consented, would constitute ‘Critical National Infrastructure’.</b></p> <p>Applicant's Response:</p> <p>i. Beyond the essential aviation security implications for a passenger and freight airport, no specific or particular security implications have been identified. Security arrangements will include screening of passenger, baggage, cargo goods and staff. Provision of controlled access points and a secure physical boundary fence. These and the design of public accessed buildings i.e. passenger terminal will follow the guidance in the DfT document ‘Airport Security in Aviation Development (ADIAD)’. Further information regarding security implications is provided in the responses below, in particular the response to question iv.</p> <p>As part of the Airport's operational procedures a Security Management System (SeMS) will be created, the guiding principles of this document are described in the Civil Aviation Authority Publication (CAP) 1273.</p>

Ref No.	Respondent	Question
		<p>The purpose of a Security Management System (SeMS) is to enable an entity to identify and manage its security risks and be assured right up to Board level that the security measures taken to manage those risks are effective.</p> <p>CAP 1273 goes on to say:</p> <p>To realise that concept, the SeMS requires several practical components to be in place. Many of these may already exist within an entity, but may need to be made more rigorous, reliable, consistent, repeatable, and effective. The SeMS project discussed below is a practical approach to assessing these components and removing loop-holes, weaknesses, gaps and duplications.</p> <p>Some of the essential aviation security implications which have resulted in inclusions in the masterplan layout include the requirement to control access to the airfield, shown through the use of security gates.</p> <p>A requirement to control access within the site to 'airside' areas, shown through internal fencing and additional security gates.</p> <p>A requirement to maintain boundary security through the inclusion of an ASIAD approved security perimeter fence and inclusion of a perimeter road adjacent to this boundary fence for maintenance and security monitoring. Consideration has also been given to the inclusion of an automated site wide area surveillance system. Further details regarding this and proposed security measures are identified in response to LV 1.30.</p> <p>ii. No discussions took place with the Centre for the Protection of National Infrastructure (CPNI) in advance of the DCO application as the Applicant did not consider the scheme to constitute a development covered by the CPNI (see iv below for further details). This is further explained in the response iv below. However, since receiving the above Written Question the Applicant has approached CPNI for confirmation of the Applicant's assessment. An update will be provided at Deadline 4.</p> <p>iii. The outline design of the Proposed Development takes into account the essential elements of aviation security as pertinent to such a development.</p>

Ref No.	Respondent	Question
		<p>The development will comply with the Aviation Security Regulations 2010 and Airport Security in Aviation Development (ASIAD) and include the following:</p> <ul style="list-style-type: none"> <li>• Utilising the existing security gates and facilities so access airside is controlled</li> <li>• Provide the required ASIAD security and anti-terrorism measures for the passenger terminal This includes compliant secure zones and blast mitigation in the building design</li> <li>• Passenger and baggage security clearance facilities within the passenger terminal i.e. Hold Baggage screening, individual passenger screening, cabin baggage screening, security staff control station</li> <li>• Maintain the existing compliant perimeter security fence and provide new compliant fencing where required to maintain a secure and compliant airside boundary</li> <li>• Establish the security 'Critical Part' areas for the cargo and passenger facilities and ensure facilities and procedures are installed to provide controlled access</li> <li>• Provide security screening facilities for people and goods within the cargo handling facilities. This will ensure that the secure supply chain is maintained from the point of origin to the point of uplift.</li> <li>• A Security Management System will be developed in accordance with CAA and DfT guidelines to manage security risks effectively and efficiently.</li> </ul> <p>With regard to customs and immigration measures the following have been considered</p> <ul style="list-style-type: none"> <li>• Within the passenger terminal the appropriate facilities will be provided in accordance with Border Force requirements. These will include as a minimum: <ul style="list-style-type: none"> <li>○ Custom Channels</li> <li>○ Interview rooms</li> <li>○ Immigration desks, queuing area, back of house offices</li> </ul> </li> <li>• Designated areas within the cargo facilities for customs clearance will be provided</li> </ul> <p>The Applicant will also be utilising the latest compliant technology that is available throughout the development and operation of Manston Airport.</p>

Ref No.	Respondent	Question
		<p>iv. The Applicant does not consider the scheme to constitute “Critical National Infrastructure” due to the following:</p> <p>The CPNI website states:</p> <p>Not everything within a national infrastructure sector is judged to be ‘critical’. The UK government’s official definition of CNI is:</p> <p>‘Those critical elements of infrastructure (namely assets, facilities, systems, networks or processes and the essential workers that operate and facilitate them), the loss or compromise of which could result in:</p> <p>a) Major detrimental impact on the availability, integrity or delivery of essential services – including those services whose integrity, if compromised, could result in significant loss of life or casualties – taking into account significant economic or social impacts; and/or</p> <p>b) Significant impact on national security, national defence, or the functioning of the state.’</p> <p>On the above basis, the Applicant does not consider the Application to constitute CNI. Beyond providing the essential aviation security implications that are required for a CAA licensed passenger and freight airport, no specific or particular implications have been identified.</p> <p>However, as noted above in response to (ii) since receiving the above Written Question the Applicant has approached CPNI for confirmation of the Applicants assessment. An update will be provided at Deadline 4.</p>
LV.1.35	The Applicant	<p><b>Design – Customs, immigration and security</b></p> <p>Advice from the Centre for the Protection of National Infrastructure is that:</p>

Ref No.	Respondent	Question
		<p>Before taking any decisions, a full risk assessment should be undertaken within each individual location to understand the various threats and vulnerabilities and their potential impacts to help identify the most appropriate security response. (<a href="https://www.cpni.gov.uk/advice">https://www.cpni.gov.uk/advice</a>).</p> <p>The ExA notes the statement in table 14.4 of the ES Volume 3: Main Text – Chapters 17 – 18 [APP-035] that Airport security and resilience is fundamental to EASA licensing and that Relevant CAP and CAA guidelines will be followed including those of security.</p> <p><b>i. State whether such risk assessment has been undertaken.</b></p> <p><b>ii. If it has, either show where it is set out in the application documentation, or provide it.</b></p> <hr/> <p>Applicant's Response:</p> <p>i. The Applicant has not at this stage undertaken the Airport security and resilience assessment that will subsequently be required as part of the European Aviation Safety Agency (EASA) Aerodrome Certificate application as mentioned in Table 17.4 (rather than 14.4) of the ES Volume 3: Main Text – Chapters 17 – 18 (APP-035) . Such assessments require analysis of both current and emerging security threats and the measures that the airport has put in place to address them; this will include a physical inspection of facilities and processes by the Civil Aviation Authority (CAA). It is therefore not possible to conduct such an assessment at present. However, a full security assessment will be conducted against the extant regulations as part of the certification assessment process by the CAA. Importantly, this is not taken as a snapshot; Manston Airport would be subject to a comprehensive ongoing audit programme by the CAA to ensure continued compliance with both current and emerging regulations with regard to operational resilience and security.</p> <p>ii. The Applicant has not yet commenced the CAA's regulatory process under the Civil Aviation Act 2012. However, the Applicant has had exploratory meetings with the CAA to discuss and agree the certification process to be followed. The start of the certification and licensing application is expected in the latter part of 2019 with a submission to the CAA in 2020.</p>

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Ref No.	Respondent	Question
LV.1.36	The Applicant	<p><b>Lighting</b></p> <p>Paragraph 11.6.17 in Chapter 11 Landscape and Visual, in ES Volume 2[APP-034] states that it is not expected that there would be any significant lighting effects as a result of the Proposed Development.</p> <p>It goes on to state that the lighting of the Proposed Development will be the subject of further development and assessment and as this takes place the design should be reviewed and more detailed modelling of the likely impacts undertaken.</p> <p><b>i. Justify the expectation of no significant lighting effects given that more detailed modelling of likely impacts is yet to be undertaken; and</b></p> <p><b>ii. State when and in what form that more detailed modelling will be made available to the ExA.</b></p> <p>Applicant's Response:</p> <p>i. A LVIA addendum has now been produced which assesses the visual effects of lighting on night-time views from the viewpoints for which night-time photography has been undertaken. The effects of lighting during daytime hours are not considered significant. The addendum is submitted as Appendix LV.1.36 in TR020002/D3/FWQ/Appendices.</p> <p>ii. The LVIA addendum contains two appendices; a baseline lighting report and an external lighting strategy (which contains more detailed design and modelling).</p>
LV.1.37	The Applicant	<p><b>Lighting</b></p> <p>As examined at the ISH into the dDCO held on 10 January 2019, the height of the new high mast lighting for aprons and stands referenced in, for example, paragraph 1.14 of the Planning Statement [AP- 080] and paragraph 2.2 of the Draft Explanatory Memorandum [APP-007] is not secured in the dDCO [APP-006].</p>



Ref No.	Respondent	Question
		<p><b>Given this, how were any possible effects of this lighting on potential receptors assessed?</b></p> <p>Applicant's Response:</p> <p>Paragraph 3.3.17 of the ES (APP-033) stated that "High mast lights would provide the required lighting for operational aircraft stands; it is expected these will vary in height from 15m to 25m". Further design development since the submission of the ES and which is included in the lighting strategy which forms an appendix to the LVIA addendum (included as Appendix LV.1.36 in TR020002/D3/FWQ/Appendices) confirms that lighting columns would be no higher than 25m (at Aprons 1, 4, 5 and 6). Lighting would be mounted at 22m high at Apron 2 and 15m high at Apron 6. It is these heights that have formed the basis of the assessment of the effects of lighting on night-time views in the LVIA Addendum.</p> <p>Additional descriptions of lighting are provided in Chapter 3 of the ES at paragraphs 3.3.75 and 3.3.78. Baseline descriptions the night-time lighting environment are provided in paragraphs 11.4.10 and 11.4.42 – 11.4.44 with radiance levels shown on Figure 11.39 (APP-041). Night-time photography is included in Figures 11.22a to 11.29 (APP-041) and descriptions of the night time views is provided in Appendix 11.3 (APP-057). All of this has provided a good understanding of the baseline night- time situation and allowed an assessment of the general effects of lighting within the airport to be made in relation to landscape character. The LVIA addendum (Appendix LV.1.36) assesses the effects of lighting on night-time views now that more detailed design work has been undertaken and is presented in Appendix A of this addendum.</p>
LV.1.38	The Applicant	<p><b>Lighting</b></p> <p>Para 11.1.9 in Chapter 11 Landscape and Visual, in Environmental Statement Volume 2 [APP-034] states that as the detailed design process moves forward additional information will be provided and the information contained here will be confirmed through more detailed modelling of the lighting conditions at specific receptors.</p> <p><b>State the timescale for this more detailed modelling and the deadline at which it will be entered into the Examination.</b></p>

Ref No.	Respondent	Question
		<p>Applicant's Response:</p> <p>An external lighting strategy forms an appendix to the LVIA addendum and contains more detailed designs with regard to external lighting. The addendum assesses the visual effects of this lighting on night-time views from the viewpoints for which night-time photography has been undertaken. The LVIA addendum is submitted as Appendix LV.1.36 in TR020002/D3/FWQ/Appendices.</p>
LV.1.39	The Applicant	<p><b>Lighting</b></p> <p><b>Either:</b></p> <p>i. <b>show where the impact of lighting on aircraft landing at, and taking off from, the proposed scheme on potential receptors has been assessed; or</b></p> <p><b>ii. Provide such an assessment.</b></p> <p>Applicant's Response:</p> <p>i. The LVIA does not include an assessment of the effects of lighting on aircraft landing at, and taking off from, the Proposed Development on potential receptors. The LVIA authors did not consider that the effects of lighting on aircraft would give rise to significant visual effects and no request to include an assessment of lighting on aircraft was made by consultees either during the scoping or the statutory consultation phases.</p> <p>ii. A statement as to why the presence of lighting on aircraft is not considered to be significant has been added to the LVIA addendum, included as Appendix LV.1.36 in TR020002/D3/FWQ/Appendices.</p>

Ref No.	Respondent	Question
LV.1.40	The Applicant	<p><b>Northern Grass</b></p> <p><b>Can the Applicant confirm whether planting, bunding or screening is proposed in the Northern Grass buffer zone area and what benefit the final treatment provides in terms of mitigation for adjacent properties, since each treatment would provide somewhat different mitigation?</b></p>
		<p>Applicant's Response:</p> <p>The LVIA is based upon the provision of a low bund within the buffer zone area along the eastern and western edges of the Northern Grass Area which itself would be planted with trees and shrubs. The bunding would allow for additional height and therefore screening benefits of the planting to be achieved. The planting, as it gradually matures, would soften and filter views of the built form proposed within Northern Grass Area.</p> <p>A combination of structural planting is proposed in the north west, northern and eastern boundaries, and is located on earth bunding where possible, to provide visual containment to the development. The extent of screening is restricted along the north eastern boundary due to the limitations imposed by the radar area, so planting is restricted to existing mature trees only, with new planting being introduced on the south side of the grass area to provide screening from long views into the site. The proposed planting is generous in nature and will, in time, establish as a mature woodland belt to provide screening of the proposed development from outside the site. The new areas of planting respond to existing boundary vegetation and, where possible, build on it to provide a generous landscape setting for the built form.</p>
LV.1.41	The Applicant	<p><b>Air Traffic Control height</b></p> <p><b>Can the Applicant confirm whether the maximum ATC height stated in Schedule 1 Work No 3 of the dDCO (APP-006] is correct or whether engineering drawings and sections – building height is correct in constraining the ATC</b></p>

Ref No.	Respondent	Question
		<p data-bbox="622 308 2069 376"><b>height to 24m? The Applicant should update the dDCO as necessary and confirm what the implications are for the landscape and visual impact assessment and for the proposed ground levels.</b></p> <p data-bbox="622 448 887 480">Applicant's Response:</p> <p data-bbox="622 520 1794 552">The maximum ATC height stated in Schedule 1 Work No 3 of the dDCO [APP-006] is correct (27m).</p> <p data-bbox="622 592 2069 699">There is an <b>error</b> on the Engineering Drawings and Sections – the <b>error</b> relates to the finished ground level rather than the maximum roof level. The correct ground level is 47m, and not 50m as shown. An updated drawing is included as Appendix LV.1.41 in TR020002/D3/FWQ/Appendices.</p> <p data-bbox="622 738 1984 770">A maximum building height for the ATC of 27m is what has been assessed in the landscape and visual assessment.</p>

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There is some pressure to relax the planning policies that have ensured that development in the past three decades has fitted to fit into the scale and intricacy of the historic city. There are several recent buildings of 10-12 stories, and the current proposal by Broadway Malayan for the Anglia Centre site includes 1250 residential units and a 25-storey tower. However, because the area is large, major redevelopment does not, so far, appear to threaten the supply of premises suitable for creative industries. A greater- if more distant- peril would arise if the erosion of the city's historic character as a result of major redevelopments led to a change in the perception of Norwich as an attractive, desirable location for small businesses.

## 3.7 RAMSGATE CONSERVATION AREA

### 3.7.1 LOCATION, ORIGINS AND ARCHITECTURAL CHARACTER

Ramsgate Conservation Area covers much of the historic town of Ramsgate. It extends to 12.2 km<sup>2</sup> and is the largest conservation area in Kent. It contains 333 listed buildings of which several are listed grade I or II\*. The local authority is Thanet District Council, which also covers the nearby towns of Margate and Broadstairs and their rural hinterland. The council has not prepared a local list or formally identified unlisted buildings that make a positive contribution to the area, but a substantial number of those predating 1914 would probably fall into the latter category.

In the medieval period, Ramsgate was a limb (i.e. branch) of the Cinque Port of Sandwich, but it was essentially a fishing village until the 16th and 17th centuries. In 1749, a new stone pier was built so that the harbour was accessible at all states of tide and could serve the merchant and naval fleets as a 'Port of Refuge', subsequently becoming a 'Royal Harbour'. By the end of the 18th century it developed as one of the first English sea-bathing resorts, and was developed with numerous terraces of houses, Assembly Rooms and baths; although it still had a large fishing fleet.

The Royal Harbour with its breakwater and associated buildings, is the defining visual and historic architectural feature of the town. The principal commercial and residential streets occupy the shallow valley that surrounds the harbour. The residential core is comprised mainly of 18th and early 19th century terraced housing. Outside this, are extensive areas of 19th and early 20th century development. Grade I listed buildings include the group comprising The Grange, St Augustine's Church, cloister and presbytery, designed for himself by the greatest of English gothic revival architect, AWN Pugin, a romantic recreation of what he saw as the medieval ideal of a Christian community; and the early 19th century church of St George. The Royal Harbour is listed Grade II\*.

Much of the 19th century townscape survives and, apart from a few intrusive modern exceptions, the town preserves its historic scale of 3-4-storey terraces, with ground floor shops in the main streets.

### 3.7.2 POST-1945 CHANGES

Ramsgate suffered much less bomb damage than nearby Margate, for example, but, as with other English seaside towns, it suffered a significant economic decline as the domestic holiday industry was replaced by the popularity of foreign holidays. A number of initiatives to regenerate the local economy have been made.

Several unsuccessful attempts to reintroduce cross-channel ferries led to a massive industrial site (the modern 'Port of Ramsgate') being developed on reclaimed land to the west of the Royal Harbour.

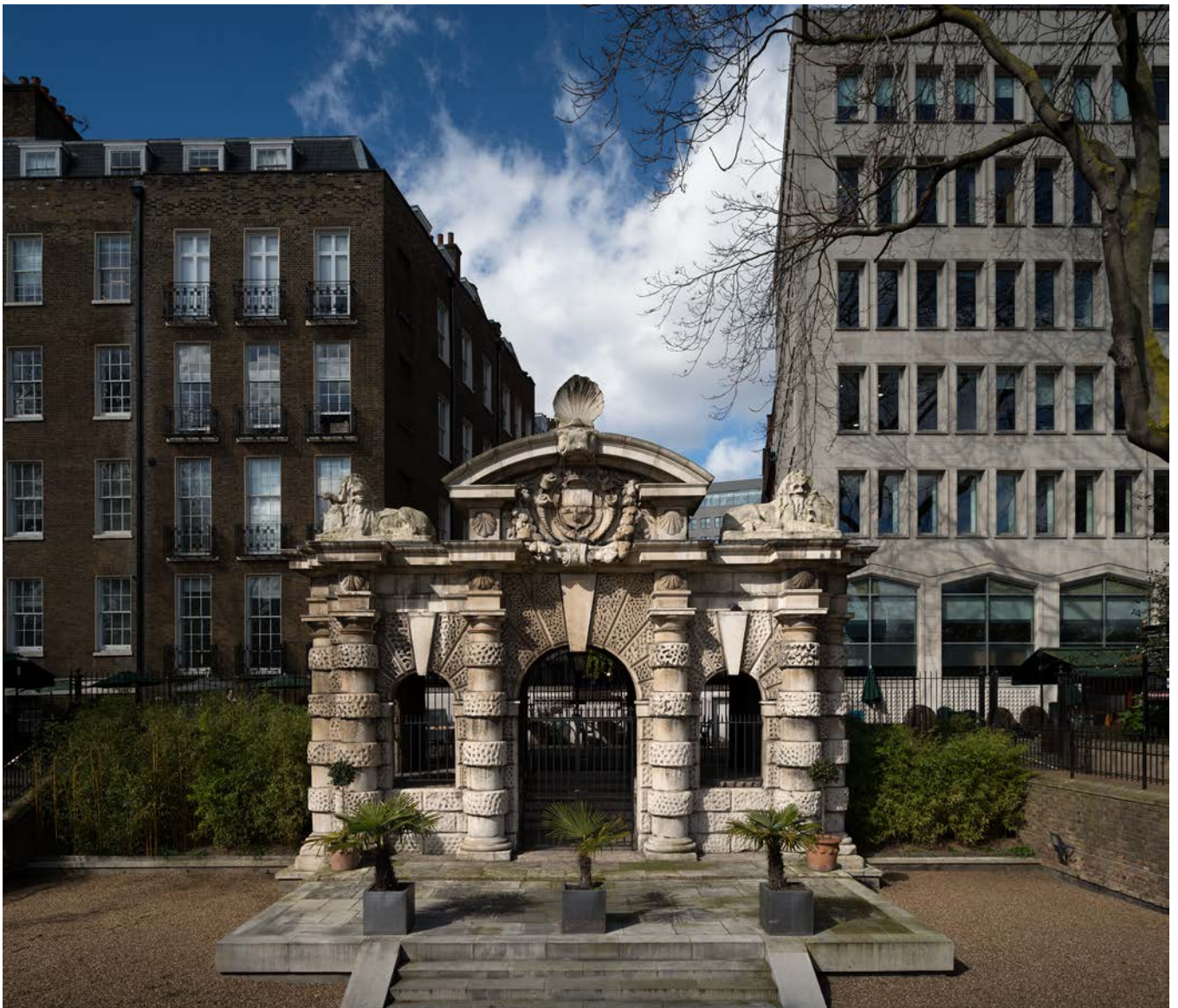
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Historic England

# The Setting of Heritage Assets

Historic Environment Good Practice Advice in  
Planning Note 3 (Second Edition)





# Summary

This document sets out guidance, against the background of the National Planning Policy Framework (NPPF) and the related guidance given in the Planning Practice Guide (PPG), on managing change within the settings of heritage assets, including archaeological remains and historic buildings, sites, areas, and landscapes.

It gives general advice on understanding setting, and how it may contribute to the significance of heritage assets and allow that significance to be appreciated, as well as advice on how views contribute to setting. The suggested staged approach to taking decisions on setting can also be used to assess the contribution of views to the significance of heritage assets. The guidance has been written for local planning authorities and those proposing change to heritage assets.

It replaces The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 – 1st edition, 2015 and Seeing the History in the View: A Method for assessing Heritage Significance within Views (English Heritage, 2011).

It is one of three related Good Practice Advice (GPA) Notes, along with [\*GPA1 The Historic Environment in Local Plans\*](#) and [\*GPA2 Managing Significance in Decision-Taking in the Historic Environment\*](#).

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[HistoricEngland.org.uk/advice/planning/planning-system/](https://historicengland.org.uk/advice/planning/planning-system/)

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## Introduction

1 The purpose of this Historic England Good Practice Advice note is to provide information on good practice to assist local authorities, planning and other consultants, owners, applicants and other interested parties in implementing historic environment policy in the [National Planning Policy Framework \(NPPF\)](#) and the related guidance in the national [Planning Practice Guide \(PPG\)](#). It should be read in conjunction with Good Practice Advice notes 1 ([The Historic Environment in Local Plans](#)) and 2 ([Managing Significance in Decision-Taking in the Historic Environment](#)). This good practice advice acknowledges the primacy of the NPPF and PPG, supporting the implementation of national policy, but does not constitute a statement of Government policy itself, nor does it seek to prescribe a single methodology or particular data sources. Alternative approaches may be equally acceptable, provided they are demonstrably compliant with legislation, national policies and objectives. This guidance, *Good Practice Advice 3 – The Setting of Heritage Assets* (2nd edition, 2017) supersedes *Good Practice Advice 3 – The Setting of Heritage Assets* (1st edition, 2015) and *Seeing the History in the View: A Method for assessing Heritage Significance within Views* (English Heritage, 2011).

2 The advice in this document, in accordance with the NPPF, emphasises that the information required in support of applications for planning permission and listed building consent should be no more than is necessary to reach an informed decision, and that activities to conserve or invest need to be proportionate to the significance of the heritage assets affected and the impact on the significance of those heritage assets. At the same time those taking decisions need enough information to understand the issues.

3 This note gives assistance concerning the assessment of the setting of heritage assets, given:

- the statutory obligation on decision-makers to have special regard to the desirability of preserving listed buildings and their settings, and
- the policy objectives in the NPPF and the PPG establishing the twin roles of setting (see boxes below): it can contribute to the significance of a heritage asset, and it can allow that significance to be appreciated. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the heritage asset's conservation, including sustaining significance ([NPPF, paragraph 132](#)).

4 This note therefore starts by giving general advice on understanding setting and how it may contribute to the significance of heritage assets, before adding advice on how views play a part in setting; it ends by suggesting a staged approach to taking decisions on the level of the contribution which setting and related views make to the significance of heritage assets (Part 2, paragraphs 17–42).

5 Consideration of the contribution of setting to the significance of heritage assets, and how it can enable that significance to be appreciated, will almost always include the consideration of views. The staged approach to taking decisions on setting given here can also be used to assess the contribution of a view, or views, to the significance of heritage assets and the ability to appreciate that significance.

6 Views, however, can of course be valued for reasons other than their contribution to heritage significance. They may, for example, be related to the appreciation of the wider landscape, where there may be little or no association with heritage assets. Landscape character and visual amenity are also related planning considerations. The assessment and management of views in

the planning process may therefore be partly or wholly separate from any consideration of the significance of heritage assets. This advice therefore directs readers elsewhere for approaches to landscape and visual impact assessment and amenity valuation (paragraphs 15 and 16).

## Part 1: Settings and Views

### **NPPF Glossary: Setting of a heritage asset**

The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral ([NPPF, Annex 2: Glossary](#)).

### **PPG: What is the setting of a heritage asset and how should it be taken into account?**

The “setting of a heritage asset” is defined in the Glossary of the National Planning Policy Framework.

A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.

Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not.

The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in

which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance.

When assessing any application for development which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset’s significance may also damage its economic viability now, or in the future, thereby threatening its on-going conservation ([PPG, paragraph: 013, reference ID: 18a-013-20140306](#)).

## Difference between setting and curtilage, character, context and landscape

7 Setting is separate from the concepts of curtilage, character and context:

- Curtilage is a legal term describing an area around a building and, for listed structures, the extent of curtilage is defined by consideration of ownership, both past and present, functional association and layout. The setting of a heritage asset will include, but generally be more extensive than, its curtilage (if it has one) (see [Identification and Designation of Heritage Assets: Listed Buildings](#) in the Historic England *Heritage Protection Guide*).
- The historic character of a place is the group of qualities derived from its past uses that make it distinctive. This may include: its associations with people, now and through time; its visual aspects; and the features, materials, and spaces associated with its history, including its original configuration and subsequent losses and changes. Character is a broad concept, often used in relation to entire historic areas and landscapes, to which heritage assets and their settings may contribute.
- The context of a heritage asset is a non-statutory term used to describe any relationship between it and other heritage assets, which is relevant to its significance, including cultural, intellectual, spatial or functional. Contextual relationships apply irrespective of distance, sometimes extending well beyond what might be considered an asset's setting, and can include the relationship of one heritage asset to another of the same period or function, or with the same designer or architect. A range of additional meanings is available for the term 'context', for example in relation to archaeological context and to the context of new developments, as well as customary usages. Setting may include associative relationships that are sometimes referred to as 'contextual'.

- To avoid uncertainty in discussion of setting, a landscape is 'an area, as perceived by people, the character of which is the result of the action and interaction of natural and/or human factors' (Glossary, *Guidelines for Landscape and Visual Impact Assessment*, 3rd edition, published by the Landscape Institute and the Institute of Environmental Management and Assessment, p 157, based on the definition in the European Landscape Convention, European Treaty Series – No. 176, Florence, 20.x.2000, p 2).

## The extent of setting

8 The NPPF makes it clear that the extent of the setting of a heritage asset 'is not fixed and may change as the asset and its surroundings evolve' ([NPPF, Annex 2: Glossary](#)). All of the following matters may affect considerations of the extent of setting:

- While setting can be mapped in the context of an individual application or proposal, it cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset. This is because the surroundings of a heritage asset will change over time, and because new information on heritage assets may alter what might previously have been understood to comprise their setting and the values placed on that setting and therefore the significance of the heritage asset.
- Extensive heritage assets, such as historic parks and gardens, landscapes and townscape, can include many heritage assets, historic associations between them and their nested and overlapping settings, as well as having a setting of their own. A conservation area is likely to include the settings of listed buildings and have its own setting, as will the hamlet, village or urban area in which it is situated (explicitly recognised in green belt designations).

The Courts have held that it is legitimate in appropriate circumstances to include within a conservation area the setting of buildings that form the heart of that area (R v Canterbury City Council ex parte David Halford, February 1992; CO/2794/1991). And NPPF paragraph 80, for example, makes it clear that historic towns are regarded as having a setting.

- Consideration of setting in urban areas, given the potential numbers and proximity of heritage assets, often overlaps with considerations both of townscape/urban design and of the character and appearance of conservation areas. Conflict between impacts on setting and other aspects of a proposal can be avoided or mitigated by working collaboratively and openly with interested parties at an early stage.

### Setting and the significance of heritage assets

9 Setting is not itself a heritage asset, nor a heritage designation, although land comprising a setting may itself be designated (see below Designed settings). Its importance lies in what it contributes to the significance of the heritage asset or to the ability to appreciate that significance. The following paragraphs examine some more general considerations relating to setting and significance.

The setting of World Heritage Sites may be protected as ‘buffer zones’ – see [PPG, paragraph: 033 Reference ID: 2a-033-20140306](#).

- **Change over time**  
Settings of heritage assets change over time. Understanding this history of change will help to determine how further

development within the asset’s setting is likely to affect the contribution made by setting to the significance of the heritage asset. Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of change over the long term. Settings may also have suffered negative impact from inappropriate past developments and may be enhanced by the removal of the inappropriate structure(s).

- **Cumulative change**

Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset. Negative change could include severing the last link between an asset and its original setting; positive change could include the restoration of a building’s original designed landscape or the removal of structures impairing key views of it (see also paragraph 40 for screening of intrusive developments).

- **Access and setting**

Because the contribution of setting to significance does not depend on public rights or ability to access it, significance is not dependent on numbers of people visiting it; this would downplay such qualitative issues as the importance of quiet and tranquillity as an attribute of setting, constraints on access such as remoteness or challenging terrain, and the importance of the setting to a local community who may be few in number. The potential for

appreciation of the asset's significance may increase once it is interpreted or mediated in some way, or if access to currently inaccessible land becomes possible.

#### ■ Buried assets and setting

Heritage assets that comprise only buried remains may not be readily appreciated by a casual observer. They nonetheless retain a presence in the landscape and, like other heritage assets, may have a setting. These points apply equally, in some rare cases, to designated heritage assets such as scheduled monuments or Protected Wreck Sites that are periodically, partly or wholly submerged, eg in the intertidal zone on the foreshore.

- The location and setting of historic battles, otherwise with no visible traces, may include important strategic views, routes by which opposing forces approached each other and a topography and landscape features that played a part in the outcome.
- Buried archaeological remains may also be appreciated in historic street or boundary patterns, in relation to their surrounding topography or other heritage assets or through the long-term continuity in the use of the land that surrounds them. While the form of survival of an asset may influence the degree to which its setting contributes to significance and the weight placed on it, it does not necessarily follow that the contribution is nullified if the asset is obscured or not readily visible.

#### ■ Designed settings

Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create experiences of drama or surprise. In these special circumstances, these designed settings may be regarded as heritage assets in their own right, for instance the designed landscape around a country house. Furthermore they may, themselves, have a wider setting: a

park may form the immediate surroundings of a great house, while having its own setting that includes lines-of-sight to more distant heritage assets or natural features beyond the park boundary. Given that the designated area is often restricted to the 'core' elements, such as a formal park, it is important that the extended and remote elements of the design are included in the evaluation of the setting of a designed landscape. Reference is sometimes made to the 'immediate', 'wider' and 'extended' setting of heritage assets, but the terms should not be regarded as having any particular formal meaning. While many day-to-day cases will be concerned with development in the vicinity of an asset, development further afield may also affect significance, particularly where it is large-scale, prominent or intrusive. The setting of a historic park or garden, for instance, may include land beyond its boundary which adds to its significance but which need not be confined to land visible from the site, nor necessarily the same as the site's visual boundary. It can include:

- land which is not part of the park or garden but which is associated with it by being adjacent and visible from it
- land which is not part of the site but which is adjacent and associated with it because it makes an important contribution to the historic character of the site in some other way than by being visible from it, and
- land which is a detached part of the site and makes an important contribution to its historic character either by being visible from it or in some other way, perhaps by historical association

#### ■ Setting and urban design

As mentioned above (paragraph 8, The extent of setting), the numbers and proximity of heritage assets in urban areas mean that the protection and enhancement of setting is intimately linked to townscape and urban



design considerations. These include the degree of conscious design or fortuitous beauty and the consequent visual harmony or congruity of development, and often relates to townscape attributes such as enclosure, definition of streets and spaces and spatial qualities as well as lighting, trees, and verges, or the treatments of boundaries or street surfaces.

See *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning 2* (2015) and *Conservation Area Designation, Appraisal and Management: Historic England Advice Note 1* (2016).

- **Setting and economic viability**  
Sustainable development under the NPPF can have important positive impacts on heritage assets and their settings, for example by bringing an abandoned building back into use or giving a heritage asset further life. However, the economic viability of a heritage asset can be reduced if the contribution made by its setting is diminished by badly designed or insensitively located development. For instance, a new road scheme affecting the setting of a heritage asset, while in some cases increasing the public's ability or inclination to visit and/or use it, thereby boosting its economic viability and enhancing the options for the marketing or adaptive re-use of a building, may in other cases have the opposite effect.

## Views and setting

10 The contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, long, short or of lateral spread, and include a variety of views of, from, across, or including that asset.

11 Views which contribute more to understanding the significance of a heritage asset include:

- those where the composition within the view was a fundamental aspect of the design or function of the heritage asset
- those where town- or village-scape reveals views with unplanned or unintended beauty
- those with historical associations, including viewing points and the topography of battlefields
- those with cultural associations, including landscapes known historically for their picturesque and landscape beauty, those which became subjects for paintings of the English landscape tradition, and those views which have otherwise become historically cherished and protected
- those where relationships between the asset and other heritage assets or natural features or phenomena such as solar or lunar events are particularly relevant

12 Assets, whether contemporaneous or otherwise, which were intended to be seen from one another for aesthetic, functional, ceremonial or religious reasons include:

- military and defensive sites
- telegraphs or beacons
- prehistoric funerary and ceremonial sites
- historic parks and gardens with deliberate links to other designed landscapes and remote 'eye-catching' features or 'borrowed' landmarks beyond the park boundary

13 Views may be identified and protected by local planning policies and guidance for the part they play in shaping our appreciation and understanding of England's historic environment, whether in rural or urban areas and whether designed to be seen as a unity or

as the cumulative result of a long process of development. This does not mean that additional views or other elements or attributes of setting do not merit consideration. Such views include:

- views identified as part of the plan-making process, such as those identified in the *London View Management Framework* (LVMF, Mayor of London 2010) and *Oxford City Council's View Cones* (2005) and *Assessment of the Oxford View Cones* (2015 Report)
- views identified in character area appraisals or in management plans, for example of World Heritage Sites
- important designed views from, to and within historic parks and gardens that have been identified as part of the evidence base for development plans, and
- views that are identified by local planning authorities when assessing development proposals

Where complex issues involving views come into play in the assessment of such views – whether for the purposes of providing a baseline for plan-making or for development management – a formal views analysis may be merited.

### Landscape Assessment and Amenity

14 Analysis of setting is different from landscape assessment. While landscapes include everything within them, the entirety of very extensive settings may not contribute equally to the significance of a heritage asset, if at all. Careful analysis is therefore required to assess whether one heritage asset at a considerable distance from another, though intervisible with it – a church spire, for instance – is a major component of the setting, rather than just an incidental element within the wider landscape.

15 Assessment and management of both setting and views are related to consideration of the wider landscape, which is outside the scope of this advice note. Additional advice on views is available in *Guidelines for Landscape and*

Being tall structures, church towers and spires are often widely visible across land- and townscapes but, where development does not impact on the significance of heritage assets visible in a wider setting or where not allowing significance to be appreciated, they are unlikely to be affected by small-scale development, unless that development competes with them, as tower blocks and wind turbines may. Even then, such an impact is more likely to be on the landscape values of the tower or spire rather than the heritage values, unless the development impacts on its significance, for instance by impacting on a designed or associative view.

*Visual Impact Assessment*, 3rd edition, published by the Landscape Institute and the Institute of Environmental Management and Assessment (in partnership with Historic England).

16 Similarly, setting is different from general amenity. Views out from heritage assets that neither contribute to significance nor allow appreciation of significance are a matter of amenity rather than of setting.

## Part 2: Setting and Views – A Staged Approach to Proportionate Decision-Taking

17 All heritage assets have significance, some of which have particular significance and are designated. The contribution made by their setting to their significance also varies. Although many settings may be enhanced by development, not all settings have the same capacity to accommodate change without harm to the significance of the heritage asset or the ability to appreciate it. This capacity may vary between designated assets of the same grade or of the same type or according to the nature of the change. It can also depend on the location of the asset: an elevated or overlooked location; a riverbank, coastal or island location; or a location within an extensive tract of flat land may increase the sensitivity of the setting (ie the capacity of

the setting to accommodate change without harm to the heritage asset's significance) or of views of the asset. This requires the implications of development affecting the setting of heritage assets to be considered on a case-by-case basis.

18 Conserving or enhancing heritage assets by taking their settings into account need not prevent change; indeed change may be positive, for instance where the setting has been compromised by poor development. Many places coincide with the setting of a heritage asset and are subject to some degree of change over time. NPPF policies, together with the guidance on their implementation in the Planning Policy Guidance (PPG), provide the framework for the consideration of change affecting the setting of undesignated and designated heritage assets as part of the decision-taking process ([NPPF, paragraphs 131-135 and 137](#)).

19 Amongst the Government's planning policies for the historic environment is that conservation decisions are based on a proportionate assessment of the particular significance of any heritage asset that may be affected by a proposal, including by development affecting the setting of a heritage asset. Historic England recommends the following broad approach to assessment, undertaken as a series of

steps that apply proportionately to the complexity of the case, from straightforward to complex:

**Step 1:** Identify which heritage assets and their settings are affected

**Step 2:** Assess the degree to which these settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated

**Step 3:** Assess the effects of the proposed development, whether beneficial or harmful, on that significance or on the ability to appreciate it

**Step 4:** Explore ways to maximise enhancement and avoid or minimise harm

**Step 5:** Make and document the decision and monitor outcomes

Each of these steps is considered in more detail below.

For further information on Strategic Environmental Assessment and Environmental Impact Assessment, see [Sustainability Appraisal and Strategic Environmental Assessment: Historic England Advice Note 8](#) (2016).

Development proposals involving the setting of single and less significant assets and straightforward effects on setting may best be handled through a simple check-list approach and can usefully take the form of a short narrative statement for each assessment stage, supported by adequate plans and drawings, etc.

Cases involving more significant assets, multiple assets, or changes considered likely to have a major effect on significance will require a more detailed approach to analysis, often taking place within the framework of Environmental Impact Assessment procedures. Each of the stages may involve detailed assessment techniques and complex forms of

analysis such as viewshed analyses, sensitivity matrices and scoring systems. Whilst these may assist analysis to some degree, as setting and views are matters of qualitative and expert judgement, they cannot provide a systematic answer. Historic England recommends that, when submitted as part of a Design and Access Statement, Environmental Statement or evidence to a public Inquiry, technical analyses of this type should be seen primarily as material supporting a clearly expressed and non-technical narrative argument that sets out 'what matters and why' in terms of the heritage significance and setting of the assets affected, together with the effects of the development upon them.

## Step 1: Identify which heritage assets and their settings are affected

20 The setting of a heritage asset is ‘the surroundings in which a heritage asset is experienced’ (NPPF, Annex 2: Glossary). Where that experience is capable of being affected by a proposed development (in any way) then the proposed development can be said to affect the setting of that asset. The starting point of the analysis is to identify those heritage assets likely to be affected by the development proposal.

21 It is important that, at the pre-application or scoping stage, the local authority, having due regard to the need for proportionality:

- indicates whether it considers a proposed development has the potential to affect the setting of (a) particular heritage asset(s), or
- specifies an ‘area of search’ around the proposed development within which it is reasonable to consider setting effects, or
- advises the applicant to consider approaches such as a ‘Zone of Visual Influence’ or ‘Zone of Theoretical Visibility’ in relation to the proposed development in order to better identify heritage assets and settings that may be affected

A ‘Zone of Visual Influence’ defines the areas from which a development may potentially be totally or partially visible by reference to surrounding topography. However, such analysis does not take into account any landscape artefacts such as trees, woodland, or buildings, and for this reason a ‘Zone of Theoretical Visibility’ which includes these factors is to be preferred.

22 For developments that are not likely to be prominent or intrusive, the assessment of effects on setting may often be limited to the immediate surroundings, while taking account

of the possibility that setting may change as a result of the removal of impermanent landscape or townscape features, such as hoardings or planting.

23 The area of assessment for a large or prominent development, such as a tall building in an urban environment or a wind turbine in the countryside or offshore, can often extend for a distance of several kilometres. In these circumstances, while a proposed development may affect the setting of numerous heritage assets, it may not impact on them all equally, as some will be more sensitive to change affecting their setting than others. Local planning authorities are encouraged to work with applicants in order to minimise the need for detailed analysis of very large numbers of heritage assets. They may give advice at the pre-application stage (or the scoping stage of an Environmental Statement) on those heritage assets, or categories of heritage asset, that they consider most sensitive as well as on the level of analysis they consider proportionate for different assets or types of asset.

24 Where spatially extensive assessments relating to large numbers of heritage assets are required, Historic England recommends that local planning authorities give consideration to the practicalities and reasonableness of requiring assessors to access privately owned land. In these circumstances, they should also address the extent to which assessors can reasonably be expected to gather and represent community interests and opinions on changes affecting settings.

25 Where the development proposal affects views which may be particularly helpful in allowing the significance of an asset to be appreciated and which are therefore part of the setting, it is often necessary to identify viewing points for assessment. An explanation why a particular viewing point has been selected will be needed. Sometimes a heritage asset is best appreciated while moving (for example, in a designed landscape, where its three-dimensional

formal qualities are an essential part of its significance). These, such as the changing views of the Tyne bridges viewed from the banks of the River Tyne or of the Tower of London from the south bank of the River Thames in London, are often termed ‘kinetic’ views.

## **Step 2: Assess the degree to which these settings and views make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated**

26 The second stage of any analysis is to assess whether the setting of an affected heritage asset makes a contribution to its significance and the extent and/or nature of that contribution; both setting, and views which form part of the way a setting is experienced, may be assessed additionally for the degree to which they allow significance to be appreciated. We recommend that this assessment should first address the key attributes of the heritage asset itself and then consider:

- the physical surroundings of the asset, including its relationship with other heritage assets
- the asset’s intangible associations with its surroundings, and patterns of use
- the contribution made by noises, smells, etc to significance, and
- the way views allow the significance of the asset to be appreciated

27 The box below provides a (non-exhaustive) **checklist** of the potential attributes of a setting that it may be appropriate to consider in order to define its contribution to the asset’s heritage values and significance. Only a limited selection of the attributes listed will be of particular relevance to an asset. A sound assessment process will identify these at an early stage, focus on them, and be as clear as possible what emphasis attaches to them. In doing so, it will generally be useful to consider, insofar as is possible, the way these attributes have contributed to the

A handy way of visualising the contribution of setting to the significance of heritage assets may be diagrammatically to map past and present relationships between a heritage asset and its surroundings, weighting the mapped connections to demonstrate the relative contribution of the relationship to the significance of the asset or the ability to appreciate the significance. By setting out the relationships and considering the level of their contribution to significance, it is possible to gauge impact more transparently and more consistently.

Change can also have the effect of strengthening relationships, for example by removing visual impediments such that significance is better revealed; mapping thereby provides one mechanism for identifying opportunities for enhancement.

significance of the asset in the past (particularly when it was first built, constructed or laid out), the implications of change over time, and their contribution in the present.

28 The local authority Historic Environment Record is an important source of information to support this assessment and, in most cases, will be able to provide information on the wider landscape context of the heritage asset as well as on the asset itself. Landscape Character Assessments, Historic Landscape Character Assessments, Conservation Area Appraisals, the Register of Parks and Gardens and the Parks & Gardens UK database are also important sources in this regard.

29 This assessment of the contribution to significance made by setting will provide the baseline for establishing the effects of a proposed development on significance, as set out in ‘Step 3’ below. It will, therefore, be focused on the need to support decision-taking in respect of the proposed development. A similar approach to

assessment may also inform the production of a strategic, management or conservation plan in advance of any specific development proposal, although the assessment of significance required for studies of this type will address the setting of the heritage asset ‘in the round’, rather than focusing on a particular development site.

30 An assessment of the contribution to significance of a view does not depend alone on the significance of the heritage assets in the view but on the way the view allows that significance to be appreciated. The view may be part of a

landscape, townscape or other design intended to allow a particular attribute of the asset to be enjoyed, such as its reflection in a body of water. Heritage assets (sometimes of different periods) may have been deliberately linked by the creation of views which were designed to have a particular effect, adding meanings through visual cross-references. Composite or fortuitous views which are the cumulative result of a long history of development, particularly in towns and cities, may become cherished and may be celebrated in artistic representations. The ability to experience

### Assessment Step 2 Checklist

The starting point for this stage of the assessment is to consider the significance of the heritage asset itself and then establish the contribution made by its setting. The following is a (non-exhaustive) check-list of potential attributes of a setting that may help to elucidate its contribution to significance. It may be the case that only a limited selection of the attributes listed is likely to be particularly important in terms of any single asset.

#### The asset’s physical surroundings

- Topography
- Aspect
- Other heritage assets (including buildings, structures, landscapes, areas or archaeological remains)
- Definition, scale and ‘grain’ of surrounding streetscape, landscape and spaces
- Formal design eg hierarchy, layout
- Orientation and aspect
- Historic materials and surfaces
- Green space, trees and vegetation
- Openness, enclosure and boundaries
- Functional relationships and communications
- History and degree of change over time

#### Experience of the asset

- Surrounding landscape or townscape character
- Views from, towards, through, across and including the asset
- Intentional intervisibility with other historic and natural features
- Visual dominance, prominence or role as focal point
- Noise, vibration and other nuisances
- Tranquillity, remoteness, ‘wildness’
- Busyness, bustle, movement and activity
- Scents and smells
- Diurnal changes
- Sense of enclosure, seclusion, intimacy or privacy
- Land use
- Accessibility, permeability and patterns of movement
- Degree of interpretation or promotion to the public
- Rarity of comparable survivals of setting
- Cultural associations
- Celebrated artistic representations
- Traditions

these same views today can illuminate the design principles and taste of our predecessors.

31 The impact of seasonal and day/night changes on a view or views needs to be considered, including other changes that may mean that a view at a particular point in time may not be representative of the experience over longer periods. Does summer foliage hide an asset that is visible in winter? Does artificial external lighting at night emphasise some aspects of an asset and leave others in the dark.

### **Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on the significance or on the ability to appreciate it**

32 The third stage of any analysis is to identify the effects a development may have on setting(s) and to evaluate the resultant degree of harm or benefit to the significance of the heritage asset(s). In some circumstances, this evaluation may need to extend to cumulative and complex impacts which may have as great an effect on heritage assets as large-scale development and which may not solely be visual.

33 The wide range of circumstances in which setting may be affected and the range of heritage assets that may be involved precludes a single approach for assessing effects. Different approaches will be required for different circumstances. In general, however, the assessment should address the attributes of the proposed development in terms of its:

- location and siting
- form and appearance
- wider effects
- permanence

34 The box (see [below](#)) provides a more detailed list of attributes of the development proposal that it may be appropriate to consider during the assessment process. This list is not intended to be exhaustive and not all attributes will apply to a particular development proposal.

Depending on the level of detail considered proportionate to the purpose of the assessment, it would normally be appropriate to make a selection from the list, identifying those particular attributes of the development requiring further consideration and considering what emphasis attaches to each. The key attributes chosen for consideration can be used as a simple check-list, supported by a short explanation, as part of a Design and Access Statement, or may provide the basis for a more complex assessment process that might sometimes draw on quantitative approaches to assist analysis.

35 In particular, it would be helpful for local planning authorities to consider at an early stage whether development affecting the setting of a heritage asset can be broadly categorised as having the potential to enhance or harm the significance of the asset through the principle of development alone; through the scale, prominence, proximity or placement of development; or through its detailed design. Determining whether the assessment will focus on spatial, landscape and views analysis, on the application of urban design considerations, or on a combination of these approaches will clarify for the applicant the breadth and balance of professional expertise required for its successful delivery.

36 Cumulative assessment is required under the EU Directive on EIA. Its purpose is to identify impacts that are the result of introducing the development into the view in combination with other existing and proposed developments. The combined impact may not simply be the sum of the impacts of individual developments; it may be more, or less.



### Assessment Step 3 Checklist

The following is a (non-exhaustive) check-list of the potential attributes of a development affecting setting that may help to elucidate its implications for the significance of the heritage asset. It may be that only a limited selection of these is likely to be particularly important in terms of any particular development.

#### Location and siting of development

- Proximity to asset
- Position in relation to relevant topography and watercourses
- Position in relation to key views to, from and across
- Orientation
- Degree to which location will physically or visually isolate asset

#### Form and appearance of development

- Prominence, dominance, or conspicuousness
- Competition with or distraction from the asset
- Dimensions, scale and massing
- Proportions
- Visual permeability (extent to which it can be seen through), reflectivity
- Materials (texture, colour, reflectiveness, etc)
- Architectural and landscape style and/or design
- Introduction of movement or activity
- Diurnal or seasonal change

#### Wider effects of the development

- Change to built surroundings and spaces
- Change to skyline, silhouette
- Noise, odour, vibration, dust, etc
- Lighting effects and 'light spill'
- Change to general character (eg urbanising or industrialising)
- Changes to public access, use or amenity
- Changes to land use, land cover, tree cover
- Changes to communications/accessibility/permeability, including traffic, road junctions and car-parking, etc
- Changes to ownership arrangements (fragmentation/permitted development/etc)
- Economic viability

#### Permanence of the development

- Anticipated lifetime/temporariness
- Recurrence
- Reversibility



#### Step 4: Explore ways to maximise enhancement and avoid or minimise harm

37 Maximum advantage can be secured if any effects on the significance of a heritage asset arising from development likely to affect its setting are considered from the project's inception. Early assessment of setting may provide a basis for agreeing the scope and form of development, reducing the potential for disagreement and challenge later in the process.

38 Enhancement (see [NPPF, paragraph 137](#)) may be achieved by actions including:

- removing or re-modelling an intrusive building or feature
- replacement of a detrimental feature by a new and more harmonious one
- restoring or revealing a lost historic feature or view
- introducing a wholly new feature that adds to the public appreciation of the asset
- introducing new views (including glimpses or better framed views) that add to the public experience of the asset, or
- improving public access to, or interpretation of, the asset including its setting

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

an important consideration in determining the balance of harm and benefit.

40 Where attributes of a development affecting setting may cause some harm to significance and cannot be adjusted, screening may have a part to play in reducing harm. As screening can only mitigate negative impacts, rather than removing impacts or providing enhancement, it ought never to be regarded as a substitute for well-designed developments within the setting of heritage assets. Screening may have as intrusive an effect on the setting as the development it seeks to mitigate, so where it is necessary, it too merits careful design. This should take account of local landscape character and seasonal and diurnal effects, such as changes to foliage and lighting. The permanence or longevity of screening in relation to the effect on the setting also requires consideration. Ephemeral features, such as hoardings, may be removed or changed during the duration of the development, as may woodland or hedgerows, unless they enjoy statutory protection. Management measures secured by legal agreements may be helpful in securing the long-term effect of screening.

## Step 5: Make and document the decision and monitor outcomes

41 It is good practice to document each stage of the decision-making process in a non-technical and proportionate way, accessible to non-specialists. This should set out clearly how the setting of each heritage asset affected contributes to its significance or to the appreciation of its significance, as well as what the anticipated effect of the development will be, including of any mitigation proposals. Despite the wide range of possible variables, normally this analysis should focus on a limited number of key attributes of the asset, its setting and the proposed development, in order to avoid undue complexity. Such assessment work is a potentially valuable resource and should be logged in the local Historic Environment Record.

42 The true effect of a development on setting may be difficult to establish from plans, drawings and visualisations. It may be helpful to review the success of a scheme and to identify any ‘lessons learned’ once a development affecting setting has been implemented that was intended to enhance, or was considered unlikely to detract from, the significance of a heritage asset. This will be particularly useful where similar developments are anticipated in the future.

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# Historic England

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003



# Planning (Listed Buildings and Conservation Areas) Act 1990

## CHAPTER 9

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# Planning (Listed Buildings and Conservation Areas) Act 1990

## CHAPTER 9

A Table showing the derivation of the provisions of this consolidation Act will be found at the end of the Act. The Table has no official status.

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# Planning (Listed Buildings and Conservation Areas) Act 1990

## 1990 CHAPTER 9

An Act to consolidate certain enactments relating to special controls in respect of buildings and areas of special architectural or historic interest with amendments to give effect to recommendations of the Law Commission. [24th May 1990]

**B**E IT ENACTED by the Queen's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same, as follows:—

### PART I

#### LISTED BUILDINGS

##### CHAPTER 1

##### LISTING OF SPECIAL BUILDINGS

1.—(1) For the purposes of this Act and with a view to the guidance of local planning authorities in the performance of their functions under this Act and the principal Act in relation to buildings of special architectural or historic interest, the Secretary of State shall compile lists of such buildings, or approve, with or without modifications, such lists compiled by the Historic Buildings and Monuments Commission for England (in this Act referred to as “the Commission”) or by other persons or bodies of persons, and may amend any list so compiled or approved.

Listing of buildings of special architectural or historic interest.

(2) The Secretary of State shall not approve any list compiled by the Commission if the list contains any building situated outside England.

(3) In considering whether to include a building in a list compiled or approved under this section, the Secretary of State may take into account not only the building itself but also—

- (a) any respect in which its exterior contributes to the architectural or historic interest of any group of buildings of which it forms part; and

**PART I**

- (b) the desirability of preserving, on the ground of its architectural or historic interest, any feature of the building consisting of a man-made object or structure fixed to the building or forming part of the land and comprised within the curtilage of the building.

(4) Before compiling, approving (with or without modifications) or amending any list under this section the Secretary of State shall consult—

- (a) in relation to buildings which are situated in England, with the Commission; and
- (b) with such other persons or bodies of persons as appear to him appropriate as having special knowledge of, or interest in, buildings of architectural or historic interest.

(5) In this Act “listed building” means a building which is for the time being included in a list compiled or approved by the Secretary of State under this section; and for the purposes of this Act—

- (a) any object or structure fixed to the building;
- (b) any object or structure within the curtilage of the building which, although not fixed to the building, forms part of the land and has done so since before 1st July 1948,

shall be treated as part of the building.

(6) Schedule 1 shall have effect for the purpose of making provision as to the treatment as listed buildings of certain buildings formerly subject to building preservation orders.

**Publication of lists.**

2.—(1) As soon as possible after any list has been compiled or approved under section 1 or any amendments of such a list have been made, a copy of so much of the list as relates to any district or London borough or, as the case may be, of so much of the amendments as so relates, certified by or on behalf of the Secretary of State to be a true copy, shall be deposited—

- (a) in the case of a London borough, with the council of the borough and with the chief officer of the Commission; and
- (b) in the case of a district—
  - (i) with the district council;
  - (ii) with the county planning authority whose area or any part of whose area includes the district, or any part of it; and
  - (iii) where the district council are not the district planning authority, with that authority.

(2) Any copy deposited under subsection (1) shall be a local land charge, and the council with whom a copy is deposited shall be treated for the purposes of the Local Land Charges Act 1975 as the originating authority as respects the charge constituted by the deposit.

(3) As soon as possible after the inclusion of any building in a list under section 1 (whether it is included when the list is compiled, approved or amended) or as soon as possible after any such list has been amended by the exclusion of any building from it—

- (a) the Secretary of State shall inform the council of the district or London borough in whose area the building is situated of the inclusion or exclusion; and

**PART I**

- (b) the council shall serve a notice in the prescribed form on every owner and occupier of the building, stating that the building has been included in or excluded from the list.

(4) The Secretary of State shall keep available for public inspection free of charge at reasonable hours and at a convenient place, copies of all lists and amendments of lists, compiled, approved or made by him under section 1.

(5) Every authority with whom copies of any list or amendments are deposited under this section shall similarly keep available copies of so much of any such list or amendment as relates to buildings within their area.

(6) For the purposes of subsection (5) the Commission shall be taken to be an authority whose area is Greater London.

3.—(1) If it appears to a local planning authority, other than a county planning authority, that a building in their area which is not a listed building—

**Temporary listing:  
building  
preservation  
notices.**

- (a) is of special architectural or historic interest; and
- (b) is in danger of demolition or of alteration in such a way as to affect its character as a building of such interest,

they may serve on the owner and occupier of the building a notice (in this Act referred to as a “building preservation notice”).

(2) A building preservation notice served by a local planning authority shall—

- (a) state that the building appears to them to be of special architectural or historic interest and that they have requested the Secretary of State to consider including it in a list compiled or approved under section 1; and
- (b) explain the effect of subsections (3) to (5) and Schedule 2.

(3) A building preservation notice—

- (a) shall come into force as soon as it has been served on both the owner and occupier of the building to which it relates; and
- (b) subject to subsection (4), shall remain in force for six months from the date when it is served or, as the case may be, last served.

(4) A building preservation notice shall cease to be in force if the Secretary of State—

- (a) includes the building in a list compiled or approved under section 1, or
- (b) notifies the local planning authority in writing that he does not intend to do so.

(5) While a building preservation notice is in force with respect to a building, the provisions of this Act (other than section 59) and the principal Act shall have effect in relation to the building as if it were a listed building.



**PART I**

(6) If, following the service of a building preservation notice, the Secretary of State notifies the local planning authority that he does not propose to include the building in a list compiled or approved under section 1, the authority shall immediately give notice of that decision to the owner and occupier of the building.

(7) Following such a notification by the Secretary of State no further building preservation notice in respect of the building shall be served by the local planning authority within the period of 12 months beginning with the date of the notification.

(8) The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under this section; and references to the local planning authority shall be construed accordingly.

**Temporary listing in urgent cases.**

4.—(1) If it appears to the local planning authority to be urgent that a building preservation notice should come into force, they may, instead of serving the notice on the owner and occupier of the building, affix the notice conspicuously to some object on the building.

(2) The affixing of a notice under subsection (1) shall be treated for all the purposes of section 3, this section, sections 5 and 10 to 26 and Schedule 2 as service of the notice.

(3) A notice which is so affixed must explain that by virtue of being so affixed it is treated as being served for those purposes.

(4) The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under this section; and references to the local planning authority shall be construed accordingly.

**Provisions applicable on lapse of building preservation notice.**

5. Schedule 2 to this Act shall have effect as respects the lapse of building preservation notices.

**Issue of certificate that building not intended to be listed.**

6.—(1) Where—

(a) application has been made for planning permission for any development involving the alteration, extension or demolition of a building; or

(b) any such planning permission has been granted;

the Secretary of State may, on the application of any person, issue a certificate stating that he does not intend to list the building.

(2) The issue of such a certificate in respect of a building shall—

(a) preclude the Secretary of State for a period of 5 years from the date of issue from exercising in relation to that building any of the powers conferred on him by section 1; and

(b) preclude the local planning authority for that period from serving a building preservation notice in relation to it.

(3) Notice of an application under subsection (1) shall be given to the local planning authority within whose area the building is situated at the same time as the application is submitted to the Secretary of State.

(4) In this section “local planning authority”, in relation to a building in Greater London, includes the Commission.

CHAPTER II

PART I

AUTHORISATION OF WORKS AFFECTING LISTED BUILDINGS

*Control of works in respect of listed buildings*

7. Subject to the following provisions of this Act, no person shall execute or cause to be executed any works for the demolition of a listed building or for its alteration or extension in any manner which would affect its character as a building of special architectural or historic interest, unless the works are authorised.

Restriction on  
works affecting  
listed buildings.

8.—(1) Works for the alteration or extension of a listed building are authorised if—

Authorisation of  
works: listed  
building consent.

(a) written consent for their execution has been granted by the local planning authority or the Secretary of State; and

(b) they are executed in accordance with the terms of the consent and of any conditions attached to it.

(2) Works for the demolition of a listed building are authorised if—

(a) such consent has been granted for their execution;

(b) notice of the proposal to execute the works has been given to the Royal Commission;

(c) after such notice has been given either—

(i) for a period of at least one month following the grant of such consent, and before the commencement of the works, reasonable access to the building has been made available to members or officers of the Royal Commission for the purpose of recording it; or

(ii) the Secretary of the Royal Commission, or another officer of theirs with authority to act on their behalf for the purposes of this section, has stated in writing that they have completed their recording of the building or that they do not wish to record it; and

(d) the works are executed in accordance with the terms of the consent and of any conditions attached to it.

(3) Where—

(a) works for the demolition of a listed building or for its alteration or extension are executed without such consent; and

(b) written consent is granted by the local planning authority or the Secretary of State for the retention of the works,

the works are authorised from the grant of that consent.

(4) In this section “the Royal Commission” means—

(a) in relation to England, the Royal Commission on the Historical Monuments of England; and

(b) in relation to Wales, the Royal Commission on Ancient and Historical Monuments in Wales.

(5) The Secretary of State may by order provide that subsection (2) shall have effect with the substitution for the references to the Royal Commission of references to such other body as may be so specified.

**PART I**

(6) Such an order—

(a) shall apply in the case of works executed or to be executed on or after such date as may be specified in the order; and

(b) may apply in relation to either England or Wales, or both.

(7) Consent under subsection (1), (2) or (3) is referred to in this Act as “listed building consent”.

**Offences.****9.**—(1) If a person contravenes section 7 he shall be guilty of an offence.

(2) Without prejudice to subsection (1), if a person executing or causing to be executed any works in relation to a listed building under a listed building consent fails to comply with any condition attached to the consent, he shall be guilty of an offence.

(3) In proceedings for an offence under this section it shall be a defence to prove the following matters—

(a) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building;

(b) that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter;

(c) that the works carried out were limited to the minimum measures immediately necessary; and

(d) that notice in writing justifying in detail the carrying out of the works was given to the local planning authority as soon as reasonably practicable.

(4) A person who is guilty of an offence under this section shall be liable—

(a) on summary conviction to imprisonment for a term not exceeding three months or a fine not exceeding the statutory maximum, or both; or

(b) on conviction on indictment to imprisonment for a term not exceeding twelve months or a fine, or both.

(5) In determining the amount of any fine to be imposed on a person convicted on indictment of an offence under this section, the court shall in particular have regard to any financial benefit which has accrued or appears likely to accrue to him in consequence of the offence.

*Applications for listed building consent***Making of applications for listed building consent.****10.**—(1) Except as provided in sections 12 to 15, an application for listed building consent shall be made to and dealt with by the local planning authority.

(2) Such an application shall be made in such form as the authority may require and shall contain—

(a) sufficient particulars to identify the building to which it relates, including a plan;

(b) such other plans and drawings as are necessary to describe the works which are the subject of the application; and

(c) such other particulars as may be required by the authority.

(3) Provision may be made by regulations under this Act with respect to— **PART I**

- (a) the manner in which such applications are to be made;
- (b) the manner in which they are to be advertised; and
- (c) the time within which they are to be dealt with by local planning authorities or, as the case may be, by the Secretary of State.

**11.—**(1) Regulations under this Act may provide that an application for listed building consent shall not be entertained unless it is accompanied by one of the following certificates in the prescribed form and signed by or on behalf of the applicant— **Certificates as to applicant's status etc.**

- (a) a certificate stating that, at the beginning of the period of 21 days ending with the date of the application, no person (other than the applicant) was the owner of any of the building to which the application relates;
- (b) a certificate stating that the applicant has given the requisite notice of the application to all the persons (other than himself) who at the beginning of that period were owners of any of the building to which the application relates;
- (c) a certificate stating—
  - (i) that the applicant is unable to issue a certificate in accordance with paragraph (a) or (b);
  - (ii) that he has given the requisite notice of the application to such one or more of the persons mentioned in paragraph (b) as are specified in the certificate; and
  - (iii) that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the remainder of those persons but has been unable to do so;
- (d) a certificate stating—
  - (i) that the applicant is unable to issue a certificate in accordance with paragraph (a); and
  - (ii) that he has taken such steps as are reasonably open to him (specifying them) to ascertain the names and addresses of the persons mentioned in paragraph (b) but has been unable to do so.

(2) Where such provision is made any such certificate as is mentioned in subsection (1)(b) or (c) must set out—

- (a) the names of the persons to whom the applicant has given the requisite notice of the application;
- (b) the addresses at which notice was given to them; and
- (c) the date of service of each such notice.

(3) Such regulations may require that any such certificate as is mentioned in subsection (1)(c) or (d) shall also contain a statement that the requisite notice of the application, as set out in the certificate, has on a date specified in the certificate (which must not be earlier than the beginning of the period mentioned in subsection (1)(a)) been published in a local newspaper circulating in the locality in which the building is situated.

**PART I**

(4) Such regulations may also require that where an application is accompanied by such a certificate as is mentioned in subsection (1)(b),(c) or (d), the local planning authority—

- (a) shall not determine the application before the end of the period of 21 days beginning with the date appearing from the certificate to be the latest of the dates of service of notices as mentioned in the certificate, or, if later, the date of publication of a notice as so mentioned;
- (b) shall in determining the application take into account any representations relating to it which are made to them before the end of that period by any person who satisfies them that he is an owner of any of the building to which the application relates; and
- (c) shall give notice of their decision to every person who has made representations which they were required to take into account in accordance with paragraph (b).

(5) Such regulations may also make provision as to who, in the case of any building, is to be treated as the owner for the purposes of any provision made by virtue of this section.

(6) If any person—

- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of this section and contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

(7) Subject to subsection (5), in this section “owner” means a person who is for the time being the estate owner in respect of the fee simple or is entitled to a tenancy granted or extended for a term of years certain of which not less than seven years remain unexpired.

Reference of  
certain  
applications to  
Secretary of State.

**12.—**(1) The Secretary of State may give directions requiring applications for listed building consent to be referred to him instead of being dealt with by the local planning authority.

(2) A direction under this section may relate either to a particular application, or to applications in respect of such buildings as may be specified in the direction.

(3) An application in respect of which a direction under this section has effect shall be referred to the Secretary of State accordingly.

(4) Before determining an application referred to him under this section, the Secretary of State shall, if either the applicant or the authority so wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State.

(5) The decision of the Secretary of State on any application referred to him under this section shall be final.

**13.—**(1) If a local planning authority (other than a London borough council) to whom application is made for listed building consent, or a London borough council to whom such an application is made by the Commission, intend to grant listed building consent they shall first notify the Secretary of State of the application, giving particulars of the works for which the consent is required.

**PART I**  
**Duty to notify**  
**Secretary of State**  
**of applications.**

(2) The Secretary of State may within the period of 28 days beginning with the date of such a notification—

- (a) direct the reference of the application to him under section 12; or
- (b) give notice to the authority that he requires further time in which to consider whether to require such a reference.

(3) The local planning authority shall not grant listed building consent until—

- (a) the period mentioned in subsection (2) has expired without the Secretary of State directing the reference of the application to him or giving them notice under paragraph (b) of that subsection; or
- (b) the Secretary of State has notified them that he does not intend to require the reference of the application.

**14.—**(1) Where an application for listed building consent is made to a local planning authority which is a London borough council—

**Duty of London**  
**borough councils**  
**to notify**  
**Commission.**

- (a) unless the authority have determined to refuse it, they shall notify the Commission of the application, giving particulars of the works for which the consent is required; and
- (b) the authority shall not grant the consent unless they are authorised or directed to do so under subsection (2)(a).

(2) On receipt of such a notification the Commission may—

- (a) subject to subsection (6), give the local planning authority directions as to the granting of the application or authorise them to determine the application as they think fit; or
- (b) direct them to refuse the application.

(3) If the Commission intend to exercise either of their powers under subsection (2)(a), they shall notify the Secretary of State of the application giving particulars of the works for which the consent is required.

(4) Where the Commission direct the local planning authority under subsection (2)(b) to refuse listed building consent, the authority may, within 28 days from the date of the direction, notify the Secretary of State of the application giving particulars of the works for which the consent is required.

(5) The Secretary of State may within the period of 28 days beginning with the date of a notification under subsection (3) or (4)—

- (a) direct the reference of the application to him; or
- (b) give notice to the authority who notified him or, as the case may be, the Commission that he requires further time in which to consider whether to require such a reference.

**PART I**

(6) The Commission shall not direct the local planning authority under subsection (2)(a) to grant the application or authorise them to determine it as they think fit unless—

- (a) the period mentioned in subsection (5) has expired without the Secretary of State directing the reference of the application to him or giving them notice under paragraph (b) of that subsection; or
- (b) he has notified them that he does not intend to require the reference of the application.

(7) Where the local planning authority notify the Secretary of State as mentioned in subsection (4), they shall not refuse the application unless—

- (a) a period of 28 days beginning with the date of the notification has expired without the Secretary of State directing the reference of the application to him or giving them notice under subsection (5)(b); or
- (b) he has notified the authority that he does not intend to require the reference of the application.

(8) Where, after receiving notification under subsection (4), the Secretary of State directs the reference of the application to him, before determining the application he shall, if either the applicant or the authority or, as the case may be, the Commission so desire, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State.

(9) Subsection (1) shall not apply where the application for listed building consent is made by the Commission.

**Directions  
concerning  
notification of  
applications etc.**

**15.—**(1) The Secretary of State may direct that, in the case of such descriptions of applications for listed building consent as he may specify, sections 13 and 14 shall not apply.

(2) Where a direction is in force under subsection (1) in respect of any description of application, local planning authorities may determine applications of that description in any manner they think fit, without notifying the Secretary of State or, as the case may be, the Commission.

(3) Before giving a direction under subsection (1) in respect of any description of application for consent to the demolition of a building in England, the Secretary of State shall consult the Commission.

(4) Where a direction is in force under subsection (1), the Secretary of State may direct a local planning authority that section 13 or, as the case may be, section 14 shall nevertheless apply—

- (a) to a particular application for listed building consent; or
- (b) to such descriptions of application for listed building consent as are specified in the direction;

and such a direction has effect in relation to any such application which has not been disposed of by the authority by their granting or refusing consent.

(5) Without prejudice to sections 10 to 14, the Secretary of State may give directions to local planning authorities requiring them, in such cases or classes of case as may be specified in the directions, to notify him and such other persons as may be so specified—

- (a) of any applications made to the authorities for listed building consent; and
- (b) of the decisions taken by the authorities on those applications.

PART I

(6) Directions under subsection (1) or (5) may be given to authorities generally or to particular authorities or descriptions of authority.

16.—(1) Subject to the previous provisions of this Part, the local planning authority or, as the case may be, the Secretary of State may grant or refuse an application for listed building consent and, if they grant consent, may grant it subject to conditions.

Decision on application.

(2) In considering whether to grant listed building consent for any works the local planning authority or 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.

(3) Any listed building consent shall (except in so far as it otherwise provides) enure for the benefit of the building and of all persons for the time being interested in it.

*Grant of consent subject to conditions*

17.—(1) Without prejudice to the generality of section 16(1), the conditions subject to which listed building consent may be granted may include conditions with respect to—

Power to impose conditions on grant of listed building consent.

- (a) the preservation of particular features of the building, either as part of it or after severance from it;
- (b) the making good, after the works are completed, of any damage caused to the building by the works;
- (c) the reconstruction of the building or any part of it following the execution of any works, with the use of original materials so far as practicable and with such alterations of the interior of the building as may be specified in the conditions.

(2) A condition may also be imposed requiring specified details of the works (whether or not set out in the application) to be approved subsequently by the local planning authority or, in the case of consent granted by the Secretary of State, specifying whether such details are to be approved by the local planning authority or by him.

(3) Listed building consent for the demolition of a listed building may be granted subject to a condition that the building shall not be demolished before—

- (a) a contract for the carrying out of works of redevelopment of the site has been made; and
- (b) planning permission has been granted for the redevelopment for which the contract provides.

18.—(1) Subject to the provisions of this section, every listed building consent shall be granted subject to the condition that the works to which it relates must be begun not later than the expiration of—

Limit of duration of listed building consent.

- (a) five years beginning with the date on which the consent is granted; or



**PART I**

- (b) such other period (whether longer or shorter) beginning with that date as the authority granting the consent may direct, being a period which the authority considers appropriate having regard to any material considerations.

(2) If listed building consent is granted without the condition required by subsection (1), it shall be deemed to have been granted subject to the condition that the works to which it relates must be begun not later than the expiration of five years beginning with the date of the grant.

(3) Nothing in this section applies to any consent to the retention of works granted under section 8(3).

Application for variation or discharge of conditions.

**19.—**(1) Any person interested in a listed building with respect to which listed building consent has been granted subject to conditions may apply to the local planning authority for the variation or discharge of the conditions.

(2) The application shall indicate what variation or discharge of conditions is applied for.

(3) Sections 10 to 15 apply to such an application as they apply to an application for listed building consent.

(4) On such an application the local planning authority or, as the case may be, the Secretary of State may vary or discharge the conditions attached to the consent, and may add new conditions consequential upon the variation or discharge, as they or he thinks fit.

### *Appeals*

Right to appeal against decision or failure to take decision.

**20.—**(1) Where a local planning authority—

- (a) refuse an application for listed building consent or grant it subject to conditions;
- (b) refuse an application for the variation or discharge of conditions subject to which such consent has been granted or grant it and add new conditions; or
- (c) refuse an application for approval required by a condition imposed on the granting of listed building consent with respect to details of works or grant it subject to conditions,

the applicant, if aggrieved by the decision, may appeal to the Secretary of State.

(2) A person who has made such an application may also appeal to the Secretary of State if the local planning authority have neither—

- (a) given notice to the applicant of their decision on the application; nor
- (b) in the case of such an application as is mentioned in paragraph (a) or (b) of subsection (1), given notice to the applicant that the application has been referred to the Secretary of State in accordance with directions given under section 12,

within the relevant period from the date of the receipt of the application, or within such extended period as may at any time be agreed upon in writing between the applicant and the authority.

**PART I**

(3) In this section “the relevant period” means—

- (a) in the case of such an application as is mentioned in paragraph (a) or (b) of subsection (1), such period as may be prescribed; and
- (b) in the case of such an application for approval as is mentioned in paragraph (c) of subsection (1), the period of eight weeks from the date of the receipt of the application.

(4) For the purposes of the application of sections 22(1) and 63(7)(b) in relation to an appeal under subsection (2) it shall be assumed that the authority decided to refuse the application in question.

**21.—(1)** An appeal under section 20 must be made by notice served in the prescribed manner within such period as may be prescribed.

**Appeals:  
supplementary  
provisions.**

(2) The period which may be prescribed under subsection (1) must not be less than—

- (a) in the case of an appeal under subsection (1) of section 20, 28 days from the receipt by the applicant of notification of the decision; or
- (b) in the case of an appeal under subsection (2) of that section, 28 days from the end of the relevant period (within the meaning of that section) or, as the case may be, the extended period there mentioned.

(3) The notice of appeal may include as the ground or one of the grounds of the appeal a claim that the building is not of special architectural or historic interest and ought to be removed from any list compiled or approved by the Secretary of State under section 1.

(4) In the case of a building with respect to which a listed building preservation notice is in force, the notice may include a claim that the building should not be included in such a list.

(5) Regulations under this Act may provide that an appeal in respect of an application for listed building consent or for the variation or discharge of conditions subject to which such consent has been granted shall not be entertained unless it is accompanied by a certificate in the prescribed form and corresponding to one of those described in subsection (1) of section 11.

(6) Any such regulations may also include provisions corresponding to those which may be included in the regulations which may be made by virtue of section 11.

(7) If any person—

- (a) issues a certificate which purports to comply with the requirements of regulations made by virtue of subsection (5) or (6) and contains a statement which he knows to be false or misleading in a material particular; or
- (b) recklessly issues a certificate which purports to comply with those requirements and contains a statement which is false or misleading in a material particular,

he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

**PART I**  
**Determination of**  
**appeals.**

**22.—**(1) The Secretary of State may allow or dismiss an appeal under section 20 or may reverse or vary any part of the authority's decision (whether or not the appeal relates to that part), and—

- (a) may deal with the application as if it had been made to him in the first instance; and
- (b) may exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.

(2) Before determining the appeal, the Secretary of State shall, if either the applicant or the local planning authority so wish, give each of them an opportunity of appearing before, and being heard by, a person appointed by the Secretary of State for the purpose.

(3) The decision of the Secretary of State on the appeal shall be final.

(4) Schedule 3 applies to appeals under section 20.

*Revocation and modification of consent*

**Revocation and**  
**modification of**  
**listed building**  
**consent by local**  
**planning**  
**authority.**

**23.—**(1) If it appears to the local planning authority that it is expedient to revoke or modify any listed building consent granted on an application under this Act, the authority may by order revoke or modify the consent to such extent as they consider expedient.

(2) In performing their functions under subsection (1) the local planning authority shall have regard to the development plan and to any other material considerations.

(3) The power conferred by this section to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

**Procedure for s.**  
**23 orders:**  
**opposed cases.**

**24.—**(1) Except as provided in section 25, an order made by a local planning authority under section 23 shall not take effect unless it is confirmed by the Secretary of State.

(2) Where a local planning authority submit such an order to the Secretary of State for confirmation they shall serve notice on—

- (a) the owner of the building affected;
- (b) the occupier of that building; and
- (c) any other person who in their opinion will be affected by the order.

(3) The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(4) If within that period a person on whom the notice is served so requires, the Secretary of State shall give such an opportunity both to that person and to the local planning authority before he confirms the order.

(5) The Secretary of State may confirm an order submitted to him under this section either without modification or subject to such modifications as he considers expedient.

25.—(1) This section shall have effect where—

- (a) the local planning authority have made an order under section 23 revoking or modifying a listed building consent granted by them; and
- (b) the owner and occupier of the land and all persons who in the authority's opinion will be affected by the order have notified the authority in writing that they do not object to the order.

(2) Where this section applies, instead of submitting the order to the Secretary of State for confirmation the authority shall—

- (a) advertise in the prescribed manner the fact that the order has been made, specifying in the advertisement—
  - (i) the period within which persons affected by the order may give notice to the Secretary of State that they wish for an opportunity of appearing before and being heard by a person appointed by him for the purpose; and
  - (ii) the period at the end of which, if no such notice is given to the Secretary of State, the order may take effect by virtue of this section without being confirmed by him;
- (b) serve notice to the same effect on the persons mentioned in subsection (1)(b);
- (c) send a copy of any such advertisement to the Secretary of State not more than three days after its publication.

(3) If—

- (a) no person claiming to be affected by the order has given notice to the Secretary of State as mentioned in subsection (2)(a)(i) within the period referred to in that subsection; and
- (b) the Secretary of State has not directed within that period that the order be submitted to him for confirmation,

the order shall take effect at the end of the period referred to in subsection (2)(a)(ii) without being confirmed by the Secretary of State as required by section 24(1).

(4) The period referred to in subsection (2)(a)(i) must not be less than 28 days from the date on which the advertisement first appears.

(5) The period referred to in subsection (2)(a)(ii) must not be less than 14 days from the end of the period referred to in subsection (2)(a)(i).

26.—(1) If it appears to the Secretary of State that it is expedient that an order should be made under section 23 revoking or modifying any listed building consent granted on an application under this Act, he may himself make such an order revoking or modifying the consent to such extent as he considers expedient.

**PART I**  
Procedure for s.  
23 orders:  
unopposed cases.

Revocation and  
modification of  
listed building  
consent by the  
Secretary of State.

(2) In performing his functions under subsection (1) the Secretary of State shall have regard to the development plan and to any other material considerations.

(3) The Secretary of State shall not make an order under that subsection without consulting the local planning authority.

**PART I** (4) Where the Secretary of State proposes to make such an order he shall serve notice on—

- (a) the owner of the building affected;
- (b) the occupier of that building; and
- (c) any other person who in his opinion will be affected by the order.

(5) The notice shall specify the period (which must not be less than 28 days after its service) within which any person on whom it is served may require an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

(6) If within that period a person on whom it is served so requires, before the Secretary of State makes the order he shall give such an opportunity both to him and to the local planning authority.

(7) The power conferred by this section to revoke or modify listed building consent in respect of any works may be exercised at any time before those works have been completed, but the revocation or modification shall not affect so much of those works as has been previously carried out.

(8) An order under this section shall have the same effect as if it had been made by the local planning authority under section 23 and confirmed by the Secretary of State under section 24.

### CHAPTER III

#### RIGHTS OF OWNERS ETC.

##### *Compensation*

Compensation for refusal of consent to alteration, etc. of listed building.

27.—(1) This section shall have effect where—

- (a) an application is made for listed building consent for the alteration or extension of a listed building;
- (b) the works do not constitute development or they do so but the development is such that planning permission for it is granted by a development order; and
- (c) the Secretary of State, either on appeal or on the reference of the application to him, refuses such consent or grants it subject to conditions.

(2) If, on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that the value of the interest of any person in the land is less than it would have been if listed building consent had been granted or, as the case may be, had been granted unconditionally, the local planning authority shall pay that person compensation of an amount equal to the difference.

(3) In determining for the purposes of subsection (2) whether or to what extent the value of an interest in land is less than it would have been if listed building consent had been granted, or had been granted unconditionally—

- (a) it shall be assumed that any subsequent application for listed building consent for the alteration or extension in question would be determined in the same way; but

- (b) in the case of a refusal of listed building consent, regard shall be had to any undertaking given by the Secretary of State on that refusal to grant such consent for some other works to the building if an application were made for it.

PART I

(4) No compensation shall be payable under this section in respect of an interest in land in respect of which a notice is served under section 32 of this Act or under section 137 of the principal Act (circumstances in which purchase notices may be served) by virtue of subsection (1)(a) or (b) of that section, being a notice which takes effect.

(5) The local planning authority need not pay compensation under this section in respect of a building in respect of which a building preservation notice is in force unless and until the building is included in a list compiled or approved by the Secretary of State under section 1, but a claim for such compensation may be made before the building is so included.

**28.—**(1) This section shall have effect where listed building consent is revoked or modified by an order under section 23 (other than an order which takes effect by virtue of section 25).

Compensation where listed building consent revoked or modified.

(2) If on a claim made to the local planning authority within the prescribed time and in the prescribed manner, it is shown that a person interested in the building—

- (a) has incurred expenditure in carrying out works which are rendered abortive by the revocation or modification; or
- (b) has otherwise sustained loss or damage which is directly attributable to the revocation or modification,

the authority shall pay that person compensation in respect of that expenditure, loss or damage.

(3) Subject to subsection (4), no compensation shall be paid under this section in respect of—

- (a) any works carried out before the grant of the listed building consent which is revoked or modified; or
- (b) any other loss or damage (not being loss or damage consisting of depreciation of the value of an interest in land) arising out of anything done or omitted to be done before the grant of that consent.

(4) For the purposes of this section, expenditure incurred in the preparation of plans for the purposes of any works, or upon other similar matters preparatory to any works, shall be taken to be included in the expenditure incurred in carrying out those works.

**29.—**(1) This section applies where a building preservation notice ceases to have effect without the building having been included in a list compiled or approved by the Secretary of State under section 1.

Compensation for loss or damage caused by service of building preservation notice.

(2) Any person who at the time when the notice was served had an interest in the building shall, on making a claim to the authority within the prescribed time and in the prescribed manner, be entitled to be paid compensation by the local planning authority in respect of any loss or damage directly attributable to the effect of the notice.

**PART I**

(3) The loss or damage in respect of which compensation is payable under subsection (2) shall include a sum payable in respect of any breach of contract caused by the necessity of discontinuing or countermanding any works to the building on account of the building preservation notice being in force with respect to it.

**Local planning  
authorities for  
compensation  
purposes.**

**30.—**(1) Subject to subsection (2)—

- (a) claims under section 27 shall be made to and paid by the local planning authority to whom the application for listed building consent was made;
- (b) claims under section 28 shall be made to and paid by the local planning authority who made the order in question or, where it was made by the Secretary of State under section 26, the local planning authority who are treated as having made it under that section;
- (c) claims under section 29 shall be made to and paid by the local planning authority who served the building preservation notice, and references in those sections to a local planning authority shall be construed accordingly.

(2) The Secretary of State may after consultation with all the authorities concerned direct that where a local planning authority is liable to pay compensation under section 27, 28 or 29 in any particular case or class of case they shall be entitled to be reimbursed the whole of the compensation or such proportion of it as he may direct from one or more authorities specified in the direction.

(3) This section does not apply in Greater London.

**General provisions  
as to  
compensation for  
depreciation under  
this Part.  
1961 c.33.**

**31.—**(1) For the purpose of assessing any compensation to which this section applies, the rules set out in section 5 of the Land Compensation Act 1961 shall, so far as applicable and subject to any necessary modifications, have effect as they have effect for the purpose of assessing compensation for the compulsory acquisition of an interest in land.

(2) This section applies to any compensation which is payable under sections 27 to 29 in respect of depreciation of the value of an interest in land.

(3) Where an interest in land is subject to a mortgage—

- (a) any compensation to which this section applies, which is payable in respect of depreciation of the value of that interest, shall be assessed as if the interest were not subject to the mortgage;
- (b) a claim for any such compensation may be made by any mortgagee of the interest, but without prejudice to the making of a claim by the person entitled to the interest;
- (c) no compensation to which this section applies shall be payable in respect of the interest of the mortgagee (as distinct from the interest which is subject to the mortgage); and
- (d) any compensation to which this section applies which is payable in respect of the interest which is subject to the mortgage shall be paid to the mortgagee, or, if there is more than one mortgagee, to the first mortgagee, and shall in either case be applied by him as if it were proceeds of sale.

(4) Except in so far as may be otherwise provided by any regulations made under this Act, any question of disputed compensation under sections 27 to 29 shall be referred to and determined by the Lands Tribunal.

**PART I**

(5) In relation to the determination of any such question, the provisions of sections 2 and 4 of the Land Compensation Act 1961 shall apply subject to any necessary modifications and to the provisions of any regulations made under this Act.

1961 c.33.

*Listed building purchase notices*

32.—(1) Where—

- (a) listed building consent in respect of a building is refused, or granted subject to conditions, or is revoked or modified by an order under section 23 or 26; and
- (b) any owner of the building claims—
  - (i) that the conditions mentioned in subsection (2) are satisfied with respect to it and any land comprising the building, or contiguous or adjacent to it, and owned with it; and
  - (ii) that the conditions mentioned in subsection (3) are satisfied with respect to that land,

**Purchase notice on refusal or conditional grant of listed building consent.**

he may, within the prescribed time and in the prescribed manner, serve on the council of the district or London borough in which the building and land are situated a notice (in this Act referred to as a “listed building purchase notice”) requiring that council to purchase his interest in the building and land in accordance with sections 33 to 37.

(2) The conditions mentioned in subsection (1)(b)(i) are—

- (a) that the building and land in respect of which the notice is served have become incapable of reasonably beneficial use in their existing state;
- (b) in a case where listed building consent has been granted subject to conditions with respect to the execution of the works or has been modified by the imposition of such conditions, that the land cannot be rendered capable of such use by the carrying out of the works in accordance with those conditions; and
- (c) in any case, that the land cannot be rendered capable of such use by the carrying out of any other works for which listed building consent has been granted or for which the local planning authority or the Secretary of State has undertaken to grant such consent.

(3) The conditions mentioned in subsection (1)(b)(ii) are that the use of the land is substantially inseparable from that of the building and that it ought to be treated, together with the building, as a single holding.

(4) In determining for the purpose of subsection (2) what is or would in any particular circumstances be a reasonably beneficial use of land, no account shall be taken of any prospective use which would involve the carrying out of new development or any works requiring listed building consent which might be executed to the building, other than works for which the local planning authority or the Secretary of State have undertaken to grant such consent.



**PART I**

(5) References in sections 33 to 37 to the land are to the building and the land in respect of which the notice under subsection (1) is served.

**Action by council on whom listed building purchase notice served.**

**33.—**(1) The council on whom a listed building purchase notice is served by an owner shall serve on him a notice stating either—

- (a) that the council are willing to comply with the purchase notice; or
- (b) that another local authority or statutory undertakers specified in the notice under this subsection have agreed to comply with it in their place; or
- (c) that for reasons so specified the council are not willing to comply with the purchase notice and have not found any other local authority or statutory undertakers who will agree to comply with it in their place and that they have transmitted to the Secretary of State a copy of the purchase notice and of the notice under this subsection.

(2) A notice under subsection (1) must be served before the end of the period of three months beginning with the date of service of the listed building purchase notice.

(3) Where such a notice as is mentioned in paragraph (a) or (b) of subsection (1) has been duly served, the council or, as the case may be, the other local authority or statutory undertakers specified in the notice shall be deemed—

- (a) to be authorised to acquire the interest of the owner compulsorily in accordance with the provisions of section 47; and
- (b) to have served a notice to treat in respect of it on the date of service of the notice under that subsection.

(4) Where the council propose to serve such a notice as is mentioned in subsection (1)(c), they shall first send to the Secretary of State a copy of—

- (a) the proposed notice; and
- (b) the listed building purchase notice which was served on them.

**Procedure on reference of listed building purchase notice to Secretary of State.**

**34.—**(1) Where a copy of a listed building purchase notice is sent to the Secretary of State under section 33(4), he shall consider whether to confirm the notice or to take other action under section 35 in respect of it.

(2) Before confirming such a notice or taking such other action, the Secretary of State shall give notice of his proposed action—

- (a) to the person who served the notice;
- (b) to the council on whom it was served;
- (c) outside Greater London—
  - (i) to the county planning authority and also, where that authority is a joint planning board, to the county council; and
  - (ii) if the district council on whom the purchase notice in question was served is a constituent member of a joint planning board, to that board; and
- (d) if the Secretary of State proposes to substitute any other local authority or statutory undertakers for the council on whom the notice was served, to them.

**PART I**

(3) A notice under subsection (2) shall specify the period (which must not be less than 28 days from its service) within which any of the persons on whom it is served may require the Secretary of State to give him an opportunity of appearing before and being heard by a person appointed by him for the purpose.

(4) If any of those persons so require, before the Secretary of State confirms the listed building purchase notice or takes any other action under section 35 in respect of it, he shall give such an opportunity to each of them.

(5) If after any of those persons have appeared before and been heard by the appointed person, it appears to the Secretary of State to be expedient to take action under section 35 otherwise than in accordance with the notice given by him, the Secretary of State may take that action accordingly.

**35.—**(1) Subject to the following provisions of this section, if the Secretary of State is satisfied that the conditions specified in section 32(2)(a) to (c) are satisfied in the case of any listed building purchase notice, he shall confirm the notice.

Action by Secretary of State in relation to listed building purchase notice.

(2) If the Secretary of State is satisfied that those conditions are fulfilled only in respect of part of the land, he shall confirm the notice only in respect of that part and the notice shall have effect accordingly.

(3) The Secretary of State shall not confirm the notice unless he is satisfied that the land comprises such land contiguous or adjacent to the building as is in his opinion required—

- (a) for preserving the building or its amenities, or
- (b) for affording access to it, or
- (c) for its proper control or management.

(4) If it appears to the Secretary of State to be expedient to do so he may, instead of confirming the notice—

- (a) in the case of a notice served on account of the refusal of listed building consent for any works, grant such consent for those works;
- (b) in the case of a notice served on account of such consent being granted subject to conditions, revoke or amend those conditions so far as it appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of those works;
- (c) in the case of a notice served on account of such consent being revoked by an order under section 23 or 26, cancel the order revoking the consent; or
- (d) in the case of a notice served on account of such consent being modified by such an order by the imposition of conditions, revoke or amend those conditions so far as appears to him to be required in order to enable the land to be rendered capable of reasonably beneficial use by the carrying out of the works in respect of which the consent was granted.

(5) If it appears to the Secretary of State that the land (or any part of it) could be rendered capable of reasonably beneficial use within a reasonable time by the carrying out—

**PART I**

- (a) of any other works for which listed building consent ought to be granted, or
- (b) of any development for which planning permission ought to be granted,

he may, instead of confirming the listed building purchase notice (or confirming it so far as it relates to that part), direct that if an application is made for such consent for those works or, as the case may be, for planning permission for that development, it shall be granted.

(6) If it appears to the Secretary of State, having regard to the probable ultimate use of the building or its site, that it is expedient to do so, he may, if he confirms the notice, modify it either in relation to the whole or any part of the land, by substituting another local authority or statutory undertakers for the council on whom the notice was served.

(7) Any reference in section 34 to the taking of action by the Secretary of State under this section includes a reference to the taking by him of a decision not to confirm the notice on the grounds that any of the conditions referred to in subsection (1) are not satisfied.

**Effect of Secretary of State's action in relation to listed building purchase notice.**

**36.—**(1) Where the Secretary of State confirms a listed building purchase notice, the council on whom the notice was served shall be deemed—

- (a) to be authorised to acquire the owner's interest in the land compulsorily in accordance with the provisions of section 47; and
- (b) to have served a notice to treat in respect of it on such date as the Secretary of State may direct.

(2) If before the end of the relevant period the Secretary of State has neither—

- (a) confirmed the listed building purchase notice; nor
- (b) notified the owner by whom it was served that he does not propose to confirm it; nor
- (c) taken any such action in respect of it as is mentioned in subsection (4) or (5) of section 35,

the notice shall be deemed to be confirmed at the end of that period and the council on whom it was served shall be deemed to have been authorised as mentioned in subsection (1)(a) and to have served a notice to treat in respect of the owner's interest at the end of that period.

(3) Where a listed building purchase notice is confirmed in respect of only part of the land, references in this section to the owner's interest in the land are references to the owner's interest in that part.

(4) Where a listed building purchase notice is modified under section 35(6) by the substitution of another local authority or statutory undertakers for the council on whom the notice was served, the reference in subsection (1) to that council is to that other local authority or those statutory undertakers.

(5) In this section "the relevant period" means, subject to subsection (6) below—

- (a) the period of nine months beginning with the date of the service of the listed building purchase notice; or

**PART I**

- (b) if it ends earlier, the period of six months beginning with the date on which a copy of the notice was sent to the Secretary of State.
- (6) The relevant period does not run if the Secretary of State has before him at the same time both—
  - (a) a copy of the listed building purchase notice sent to him under section 33(4); and
  - (b) a notice of appeal under section 20 or section 39 relating to any of the land to which the listed building purchase notice relates.
- (7) Where any decision by the Secretary of State to confirm or not to confirm a listed building purchase notice (including any decision to confirm the notice only in respect of part of the land, or to give any direction as to the granting of listed building consent or planning permission) is quashed under section 63, the notice shall be treated as cancelled but the owner may serve a further notice in its place.
- (8) For the purposes of determining whether such a further notice has been served within the period prescribed for the service of listed building purchase notices, the decision concerning listed building consent on account of which the notice has been served shall be treated as having been made on the date on which the Secretary of State's decision was quashed.

37. Where compensation is payable under section 28 in respect of expenditure incurred in carrying out any works to a building, any compensation which then becomes payable in respect of the acquisition of an interest in the land in pursuance of a listed building purchase notice shall be reduced by an amount equal to the value of those works.

Reduction of compensation on acquisition where s. 28 compensation payable.

**CHAPTER IV**

**ENFORCEMENT**

- 38.—(1) Where it appears to the local planning authority—
- (a) that any works have been or are being executed to a listed building in their area; and
  - (b) that the works are such as to involve a contravention of section 9(1) or (2),

Power to issue listed building enforcement notice.

they may, if they consider it expedient to do so having regard to the effect of the works on the character of the building as one of special architectural or historic interest, issue a notice under this section (in this Act referred to as a “listed building enforcement notice”).

(2) A listed building enforcement notice shall specify the alleged contravention and require such steps as may be specified in the notice to be taken within such period as may be so specified—

- (a) for restoring the building to its former state; or
- (b) if the authority consider that such restoration would not be reasonably practicable or would be undesirable, for executing such further works specified in the notice as they consider necessary to alleviate the effect of the works which were carried out without listed building consent; or
- (c) for bringing the building to the state in which it would have been if the terms and conditions of any listed building consent which has been granted for the works had been complied with.

**PART I**

(3) A listed building enforcement notice shall specify the date on which it is to take effect (in this section referred to as “the specified date”).

(4) A copy of a listed building enforcement notice shall be served, not later than 28 days after the date of its issue and not later than 28 days before the specified date—

(a) on the owner and on the occupier of the building to which it relates; and

(b) on any other person having an interest in that building which in the opinion of the authority is materially affected by the notice.

(5) The local planning authority may withdraw a listed building enforcement notice (without prejudice to their power to issue another) at any time before it takes effect.

(6) If they do so, they shall immediately give notice of the withdrawal to every person who was served with a copy of the notice.

(7) Where a listed building enforcement notice imposes any such requirement as is mentioned in subsection (2)(b), listed building consent shall be deemed to be granted for any works of demolition, alteration or extension of the building executed as a result of compliance with the notice.

**Appeal against  
listed building  
enforcement  
notice.**

**39.—**(1) A person having an interest in the building to which a listed building enforcement notice relates or a relevant occupier may appeal to the Secretary of State against the notice on any of the following grounds—

(a) that the building is not of special architectural or historic interest;

(b) that the matters alleged to constitute a contravention of section 9(1) or (2) do not involve such a contravention;

(c) that the contravention of that section alleged in the notice has not taken place;

(d) that works to the building were urgently necessary in the interests of safety or health or for the preservation of the building, that it was not practicable to secure safety or health or, as the case may be, the preservation of the building by works of repair or works for affording temporary support or shelter, and that the works carried out were limited to the minimum measures immediately necessary;

(e) that listed building consent ought to be granted for the works, or that any relevant condition of such consent which has been granted ought to be discharged, or different conditions substituted;

(f) that copies of the notice were not served as required by section 38(4);

(g) except in relation to such a requirement as is mentioned in section 38(2)(b) or (c), that the requirements of the notice exceed what is necessary for restoring the building to its condition before the works were carried out;

(h) that the period specified in the notice as the period within which any step required by the notice is to be taken falls short of what should reasonably be allowed;

**PART I**

- (i) that the steps required by the notice for the purpose of restoring the character of the building to its former state would not serve that purpose;
- (j) that steps required to be taken by virtue of section 38(2)(b) exceed what is necessary to alleviate the effect of the works executed to the building;
- (k) that steps required to be taken by virtue of section 38(2)(c) exceed what is necessary to bring the building to the state in which it would have been if the terms and conditions of the listed building consent had been complied with.

(2) An appeal under this section must be made by notice in writing to the Secretary of State before the date specified in the listed building enforcement notice as that on which it is to take effect.

(3) Where such an appeal is brought the listed building enforcement notice shall be of no effect pending the final determination or the withdrawal of the appeal.

(4) A person who gives notice of appeal under this section shall submit to the Secretary of State, either when giving the notice or within such time as may be prescribed, a statement in writing—

- (a) specifying the grounds on which he is appealing against the listed building enforcement notice; and
- (b) giving such further information as may be prescribed.

(5) If, where more than one ground is specified in the statement, the appellant does not give information required under subsection (4)(b) in relation to each of those grounds within the prescribed time, the Secretary of State may determine the appeal without considering any ground as to which the appellant has failed to give such information within that time.

(6) Where any person has appealed to the Secretary of State under this section against a notice, no person shall be entitled, in any other proceedings instituted after the making of the appeal, to claim that the notice was not duly served on the person who appealed.

(7) In this section “relevant occupier” means a person who—

- (a) on the date on which the listed building enforcement notice is issued occupies the building to which the notice relates by virtue of a licence in writing; and
- (b) continues so to occupy the building when the appeal is brought.

**40.—(1)** The Secretary of State may by regulations prescribe the procedure which is to be followed on appeals under section 39, and in particular, but without prejudice to the generality of this subsection may—

**Appeals:  
supplementary  
provisions.**

- (a) require the local planning authority to submit, within such time as may be prescribed, a statement indicating the submissions which they propose to put forward on the appeal;
- (b) specify the matters to be included in such a statement;
- (c) require the authority or the appellant to give such notice of such an appeal as may be prescribed, being notice which in the opinion of the Secretary of State is likely to bring the appeal to the attention of persons in the locality in which the building in question is situated;

**PART I**

- (d) require the authority to send to the Secretary of State, within such period from the date of the bringing of the appeal as may be prescribed, a copy of the enforcement notice and a list of the persons served with copies of it.

(2) Subject to section 41(4), the Secretary of State shall, if either the appellant or the local planning authority so wish, give each of them an opportunity of appearing before and being heard by a person appointed by the Secretary of State for the purpose.

- (3) Schedule 3 applies to appeals under section 39.

**Determination of  
appeals under s.  
39.**

**41.—**(1) On the determination of an appeal under section 39, the Secretary of State shall give directions for giving effect to the determination, including where appropriate directions for quashing the listed building enforcement notice or for varying its terms.

(2) On such an appeal if the Secretary of State is satisfied that to do so will not cause injustice to the appellant or to the local planning authority, he may—

- (a) correct any informality, defect or error in the listed building enforcement notice, or
- (b) give directions for varying its terms.

- (3) The Secretary of State—

- (a) may dismiss such an appeal if the appellant fails to comply with section 39(4) within the prescribed time; and
- (b) may allow such an appeal and quash the listed building enforcement notice if the local planning authority fail to comply within the prescribed period with any requirement imposed by regulations made by virtue of section 40(1)(a),(b) or (d).

(4) If the Secretary of State proposes to dismiss an appeal under paragraph (a) of subsection (3) or to allow an appeal and quash the listed building enforcement notice under paragraph (b) of that subsection he need not comply with section 40(2).

(5) Where it would otherwise be a ground for determining an appeal in favour of the appellant that a person required to be served with a copy of the listed building enforcement notice was not served, the Secretary of State may disregard that fact if neither the appellant nor that person has been substantially prejudiced by the failure to serve him.

- (6) On the determination of an appeal the Secretary of State may—

- (a) grant listed building consent for the works to which the listed building enforcement notice relates or for part only of those works;
- (b) discharge any condition or limitation subject to which listed building consent was granted and substitute any other condition, whether more or less onerous;
- (c) if he thinks fit, exercise his power under section 1 to amend any list compiled or approved under that section by removing from it the building to which the appeal relates.

(7) Any listed building consent granted by the Secretary of State under subsection (6) shall be treated as granted on an application for the same consent under section 10 and the Secretary of State's decision in relation to the grant shall be final.

**PART I**

**42.**—(1) If any of the steps specified in the listed building enforcement notice have not been taken within the compliance period, the authority may—

Execution of works required by listed building enforcement notice.

- (a) enter the land and take those steps, and
- (b) recover from the person who is then the owner of the land any expenses reasonably incurred by them in doing so.

(2) Where a listed building enforcement notice has been served in respect of a building—

- (a) any expenses incurred by the owner or occupier of the building for the purpose of complying with it, and
- (b) any sums paid by the owner of the building under subsection (1) in respect of expenses incurred by the local planning authority in taking steps required by it,

shall be deemed to be incurred or paid for the use and at the request of the person who carried out the works to which the notice relates.

(3) Regulations under this Act may provide that all or any of the following sections of the Public Health Act 1936, namely—

1936 c. 49.

- (a) section 276 (power of local authorities to sell materials removed in executing works under that Act subject to accounting for the proceeds of sale);
- (b) section 289 (power to require the occupier of any premises to permit works to be executed by the owner of the premises);
- (c) section 294 (limit on liability of persons holding premises as agents or trustees in respect of the expenses recoverable under that Act),

shall apply, subject to such adaptations and modifications as may be specified in the regulations, in relation to any steps required to be taken by a listed building enforcement notice.

(4) Regulations under subsection (3) applying all or any of section 289 of that Act may include adaptations and modifications for the purpose of giving the owner of land to which such a notice relates the right, as against all other persons interested in the land, to comply with the requirements of the notice.

(5) Regulations under subsection (3) may also provide for the charging on the land on which the building stands of any expenses recoverable by a local planning authority under subsection (1).

(6) Where any expenses are recoverable by a local planning authority by virtue of this section, those expenses shall be recoverable as a simple contract debt in any court of competent jurisdiction.

(7) In this section and in section 43 references to “the compliance period”, in relation to a listed building enforcement notice, are references to the period specified in the notice as that within which the steps specified in it are to be taken, or such extended period as the local planning authority may allow for the taking of those steps.



**PART I**  
**Penalties for non-**  
**compliance with**  
**listed building**  
**enforcement**  
**notice.**

**43.—(1)** Where a listed building enforcement notice has been served on the person who at the time when the notice was served was the owner of the building to which it relates, and any steps required by the notice have not been taken within the compliance period, then subject to the provisions of this section, that person shall be guilty of an offence and liable—

- (a) on summary conviction, to a fine not exceeding the statutory maximum, or
- (b) on conviction on indictment, to a fine.

(2) Where proceedings have been brought under subsection (1) against a person (“the original owner”) who ceased to be the owner of the building before the end of the compliance period, if he—

- (a) duly lays information to that effect; and
- (b) gives the prosecution not less than three clear days’ notice of his intention,

he shall be entitled to have the person who then became the owner of the building (“the subsequent owner”) brought before the court in the proceedings.

(3) Where in such proceedings—

- (a) it is proved that any steps required by the notice have not been taken within the compliance period; and
- (b) the original owner proves that the failure to take those steps was attributable, in whole or in part, to the default of the subsequent owner,

then—

- (i) the subsequent owner may be convicted of the offence; and
- (ii) if the original owner also proves that he took all reasonable steps to secure compliance with the notice, he shall be acquitted of the offence.

(4) If, after a person has been convicted under the previous provisions of this section, he does not as soon as practicable do everything in his power to secure compliance with the notice, he shall be guilty of a further offence and liable—

- (a) on summary conviction, to a fine not exceeding £200 for each day following his first conviction on which any of the requirements of the notice remain unfulfilled; or
- (b) on conviction on indictment, to a fine.

**Effect of listed**  
**building consent**  
**on listed building**  
**enforcement**  
**notice.**

**44.—(1)** If, after the issue of a listed building enforcement notice, consent is granted under section 8(3)—

- (a) for the retention of any work to which the notice relates; or
- (b) permitting the retention of works without compliance with some condition subject to which a previous listed building consent was granted,

the notice shall cease to have effect in so far as it requires steps to be taken involving the works not being retained or, as the case may be, for complying with that condition.

(2) The fact that such a notice has wholly or partly ceased to have effect under subsection (1) shall not affect the liability of any person for an offence in respect of a previous failure to comply with that notice.

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**45.** The Commission shall, as respects any London borough, have concurrently with the council of that borough the functions of a local planning authority under sections 38 to 43; and references to the local planning authority in those provisions shall be construed accordingly.

Commission to have concurrent enforcement functions in London.

**46.—**(1) If it appears to the Secretary of State to be expedient that a listed building enforcement notice should be issued in respect of any land, he may issue such a notice.

Enforcement by the Secretary of State.

(2) Before the Secretary of State serves a notice under subsection (1) he shall consult—

- (a) the local planning authority; and
- (b) if the land is situated in England, the Commission.

(3) A listed building enforcement notice issued by the Secretary of State shall have the same effect as a notice issued by the local planning authority.

(4) In relation to a listed building enforcement notice issued by the Secretary of State, sections 42 and 43 shall apply as if for any reference in those sections to the local planning authority there were substituted a reference to the Secretary of State.

(5) References in this section to the local planning authority shall in the case of an authority for an area outside Greater London be construed as references to the district planning authority.

## CHAPTER V

### PREVENTION OF DETERIORATION AND DAMAGE

#### *Compulsory acquisition of listed building in need of repair*

**47.—**(1) If it appears to the Secretary of State that reasonable steps are not being taken for properly preserving a listed building he—

Compulsory acquisition of listed building in need of repair.

- (a) may authorise the appropriate authority to acquire compulsorily under this section the building and any relevant land; or
- (b) may himself compulsorily acquire them under this section.

(2) The Acquisition of Land Act 1981 shall apply to compulsory acquisition under this section. 1981 c.67.

(3) The Secretary of State shall not make or confirm a compulsory purchase order for the acquisition of any building by virtue of this section unless—

- (a) in the case of the acquisition of a building situated in England otherwise than by the Commission, he has consulted with the Commission; and
- (b) in any case, he is satisfied that it is expedient to make provision for the preservation of the building and to authorise its compulsory acquisition for that purpose.

**PART I**

(4) Any person having an interest in a building which it is proposed to acquire compulsorily under this section may, within 28 days after the service of the notice required by section 12 of that Act of 1981 or, as the case may be, paragraph 3(1) of Schedule 1 to that Act, apply to a magistrates' court acting for the petty sessions area within which the building is situated for an order staying further proceedings on the compulsory purchase order.

(5) If on an application under subsection (4) the court is satisfied that reasonable steps have been taken for properly preserving the building, the court shall make an order accordingly.

(6) Any person aggrieved by the decision of a magistrates' court on an application under subsection (4) may appeal against the decision to the Crown Court.

(7) In this section—

“the appropriate authority” means—

(a) the council of the county or district in which the building is situated, or

(b) in the case of a building situated in Greater London, the Commission or the council of the London borough in which the building is situated, or

(c) in the case of a building situated outside Greater London, the joint planning board for the area in which the building is situated; or

(d) in the case of a building situated within the Broads, the Broads Authority;

“relevant land”, in relation to any building, means the land comprising or contiguous or adjacent to it which appears to the Secretary of State to be required for preserving the building or its amenities, or for affording access to it, or for its proper control or management.

**Repairs notice as preliminary to acquisition under s. 47.**

**48.—**(1) The compulsory purchase of a building under section 47 shall not be started by the appropriate authority or by the Secretary of State unless at least two months previously the authority or, as the case may be, the Secretary of State has served on the owner of the building a notice under this section (in this section referred to as a “repairs notice”)—

(a) specifying the works which the appropriate authority or, as the case may be, the Secretary of State considers reasonably necessary for the proper preservation of the building; and

(b) explaining the effect of sections 47 to 50,

and the repairs notice has not been withdrawn.

(2) Where—

(a) a building is demolished after a repairs notice has been served in respect of it by an appropriate authority or the Secretary of State, but

**PART I**

(b) the Secretary of State is satisfied that he would have confirmed or, as the case may be, would have made a compulsory purchase order in respect of the building had it not been demolished, the demolition of the building shall not prevent the authority or the Secretary of State from being authorised under section 47 to acquire compulsorily the site of the building.

(3) An appropriate authority or the Secretary of State may at any time withdraw a repairs notice served by them on any person; and if they do so, they shall immediately give him notice of the withdrawal.

(4) The Secretary of State shall consult with the Commission before he serves or withdraws a repairs notice in relation to a building situated in England.

(5) Where a repairs notice has been served on a person in respect of a building, he shall not be entitled to serve a listed building purchase notice in respect of it—

- (a) until the expiration of three months beginning with the date of the service of the repairs notice; or
- (b) if during that period the compulsory acquisition of the building is begun under section 47, unless and until the compulsory acquisition is discontinued.

(6) For the purposes of this section a compulsory acquisition—

- (a) is started when the notice required by section 12 of the Acquisition of Land Act 1981 or, as the case may be, paragraph 3(1) of Schedule 1 to that Act is served; and 1981 c.67.
- (b) is discontinued—
  - (i) in the case of acquisition by the Secretary of State, when he decides not to make the compulsory purchase order; and
  - (ii) in any other case, when the order is withdrawn or the Secretary of State decides not to confirm it.

(7) In this section “appropriate authority” has the same meaning as in section 47.

**49.** Subject to section 50, for the purpose of assessing compensation in respect of any compulsory acquisition of land including a building which immediately before the date of the compulsory purchase order was listed, it shall be assumed that listed building consent would be granted for any works—

**Compensation on compulsory acquisition of listed building.**

- (a) for the alteration or extension of the building; or
- (b) for the demolition of the building for the purpose of development of any class specified in Schedule 3 to the principal Act (development not constituting new development),

other than works in respect of which such consent has been applied for before the date of the order and refused by the Secretary of State, or granted by him subject to conditions, the circumstances having been such that on that refusal or grant compensation became payable under section 27.

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Minimum  
compensation in  
case of listed  
building  
deliberately left  
derelict.

**50.—(1)** Where the appropriate authority within the meaning of section 47—

- (a) propose to acquire a building compulsorily under that section; and
- (b) are satisfied that the building has been deliberately allowed to fall into disrepair for the purpose of justifying its demolition and the development or redevelopment of the site or any adjoining site,

they may include in the compulsory purchase order as submitted to the Secretary of State for confirmation a direction for minimum compensation.

(2) Subject to the provisions of this section, where the Secretary of State acquires a building compulsorily under section 47, he may, if he is satisfied as mentioned in subsection (1)(b), include a direction for minimum compensation in the compulsory purchase order.

1981 c.67.

(3) Without prejudice to so much of section 12 of the Acquisition of Land Act 1981 or, as the case may be, paragraph 3(1) of Schedule 1 to that Act (notices stating effect of compulsory purchase order or, as the case may be, draft order) as requires the notice to state the effect of the order, the notice required to be served in accordance with that provision shall—

- (a) include a statement that a direction for minimum compensation has been included in the order or, as the case may be, in the draft order prepared by the Secretary of State in accordance with Schedule 1 to that Act; and
- (b) explain the meaning of the expression “direction for minimum compensation”.

1961 c.33.

(4) A direction for minimum compensation, in relation to a building compulsorily acquired, is a direction that for the purpose of assessing compensation it is to be assumed, notwithstanding anything to the contrary in the Land Compensation Act 1961, the principal Act, or this Act—

- (a) that planning permission would not be granted for any development or re-development of the site of the building; and
- (b) that listed building consent would not be granted for any works for the demolition, alteration or extension of the building other than development or works necessary for restoring it to and maintaining it in a proper state of repair.

(5) If a compulsory purchase order is confirmed or made with the inclusion of a direction for minimum compensation, the compensation in respect of the compulsory acquisition shall be assessed in accordance with the direction.

(6) Where such a direction is included in a compulsory purchase order or, as the case may be, in a draft order prepared by the Secretary of State, any person having an interest in the building may, within 28 days after the service of the notice mentioned in subsection (3), apply to a magistrates’ court acting for the petty sessions area in which the building is situated for an order that no such direction be included in the compulsory purchase order as confirmed or made by the Secretary of State.

(7) If the court to which an application is made under subsection (6) is satisfied that the building in respect of which the application is made has not been deliberately allowed to fall into disrepair for the purpose mentioned in subsection (1)(b) the court shall make the order applied for.

(8) A person aggrieved by the decision of a magistrates' court on an application under subsection (6) may appeal against the decision to the Crown Court.

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(9) The rights conferred by subsections (6) and (8) shall not prejudice those conferred by section 47(4) and (6).

**51.—**(1) Subject to the provisions of this section, upon the completion of a compulsory acquisition of land under section 47—

Ending of rights over land compulsorily acquired.

(a) all private rights of way and rights of laying down, erecting, continuing or maintaining any apparatus on, under or over the land shall be extinguished, and

(b) any such apparatus shall vest in the acquiring authority.

(2) Subsection (1) shall not apply—

(a) to any right vested in, or apparatus belonging to, statutory undertakers for the purpose of the carrying on of their undertaking, or

(b) to any right conferred by or in accordance with the telecommunications code on the operator of a telecommunications code system, or

(c) to any telecommunication apparatus kept installed for the purposes of any such system.

(3) In respect of any right or apparatus not falling within subsection (2), subsection (1) shall have effect subject—

(a) to any direction given by the acquiring authority before the completion of the acquisition that subsection (1) shall not apply to any right or apparatus specified in the direction; and

(b) to any agreement which may be made (whether before or after the completion of the acquisition) between the acquiring authority and the person in or to whom the right or apparatus in question is vested or belongs.

(4) Any person who suffers loss by the extinguishment of a right or the vesting of any apparatus under this section shall be entitled to compensation from the acquiring authority.

(5) Any compensation payable under this section shall be determined in accordance with the Land Compensation Act 1961.

1961 c.33.

#### *Acquisition by agreement*

**52.—**(1) The council of any county, district or London borough or a joint planning board for an area outside Greater London may acquire by agreement—

Acquisition of land by agreement.

(a) any building appearing to them to be of special architectural or historic interest; and

(b) any land comprising or contiguous or adjacent to such a building which appears to the Secretary of State to be required—

(i) for preserving the building or its amenities, or

(ii) for affording access to it, or

(iii) for its proper control or management.

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1965 c.56.

(2) The provisions of Part I of the Compulsory Purchase Act 1965 (so far as applicable), other than sections 4 to 8, 10 and 31, shall apply in relation to the acquisition of land under subsection (1), but references in that Part to the execution of the works shall be construed as including references to—

- (a) any erection, construction or carrying out of buildings or works authorised by section 237 of the principal Act; and
- (b) any erection, construction or carrying out of buildings or works on behalf of a Minister or statutory undertakers on land acquired by that Minister or those undertakers, where the buildings or works are erected, constructed or carried out for the purposes for which the land was acquired.

*Management of acquired buildings*

Management of  
listed buildings  
acquired under  
this Act.

53.—(1) Where—

- (a) a local authority or joint planning board acquire any building or other land under section 47(1) or 52(1)(a) or (b); or
- (b) the Commission acquire any building or other land under section 47(1),

they may make such arrangements as to its management, use or disposal as they consider appropriate for the purpose of its preservation.

(2) Where the Secretary of State acquires any building or other land under section 47(1), he may—

- (a) make such arrangements as he thinks fit as to the management, custody or use of the building or land; and
- (b) dispose of or otherwise deal with any such building or land as he may from time to time determine.

(3) The Commission may be a party to such arrangements as are mentioned in subsection (2) if they relate to property situated in England.

*Urgent preservation*

Urgent works to  
preserve  
unoccupied listed  
buildings.

54.—(1) A local authority may execute any works which appear to them to be urgently necessary for the preservation of a listed building in their area.

(2) If it appears to the Secretary of State that any works are urgently necessary for the preservation of a listed building—

- (a) if the building is in England, he shall authorise the Commission to execute any works specified in the authorisation which appear to him to be urgently necessary for its preservation; or
- (b) if the building is in Wales, he may himself execute any works which appear to him to be urgently necessary for its preservation.

(3) The works which may be executed under this section may consist of or include works for affording temporary support or shelter for the building.

(4) If the building is occupied works may be carried out only to those parts which are not in use.

(5) The owner of the building must be given not less than seven days notice in writing of the intention to carry out the works and, in the case of works authorised under subsection (2)(a), the Commission shall give that notice.

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(6) A notice under subsection (5) shall describe the works proposed to be carried out.

(7) As respects buildings in Greater London, the functions of a local authority under this section are exercisable concurrently by the Commission and the relevant London borough council.

**55.**—(1) This section has effect for enabling the expenses of works executed under section 54 to be recovered by the authority who carried out the works, that is to say the local authority, the Commission or the Secretary of State or, in the case of works carried out by the Commission on behalf of the Secretary of State, the Secretary of State.

Recovery of expenses of works under s. 54.

(2) That authority may give notice to the owner of the building requiring him to pay the expenses of the works.

(3) Where the works consist of or include works for affording temporary support or shelter for the building—

(a) the expenses which may be recovered include any continuing expenses involved in making available the apparatus or materials used; and

(b) notices under subsection (2) in respect of any such continuing expenses may be given from time to time.

(4) The owner may within 28 days of the service of the notice represent to the Secretary of State—

(a) that some or all of the works were unnecessary for the preservation of the building; or

(b) in the case of works for affording temporary support or shelter, that the temporary arrangements have continued for an unreasonable length of time; or

(c) that the amount specified in the notice is unreasonable; or

(d) that the recovery of that amount would cause him hardship,

and the Secretary of State shall determine to what extent the representations are justified.

(5) The Secretary of State shall give notice of his determination, the reasons for it and the amount recoverable—

(a) to the owner of the building; and

(b) if the authority who gave notice under subsection (2) is a local authority or the Commission, to them.

(6) Any expenses recoverable by virtue of this section shall be recoverable as a simple contract debt in any court of competent jurisdiction.

**56.** Before taking any steps with a view to—

(a) the making of an order in respect of a listed building under section 77(1)(a) of the Building Act 1984 or section 65 or 69(1) of the London Building Acts (Amendment) Act 1939; or

Dangerous structure orders in respect of listed buildings.  
1984 c. 55.  
1939 c. xcvi.



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- (b) the service of a notice under section 79(1) of that Act of 1984 or section 62(2) of that Act of 1939,

a local planning authority shall consider whether they should instead exercise their powers under sections 47 and 48 or section 54.

*Grants for repair and maintenance*

Power of local authority to contribute to preservation of listed buildings etc.

**57.**—(1) A local authority may contribute towards the expenses incurred or to be incurred in the repair or maintenance—

- (a) of a listed building which is situate in or in the vicinity of their area; or
- (b) of a building in their area which is not listed but appears to them to be of architectural or historic interest.

(2) At the time of making such a contribution the local authority may also contribute towards the expenses incurred, or to be incurred, in the upkeep of any garden occupied with the building and contiguous or adjacent to it.

(3) A contribution under this section may be made by grant or loan.

(4) A contribution by way of loan may be made upon such terms and conditions as the local authority may determine including (but without prejudice to the foregoing) a term that the loan shall be free of interest.

(5) A local authority—

- (a) may renounce their right to repayment of such a loan or any interest for the time being outstanding, and
- (b) by agreement with the borrower may otherwise vary any of the terms and conditions on which such a loan is made.

(6) A local authority may require as a condition of the making by them of a contribution under this section by way of grant towards the expenses of the repair or maintenance or upkeep of any property that the person to whom the grant is made shall enter into an agreement with them for the purpose of enabling the public to have access to the property or part of it during such period and at such times as the agreement may provide.

(7) In this section and in section 58 “local authority” means—

- (a) the council of a county, borough or district,
- (b) a joint planning board constituted under section 2 of the principal Act, and
- (c) in relation to a building or land in the Broads, the Broads Authority.

Recovery of grants under s. 57.

**58.**—(1) If, during the period of three years beginning with the day on which a grant is made under section 57 towards the repair or maintenance or upkeep of any property (“the grant property”), the grantee disposes of the interest held by him in the property on that day or any part of that interest, by way of sale or exchange or lease for a term of not less than 21 years, the local authority may recover the amount of the grant, or such part of it as they think fit, from the grantee in any court of competent jurisdiction.

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(2) If the grantee gives the whole of that interest to any person (whether directly or indirectly, but otherwise than by will) subsection (1) shall have effect as if the donee were the grantee.

(3) If the grantee gives part of that interest to any person (whether directly or indirectly, but otherwise than by will) subsection (1) shall have effect as if any disposal or part disposal of that interest by the donee were a disposal by the grantee.

(4) If any condition imposed on the making of a grant to which this section applies is contravened or not complied with, the grantor may recover the amount of the grant, or such part of it as he thinks fit, from the grantee.

(5) Nothing in this section entitles a grantor to recover amounts in the aggregate exceeding the amount of the grant (for example by virtue of a breach of more than one condition or disposals of several parts of an interest in the grant property).

*Damage to listed buildings*

**59.**—(1) If, with the intention of causing damage to a listed building, any relevant person does or permits the doing of any act which causes or is likely to result in damage to the building, he shall be guilty of an offence and liable on summary conviction to a fine not exceeding level 3 on the standard scale.

Acts causing or likely to result in damage to listed buildings.

(2) A person is a relevant person for the purpose of subsection (1) if apart from that subsection he would be entitled to do or permit the act in question.

(3) Subsection (1) does not apply to an act for the execution—

- (a) of works authorised by planning permission granted or deemed to be granted in pursuance of an application under the principal Act; or
- (b) of works for which listed building consent has been given under this Act.

(4) If a person convicted of an offence under this section fails to take such reasonable steps as may be necessary to prevent any damage or further damage resulting from the offence, he shall be guilty of a further offence and liable on summary conviction to a fine not exceeding £40 for each day on which the failure continues.

CHAPTER VI

MISCELLANEOUS AND SUPPLEMENTAL

*Exceptions for church buildings and ancient monuments*

**60.**—(1) The provisions mentioned in subsection (2) shall not apply to any ecclesiastical building which is for the time being used for ecclesiastical purposes.

Exceptions for ecclesiastical buildings and redundant churches.

(2) Those provisions are sections 3, 4, 7 to 9, 47, 54 and 59.

(3) For the purposes of subsection (1), a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

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(4) For the purposes of sections 7 to 9 a building shall be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question.

(5) The Secretary of State may by order provide for restricting or excluding the operation of subsections (1) to (3) in such cases as may be specified in the order.

(6) An order under this section may—

- (a) make provision for buildings generally, for descriptions of building or for particular buildings;
- (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;
- (c) make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 1(5)) as may be made in relation to a building and make different provision for different parts of the same building;
- (d) make different provision with respect to works of different descriptions or according to the extent of the works;
- (e) make such consequential adaptations or modifications of the operation of any other provision of this Act or the principal Act, or of any instrument made under either of those Acts, as appear to the Secretary of State to be appropriate.

(7) Sections 7 to 9 shall not apply to the execution of works for the demolition, in pursuance of a pastoral or redundancy scheme (within the meaning of the Pastoral Measure 1983), of a redundant building (within the meaning of that Measure) or a part of such a building.

1983 No. 1.

Exceptions for  
ancient  
monuments etc.  
1979 c.46.

**61.**—(1) The provisions mentioned in subsection (2) shall not apply to any building for the time being included in the schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979.

(2) Those provisions are sections 3, 4, 7 to 9, 47, 54 and 59.

*Validity of instruments, decisions and proceedings*

Validity of certain  
orders and  
decisions.

**62.**—(1) Except as provided by section 63, the validity of—

- (a) any order under section 23 or 26 (whether before or after it has been confirmed); or
- (b) any such decision by the Secretary of State as is mentioned in subsection (2),

shall not be questioned in any legal proceedings whatsoever.

(2) Those decisions are—

- (a) any decision on an application referred to the Secretary of State under section 12 or on an appeal under section 20;
- (b) any decision to confirm or not to confirm a listed building purchase notice including—
  - (i) any decision not to confirm such a notice in respect of part of the land to which it relates, and

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- (ii) any decision to grant any consent, or give any direction, in lieu of confirming such a notice, either wholly or in part;
- (c) any decision to grant listed building consent under paragraph (a) of section 41(6) or to discharge a condition or limitation under paragraph (b) of that section.

(3) Nothing in this section shall affect the exercise of any jurisdiction of any court in respect of any refusal or failure on the part of the Secretary of State to take any such decision as is mentioned in subsection (2).

**63.**—(1) If any person is aggrieved by any such order or decision as is mentioned in section 62(1) and wishes to question its validity on the grounds—

Proceedings for questioning validity of other orders, decisions and directions.

- (a) that it is not within the powers of this Act, or
- (b) that any of the relevant requirements have not been complied with in relation to it,

he may make an application to the High Court under this section.

(2) Without prejudice to subsection (1), if the authority directly concerned with any such order or decision wish to question its validity on any of those grounds, the authority may make an application to the High Court under this section.

(3) An application under this section must be made within six weeks from the date on which the order is confirmed (or, in the case of an order under section 23 which takes effect under section 25 without confirmation, the date on which it takes effect) or, as the case may be, the date on which the action is taken.

(4) On any application under this section the High Court—

- (a) may by interim order suspend the operation of the order or decision, the validity of which is questioned by the application, until the final determination of the proceedings; and
- (b) if satisfied—
  - (i) that the order or decision is not within the powers of this Act, or
  - (ii) that the interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it,

may quash that order or decision.

(5) References in this section to the confirmation of an order include the confirmation of an order subject to modifications.

(6) In this section “the relevant requirements”, in relation to any order or decision, means any requirements of this Act or of the Tribunals and Inquiries Act 1971 or of any order, regulations or rules made under either of those Acts which are applicable to that order or decision.

1971 c.62.

(7) For the purposes of subsection (2) the authority directly concerned with an order or decision is—

- (a) in relation to any such decision as is mentioned in section 62(2)(b)—
  - (i) the council on whom the listed building purchase notice was served, and

**PART I**

(ii) in a case where the Secretary of State has modified the notice wholly or in part by substituting another local authority or statutory undertakers for that council, also that authority or those statutory undertakers; and

(b) otherwise, the authority who—

(i) made the order or decision to which the proceedings in question relate, or

(ii) referred the matter to the Secretary of State, or

(iii) if the order was made by him, are the authority named in it.

**Validity of listed building enforcement notices.**

**64.** The validity of a listed building enforcement notice shall not, except by way of an appeal under section 39, be questioned in any proceedings whatsoever on any of the grounds on which such an appeal may be brought.

**Appeals to High Court relating to listed building enforcement notices.**

**65.—(1)** Where the Secretary of State gives a decision in proceedings on an appeal under section 39 against a listed building enforcement notice, the appellant or the local planning authority or any other person having an interest in the land to which the notice relates may, according as rules of court may provide, either appeal to the High Court against the decision on a point of law or require the Secretary of State to state and sign a case for the opinion of the High Court.

(2) At any stage of the proceedings on any such appeal, the Secretary of State may state any question of law arising in the course of the proceedings in the form of a special case for the decision of the High Court.

1981 c.54.

(3) A decision of the High Court on a case stated by virtue of subsection (2) shall be deemed to be a judgment of the court within the meaning of section 16 of the Supreme Court Act 1981 (jurisdiction of the Court of Appeal to hear and determine appeals from any judgment of the High Court).

(4) In relation to any proceedings in the High Court or the Court of Appeal brought by virtue of this section the power to make rules of court shall include power to make rules—

(a) prescribing the powers of the High Court or the Court of Appeal with respect to the remitting of the matter with the opinion or direction of the court for re-hearing and determination by the Secretary of State; and

(b) providing for the Secretary of State, either generally or in such circumstances as may be prescribed by the rules, to be treated as a party to any such proceedings and to be entitled to appear and to be heard accordingly.

(5) No appeal to the Court of Appeal shall be brought by virtue of this section except with the leave of the High Court or the Court of Appeal.

(6) In this section “decision” includes a direction or order, and references to the giving of a decision shall be construed accordingly.

(7) In the case of a listed building enforcement notice issued by the Commission subsection (1) shall apply as if the reference to the local planning authority were a reference to the Commission.

*Special considerations affecting planning functions*

**PART I**

**66.**—(1) In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

General duty as respects listed buildings in exercise of planning functions.

(2) Without prejudice to section 72, in the exercise of the powers of appropriation, disposal and development (including redevelopment) conferred by the provisions of sections 232, 233 and 235(1) of the principal Act, a local authority shall have regard to the desirability of preserving features of special architectural or historic interest, and in particular, listed buildings.

(3) The reference in subsection (2) to a local authority includes a reference to a joint planning board and a board reconstituted in pursuance of Schedule 17 to the Local Government Act 1972.

1972 c.70.

**67.**—(1) This section applies where an application for planning permission for any development of land is made to a local planning authority and the development would, in the opinion of the authority, affect the setting of a listed building.

Publicity for applications affecting setting of listed buildings.

(2) The local planning authority shall—

- (a) publish in a local newspaper circulating in the locality in which the land is situated; and
- (b) for not less than seven days display on or near the land,

a notice indicating the nature of the development in question and naming a place within the locality where a copy of the application, and of all plans and other documents submitted with it, will be open to inspection by the public at all reasonable hours during the period of 21 days beginning with the date of publication of the notice under paragraph (a).

(3) In a case where the land is situated in England, the local planning authority shall send a copy of the notice to the Commission.

(4) Where the Secretary of State, after consulting with the Commission, notifies a local planning authority in writing that subsection (3) shall not affect the authority as regards any notice relating to any kind of application specified in the notification, then that subsection shall not affect the authority as regards any such notice.

(5) The Secretary of State shall send the Commission a copy of any notification made under subsection (4).

(6) The application shall not be determined by the local planning authority before—

- (a) the expiry of the period of 21 days referred to in subsection (2); or
- (b) if later, the expiry of the period of 21 days beginning with the date on which the notice required by that subsection to be displayed was first displayed.

(7) In determining any application for planning permission to which this section applies, the local planning authority shall take into account any representations relating to the application which are received by them before the periods mentioned in subsection (6) have elapsed.

## PART I

(8) Subsection (3) of section 63 of the principal Act (references to applications for planning permission to include applications for permission to retain existing works and uses) does not apply to the construction of this section.

Reference to  
Commission of  
planning  
applications  
involving listed  
buildings in  
Greater London.

**68.**—(1) Without prejudice to his powers by virtue of section 74(1) of the principal Act, the Secretary of State may by regulations provide for any application for planning permission to which this section applies to be referred to the Commission before it is dealt with by the local planning authority.

(2) This section applies to an application for planning permission for any development in Greater London which would, in the opinion of the local planning authority to which the application is made, involve the demolition, in whole or in part, or a material alteration, of a listed building.

(3) Regulations under this section may—

- (a) provide for the Commission to give the referring authority directions as to the manner in which an application is to be dealt with; and
- (b) provide that an application which satisfies such conditions as may be specified in the regulations need not be referred to the Commission.

## PART II

## CONSERVATION AREAS

*Designation*

Designation of  
conservation  
areas.

**69.**—(1) Every local planning authority—

- (a) shall from time to time determine which parts of their area are areas of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance, and
- (b) shall designate those areas as conservation areas.

(2) It shall be the duty of a local planning authority from time to time to review the past exercise of functions under this section and to determine whether any parts or any further parts of their area should be designated as conservation areas; and, if they so determine, they shall designate those parts accordingly.

(3) The Secretary of State may from time to time determine that any part of a local planning authority's area which is not for the time being designated as a conservation area is an area of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance; and, if he so determines, he may designate that part as a conservation area.

(4) The designation of any area as a conservation area shall be a local land charge.

Designation of  
conservation  
areas:  
supplementary  
provisions.

**70.**—(1) The functions of a local planning authority under section 69 and this section shall also be exercisable in Greater London by the Commission.

**PART II**

(2) Before making a determination under section 69 the Commission shall consult the council of each London borough of which any part is included in the area to which the proposed determination relates.

(3) Before making a determination under section 69(3) the Secretary of State shall consult the local planning authority.

(4) Before designating any area in Greater London as a conservation area the Commission shall obtain the consent of the Secretary of State.

(5) A local planning authority shall give notice of the designation of any part of their area as a conservation area under section 69(1) or (2) and of any variation or cancellation of any such designation—

(a) to the Secretary of State; and

(b) if it affects an area in England and the designation or, as the case may be, the variation or cancellation was not made by the Commission, to the Commission.

(6) The Secretary of State shall give notice of the designation of any part of the area of a local planning authority as a conservation area under section 69(3) and of any variation or cancellation of any such designation—

(a) to the authority; and

(b) if it affects an area in England, to the Commission.

(7) A notice under subsection (5) or (6) shall contain sufficient particulars to identify the area affected.

(8) Notice of any such designation, variation or cancellation as is mentioned in subsection (5) or (6), with particulars of its effect, shall be published in the London Gazette and in at least one newspaper circulating in the area of the local planning authority, by that authority or, as the case may be, the Secretary of State.

*General duties of planning authorities*

**71.**—(1) It shall be the duty of a local planning authority from time to time to formulate and publish proposals for the preservation and enhancement of any parts of their area which are conservation areas.

Formulation and publication of proposals for preservation and enhancement of conservation areas.

(2) Proposals under this section shall be submitted for consideration to a public meeting in the area to which they relate.

(3) The local planning authority shall have regard to any views concerning the proposals expressed by persons attending the meeting.

**72.**—(1) In the exercise, with respect to any buildings or other land in a conservation area, of any powers under any of the provisions mentioned in subsection (2), special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.

General duty as respects conservation areas in exercise of planning functions.

(2) The provisions referred to in subsection (1) are the planning Acts and Part I of the Historic Buildings and Ancient Monuments Act 1953.

1953 c.49.



**PART II**  
**Publicity for**  
**applications**  
**affecting**  
**conservation**  
**areas.**

**73.—(1)** Where an application for planning permission for any development of land is made to a local planning authority and the development would, in the opinion of the authority, affect the character or appearance of a conservation area, subsections (2) to (7) of section 67 shall apply as they apply in the circumstances mentioned in subsection (1) of that section.

(2) Subsection (3) of section 63 of the principal Act (references to applications for planning permission to include applications for permission to retain existing works and uses) does not apply to the construction of this section.

*Control of demolition*

**Control of**  
**demolition in**  
**conservation**  
**areas.**

**74.—(1)** A building in a conservation area shall not be demolished without the consent of the appropriate authority (in this Act referred to as “conservation area consent”).

(2) The appropriate authority for the purposes of this section is—

- (a) in relation to applications for consent made by local planning authorities, the Secretary of State; and
- (b) in relation to other applications for consent, the local planning authority or the Secretary of State.

(3) Sections 7 to 26, 28, 32 to 46, 56, 62 to 65, 66(1), 82(2) to (4), 83(1)(b),(3) and (4) and 90(2) to (4) have effect in relation to buildings in conservation areas as they have effect in relation to listed buildings subject to such exceptions and modifications as may be prescribed by regulations.

(4) Any such regulations may make different provision—

- (a) in relation to applications made by local planning authorities, and
- (b) in relation to other applications.

**Cases in which s.**  
**74 does not apply.**

**75.—(1)** Section 74 does not apply to—

- (a) listed buildings;
- (b) ecclesiastical buildings which are for the time being used for ecclesiastical purposes;
- (c) buildings for the time being included in the schedule of monuments compiled and maintained under section 1 of the Ancient Monuments and Archaeological Areas Act 1979; or
- (d) buildings in relation to which a direction under subsection (2) is for the time being in force.

(2) The Secretary of State may direct that section 74 shall not apply to any description of buildings specified in the direction.

(3) A direction under subsection (2) may be given either to an individual local planning authority exercising functions under that section or to local planning authorities generally.

(4) The Secretary of State may vary or revoke a direction under subsection (2) by a further direction under that subsection.

1979 c.46.

**PART II**

(5) For the purposes of subsection (1)(b), a building used or available for use by a minister of religion wholly or mainly as a residence from which to perform the duties of his office shall be treated as not being an ecclesiastical building.

(6) For the purposes of sections 7 to 9 as they apply by virtue of section 74(3) a building shall be taken to be used for the time being for ecclesiastical purposes if it would be so used but for the works in question.

(7) The Secretary of State may by order provide for restricting or excluding the operation of subsection (1)(b) in such cases as may be specified in the order.

(8) An order under subsection (7) may—

- (a) make provision for buildings generally, for descriptions of building or for particular buildings;
- (b) make different provision for buildings in different areas, for buildings of different religious faiths or denominations or according to the use made of the building;
- (c) make such provision in relation to a part of a building (including, in particular, an object or structure falling to be treated as part of the building by virtue of section 1(5)) as may be made in relation to a building and make different provision for different parts of the same building;
- (d) make different provision with respect to works of different descriptions or according to the extent of the works;
- (e) make such consequential adaptations or modifications of the operation of any other provision of this Act or the principal Act, or of any instrument made under either of those Acts, as appear to the Secretary of State to be appropriate.

(9) Regulations under this Act may provide that subsections (5) to (8) shall have effect subject to such exceptions and modifications as may be prescribed, and any such regulations may make different provision—

- (a) in relation to applications made by local planning authorities, and
- (b) in relation to other applications.

(10) Any proceedings on or arising out of an application for conservation area consent made while section 74 applies to a building shall lapse if it ceases to apply to it, and any such consent granted with respect to the building shall also lapse.

(11) The fact that that section has ceased to apply to a building shall not affect the liability of any person to be prosecuted and punished for an offence under section 9 or 43 committed with respect to the building while that section did apply to it.

**76.—**(1) If it appears to the Secretary of State that the preservation of a building in a conservation area is important for maintaining the character or appearance of that area, he may direct that section 54 shall apply to it as it applies to listed buildings.

Urgent works to preserve unoccupied buildings in conservation areas.

(2) The Secretary of State shall consult the Commission before giving a direction under subsection (1) in respect of a building in England.

## PART II

*Grants*

Grants and loans  
for preservation  
or enhancement of  
conservation  
areas.

**77.**—(1) If in the opinion of the Commission any relevant expenditure has made or will make a significant contribution towards the preservation or enhancement of the character or appearance of any conservation area situated in England or any part of such an area, they may make grants or loans for the purposes of defraying the whole or part of that expenditure.

(2) If in the opinion of the Secretary of State any relevant expenditure has made or will make a significant contribution towards the preservation or enhancement of the character or appearance of any conservation area situated in Wales or any part of such an area, he may make grants or loans for the purposes of defraying the whole or part of that expenditure.

(3) Expenditure is relevant for the purposes of subsection (1) or (2) if it has been or is to be incurred in or in connection with, or with a view to the promotion of, such preservation or enhancement as is mentioned in that subsection.

(4) A grant or loan under this section may be made subject to such conditions as the Commission or, as the case may be, the Secretary of State may think fit to impose.

(5) Any loan under subsection (1) shall be made on such terms as to repayment, payment of interest and otherwise as the Commission may determine.

(6) Any loan under subsection (2) shall be made on such terms as to repayment, payment of interest and otherwise as the Secretary of State may with the approval of the Treasury determine.

(7) Unless the making of a grant or loan under this section appears to the Secretary of State to be a matter of immediate urgency, before making the grant or loan, the Secretary of State shall consult the Historic Buildings Council for Wales as to its making and the conditions subject to which it should be made.

(8) The Secretary of State may pay such remuneration and allowances as he may with the approval of the Treasury determine to any member of the Historic Buildings Council for Wales by whom services are rendered in connection with any question as to the exercise of his powers under this section.

(9) If any such member is also a member of the House of Commons, those payments shall extend only to allowances in respect of travelling and subsistence expenses, and any other expenses necessarily incurred by him in connection with those services.

Recovery of  
grants under s. 77.

**78.**—(1) This section applies to any grant under section 77 made on terms that it shall be recoverable under this section.

(2) A grant shall only be regarded as made on those terms if before or on making the grant the grantor gives the grantee notice in writing—

(a) summarising the effect of this section; and

(b) if the grant is made for the purpose of defraying the whole or part of expenditure in relation to any particular property (“the grant property”), specifying the recovery period.

**PART II**

(3) In this section “the recovery period” means the period, beginning with the day on which the grant is made and ending not more than ten years after that day, during which the grant is to be recoverable in accordance with subsection (4).

(4) If during the recovery period the grantee disposes of the interest which was held by him in the grant property on the day on which the grant was made or any part of that interest by way of sale or exchange or lease for a term of not less than 21 years, the grantor may recover the amount of the grant, or such part of it as the grantor thinks fit, from the grantee.

(5) If the grantee gives the whole of that interest to any person (whether directly or indirectly, but otherwise than by will) subsection (4) shall have effect as if the donee were the grantee.

(6) If the grantee gives part of that interest to any person (whether directly or indirectly, but otherwise than by will) subsection (4) shall have effect as if any disposal or part disposal of that interest by the donee were a disposal by the grantee.

(7) If any condition imposed on the making of a grant to which this section applies is contravened or not complied with, the grantor may recover the amount of the grant, or such part of it as he thinks fit, from the grantee.

(8) Nothing in this section entitles a grantor to recover amounts in the aggregate exceeding the amount of the grant (for example by virtue of a breach of more than one condition or disposals of several parts of an interest in the grant property).

*Town schemes*

79.—(1) The Commission and one or more local authorities in England, or the Secretary of State and one or more local authorities in Wales, may enter an agreement (in this Act referred to as a “town scheme agreement”) that a specified sum of money shall be set aside for a specified period of years for the purpose of making grants for the repair of buildings which are—

**Town scheme agreements.**

- (a) included in a list compiled for the purposes of such an agreement by the parties to the agreement, or by them and other such authorities, or
- (b) shown on a map prepared for those purposes by the parties, or by them and such other authorities.

(2) Before such a list is compiled or such a map is prepared by the Secretary of State and any local authorities as respects any buildings in Wales they shall consult the Historic Buildings Council for Wales.

(3) In this section “local authority” means—

- (a) a county council;
- (b) a district council;
- (c) in relation to any building situated within the Broads, the Broads Authority;
- (d) a London borough council or the Common Council of the City of London;
- (e) the Council of the Isles of Scilly.

**PART II**  
**Grants for**  
**repairing of**  
**buildings in town**  
**schemes.**

**80.**—(1) The Commission may make grants for the purpose of defraying the whole or part of any expenditure incurred or to be incurred in the repair of any building which—

- (a) is the subject of a town scheme agreement;
- (b) is situated in a conservation area in England; and
- (c) appears to the Commission to be of architectural or historic interest.

(2) The Secretary of State may make grants for the purpose of defraying the whole or part of any expenditure incurred or to be incurred in the repair of any building which—

- (a) is the subject of a town scheme agreement;
- (b) is situated in a conservation area in Wales; and
- (c) appears to him to be of architectural or historic interest.

(3) A grant under this section may be made subject to conditions imposed by the Commission or, as the case may be, the Secretary of State for such purposes as the Commission or, as the case may be, the Secretary of State thinks fit.

(4) Unless the making of a grant under this section appears to the Secretary of State to be a matter of immediate urgency, before he makes such a grant he may consult with the Historic Buildings Council for Wales as to the making of the grant and as to the conditions subject to which it should be made.

(5) The Commission or the Secretary of State may—

- (a) pay any grant under this section to any authority which is a party to a town scheme agreement; and
- (b) make arrangements with any such authority for the way in which the agreement is to be carried out.

(6) Those arrangements may include such arrangements for the offer and payment of grants under this section as the parties may agree.

(7) Section 78(4) to (8) shall apply to a grant under this section as it applies to a grant under that section, but taking the recovery period to be three years beginning with the day on which the grant is made.

**PART III**

**GENERAL**

*Authorities exercising functions under Act*

**Authorities**  
**exercising**  
**functions under**  
**Act.**

**81.** In this Act “local planning authority” shall be construed in accordance with Part I of the principal Act and Schedule 4 to this Act (which makes further provision as to the exercise of functions under this Act).

*Special cases*

**Application of**  
**Act to land and**  
**works of local**  
**planning**  
**authorities.**

**82.**—(1) In relation to land of a local planning authority, section 1(1), (2) and (4) and sections 2, 39(6), 42(6) and 55(6) shall have effect subject to such exceptions and modifications as may be prescribed.

**PART III**

(2) The provisions mentioned in subsection (3) shall have effect for the purpose of applications by local planning authorities relating to the execution of works for the demolition, alteration or extension of listed buildings, subject to such exceptions and modifications as may be prescribed.

(3) Those provisions are sections 1(3), (5) and (6), 3 to 5, 7 to 29, 32 to 50 (except sections 39(6) and 42(6)), 60(1) to (4) (as it applies as respects the provisions mentioned in this subsection), 62 to 65, 67(2)(b), (6) and (7), 73(1), Schedules 1 and 2, paragraph 2 of Schedule 4 (as it applies to Schedule 1) and paragraph 4(1) of Schedule 4 (as it applies as respects the provisions mentioned in this subsection).

(4) Regulations under this section may in particular provide—

- (a) for the making of applications for listed building consent to the Secretary of State; and
- (b) for the issue or service by him of notices under section 2(3) and the provisions mentioned in subsection (3).

**83.**—(1) Notwithstanding any interest of the Crown in Crown land, but subject to the following provisions of this section—

**Exercise of powers  
in relation to  
Crown land.**

- (a) a building which for the time being is Crown land may be included in a list compiled or approved by the Secretary of State under section 1;
- (b) any restrictions imposed or powers conferred by sections 1 to 26, 32 to 46, 54 to 56, 59 to 61, 66(1), 67, 68, 73 or 76 or Schedule 1, 2 or 3 shall apply and be exercisable in relation to Crown land to the extent of any interest in it for the time being held otherwise than by or on behalf of the Crown;
- (c) any power to acquire land compulsorily under section 47 may be exercised in relation to any interest in the land which is for the time being held otherwise than by or on behalf of the Crown.

(2) Except with the consent of the appropriate authority—

- (a) no notice shall be issued or served under section 38 in relation to land which for the time being is Crown land;
- (b) no interest in land which for the time being is Crown land shall be acquired compulsorily under section 47.

(3) No listed building enforcement notice shall be issued in respect of works executed by or on behalf of the Crown in respect of a building which was Crown land at the time when the works were executed.

(4) No listed building purchase notice shall be served in relation to any interest in Crown land unless—

- (a) an offer has been previously made by the owner of that interest to dispose of it to the appropriate authority on terms that the price payable for it—
  - (i) shall be equal to the compensation which would be payable in respect of it if it were acquired in pursuance of such a notice, or
  - (ii) in default of agreement, shall be determined in a similar manner to that in which that compensation would be determined; and
- (b) that offer has been refused by the appropriate authority.

**PART III****(5) In this section—**

“Crown land” means land in which there is a Crown interest or a Duchy interest;

“Crown interest” means an interest belonging to Her Majesty in right of the Crown, or belonging to a government department, or held in trust for Her Majesty for the purposes of a government department;

“Duchy interest” means an interest belonging to Her Majesty in right of the Duchy of Lancaster or belonging to the Duchy of Cornwall.

(6) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated as having an interest in land for the purposes of subsection (1)(b) so far as applicable to sections 1 to 26, 38 to 46, 54 to 56, 59 to 61, 66(1), 67, 68, 73 and 76 and Schedule 1, 2 or 3.

(7) For the purposes of this section “the appropriate authority”, in relation to any land—

(a) in relation to land belonging to Her Majesty in right of the Crown and forming part of the Crown Estate, means the Crown Estate Commissioners;

(b) in relation to any other land belonging to Her Majesty in right of the Crown, means the government department having the management of that land;

(c) in relation to land belonging to Her Majesty in right of the Duchy of Lancaster, means the Chancellor of the Duchy;

(d) in relation to land belonging to the Duchy of Cornwall, means such person as the Duke of Cornwall or the possessor for the time being of the Duchy of Cornwall appoints;

(e) in the case of land belonging to a government department or held in trust for Her Majesty for the purposes of a government department, means that department.

(8) If any question arises as to what authority is the appropriate authority in relation to any land, that question shall be referred to the Treasury, whose decision shall be final.

**Application for listed building or conservation area consent in anticipation of disposal of Crown land.**

**84.—**(1) This section has effect for the purpose of enabling Crown land, or an interest in Crown land, to be disposed of with the benefit of listed building consent or conservation area consent.

(2) Notwithstanding the interest of the Crown in the land in question, an application for any such consent may be made—

(a) by the appropriate authority; or

(b) by any person authorised by that authority in writing;

and, subject to subsections (3) and (4), all the statutory provisions relating to the making and determination of any such application shall accordingly apply as if the land were not Crown land.

(3) Any listed building consent or conservation area consent granted by virtue of this section shall apply only—

(a) to works carried out after the land in question has ceased to be Crown land; and

**PART III**

- (b) so long as that land continues to be Crown land, to works carried out by virtue of a private interest in the land.

(4) The Secretary of State may by regulations—

- (a) modify or exclude any of the statutory provisions referred to in subsection (2) in their application by virtue of that subsection and any other statutory provisions in their application to consents granted or made by virtue of this section;
- (b) make provision for requiring a local planning authority to be notified of any disposal of, or of an interest in, any Crown land in respect of which an application has been made by virtue of this section; and
- (c) make such other provision in relation to the making and determination of applications by virtue of this section as he thinks necessary or expedient.

(5) This section shall not be construed as affecting any right to apply for any listed building consent or conservation area consent in respect of Crown land in a case in which such an application can be made by virtue of a private interest in the land.

(6) In this section—

“statutory provisions” means provisions contained in or having effect under any enactment;

“private interest” means an interest which is neither a Crown interest nor a Duchy interest;

and references to the disposal of an interest in Crown land include references to the grant of an interest in such land.

(7) Subsections (5), (7) and (8) of section 83 apply for the purposes of this section as they apply for the purposes of that section.

(8) A person who is entitled to occupy Crown land by virtue of a licence in writing shall be treated for the purposes of this section as having an interest in land and references to the disposal or grant of an interest in Crown land and to a private interest in such land shall be construed accordingly.

**85.—**(1) The Secretary of State for the Environment and the Secretary of State for Energy with the consent of the Treasury may by regulations direct that any of the provisions of sections 1(1) to (5), 2(1) to (3), 51, 52, 83, 88 (except subsection (3)) and 90(1) to (6) relating to statutory undertakers and land of such undertakers and any of the other provisions of this Act as they have effect for the purposes of any of those provisions shall apply to the British Coal Corporation as if it were a statutory undertaker. **British Coal.**

(2) Such regulations may apply those provisions subject to such adaptations, modifications and exceptions as may be specified in the regulations.



**PART III**  
**Ecclesiastical**  
**property.**  
 1981 c.67.

**86.**—(1) Without prejudice to the provisions of the Acquisition of Land Act 1981 with respect to notices served under that Act, where under any of the provisions of this Act a notice or copy of a notice is required to be served on an owner of land, and the land is ecclesiastical property, a similar notice or copy of a notice shall be served on the Church Commissioners.

(2) Where the fee simple of any ecclesiastical property is in abeyance—

(a) if the property is situated in England, then for the purposes of section 11, this subsection (other than paragraph (b)) and sections 62, 63 and 83(1) and any other provisions of this Act so far as they apply or have effect for the purposes of any of those provisions, the fee simple shall be treated as being vested in the Church Commissioners;

(b) in any case, the fee simple shall, for the purposes of a compulsory acquisition of the property under section 47, be treated as being vested in the Church Commissioners, and any notice to treat shall be served, or be deemed to have been served, accordingly.

(3) Any compensation payable under section 29 in respect of land which is ecclesiastical property—

(a) shall be paid to the Church Commissioners, and

(b) shall be applied by them for the purposes for which the proceeds of a sale by agreement of the land would be applicable under any enactment or Measure authorising or disposing of the proceeds of such a sale.

(4) In this section “ecclesiastical property” means land belonging to an ecclesiastical benefice, or being or forming part of a church subject to the jurisdiction of a bishop of any diocese or the site of such a church, or being or forming part of a burial ground subject to such jurisdiction.

**Settled land.**  
 1925 c.15.

**87.** The classes of works specified in Part II of Schedule 3 to the Settled Land Act 1925 (which specifies improvements which may be paid for out of capital money, subject to provisions under which repayment out of income may be required to be made) shall include works specified by the Secretary of State as being required for properly maintaining a listed building which is settled land within the meaning of that Act.

*Miscellaneous provisions*

**Rights of entry.**

**88.**—(1) Any person duly authorised in writing by the Secretary of State may at any reasonable time enter any land for the purpose of surveying any building on it in connection with a proposal to include the building in, or exclude it from, a list compiled or approved under section 1.

(2) Any person duly authorised in writing by the Secretary of State, a local planning authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes—

(a) surveying it in connection with any proposal by the authority or the Secretary of State to make, issue or serve any order or notice under any of the provisions of sections 1 to 26, 38, 40, 46, 54, 55, 60, 68, 75 or 76 or under any order or regulations made under any of them, or any notice under section 48;

**PART III**

- (b) ascertaining whether any such order or notice has been complied with;
  - (c) ascertaining whether an offence has been, or is being, committed with respect to any building on the land, under section 9, 11 or 43;
  - (d) ascertaining whether any such building is being maintained in a proper state of repair.
- (3) Any person duly authorised in writing by the Secretary of State, a local authority or, where the authorisation relates to a building situated in Greater London, the Commission may at any reasonable time enter any land for any of the following purposes—
- (a) ascertaining whether an offence has been or is being committed under section 59;
  - (b) ascertaining whether any of the functions conferred by section 54 should or may be exercised in connection with the land; or
  - (c) exercising any of those functions in connection with the land.
- (4) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local planning authority may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with a claim for compensation payable by the authority under section 27, 28 or 29 in respect of any land.
- (5) Any person who is an officer of the Valuation Office or is duly authorised in writing by a local authority having power to acquire land under sections 47 to 52 may at any reasonable time enter any land for the purpose of surveying it, or estimating its value, in connection with any proposal to acquire that land or any other land or in connection with any claim for compensation in respect of any such acquisition.
- (6) Subject to subsection (7), any power conferred by this section to survey land shall be construed as including power to search and bore for the purpose of ascertaining the nature of the subsoil or the presence of minerals in it.
- (7) Section 325 of the principal Act (supplementary provisions as to rights of entry) applies in relation to this section as it applies in relation to section 324 of that Act taking the reference in section 325(8) to section 324(8) as a reference to subsection (6) of this section.

**89.—**(1) Subject to subsection (2), the following provisions of the principal Act shall apply for the purposes of this Act as they apply for the purposes of that Act, namely—

**Application of  
certain general  
provisions of  
principal Act.**

- section 320 (local inquiries),
- section 322 (orders as to costs of parties where no inquiry held),
- section 323 (procedure on certain appeals and applications),
- section 329 (service of notices),
- section 330 (power to require information as to interests in land),
- section 331 (offences by corporations).

(2) Section 331 of that Act shall not apply to offences under section 59 of this Act.

**PART III**  
Financial  
provisions.

**90.—(1) Where—**

- (a) compensation is payable by a local authority under this Act in consequence of any decision or order given or made under Chapters I, II or IV of Part I or sections 32 to 37, 60 or Schedule 3; and
- (b) the decision or order in consequence of which it is payable was given or made wholly or partly in the interest of a service which is provided by a government department and the cost of which is defrayed out of money provided by Parliament,

the Minister responsible for the administration of that service may pay that authority a contribution of such amount as he may with the consent of the Treasury determine.

(2) Any local authority and any statutory undertakers may contribute towards any expenses incurred by a local planning authority in or in connection with the performance of any of their functions under the provisions of Chapters I to V of Part I (other than sections 27 to 31, 53, 54, 55, 57, 58) and sections 66 and 68 and Schedule 1.

(3) Where any expenses are incurred by a local authority in the payment of compensation payable in consequence of anything done under Chapters I, II or IV of Part I or sections 32 to 37, 56, 59, 60, 66(1), 67, 68 or 73, the Secretary of State may, if it appears to him to be expedient to do so, require any other local authority to contribute towards those expenses such sum as appears to him to be reasonable, having regard to any benefit accruing to that authority by reason of the proceeding giving rise to the compensation.

(4) For the purposes of subsections (2) and (3), contributions made by a local planning authority towards the expenditure of a joint advisory committee shall be deemed to be expenses incurred by that authority for the purposes for which that expenditure is incurred by the committee.

(5) The council of a county may direct that any expenses incurred by them under the provisions specified in subsection (6) shall be treated as special expenses of a county council chargeable upon such part of the county as may be specified in the directions.

**(6) Those provisions are—**

- (a) sections 1(1) to (5), 2(1) to (3), 51, 52, 64, 65, 66(2), 82(1) and (4)(b), 83, 86 (except subsection (2)(a)), 87, 88 (except subsection (3)) and subsections (1) to (4) of this section and any other provisions of the planning Acts in so far as they apply, or have effect for the purposes of, any of those provisions; and
- (b) sections 1(6), 3, 4, 5, 7 to 29, 32 to 50 (except 39(6) and 42(6)), 60(1) to (4), 61, 66(1), 67(2)(b), (6) and (7), 73(1) (so far as it applies to section 67(2)(b), (6) and (7)), 82(2), (3) and (4)(a) and Schedules 1, 2 and 3.

**(7) There shall be paid out of money provided by Parliament—**

- (a) any sums necessary to enable the Secretary of State to make any payments becoming payable by him under sections 27 to 29;
- (b) any expenses incurred by any government department (including the Secretary of State) in the acquisition of land under sections 47 to 52 or in the payment of compensation under section 51(4) or 88(7) or under subsection (1);

- (c) any administrative expenses incurred by the Secretary of State for the purposes of this Act. **PART III**

(8) Any sums received by the Secretary of State under this Act shall be paid into the Consolidated Fund.

#### PART IV

##### SUPPLEMENTAL

**91.—**(1) In this Act, except in so far as the context otherwise requires— **Interpretation.**

“building preservation notice” has the meaning given in section 3(1);

“the Commission” means the Historic Buildings and Monuments Commission for England;

“conservation area” means an area for the time being designated under section 69;

“conservation area consent” has the meaning given in section 74(1);

“listed building” has the meaning given in section 1(5);

“listed building consent” has the meaning given in section 8(7);

“listed building enforcement notice” has the meaning given in section 38(1);

“listed building purchase notice” has the meaning given in section 32(1);

“local planning authority” shall be construed in accordance with section 81;

“prescribed”, except in relation to matters expressly required or authorised by this Act to be prescribed in some other way, means prescribed by regulations under this Act;

“the principal Act” means the Town and Country Planning Act 1990 c. 8.

“town scheme agreement” has the meaning given in section 79.

(2) Subject to subsections (6) and (7) and except in so far as the context otherwise requires, the following expressions have the same meaning as in the principal Act—

“the 1962 Act”

“acquiring authority”

“the Broads”

“building”

“compulsory acquisition”

“development”

“development order”

“development plan”

“disposal”

“enactment”

“functions”

“government department”

“joint planning board”

**PART IV**

“land”  
 “lease”  
 “local authority”  
 “London borough”  
 “minerals”  
 “Minister”  
 “new development”  
 “owner”  
 “the planning Acts”  
 “planning permission”  
 “public gas supplier”  
 “use”  
 “Valuation Office”,

but this subsection does not affect the meaning of “owner” in section 11.

(3) In this Act “statutory undertakers” has the same meaning as in the principal Act except that—

- (a) in sections 33 to 36 it shall be deemed to include references to a public telecommunications operator;
- (b) in sections 33 to 36, 51(2)(a) and 90(2) it shall be deemed to include the Post Office, the Civil Aviation Authority, a public gas supplier, a holder of a licence under section 6 of the Electricity Act 1989, the National Rivers Authority and every water or sewerage undertaker.

1989 c. 29.

(4) References in the planning Acts to any of the provisions mentioned in section 82 include, except where the context otherwise requires, references to those provisions as modified under that section.

(5) Words in this Act importing a reference to service of a notice to treat shall be construed as including a reference to the constructive service of such a notice which, by virtue of any enactment, is to be deemed to be served.

(6) In sections 33 to 36, 53(1) 54, 55 and 88(3) “local authority”, in relation to a building or land in the Broads, includes the Broads Authority.

(7) For the purposes of subsection (1)(b) of section 57 and subsection (2) of that section as it applies for the purposes of that subsection the definition of “building” in the principal Act shall apply with the omission of the words “but does not include any plant or machinery comprised in a building”.

**Application of  
Act to Isles of  
Scilly.**

**92.—**(1) The Secretary of State shall, after consultation with the Council of the Isles of Scilly, by order provide for the application to those Isles of the provisions of this Act specified in subsection (2) as if those Isles were a separate county.

(2) The provisions referred to in subsection (1) are—

**PART IV**

- (a) sections 1(1) to (5), 2(1) to (3), 51, 52, 64, 65, 66(2), 82(1) and (4)(b), 83, 84, 86 (except subsection (2)(a)), 87, 88 (except subsection (3)), 90(1) to (4) and any other provisions of the planning Acts in so far as they apply, or have effect for the purposes of, any of those provisions; and
- (b) sections 1(6), 3, 4, 5, 7 to 29, 32 to 50 (except 39(6) and 42(6)), 60(1) to (4), 61, 66(1), 67(2)(b), (6) and (7), 73(1) (so far as it applies to section 67(2)(b), (6) and (7)), 75(1), (5) and (6), 82(2), (3) and (4)(a) and Schedules 1, 2 and 3.

(3) The Secretary of State, may, after consultation with the Council of the Isles of Scilly, by order provide for the application to those Isles of sections 2(4) and (5), 53 to 55, 59, 67(1) to (6), 69 to 72, 73(1), 74 to 76 and 88(3) and paragraph 4 of Schedule 4 as if those Isles were a separate county or district.

(4) Any order under this section may provide for the application of provisions to the Isles subject to such modifications as may be specified in the order.

**93.—**(1) The Secretary of State may make regulations under this Act—

**Regulations and orders.**

- (a) for prescribing the form of any notice, order or other document authorised or required by any of the provisions of this Act to be served, made or issued by any local authority;
- (b) for any purpose for which regulations are authorised or required to be made under this Act.

(2) Any power conferred by this Act to make regulations shall be exercisable by statutory instrument.

(3) Any statutory instrument containing regulations made under this Act shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(4) The power to make orders under sections 8(5), 60, 75(7) and 92 shall be exercisable by statutory instrument.

(5) Any statutory instrument which contains an order under section 60 or 75(7) shall be subject to annulment in pursuance of a resolution of either House of Parliament.

(6) Any order under section 60 or 75(7) may contain such supplementary and incidental provisions as may appear to the Secretary of State appropriate.

(7) Without prejudice to section 14 of the Interpretation Act 1978, any power conferred by this Act to make an order shall include power to vary or revoke any such order by a subsequent order.

1978 c. 30.

**94.—**(1) This Act may be cited as the Planning (Listed Buildings and Conservation Areas) Act 1990.

**Short title, commencement and extent.**  
1990 c. 11.

(2) Except as provided in Schedule 4 to the Planning (Consequential Provisions) Act 1990, this Act shall come into force at the end of the period of three months beginning with the day on which it is passed.

(3) This Act extends to England and Wales only.

## SCHEDULES

### Section 1(6).

#### SCHEDULE 1

##### BUILDINGS FORMERLY SUBJECT TO BUILDING PRESERVATION ORDERS

1. Subject to paragraph 2, every building which immediately before 1st January 1969 was subject to a building preservation order under Part III of the 1962 Act, but was not then included in a list compiled or approved under section 32 of that Act, shall be deemed to be a listed building.

2.—(1) The Secretary of State may at any time direct, in the case of any building, that paragraph 1 shall no longer apply to it.

(2) The local planning authority in whose area a building in respect of which such a direction is given is situated shall, on being notified of the direction, give notice of it to the owner and occupier of the building.

(3) Before giving such a direction in relation to a building situated in England, the Secretary of State shall consult with the Commission who shall in turn consult with the local planning authority and the owner and occupier of the building.

(4) Before giving such a direction in relation to a building not situated in England, the Secretary of State shall consult with the local planning authority and the owner and occupier of the building.

3. In the case of a building to which paragraph 1 applies—

(a) a notice of appeal under section 20 may include a claim that the Secretary of State should give a direction under paragraph 2 with respect to the building and on such an appeal the Secretary of State may give such a direction; and

(b) such a direction may also be given on an appeal under section 39.

### Section 5.

#### SCHEDULE 2

##### LAPSE OF BUILDING PRESERVATION NOTICES

1. This Schedule applies where a building preservation notice ceases to be in force by virtue of—

(a) the expiry of the six month period mentioned in subsection (3)(b) of section 3; or

(b) the service of a notification by the Secretary of State under subsection (4)(b) of that section.

2. The fact that the notice has ceased to be in force shall not affect the liability of any person to be prosecuted and punished for an offence under section 9 or 43 committed with respect to the building while it was in force.

3. Any proceedings on or arising out of an application for listed building consent with respect to the building made while the notice was in force and any such consent granted while it was in force shall lapse.

4.—(1) Any listed building enforcement notice served by the local planning authority while the building preservation notice was in force shall cease to have effect.

(2) Any proceedings on it under sections 38 to 40 shall lapse.

(3) Notwithstanding sub-paragraph (1), section 42(1) and (2) shall continue to have effect as respects any expenses incurred by the local authority, owner or occupier as mentioned in that section and with respect to any sums paid on account of such expenses.

SCH. 2

### SCHEDULE 3

Sections 22 and 40.

#### DETERMINATION OF CERTAIN APPEALS BY PERSON APPOINTED BY SECRETARY OF STATE

##### *Determination of appeals by appointed person*

1.—(1) The Secretary of State may by regulations prescribe the classes of appeals under sections 20 and 39 which are to be determined by a person appointed by the Secretary of State for the purpose instead of by the Secretary of State.

(2) Appeals of a prescribed class shall be so determined except in such classes of case as may for the time being be prescribed or as may be specified in directions given by the Secretary of State.

(3) Regulations made for the purpose of this paragraph may provide for the giving of publicity to any directions given by the Secretary of State under this paragraph.

(4) This paragraph shall not affect any provision in this Act or any instrument made under it that an appeal shall lie to, or a notice of appeal shall be served on, the Secretary of State.

(5) A person appointed under this paragraph is referred to in this Schedule as “an appointed person”.

##### *Powers and duties of appointed person*

2.—(1) An appointed person shall have the same powers and duties—

- (a) in relation to an appeal under section 20, as the Secretary of State has under subsection (1) of section 22 and paragraph 2 of Schedule 1; and
- (b) in relation to an appeal under section 39, as he has under section 41(1), (2), (5) or (6) and paragraph 2 of Schedule 1.

(2) Sections 22(2) and 40(2) shall not apply to an appeal which falls to be determined by an appointed person, but before it is determined the Secretary of State shall ask the appellant and the local planning authority whether they wish to appear before and be heard by the appointed person.

(3) If both the parties express a wish not to appear and be heard the appeal may be determined without their being heard.

(4) If either of the parties expresses a wish to appear and be heard, the appointed person shall give them both an opportunity of doing so.

(5) Where an appeal has been determined by an appointed person, his decision shall be treated as that of the Secretary of State.

(6) Except as provided by sections 62 to 65, the validity of that decision shall not be questioned in any proceedings whatsoever.

(7) It shall not be a ground of application to the High Court under section 63, or of appeal to the High Court under section 65, that an appeal ought to have been determined by the Secretary of State and not by an appointed person, unless the appellant or the local planning authority challenge the appointed person's power to determine the appeal before his decision on the appeal is given.

(8) Where in any enactment (including this Act) there is a reference to the Secretary of State in a context relating or capable of relating—

- (a) to an appeal under section 20 or 39, or



- SCH. 3 (b) to anything done or authorised or required to be done by, to or before the Secretary of State on or in connection with any such appeal, then so far as the context permits it shall be construed, in relation to an appeal determined or falling to be determined by an appointed person, as a reference to him.

*Determination of appeals by Secretary of State*

3.—(1) The Secretary of State may, if he thinks fit, direct that an appeal which would otherwise fall to be determined by an appointed person shall instead be determined by the Secretary of State.

(2) Such a direction shall state the reasons for which it is given and shall be served on the appellant, the local planning authority, any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 11(4) and, if any person has been appointed under paragraph 1, on him.

(3) Where in consequence of such a direction an appeal under section 20 or 39 falls to be determined by the Secretary of State himself, the provisions of this Act which are relevant to the appeal shall, subject to the following provisions of this paragraph, apply to the appeal as if this Schedule had never applied to it.

(4) The Secretary of State shall give the appellant, the local planning authority and any person who has made such representations as are referred to in sub-paragraph (2) an opportunity of appearing before and being heard by a person appointed by the Secretary of State for that purpose if—

- (a) the reasons for the direction raise matters with respect to which any of those persons have not made representations; or
- (b) in the case of the appellant and the local planning authority, either of them was not asked in pursuance of paragraph 2(2) whether they wished to appear before and be heard by the appointed person, or expressed no wish in answer to that question, or expressed a wish to appear and be heard but was not given an opportunity of doing so.

(5) Except as provided by sub-paragraph (4), the Secretary of State need not give any person an opportunity of appearing before and being heard by a person appointed for the purpose, or of making fresh representations or making or withdrawing any representations already made.

(6) In determining the appeal the Secretary of State may take into account any report made to him by any person previously appointed to determine it.

4.—(1) The Secretary of State may by a further direction revoke a direction under paragraph 3 at any time before the determination of the appeal.

(2) Such a further direction shall state the reasons for which it is given and shall be served on the person, if any, previously appointed to determine the appeal, the appellant, the local planning authority and any person who made representations relating to the subject matter of the appeal which the authority were required to take into account by regulations made under section 11(4).

(3) Where such a further direction has been given the provisions of this Schedule relevant to the appeal shall apply, subject to sub-paragraph (4), as if no direction under paragraph 3 had been given.

(4) Anything done by or on behalf of the Secretary of State in connection with the appeal which might have been done by the appointed person (including any arrangements made for the holding of a hearing or local inquiry) shall unless that person directs otherwise, be treated as having been done by him.

*Appointment of another person to determine appeal*

SCH. 3

5.—(1) At any time before the appointed person has determined the appeal the Secretary of State may—

- (a) revoke his appointment; and
  - (b) appoint another person under paragraph 1 to determine the appeal instead.
- (2) Where such a new appointment is made the consideration of the appeal or any inquiry or other hearing in connection with it shall be begun afresh.
- (3) Nothing in sub-paragraph (2) shall require—
- (a) the question referred to in paragraph 2(2) to be asked again with reference to the new appointed person if before his appointment it was asked with reference to the previous appointed person (any answers being treated as given with reference to the new appointed person); or
  - (b) any person to be given an opportunity of making fresh representations or modifying or withdrawing any representations already made.

*Local inquiries and hearings*

6.—(1) Whether or not the parties to an appeal have asked for an opportunity to appear and be heard, an appointed person—

- (a) may hold a local inquiry in connection with the appeal; and
  - (b) shall do so if the Secretary of State so directs.
- (2) Where an appointed person—
- (a) holds a hearing by virtue of paragraph 2(4); or
  - (b) holds an inquiry by virtue of this paragraph,
- an assessor may be appointed by the Secretary of State to sit with the appointed person at the hearing or inquiry to advise him on any matters arising, notwithstanding that the appointed person is to determine the appeal.
- (3) Subject to sub-paragraph (4), the costs of any such hearing or inquiry shall be paid by the Secretary of State.
- (4) Section 250(2) to (5) of the Local Government Act 1972 (local inquiries: evidence and costs) applies to an inquiry held by virtue of this paragraph with the following adaptations—
- (a) for the references in subsection (4) (recovery of costs of holding the inquiry) to the Minister causing the inquiry to be held, there shall be substituted references to the Secretary of State; and
  - (b) for the reference in subsection (5) (orders as to the costs of the parties) to the Minister causing the inquiry to be held, there shall be substituted a reference to the appointed person or the Secretary of State.
- (5) Subject to sub-paragraph (6), at any such inquiry oral evidence shall be heard in public and documentary evidence shall be open to public inspection.
- (6) If the Secretary of State is satisfied in the case of any such inquiry—
- (a) that giving evidence of a particular description or, as the case may be, making it available for inspection would be likely to result in the disclosure of information as to any of the matters mentioned in sub-paragraph (7); and
  - (b) that the public disclosure of that information would be contrary to the national interest,

he may direct that evidence of the description indicated in the direction shall only be heard or, as the case may be, open to inspection at that inquiry by such persons or persons of such descriptions as he may specify in that direction.

SCH. 3

(7) The matters referred to in sub-paragraph (6)(a) are—

- (a) national security; and
- (b) the measures taken or to be taken to ensure the security of any premises or property.

1972 c. 70.

(8) The appointed person or the Secretary of State has the same power to make orders under section 250(5) of the Local Government Act 1972 (orders with respect to costs of the parties) in relation to proceedings under this Schedule which do not give rise to an inquiry as he has in relation to such an inquiry.

*Supplementary provisions*

1971 c. 62.

7.—(1) The Tribunals and Inquiries Act 1971 shall apply to a local inquiry or other hearing held in pursuance of this Schedule as it applies to a statutory inquiry held by the Secretary of State, but as if in section 12(1) of that Act (statement of reasons for decisions) the reference to any decision taken by the Secretary of State were a reference to a decision taken by an appointed person.

1967 c. 13.

(2) Where an appointed person is an officer of the Department of the Environment or the Welsh Office the functions of determining an appeal and doing anything in connection with it conferred on him by this Schedule shall be treated for the purposes of the Parliamentary Commissioner Act 1967—

- (a) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to England, as functions of that Department; and
- (b) if he was appointed by the Secretary of State for the time being having general responsibility in planning matters in relation to Wales, as functions of the Welsh Office.

Section 81.

#### SCHEDULE 4

##### FURTHER PROVISIONS AS TO EXERCISE OF FUNCTIONS BY DIFFERENT AUTHORITIES

1. Subsection (3) of section 1 of the principal Act (which provides that outside London, the metropolitan counties and the Isles of Scilly planning functions are exercisable by both county and district planning authorities) shall have effect subject to paragraphs 2, 4 and 5, and that section and section 2 of the principal Act (joint planning boards) shall have effect subject to paragraph 3.

2. Subject to sections 4, 6, 7 and 8 of the principal Act (which make provision as to the exercise of planning functions in National Parks, enterprise zones, urban development areas and housing action areas) and to the following provisions, outside Greater London the functions of a local planning authority under sections 7 to 26, 38, 42, paragraph 2(2) of Schedule 1 and Schedule 2 shall be exercised by the district planning authority.

3.—(1) Any application for listed building consent under section 10 shall, if relating to land in a National Park, be made to the district planning authority who shall, unless it falls to be determined by them, send it on to the county planning authority.

(2) Where any such application relating to land in a National Park falls to be determined by a county planning authority, that authority shall before determining it consult with the district planning authority for the area in which the land to which the application relates is situated.

4.—(1) Subject to sections 4(3) and (4), 6, 7 and 8 of the principal Act, the functions of a local planning authority under sections 67(2) and (3), 69, 70 and 74 and paragraph 2(3) and (4) of Schedule 1 shall be exercisable—

- (a) in Greater London or a metropolitan county, by the local planning authority; SCH. 4
- (b) in any part of a National Park outside a metropolitan county, by the county planning authority; and
- (c) elsewhere, by the district planning authority;

but outside a National Park a county planning authority shall also have power to make determinations and designations under section 69.

(2) Before making a determination under section 69 a county planning authority shall consult the council of each district of which any part is included in the area to which the proposed determination relates.

(3) Where it is the duty of the district planning authority to take the steps required by section 67(2) in relation to an application which falls to be determined by the county planning authority, the district planning authority shall as soon as possible after taking those steps notify the county planning authority of the steps which they have taken and the date on which they took them.

5. For the purposes of sections 3 and 4, 7 to 26, 38, 42, 56, 66(1), 67, 69 to 75, 82, 84 and 88(2)(c) and (d) and the provisions of this Schedule so far as they relate to those provisions, the Broads Authority shall be the sole district planning authority in respect of the Broads, and in relation to a building or land within the Broads—

- (a) the references to the district planning authority in section 2(1)(b)(iii) and in paragraph 4(1)(c) of this Schedule, so far as that paragraph relates to paragraph 2(3) and (4) of Schedule 1, include that Authority; and
- (b) for the purposes of sections 6 and 88(2)(a) and (b) “local planning authority” includes that Authority.

6. The validity of any consent or determination granted or made or purported to be granted or made by a local planning authority in respect of an application for listed building consent or conservation area consent shall not be called in question in any legal proceedings, or in any proceedings under this Act which are not legal proceedings, on the ground that the consent or determination should have been granted or made by some other local planning authority.

7.—(1) The Secretary of State may from time to time direct a district planning authority to submit to him for his approval within a period specified in the direction the arrangements which the authority propose to make to obtain specialist advice in connection with their functions under sections 3, 4, 8, 10 to 26, 38, 42, 66(1), 69 to 72, 74 and 75.

(2) If the Secretary of State is not satisfied about any such arrangements he may direct the district planning authority and another local planning authority specified in the direction—

- (a) to enter into an agreement under section 113 of the Local Government Act 1972 for the placing at the disposal of the district planning authority, for the purpose of giving them any such specialist advice, of the services of officers employed by that other authority who are qualified to give such advice; or 1972 c. 70.
- (b) to enter into arrangements, containing terms specified in the direction or terms on lines laid down by him, for the discharge by that other authority of any of those functions.

(3) Before giving a direction under sub-paragraph (2) the Secretary of State shall consult with the district planning authority and the other authority concerned.

## TABLE OF DERIVATIONS

*Notes:*

## 1. The following abbreviations are used in this Table:—

1953 c. 49 =	The Historic Buildings and Ancient Monuments Act 1953
1962 c. 36 =	The Local Authorities (Historic Buildings) Act 1962
1969 c. 22 =	The Redundant Churches and Other Religious Buildings Act 1969
1969 c. 48 =	The Post Office Act 1969
1971 c. 78 =	The Town and Country Planning Act 1971
1972 c. 42 =	The Town and Country Planning (Amendment) Act 1972
1972 c. 70 =	The Local Government Act 1972
1974 c. 7 =	The Local Government Act 1974
1974 c. 32 =	The Town and Country Amenities Act 1974
1975 c. 10 =	The Statute Law (Repeals) Act 1975
1975 c. 76 =	The Local Land Charges Act 1975
1977 c. 38 =	The Administration of Justice Act 1977
1978 c. 30 =	The Interpretation Act 1978
1979 c. 46 =	The Ancient Monuments and Archaeological Areas Act 1979
1980 c. 43 =	The Magistrates' Courts Act 1980
1980 c. 65 =	The Local Government, Planning and Land Act 1980
1981 c. 41 =	The Local Government and Planning (Amendment) Act 1981
1981 c. 54 =	The Supreme Court Act 1981
1981 c. 67 =	The Acquisition of Land Act 1981
1982 c. 16 =	The Civil Aviation Act 1982.
1982 c. 21 =	The Planning Inquiries (Attendance of Public) Act 1982
1982 c. 30 =	The Local Government (Miscellaneous Provisions) Act 1982
1982 c. 48 =	The Criminal Justice Act 1982
1983 c. 47 =	The National Heritage Act 1983
1984 c. 10 =	The Town and Country Planning Act 1984
1984 c. 12 =	The Telecommunications Act 1984
1985 c. 51 =	The Local Government Act 1985
1986 c. 44 =	The Gas Act 1986
1986 c. 63 =	The Housing and Planning Act 1986
1987 c. 3 =	The Coal Industry Act 1987
1988 c. 4 =	The Norfolk and Suffolk Broads Act 1988
1989 c. 15 =	The Water Act 1989
1989 c. 29 =	The Electricity Act 1989

## 2. The Table does not show the effect of Transfer of Function orders.

3. The letter R followed by a number indicates that the provision gives effect to the Recommendation bearing that number in the Law Commission's Report on the Consolidation of Certain Enactments relating to Town and Country Planning (Cmnd. 958).

4. The entry "drafting" indicates a provision of a mechanical or editorial nature only affecting the arrangement of the consolidation.

Provision	Derivation
1 (1)	1971 c. 78 s. 54(1); 1983 c. 47 Sch. 4 para. 16(2).
(2)	1971 c. 78 s. 54(1)(part); 1983 c. 47 Sch. 4 para. 16(2).
(3)	1971 c. 78 s. 54(2).
(4)	1971 c. 78 s. 54(3); 1983 c. 47 Sch. 4 para. 16(3).
(5)	1971 c. 78 s. 54(9); 1986 c. 63 Sch. 9 para. 1(1).
(6)	Drafting.
2 (1)	1971 c. 78 s. 54(4),(5); 1972 c. 70 s. 179(3), Sch. 16 para. 28, Sch. 30; 1985 c. 51 Sch. 2 para. 1(3); R 34.
(2)	1971 c. 78 s. 54(6); 1972 c. 70 Sch. 30; 1975 c. 76 Sch. 1.
(3)	1971 c. 78 s. 54(7); 1972 c. 70 s. 179(3), Sch. 30.
(4)	1971 c. 78 s. 54(8).
(5)	1971 c. 78 s. 54(8); 1985 c. 51 Sch. 2 para. 1(3); R 34.
(6)	1971 c. 78 s. 54(8); 1985 c. 51 Sch. 2 para. 1(3).
3 (1)	1971 c. 78 s. 58(1); 1980 c. 65 Sch. 15 para. 12; 1985 c. 51 Sch. 2 para. 1(5).
(2)	1971 c. 78 s. 58(1); 1980 c. 65 Sch. 15 para. 12; 1985 c. 51 Sch. 2 para. 1(5).
(3)	1971 c. 78 s. 58(3); 1980 c. 65 Sch. 15 para. 12; 1985 c. 51 Sch. 2 para. 1(5).
(4)	1971 c. 78 s. 58(3); 1980 c. 65 Sch. 15 para. 12; 1985 c. 51 Sch. 2 para. 1(5).
(5)	1971 c. 78 s. 58(4)(part).
(6)	1971 c. 78 s. 58(5)(a); 1980 c. 65 Sch. 15 para. 12; 1985 Sch. 2 para. 1(5).
(7)	1971 c. 78 s. 58(5)(b); 1980 c. 65 Sch. 15 para. 12; 1985 c. 51 Sch. 2 para. 1(5).
(8)	1971 c. 78 s. 58(7); 1985 c. 51 Sch. 2 para. 1(5)(c).
4 (1) to (3)	1971 c. 78 s. 58(6); 1972 c. 42 s. 7(1); 1985 c. 51 Sch. 2 para. 1(5).
(4)	1971 c. 78 s. 58(7); 1985 c. 51 Sch. 2 para. 1(5)(c).
5	Drafting
6 (1)	1971 c. 78 s. 54A(1); 1980 c. 65 Sch. 15 para. 5.
(2)	1971 c. 78 s. 54A(2); 1980 c. 65 Sch. 15 para. 5; R 35.
(3)	1971 c. 78 s. 54A(3); 1980 c. 65 Sch. 15 para. 5.
(4)	1971 c. 78 s. 54A(4); 1980 c. 65 Sch. 15 para. 5; 1985 c. 51 Sch. 2 para. 1(4).
7	1971 c. 78 s. 55(1)(part); 1980 c. 65 Sch. 15 para. 6(1).
8(1), (2)	1971 c. 78 s. 55(2); 1980 c. 65 Sch. 34, Pt X; R 36.
(3)	1971 c. 78 s. 55(2A); 1980 c. 65 Sch. 15 para. 6(2).

Provision	Derivation
(4) to (6)	1971 c. 78 s. 55(3).
(7)	1971 c. 78 s. 55(3A); 1980 c. 65 Sch. 15 para. 6(3).
9 (1)	1971 c. 78 s. 55(1)(part).
(2)	1971 c. 78 s. 55(4); 1986 c. 63 Sch. 11 para. 19.
(3)	1971 c. 78 s. 55(6); 1986 c. 63 Sch. 9 para. 2(1).
(4), (5)	1971 c. 78 s. 55(5); 1980 c. 43 s. 32(2); 1982 c. 48 s. 74(1).
10 (1)	1971 c. 78 s. 56(6) (part), Sch. 11 para. 1(1A) (part); 1986 c. 63 Sch. 9 para. 9.
(2)	1971 c. 78 Sch. 11 para. 1(1); 1986 c. 63 Sch. 9 para. 9.
(3)	1971 c. 78 Sch. 11 para. 1(1A); 1986 c. 63 Sch. 9 para. 9.
11 (1) to (5)	1971 c. 78 s. 27(1) (except (cc)), (2), (4), 29(3), Sch. 11 para. 2(1).
(6)	1971 c. 78 Sch. 11 para. 2(2); 1982 c. 48 ss. 38, 46.
(7)	1971 c. 78 s. 27(7), Sch. 11 para. 2(1).
12 (1)	1971 c. 78 Sch. 11 para. 4(1).
(2)	1971 c. 78 Sch. 11 para. 4(2).
(3)	1971 c. 78 Sch. 11 para. 4(3).
(4)	1971 c. 78 Sch. 11 para. 4(4).
(5)	1971 c. 78 Sch. 11 para. 4(5).
13 (1)	1971 c. 78 Sch. 11 para. 5(1), (3); 1985 c. 51 Sch. 2 para. 1(17).
(2)	1971 c. 78 Sch. 11 para. 5(1).
(3)	1971 c. 78 Sch. 11 para. 5(2); 1986 c. 63 Sch. 9 para. 10(1).
14 (1)	1971 c. 78 Sch. 11 para. 6(1); 1985 c. 51 Sch. 2 para. 1(17)(b).
(2)	1971 c. 78 Sch. 11 para. 6(2); 1985 c. 51 Sch. 2 para. 1(17)(b).
(3)	1971 c. 78 Sch. 11 para. 6(3); 1985 c. 51 Sch. 2 para. 1(17)(b).
(4)	1971 c. 78 Sch. 11 para. 6(5); 1985 c. 51 Sch. 2 para. 1(17)(b).
(5)	1971 c. 78 Sch. 11 para. 6(4), (6); 1985 c. 51 Sch. 2 para. 1(17)(b); 1986 c. 63 Sch. 9 para. 10.
(6)	1971 c. 78 Sch. 11 para. 6(3), (4); 1985 c. 51 Sch. 2 para. 1(17)(b); 1986 c. 63 Sch. 9 para. 10.
(7)	1971 c. 78 Sch. 11 para. 6(5); 1985 c. 51 Sch. 2 para. 1(17)(b).
(8)	1971 c. 78 Sch. 11 para. 6(7); 1985 c. 51 Sch. 2 para. 1(17)(b).
(9)	1971 c. 78 Sch. 11 para. 6(8); 1985 c. 51 Sch. 2 para. 1(17)(b).
15 (1)	1971 c. 78 Sch. 11 para. 7(1); 1986 c. 63 Sch. 9 para. 11(2).
(2)	1971 c. 78 Sch. 11 para. 7(1); 1985 c. 51 Sch. 2 para. 1(17)(c).
(3)	1971 c. 78 Sch. 11 para. 7(1A); 1986 c. 63 Sch. 9 para. 11(2).
(4)	1971 c. 78 Sch. 11 para. 7(1B); 1986 c. 63 Sch. 9 para. 11(3).
(5)	1971 c. 78 Sch. 11 para. 7(2).
(6)	1971 c. 78 Sch. 11 para. 7(3); 1986 c. 63 Sch. 9 para. 11(4).
16 (1)	1971 c. 78 s. 56(3)(part), (4); 1980 c. 65 Sch. 15 para. 9.
(2)	1971 c. 78 s. 56(3) (part); 1980 c. 65 Sch. 15 para. 8.
(3)	1971 c. 78 Sch. 11 para. 1(2).
17 (1)	1971 c. 78 s. 56(4A); 1980 c. 65 Sch. 15 para. 9.
(2)	1971 c. 78 s. 56(4B); 1986 c. 63 Sch. 9 para. 3(1).

Provision	Derivation
(3)	1971 c. 78 s. 56(5); 1980 c. 65 Sch. 15 para. 10.
18 (1)	1971 c. 78 s. 56A(1); 1980 c. 65 Sch. 15 para. 11.
(2)	1971 c. 78 s. 56A(2); 1980 c. 65 Sch. 15 para. 11.
(3)	1971 c. 78 s. 56A(5); 1980 c. 65 Sch. 15 para. 11.
19 (1)	1971 c. 78 s. 56B(1); 1986 c. 63 Sch. 9 para. 4.
(2)	1971 c. 78 s. 56B(2); 1986 c. 63 Sch. 9 para. 4.
(3)	1971 c. 78 s. 56B(2); 1986 c. 63 Sch. 9 para. 4.
(4)	1971 c. 78 s. 56B(3); 1986 c. 63 Sch. 9 para. 4.
20 (1)	1971 c. 78 s. 56B(2)(part), Sch. 11 para. 8(1); 1986 c. 63 Sch. 9 para. 3(2), para. 4.
(2), (3)	1971 c. 78 Sch. 11 para. 9; 1986 c. 63 Sch. 9 para. 3(3).
(4)	1971 c. 78 Sch. 11 para. 9(1) (part); 1986 c. 63 Sch. 9 para. 3(3); R 8(a).
21 (1)	1971 c. 78 Sch. 11 para. 8(1), 9; 1986 c. 63 Sch. 9 para. 3(2),(3).
(2)	1971 c. 78 Sch. 11 para. 8(1),9; 1986 c. 63 Sch. 9 para. 3(2),(3).
(3), (4)	1971 c. 78 Sch. 11 para. 8(2) (part).
(5), (6)	1971 c. 78 s. 56B(2)(part), Sch. 11 para. 2(part); 1986 c. 63 Sch. 9 para. 4.
(7)	1971 c. 78 Sch. 11 para. 2(2); 1982 c. 48 ss. 38, 46.
22 (1)	1971 c. 78 Sch. 11 para. 8(3).
(2)	1971 c. 78 Sch. 11 para. 8(4).
(3)	1971 c. 78 Sch. 11 para. 8(5).
(4)	1971 c. 78 Sch. 11 para. 8(6).
23 (1), (2)	1971 c. 78 Sch. 11 para. 10(1).
(3)	1971 c. 78 Sch. 11 para. 10(4).
24 (1)	1971 c. 78 Sch. 11 para. 10(2) (part).
(2) to (4)	1971 c. 78 Sch. 11 para. 10(3).
(5)	1971 c. 78 Sch. 11 para. 10(2) (part).
25 (1)	1971 c. 78 Sch. 11 para. 12(1), (6); 1980 c. 65 Sch. 15 para. 25.
(2)	1971 c. 78 Sch. 11 para. 12(2),(3),(4); 1980 c. 65 Sch. 34 Pt. X.
(3)	1971 c. 78 Sch. 11 para. 12(5).
(4)	1971 c. 78 Sch. 11 para. 12(2)(a).
(5)	1971 c. 78 Sch. 11 para. 12(2)(b).
26	1971 c. 78 Sch. 11 para. 11; 1974 c. 7 Sch. 6 para. 25(14).
27 (1)	1971 c. 78 s. 171(1).
(2)	1971 c. 78 s. 171(2).
(3)	1971 c. 78 s. 171(3).
(4)	1971 c. 78 s. 171(4).
(5)	1971 c. 78 s. 173(1) (part),(2).
28 (1),(2)	1971 c. 78 s. 172(1).
(3)	1971 c. 78 s. 172(3).
(4)	1971 c. 78 s. 172(2).



Provision	Derivation
29 (1)	1971 c. 78 s. 173(1),(3).
(2)	1971 c. 78 s. 173(3).
(3)	1971 c. 78 s. 173(4).
30 (1)	1972 c. 70 Sch. 16 para. 34(1),(2); R 37.
(2)	1972 c. 70 Sch. 16 para. 34(3).
(3)	1972 c. 70 Sch. 16 para. 52.
31 (1)	1971 c. 78 s. 178(1).
(2)	1971 c. 78 s. 178(2).
(3)	1971 c. 78 s. 178(3).
(4)	1971 c. 78 s. 179(1).
(5)	1971 c. 78 s. 179(2).
32 (1)	1971 c. 78 s. 190(1),(3),(5); 1972 c. 70 s. 179(3); 1975 c. 10 Sch. Pt. XII.
(2)	1971 c. 78 s. 190(1); 1975 c. 10 Sch. Pt. XII.
(3)	1971 c. 78 s. 190(3).
(4)	1971 c. 78 s. 190(2).
(5)	1971 c. 78 s. 190(3),drafting.
33 (1),(2)	1971 c. 78 Sch. 19 para. 1(1); 1986 c. 63 Sch. 11 para. 5(2)(a).
(3)	1971 c. 78 Sch. 19 para. 1(2).
(4)	1971 c. 78 Sch. 19 para. 1(3); 1986 c. 63 Sch. 11 para. 5(2)(b).
34 (1)	1971 c. 78, s. 182(1), Sch. 19 para. 1(3).
(2)	1971 c. 78 s. 182(2), Sch. 19 para. 1(3); 1972 c. 70 Sch. 16 paras. 37, 52.
(3),(4)	1971 c. 78 s. 182(3), Sch. 19 para. 1(3).
(5)	1971 c. 78 s. 182(4), Sch. 19 para. 1(3).
35 (1),(2)	1971 c. 78 Sch. 19 para. 2(1).
(3)	1971 c. 78 Sch. 19 para. 2(2).
(4)	1971 c. 78 Sch. 19 para. 2(3),(4).
(5)	1971 c. 78 Sch. 19 para. 2(5),(6).
(6)	1971 c. 78 Sch. 19 para. 2(7).
(7)	1971 c. 78 Sch. 19 para. 2(8).
36 (1)	1971 c. 78 Sch. 19 para. 3(1).
(2)	1971 c. 78 Sch. 19 para. 3(2).
(3)	1971 c. 78 Sch. 19 para. 3(3)(a).
(4)	1971 c. 78 Sch. 19 para. 3(1).
(5)	1971 c. 78 Sch. 19 para. 3(3)(b); 1986 c. 63 Sch. 11 para. 7(2).
(6)	1971 c. 78 Sch. 19 para. 3(3A); 1986 c. 63 Sch. 11 para. 7(2).
(7)	1971 c. 78 Sch. 19 para. 3(4); R 38.
(8)	1971 c. 78 Sch. 19 para. 3(5); R 39.
37	1971 c. 78 Sch. 19 para. 4.
38 (1)	1971 c. 78 s. 96(1),(2); 1981 c. 41 Sch. para. 9.
(2)	1971 c. 78 s. 96(1); 1981 c. 41 Sch. para. 9.
(3)	1971 c. 78 s. 96(3),(4); 1981 c. 41 Sch. para. 9.
(4)	1971 c. 78 s. 96(3); 1981 c. 41 Sch. para. 9.

Provision	Derivation
(5) to (7)	1971 c. 78 s. 96(5) to (7); 1981 c. 41 Sch. para. 9.
39 (1)	1971 c. 78 s. 97(1); 1981 c. 41 Sch. para. 9; 1984 c. 10 s. 4(2); 1986 c. 63 Sch. 9 para. 2(2).
(2)	1971 c. 78 s. 97(1),(2); 1981 c. 41 Sch. para. 9.
(3)	1971 c. 78 s. 97(9); 1981 c. 41 Sch. para. 9.
(4)	1971 c. 78 s. 97(3); 1981 c. 41 Sch. para. 9.
(5)	1971 c. 78 s. 97(8); 1981 c. 41 Sch. para. 9.
(6)	1971 c. 78 s. 110(2)(part).
(7)	1984 c. 10 s. 4(2).
40 (1)	1971 c. 78 ss. 88(5), 97(4); 1981 c. 41 Sch. paras. 1, 9.
(2)	1971 c. 78 s. 97(6); 1981 c. 41 Sch. para. 9.
(3)	1971 c. 78 s. 97(10); 1981 c. 41 Sch. para. 9.
41 (1)	1971 c. 78 s. 97A(1); 1981 c. 41 Sch. para. 9.
(2)	1971 c. 78 s. 97A(2); 1981 c. 41 Sch. para. 9.
(3)	1971 c. 78 s. 97(5); 1981 c. 41 Sch. para. 9.
(4)	1971 c. 78 s. 97(7); 1981 c. 41 Sch. para. 9.
(5)	1971 c. 78 s. 97A(3); 1981 c. 41 Sch. para. 9.
(6)	1971 c. 78 s. 97A(4); 1981 c. 41 Sch. para. 9.
(7)	1971 c. 78 s. 97A(5); 1981 c. 41 Sch. para. 9.
42 (1)	1971 c. 78 s. 99(1).
(2)	1971 c. 78 s. 99(2).
(3)	1971 c. 78 ss. 91(3),(4), 99(3); 1974 c. 7 Sch. 8.
(4)	1971 c. 78 ss. 91(3), 99(3).
(5)	1971 c. 78 s. 99(3).
(6)	1971 c. 78 s. 111.
(7)	1971 c. 78 s. 99(1).
43 (1)	1971 c. 78 s. 98(1); 1980 c. 43 s. 32(2),(9); 1982 c. 48 s. 74(1).
(2)	1971 c. 78 s. 98(2).
(3)	1971 c. 78 s. 98(3).
(4)	1971 c. 78 s. 98(4); 1980 c. 43 s. 32(2),(9); 1981 c. 41 Sch. para. 10; 1986 c. 63 Sch. 11 para. 13.
44(1)	1971 c. 78 s. 99A(1), (2); 1980 c. 65 Sch. 15 para. 17.
(2)	1971 c. 78 s. 99A(3); 1980 c. 65 Sch. 15 para. 17.
45	1971 c. 78 s. 99B; 1985 c. 51 Sch. 2 para. 1(7).
46(1)	1971 c. 78 ss. 100(1), 276(5A); 1981 c. 41 Sch. paras. 11, 24; 1985 c. 51 Sch. 17.
(2)	1971 c. 78 ss. 100(1), 276(5A); 1981 c. 41 Sch. paras. 11, 24; 1983 c. 47 Sch. 4 para. 17; 1985 c. 51 Sch. 17.
(3)	1971 c. 78 ss. 100(1), 276(5A); 1981 c. 41 Sch. para. 11; 1983 c. 47 Sch. 4 para. 17; 1985 c. 51 Sch. 17.
(4)	1971 c. 78 ss. 100(2), 276(5B); 1981 c. 41 Sch. paras. 11, 24; R 40.
(5)	1972 c. 70 Sch. 16 paras. 47(2), 52.
47(1)	1971 c. 78 s. 114(1) to (3); 1972 c. 70 Sch. 30; 1985 c. 51 Sch. 2 para. 1(9); 1988 c. 4 Sch. 3 para. 15.

Provision	Derivation
(2)	1971 c. 78 s. 114(5); 1981 c. 67 Sch. 4 para. 1, Sch. 6 Pt. I.
(3)	1971 c. 78 s. 114(3A), (4); 1983 c. 47 Sch. 4 para. 19; 1985 c. 51 Sch. 2 para. 1(9).
(4)	1971 c. 78 s. 114(6); 1981 c. 67 Sch. 4 para. 21(1),(2); R 41.
(5)	1971 c. 78 s. 114(6); 1981 c. 67 Sch. 4 para. 21(1),(2).
(6)	1971 c. 78 s. 114(7).
(7)	1971 c. 78 s. 114(1), (1A); 1972 c. 70 s. 179(3), Sch. 16 paras. 31, 52; 1988 c. 4 Sch. 3 para. 16.
48(1)	1971 c. 78 s. 115(1); 1985 c. 51 Sch. 2 para. 1(10)(a).
(2)	1971 c. 78 s. 115(2); 1985 c. 51 Sch. 2 para. 1(10)(b).
(3)	1971 c. 78 s. 115(3); 1985 c. 51 Sch. 2 para. 1(10)(b).
(4)	1971 c. 78 s. 115(3A); 1983 c. 47 Sch. 4 para. 20; 1985 c. 51 Sch. 2 para. 1(10)(c).
(5)	1971 c. 78 ss. 180(5), 190(4); R 12.
(6)	1971 c. 78 ss. 115(4), 180(6), 190(4); 1981 c. 67 Sch. 4 para. 21(3); 1985 c. 51 Sch. 2 para. 1(10)(d); R 12, R 41.
(7)	1971 c. 78 ss. 114(1), 115(5); 1972 c. 70 s. 179(3), Sch. 16 paras. 31, 52; 1988 c. 4 Sch. 3 para. 16.
49	1971 c. 78 s. 116; 1974 c. 32 s. 6.
50(1)	1971 c. 78 s. 117(1), (8); 1974 c. 7 Sch. 6 para. 25(8); 1985 c. 51 Sch. 2 para. 1(11)(a); 1988 c. 4 Sch. 3 para. 17; R 42.
(2)	1971 c. 78 s. 117(2).
(3)	1971 c. 78 s. 117(3); 1974 c. 7 Sch. 6 para. 25(8); 1981 c. 67 Sch. 4 para. 21(4)(b); R 41.
(4)	1971 c. 78 s. 117(4).
(5)	1971 c. 78 s. 117(4).
(6)	1971 c. 78 s. 117(5); 1974 c. 7 Sch. 6 para. 25(8), Sch. 8; 1981 c. 67 Sch. 4 para. 21(5)(b); 1985 c. 51 Sch. 2 para. 1(11)(b).
(7)	1971 c. 78 s. 117(5).
(8)	1971 c. 78 s. 117(6).
(9)	1971 c. 78 s. 117(7).
51(1)	1971 c. 78 s. 118(1).
(2)	1971 c. 78 s. 118(2); 1984 c. 12 Sch. 4 para. 53(3).
(3) to (5)	1971 c. 78 s. 118(3) to (5).
52(1)	1971 c. 78 s. 119(1); 1972 c. 70 s. 179(3), Sch. 16 paras. 31, 52, Sch. 30.
(2)	1971 c. 78 ss. 119(3), 132(4)(a),(c).
53(1)	1971 c. 78 s. 126(1); 1972 c. 70 Sch. 16 paras. 31, 52; 1985 c. 51 Sch. 2 para. 1(12); R 43.
(2)	1953 c. 49 s. 5(3); 1971 c. 78 s. 126(2).
(3)	1953 c. 49 s. 5(3A); 1983 c. 47 Sch. 4 para. 6(2).
54(1)	1971 c. 78 s. 101(1); 1986 c. 63 Sch. 9 para. 7.
(2)	1971 c. 78 s. 101(1),(5)(c); 1986 c. 63 Sch. 9 para. 7.
(3)	1971 c. 78 s. 101(1); 1986 c. 63 Sch. 9 para. 7.
(4)	1971 c. 78 s. 101(3); 1986 c. 63 Sch. 9 para. 7.
(5),(6)	1971 c. 78 s. 101(4); 1986 c. 63 Sch. 9 para. 7.

Provision	Derivation
(7)	1971 c. 78 s. 101(5)(a); 1986 c. 63 Sch. 9 para. 7.
55(1) to (5)	1971 c. 78 s. 101A(1) to (5); 1986 c. 63 Sch. 9 para. 7.
(6)	1971 c. 78 s. 111; R 40.
56	1971 c. 78 s. 56C(1); 1986 c. 63 Sch. 9 para. 6(1).
57(1) to (3)	1962 c. 36 s. 1(1).
(4),(5)	1962 c. 36 s. 1(2).
(6)	1962 c. 36 s. 1(3).
(7)	1962 c. 36 s. 1(4),(5); 1988 c. 4. Sch. 3 para. 4.
58(1)	1962 c. 36 s. 2(1).
(2),(3)	1962 c. 36 s. 2(2).
(4)	1962 c. 36 s. 2(2); R 44.
(5)	1962 c. 36 s. 2(3); R 45.
59(1)	1971 c. 78 s. 57(1)(part); 1982 c. 48 ss. 38, 46.
(2)	1971 c. 78 s. 57(1)(part).
(3)	1971 c. 78 s. 57(2).
(4)	1971 c. 78 s. 57(3); 1982 c. 48 ss. 38, 46; 1986 c. 63 Sch. 11 para. 13.
60(1) to (3)	1971 c. 78 ss. 56(1), 57(1), 58(2), 101(3), 114(3); 1979 c. 46 Sch. 4 para. 11; 1986 c. 63 Sch. 9 para. 7.
(4)	1971 c. 78 s. 56(1)(a).
(5)	1971 c. 78 s. 58AA(1); 1986 c. 63 Sch. 9 para. 5(1).
(6)	1971 c. 78 s. 58AA(2); 1986 c. 63 Sch. 9 para. 5(1).
(7)	1969 c. 22 s. 2; 1971 c. 78 Sch. 23 Pt II; 1978 c. 30 ss. 17(2)(a), 22(3).
61	1971 c. 78 ss. 56(1)(part), 57(1), 58(2), 101(3), 114(3); 1979 c. 46 Sch. 4 para. 11; 1986 c. 63 Sch. 9 para. 7.
62(1)	1971 c. 78 ss. 242(1)(d)(e),(2)(e).
(2)	1971 c. 78 s. 242(3)(h) to (k); 1982 c. 30 Sch. 6 para. 7(b).
(3)	1971 c. 78 s. 242(4).
63(1)	1971 c. 78 s. 245(1).
(2)	1971 c. 78 s. 245(2).
(3)	1971 c. 78 s. 245(1), (2); R 25(b).
(4)	1971 c. 78 s. 245(4).
(5)	1971 c. 78 s. 245(6).
(6)	1971 c. 78 s. 245(7); 1972 c. 70 Sch. 16 para. 46.
(7)	1971 c. 78 s. 245(3),(7); 1972 c. 70 Sch. 16 para. 46; R 26.
64	1971 c. 78 s. 243(1)(b); 1981 c. 41 Sch. para. 18(1).
65(1)	1971 c. 78 s. 246(1); 1981 c. 41 Sch. para. 19.
(2), (3)	1971 c. 78 s. 246(2); 1981 c. 54 Sch. 5.
(4)	1971 c. 78 s. 246(3).
(5)	1971 c. 78 s. 246(4); 1977 c. 38 Sch. 5 Pt. IV.
(6)	1971 c. 78 s. 246(5).
(7)	1971 c. 78 s. 246(6); 1985 c. 51 Sch. 2 para. 1(13).
66(1)	1971 c. 78 s. 56(3); 1980 c. 65 Sch. 15 para. 8.

Provision	Derivation
(2)	1971 c. 78 ss. 125(1),(3),(4); 1974 c. 7 Sch. 6 para. 25(10).
(3)	1980 c. 65 s. 119(3).
67(1)	1971 c. 78 s. 28(1); 1974 c. 7 Sch. 6 para. 25(1); 1974 c. 32 s. 4(1).
(2)	1971 c. 78 s. 28(2); 1972 c. 70 Sch. 16 para. 21(1); 1985 c. 51 Sch. 2 para. 1(2).
(3)	1971 c. 78 s. 28(2A); 1983 c. 47 Sch. 4 para. 15(2).
(4)	1971 c. 78 s. 28(2B); 1983 c. 47 Sch. 4 para. 15(2).
(5)	1971 c. 78 s. 28(2C); 1983 c. 47 Sch. 4 para. 15(2).
(6)	1971 c. 78 s. 28(3); 1983 c. 47 Sch. 4 para. 15(3).
(7)	1971 c. 78 s. 29(4).
(8)	1971 c. 78 s. 32(2) proviso.
68(1)	1971 c. 78 s. 58A(1); 1985 c. 51 Sch. 2 para. 1(6).
(2)	1971 c. 78 s. 58A(2); 1985 c. 51 Sch. 2 para. 1(6).
(3)	1971 c. 78 s. 58A(3); 1985 c. 51 Sch. 2 para. 1(6).
69(1)	1971 c. 78 s. 277(1); 1974 c. 32 s. 1(1).
(2)	1971 c. 78 s. 277(2); 1974 c. 32 s. 1(1); 1980 c. 65 Sch. 15 para. 26(1).
(3)	1971 c. 78 s. 277(4); 1974 c. 32 s. 1(1).
(4)	1971 c. 78 s. 277(9); 1974 c. 32 s. 1(1); 1975 c. 76 Sch. 1.
70(1)	1971 c. 78 s. 277(10)(a); 1974 c. 32 s. 1(1); 1985 c. 51 Sch. 2 para. 1(14)(b).
(2)	1971 c. 78 s. 277(5); 1974 c. 32 s. 1(1); 1985 c. 51 Sch. 2 para. 1(14)(a).
(3)	1971 c. 78 s. 277(4)(part); 1974 c. 32 s. 1(1).
(4)	1971 c. 78 s. 277(5); 1974 c. 32 s. 1(1); 1985 c. 51 Sch. 2 para. 1(14)(a).
(5)	1971 c. 78 s. 277(6), (6A); 1974 c. 32 s. 1(1); 1983 c. 47 Sch. 4 para. 21.
(6)	1971 c. 78 s. 277(6), (6A); 1974 c. 32 s. 1(1); 1983 c. 47 Sch. 4 para. 21.
(7)	1971 c. 78 s. 277(6); 1974 c. 32 s. 1(1).
(8)	1971 c. 78 s. 277(7); 1974 c. 32 s. 1(1).
71(1)	1971 c. 78 s. 277B(1); 1974 c. 32 s. 1(1); 1980 c. 65 Sch. 15 para. 26(3).
(2), (3)	1971 c. 78 s. 277B(2); 1974 c. 32 s. 1(1).
72	1971 c. 78 s. 277(8); 1974 c. 32 s. 1(1).
73(1)	1971 c. 78 ss. 28(1) to (3), 29(4); 1972 c. 70 Sch. 16 para. 21; 1974 c. 7 Sch. 6 para. 25(1); 1974 c. 32 s. 4(1); 1983 c. 47 Sch. 4 para. 15(2), (3); 1985 c. 51 Sch. 2 para. 1(2).
(2)	1971 c. 78 s. 32(2) proviso.
74(1)	1971 c. 78 s. 277A(1),(2); 1974 c. 32 s. 1(1).
(2)	1971 c. 78 s. 277A(7); 1974 c. 32 s. 1(1).
(3)	1971 c. 78 s. 277A(8); 1974 c. 32 s. 1(1); 1984 c. 10 s. 4(3); 1986 c. 63 Sch. 9 para. 8(2).
(4)	1971 c. 78 s. 277A(9); 1974 c. 32 s. 1(1).

Provision	Derivation
75(1)	1971 c. 78 ss. 58(2), 277A(1); 1974 c. 32 s. 1(1); 1979 c. 46 Sch. 4 para. 11.
(2)	1971 c. 78 s. 277A(4); 1974 c. 32 s. 1(1); 1980 c. 65 Sch. 15 para. 26(2)(b).
(3)	1971 c. 78 s. 277A(5); 1974 c. 32 s. 1(1).
(4)	1971 c. 78 s. 277A(6); 1974 c. 32 s. 1(1).
(5)	1971 c. 78 ss. 58(2), 277A(1); 1974 c. 32 s. 1(1).
(6)	1971 c. 78 s. 56(1).
(7)	1971 c. 78 s. 58AA(1); 1986 c. 63 Sch. 9 para. 5(1).
(8)	1971 c. 78 s. 58AA(2); 1986 c. 63 Sch. 9 para. 5(1).
(9)	1971 c. 78 s. 277A(8), (9); 1974 c. 32 s. 1(1); 1986 c. 63 Sch. 9 para. 8(2).
(10), (11)	1971 c. 78 s. 277A(10); 1974 c. 32 s. 1(1).
76(1)	1971 c. 78 s. 101(1)(b), (2); 1986 c. 63 Sch. 9 para. 7.
(2)	1971 c. 78 s. 101(5)(b); 1986 c. 63 Sch. 9 para. 7.
77(1)	1972 c. 42 s. 10(1AA); 1983 c. 47 Sch. 4 para. 22.
(2)	1972 c. 42 s. 10(1); 1980 c. 65 Sch. 15 para. 27; 1983 c. 47 Sch. 4 para. 22.
(3)	1972 c. 42 s. 10(1), (1AA); 1980 c. 65 Sch. 15 para. 27; 1983 c. 47 Sch. 4 para. 22.
(4)	1972 c. 42 s. 10(2); 1983 c. 47 Sch. 4 para. 22.
(5)	1972 c. 42 s. 10(3A); 1983 c. 47 Sch. 4 para. 22.
(6)	1972 c. 42 s. 10(3); 1983 c. 47 Sch. 4 para. 22.
(7)	1972 c. 42 s. 10(4); 1983 c. 47 Sch. 6.
(8)	1972 c. 42 s. 10(5).
(9)	1972 c. 42 s. 10(5).
78(1)	1972 c. 42 s. 10A(1); 1979 c. 46 s. 48(1); 1983 c. 47 Sch. 4 para. 23(2).
(2)	1972 c. 42 s. 10A(1), (4); 1979 c. 46 s. 48(1); 1983 c. 47 Sch. 4 para. 23(2).
(3)	1972 c. 42 s. 10A(2); 1979 c. 46 s. 48(1).
(4)	1972 c. 42 s. 10A(5); 1979 c. 46 s. 48(1); 1983 c. 47 Sch. 4 para. 23(2), (3).
(5)	1972 c. 42 s. 10A(7); 1979 c. 46 s. 48(1).
(6)	1972 c. 42 s. 10A(6); 1979 c. 46 s. 48(1).
(7)	1972 c. 42 s. 10A(3); 1979 c. 46 s. 48(1); 1983 c. 47 Sch. 4 para. 23(2), (3).
(8)	1972 c. 42 s. 10A(8); 1979 c. 46 s. 48(1); 1983 c. 47 Sch. 4 para. 23(2); R 45.
79(1)	1972 c. 42 s. 10B(3), (4); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(4), (5).
(2)	1972 c. 42 s. 10B(3); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(4).
(3)	1972 c. 42 s. 10B(11); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(11); 1988 c. 4 Sch. 3 para. 27.
80(1)	1972 c. 42 s. 10B(1A), (2); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(3).

Provision	Derivation
(2)	1972 c. 42 s. 10B(1),(2); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(2).
(3)	1972 c. 42 s. 10B(5); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(6).
(4)	1972 c. 42 s. 10B(6),(7); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(7).
(5)	1972 c. 42 s. 10B(8); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(8).
(6)	1972 c. 42 s. 10B(9); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(9).
(7)	1972 c. 42 s. 10B(10)(part); 1980 c. 65 Sch. 15 para. 28; 1983 c. 47 Sch. 4 para. 24(10); R 44.
81	Drafting
82(1)	1971 c. 78 s. 270(1), Sch. 21 Pt. V.
(2)	1971 c. 78 s. 271; 1974 c. 32 s. 7(1).
(3)	1971 c. 78 s. 271, Sch. 21 Pt. VI; 1974 c. 32 s. 7(1); 1986 c. 63 Sch. 9 para. 12; R 47, R 48.
(4)	1971 c. 78 ss. 270(2)(b), 271; 1974 c. 32 s. 7(1); 1981 c. 41 Sch. paras. 21, 22.
83(1)	1971 c. 78 s. 266(1)(part).
(2)	1971 c. 78 s. 266(2)(part); 1981 c. 41 Sch. para. 20.
(3)	1971 c. 78 s. 266(4); 1981 c. 41 Sch. para. 20.
(4)	1971 c. 78 s. 266(5).
(5)	1971 c. 78 s. 266(7).
(6)	1984 c. 10 s. 4(1).
(7), (8)	1971 c. 78 s. 266(7)
84(1)	1984 c. 10 s. 1(1)(a).
(2)	1984 c. 10 s. 1(2)
(3)	1984 c. 10 s. 1(3).
(4)	1984 c. 10 s. 1(5).
(5)	1984 c. 10 s. 1(7).
(6)	1984 c. 10 ss. 1(6), 6(1).
(7)	1984 c. 10 s. 6(1).
(8)	1984 c. 10 s. 4(1).
85	1971 c. 78 s. 273; 1987 c. 3 Sch. 1 para. 19; R 48.
86(1)	1971 c. 78 s. 274(1); 1981 c. 41 Sch. para. 23; 1981 c. 67 Sch. 4 para. 1.
(2)	1971 c. 78 s. 274(2).
(3)	1971 c. 78 s. 274(3).
(4)	1971 c. 78 s. 274(5).
87	1971 c. 78 s. 275(2).
88(1)	1971 c. 78 s. 280(2).
(2)	1971 c. 78 s. 280(1)(c),(3),(8),(10); 1981 c. 41 Sch. para. 25; 1985 c. 51 Sch. 2 para. 1(16).
(3)	1971 c. 78 s. 280(4),(10); 1985 c. 51 Sch. 2 para. 1(16); R 49.
(4)	1971 c. 78 s. 280(6).

Provision	Derivation
(5)	1971 c. 78 s. 280(7).
(6)	1971 c. 78 s. 280(9).
(7)	1971 c. 78 s. 281.
89(1)	1971 c. 78 ss. 282, 282A, 282B, 283, 284, 285; 1986 c. 63 Sch. 11 paras. 9, 10.
(2)	1971 c. 78 s. 285(1).
90(1)	1971 c. 78 s. 254; R 50.
(2)	1971 c. 78 s. 255(2).
(3)	1971 c. 78 s. 255(3).
(4)	1971 c. 78 s. 255(5).
(5)	1971 c. 78 s. 263(1); 1972 c. 70 Sch. 29 Pt. I para. 3(b).
(6)	1971 c. 78 s. 263(1); R 47, R 48.
(7)	1971 c. 78 s. 260(1)(b)(f), (2).
(8)	1971 c. 78 s. 262.
91(1)	1971 c. 78 s. 290(1).
(2)	1971 c. 78 s. 290(1); 1972 c. 70 Sch. 30; 1985 c. 51 Sch. 17; 1986 c. 63 Sch. 12 Pt III; 1988 c. 4 Sch. 3 para. 25.
(3)	1969 c. 48 Sch. 4 para. 93(1)(xxxiii); 1971 c. 78 s. 191A; 1982 c. 16 Sch. 2 para. 4; 1984 c. 12 Sch. 4 para. 53(5); 1986 c. 44 Sch. 7 para. 2; 1989 c. 15 Sch. 25 para. 1(1),(2); 1989 c. 29 Sch. 16 para. 1(1)(xxii).
(4)	1971 c. 78 s. 290(8).
(5)	1971 c. 78 s. 290(3).
(6)	1971 c. 78 ss. 101(6), 126(3), 280(10), Sch. 19 para. 1(4); 1988 c. 4 Sch. 3 paras. 14, 18, 23, 26.
(7)	1962 c. 36 s. 1.
92(1)	1971 c. 78 s. 269(1).
(2)	1971 c. 78 s. 269(1); 1984 c. 10 s. 6(3); R 47, R 48.
(3)	1971 c. 78 s. 269(3); 1972 c. 70 s. 179(3).
(4)	1971 c. 78 s. 269(4).
93(1)	1971 c. 78 s. 287(1).
(2),(3)	1971 c. 78 s. 287(2).
(4)	1971 c. 78 s. 287(4); 1986 c. 63 Sch. 9 para. 5(2).
(5)	1971 c. 78 s. 287(5)(b); 1986 c. 63 Sch. 9 para. 5(2).
(6)	1971 c. 78 s. 287(9); 1986 c. 63 Sch. 9 para. 5(2); R 51.
(7)	1971 c. 78 s. 287(3).
94	Drafting.
Sch. 1 para. 1	1971 c. 78 s. 54(10).
para. 2(1)	1971 c. 78 ss. 54(10).
(2)	1971 c. 78 s. 54(10); 1972 c. 70 s. 179(3), Sch. 30.
(3)	1971 c. 78 s. 54(12); 1983 c. 47 Sch. 4 para. 16(5).
(4)	1971 c. 78 s. 54(11); 1972 c. 70 Sch. 16 para. 28(2); 1983 c. 47 Sch. 4 para. 16(4); 1985 c. 51 Sch. 2 para. 1(3).
para. 3	1971 c. 78 s. 97A(4)(c)(ii), Sch. 11 paras. 8(2)(a), (3)(b); 1981 c. 41 Sch. para. 9.



Provision	Derivation
Sch. 2 para. 1	1971 c. 78 Sch. 11 para. 13.
para. 2	1971 c. 78 Sch. 11 para. 14.
para. 3	1971 c. 78 Sch. 11 para. 15.
para. 4	1971 c. 78 Sch. 11 para. 16.
Sch. 3 para. 1(1), (2)	1971 c. 78 Sch. 9 para. 1(1).
(3)	1971 c. 78 Sch. 9 para. 1(2).
(4)	1971 c. 78 Sch. 9 para. 1(3).
(5)	Drafting.
para. 2(1)	1971 c. 78 Sch. 9 para. 2(1)(d), (f); 1981 c. 41 Sch. para. 27.
(2)	1971 c. 78 Sch. 9 para. 2(2); 1981 c. 41 Sch. para. 27.
(3)	1971 c. 78 Sch. 9 para. 2(2)(a); 1981 c. 41 Sch. para. 27.
(4)	1971 c. 78 Sch. 9 para. 2(2)(b); 1981 c. 41 Sch. para. 27.
(5)	1971 c. 78 Sch. 9 para. 2(3).
(6)	1971 c. 78 Sch. 9 para. 2(3)(a).
(7)	1971 c. 78 Sch. 9 para. 2(3)(b).
(8)	1971 c. 78 Sch. 9 para. 2(4).
para. 3(1)	1971 c. 78 Sch. 9 para. 3(1).
(2)	1971 c. 78 Sch. 9 para. 3(2); R 52.
(3)	1971 c. 78 Sch. 9 para. 3(3).
(4)	1971 c. 78 Sch. 9 para. 3(4); R 52.
(5), (6)	1971 c. 78 Sch. 9 para. 3(5).
para. 4(1)	1971 c. 78 Sch. 9 para. 3A(1); 1986 c. 63 Sch. 11 para. 11.
(2)	1971 c. 78 Sch. 9 para. 3A(2); 1986 c. 63 Sch. 11 para. 11; R 52.
(3)	1971 c. 78 Sch. 9 para. 3A(3); 1986 c. 63 Sch. 11 para. 11.
(4)	1971 c. 78 Sch. 9 para. 3A(4); 1986 c. 63 Sch. 11 para. 11.
para. 5(1)	1971 c. 78 Sch. 9 para. 4(1).
(2)	1971 c. 78 Sch. 9 para. 4(2)(a).
(3)	1971 c. 78 Sch. 9 para. 4(2).
para. 6(1)	1971 c. 78 Sch. 9 para. 5(1).
(2)	1971 c. 78 Sch. 9 para. 5(1A); 1986 c. 63 Sch. 11 para. 12.
(3)	1971 c. 78 Sch. 9 para. 5(2).
(4)	1971 c. 78 Sch. 9 para. 5(3); 1986 c. 63 Sch. 11 para. 8(2).
(5)	1982 c. 21 s. 1(1).
(6)	1982 c. 21 s. 1(2), (3).
(7)	1982 c. 21 s. 1(4).
(8)	1971 c. 78 Sch. 9 para. 5(4); 1986 c. 63 Sch. 11 para. 9(2).
para. 7(1)	1971 c. 78 Sch. 9 para. 7(1).
(2)	1971 c. 78 Sch. 9 para. 7(2).
Sch. 4 para. 1	Drafting.
para. 2	1971 c. 78 s. 54(10); 1972 c. 70 s. 179(3), Sch. 16 paras. 25(1), 52; R 46.
para. 3(1)	1972 c. 70 Sch. 16 paras. 16(1), 52.

Provision	Derivation
(2)	1972 c. 70 Sch. 16 paras. 16(2), 52.
para. 4(1)	1971 c. 78 ss. 28(2), (2A), 54(11), (12), 277(10), 277A(11); 1972 c. 70 Sch. 16 paras. 21(1), 28; 1974 c. 32 s. 1(1); 1983 c. 47 Sch. 4 para. 15; 1985 c. 51 Sch. 2 para. 1(2), (3), (14), (15); 1986 c. 63 Sch. 9 para. 8(3).
(2)	1971 c. 78 s. 277(5); 1974 c. 32 s. 1(1); 1985 c. 51 Sch. 2 para. 1(14).
(3)	1972 c. 70 Sch. 16 para. 21(2).
para. 5	1971 c. 78 ss. 54(13), 54A(4), 273A, 280(10); 1984 c. 10 s. 6(5),(6); 1985 c. 51 Sch. 2 para. 1(16); 1988 c. 4 Sch. 3 paras. 7, 8, 12, 13, 23, 32.
para. 6	1972 c. 70 Sch. 16 para. 51(1); R 53.
para. 7(1)	1972 c. 70 Sch. 16 para. 58.
(2)	1972 c. 70 Sch. 16 para. 59; 1978 c. 30 s. 17(2)(a).
(3)	1972 c. 70 Sch. 16 para. 59(part).

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Weekly Law Reports (ICLR)/2015/Volume 1 /\*East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another - [2015] 1 WLR 45

[2015] 1 WLR 45

**\*East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another**

**Court of Appeal**

[2014] EWCA Civ 137

**2014 Jan 23; Feb 18**

**Maurice Kay, Sullivan, Rafferty LJJ**

*Planning -- Planning permission -- Development affecting listed building -- Application for planning permission for wind farm development close to Grade I listed buildings -- Requirement on decision-maker to "have special regard to the desirability of preserving" setting of listed buildings -- Inspector finding benefit of proposed development outweighing harm to buildings and granting permission -- Whether statutory duty requiring inspector to give considerable importance and weight to desirability of preserving setting of listed buildings when carrying out balancing exercise -- Whether applying with particular force where setting Grade I listed building affected -- Relevance of finding that harm to setting less than substantial -- Relevance of perception of any reasonable observer -- Whether inspector's decision flawed -- Whether rightly quashed -- Planning (Listed Buildings and Conservation Areas) Act 1990 (c 9), s 66(1)*

The local planning authority refused the developer's application for planning permission to build a four-turbine wind farm on land in a conservation area which contained a number of listed buildings including a collection of Grade I listed buildings and gardens. The developer appealed to the Secretary of State for Communities and Local Government, who appointed a planning inspector to determine the appeal. By section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990<sup>1</sup> the inspector was under a duty when considering whether to grant planning permission to "have special regard to the desirability of preserving" a listed building or its setting. Listed buildings came within the definition of "designated heritage assets" in the Government's Planning Policy Statement 5<sup>2</sup> and practice guide. The inspector concluded that while the wind farm would fall within and affect the settings of a wide range of heritage assets, on balance the significant benefits of the proposed development in terms of the renewable energy which it would produce outweighed the less than substantial harm which it would cause to the setting of such designated heritage assets and the wider landscape, and accordingly granted planning permission. One of the reasons given for the inspector's conclusion that the harm would be less than substantial was that "any reasonable observer" would know that the development was a modern addition to the landscape, separate from the planned historic landscape or building he was within or considering or interpreting. The judge granted an application by, among others, the local planning authority under section 288 of the Town and County Planning Act 1990 to quash the inspector's decision on the ground that it was flawed because, among other things, he had failed to give effect to the duty under section 66(1) by not giving sufficient weight to the desirability of preserving the setting of the listed buildings.

On the developer's appeal--

*Held*, dismissing the appeal, (1) that section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 required the decision-maker to give "the desirability of preserving the building or its setting" not merely careful consideration

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for the purpose of deciding whether there would be some harm, but considerable importance and weight when balancing the advantages of the proposed development against any such harm; that that general duty applied with particular force if harm would be caused to the setting of a Grade I listed building, which was a designated heritage asset of the highest significance; that, if the harm to the setting of the Grade I listed building would be less than substantial, the strength of the presumption against the grant of planning permission would be lessened but it would not be entirely removed; that, since the planning inspector had not given considerable importance and weight to the desirability of preserving the setting of the listed buildings when carrying out the balancing exercise, he had not given proper effect to the section 66(1) duty; and that, accordingly, the judge had been right to conclude that the inspector's decision was flawed on that basis (post, paras 22, 23, 24, 26, 28, 29, 45, 46, 47).

*The Bath Society v Secretary of State for the Environment* [1991] 1 WLR 1303, CA and *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141, HL(E) applied.

(2) That, to the extent that the application of the "reasonable observer" test had been the decisive factor in the inspector's reasoning for his conclusion that harm to the setting of the listed buildings was less than substantial, he had not properly applied the relevant Government policy guidance; that if it had not been the decisive factor he had not given adequate reasons for that conclusion; and that, accordingly, the judge had been right to conclude that the inspector's decision was flawed on that basis also (post, paras 43-44, 45, 46, 47).

Decision of Lang J [2013] EWHC 473 (Admin); [2013] 2 P & CR 94 affirmed.

The following cases are referred to in the judgment of Sullivan LJ:

*Bath Society, The v Secretary of State for the Environment* [1991] 1 WLR 1303; [1992] 1 All ER 28; 89 LGR 834, CA

*Heatherington (UK) Ltd v Secretary of State for the Environment* (1994) 69 P & CR 374

*R (Garner) v Elmbridge Borough Council* [2011] EWHC 86 (Admin); [2011] PTSR D25; [2011] EWCA Civ 891; [2012] PTSR D7, CA

*South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141; [1992] 2 WLR 204; [1992] 1 All ER 573; 90 LGR 201, HL(E)

*Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759; [1995] 2 All ER 636; 93 LGR 403, HL(E)

No additional cases were cited in argument.

**APPEAL** from Lang J

By an application under section 288 of the Town and Country Planning Act 1990 the applicants, East Northamptonshire District Council (the local planning authority), English Heritage and the Na-



tional Trust, applied for an order to quash the decision of a planning inspector appointed by the Secretary of State for Communities and Local Government, by a decision letter dated 12 March 2012, allowing an appeal by the developer, Barnwell Manor Wind Energy Ltd, against the decision of the local planning authority dated 24 January 2011 to refuse its application for planning permission for a four-turbine wind farm in a conservation area. The Secretary of State conceded that the inspector's decision should be quashed and took no further part in proceedings. By order dated 11 March 2013 following judgment on 8 March 2013 Lang J [2013] EWHC 473 (Admin); [2013] 2 P & CR 94 granted the application on the basis grounds that the inspector (1) had failed under the duty in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to and

[2015] 1 WLR 45 at 47

give considerable weight to the desirability of preserving the settings of listed buildings, including Lyveden New Bield; (2) had failed correctly to interpret and apply the policies in Planning Policy Statement 5; and (3) had failed to give adequate reasons for his decision.

By an appellant's notice dated 28 March 2013, the developer appealed, with permission of the judge, on the grounds that the judge (1) had erred in concluding that section 66(1) of the 1990 Act required the inspector to give considerable weight to the desirability of preserving the settings of the many listed buildings in the area; (2) had taken an over-rigid approach to the policy statement and practice guide which were not intended to be prescriptive; and (3) had erred in finding that the inspector had failed to give adequate reasons for his conclusion that the harm would in all cases be less than substantial.

The facts are stated in the judgment of Sullivan LJ.

*Gordon Nardell QC* and *Justine Thornton* (instructed by *Eversheds LLP*) for the developer.

*Morag Ellis QC* and *Robin Green* (instructed by *Sharpe Pritchard*) for the applicants.

The Secretary of State did not appear and was not represented.

The court took time for consideration.

18 February 2014. The following judgments were handed down.

## **SULLIVAN LJ**

### **Introduction**

**1** This is an appeal against the order dated 11 March 2013 of Lang J quashing the decision dated 12 March 2012 of a planning inspector appointed by the Secretary of State granting planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire. The background to the appeal is set out in Lang J's judgment [2013] 2 P & CR 94 of 8 March 2013.

### **Section 66**

**2** Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") imposes a "General duty as respects listed buildings in exercise of planning functions". Subsection (1) 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."

## Planning policy

**3** When the permission was granted the Government's planning policies on the conservation of the historic environment were contained in Planning Policy Statement 5 ("PPS5"). In PPS5 those parts of the historic environment that have significance because of their historic, archaeological, architectural

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or artistic interest are called heritage assets. Listed buildings, scheduled ancient monuments and registered parks and gardens are called "designated heritage assets". Guidance to help practitioners implement the policies in PPS5 was contained in "PPS5: planning for the historic environment: historic environment planning practice guide". For present purposes, policies HE9 and HE10 in PPS5 are of particular relevance. Policy HE9.1 advised that:

"There should be 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 ... Substantial harm to or loss of a Grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, including scheduled monuments ... Grade I and II\* listed buildings and Grade I and II\* registered parks and gardens ... should be wholly exceptional."

Policy HE9.4 advised that:

"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 (for example, that it helps to secure the optimum viable use of the heritage asset in the interests of its long term conservation) against the harm; 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."

Policy HE10.1 advised decision-makers that when considering applications for development that do not preserve those elements of the setting of a heritage asset, they:

"should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval."

## The inspector's decision

**4** The inspector concluded, at para 22, that the wind farm would fall within and affect the setting of a wide range of heritage assets. For the purposes of this appeal the parties' submissions largely focused on one of the most significant of those assets: a site owned by the National Trust, Lyveden New Bield. Lyveden New Bield is covered by a range of heritage designations: Grade I listed building, inclusion in the register of parks and gardens of special historic interest at Grade I, and scheduled ancient monument.

**5** It was common ground between the parties at the inquiry that the group of designated heritage assets at Lyveden New Bield was probably the finest surviving example of an Elizabethan garden, and that as a group the heritage asset at Lyveden New Bield had a cultural value of national, if not international significance. The inspector agreed, and found, at para 45: "this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude."

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6 The closest turbine in the wind farm site (following the deletion of one turbine) to Lyveden New Bield was around 1.3 km from the boundary of the registered park and 1.7 km from the New Bield itself. The inspector found, at para 46:

"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."

This conclusion led the inspector to identify the central question, at para 46:

"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."

7 The inspector answered that question in relation to Lyveden New Bield in paras 47-51 of his decision letter.

"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 one and two 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. [2015] 1 WLR 45 at 50

"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."

## 8 The inspector carried out "the balancing exercise" in paras 85-86 of his decision letter.

"85. The proposal 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 its temporary nature and reversibility. The proposal would also cause harm to the landscape but this would be ameliorated by a number of factors. Read in isolation though, all this means that the proposal would fail to accord with [conservation policies in the East Midlands regional plan ("EMRP")]. On the other hand, having regard to advice in PPS22, the benefits that would accrue from the wind farm in the 25-year period of its operation attract significant weight in favour of the proposal. The 10 MW that it could provide would contribute towards the 2020 regional target for renewable energy, as required by EMRP policy 40 and Appendix 5, and the wider UK national requirement.

"86. PPS5 policies HE9.4 and HE10.1 require the identified harm to the setting of designated heritage assets to be balanced against the benefits that the proposal would provide. Application of the development plan as a whole would also require that harm, and the harm to the landscape, to be weighed against the benefits. Key principle (i) of PPS22 says that 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. I take that as a clear expression 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. In my view, the significant benefits of the proposal in terms of the energy it would produce from a renewable source outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape."

## Lang J's judgment

9 Before Lang J the first, second and third applicants challenged the inspector's decision on three grounds. In summary, they submitted that the inspector had failed (1) to have special regard to the desirability of preserving the settings of listed buildings, including Lyveden New Bield; (2) correctly to interpret and apply the policies in PPS5; and (3) to give adequate reasons for his decision. The Secretary of State had conceded prior to the hearing that the inspector's decision should be quashed on ground (3), and took no part in the proceedings before Lang J and in this court.

[2015] 1 WLR 45 at 51

10 Lang J concluded [2013] 2 P & CR 94, para 72 that all three grounds of challenge were made out. In respect of ground (1) she concluded, at para 39:

"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 Ltd v Secretary of State for the Environment* [1995] 1 WLR 759, 780 F-H that the weight to be given to a material consideration was a question of planning judgment for the planning authority."

Applying that interpretation of section 66(1) she concluded, at para 46:

"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' (para 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."

**11** In respect of ground (2) Lang J concluded that the policy guidance in PPS5 and the practice guide required the inspector to assess the contribution that the setting made to the significance of the heritage assets, including Lyveden New Bield, and the effect of the proposed wind turbines on both the significance of the heritage asset *and* the ability to appreciate that significance. Having analysed the inspector's decision, she found, at paras 55-65, that the inspector's assessment had been too narrow. He had failed to assess the contribution that the setting of Lyveden New Bield made to its significance as a heritage asset and the extent to which the wind turbines would enhance or detract from that significance, and had wrongly limited his assessment to one factor: the ability of the public to understand the asset based on the ability of "the reasonable observer" to distinguish between the "modern addition" to the landscape and the "historic landscape."

**12** In respect of ground (3) Lang J found, at para 68, that the question whether Sir Thomas Tresham intended that the views from the garden and the garden lodge should be of significance was a controversial and important issue at the inquiry which the inspector should have resolved before proceeding to assess the level of harm. However, the inspector's reasoning on this issue was unclear. Having said in para 47 of his decision that it was "not altogether clear ... whether the designer considered views out of the garden to be of any significance", he had concluded, in para 50, that "the turbine array would not intrude on any obviously intended, planned view

*[2015] 1 WLR 45 at 52*

out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter)." It was not clear from paras 70-71 whether this was a conclusion that there were no planned views (as submitted by the second defendant) or a conclusion that there were such views but the turbine array would not intrude into them.

### **The grounds of appeal**

**13** On behalf of the second defendant, Mr Nardell QC challenged Lang J's conclusions in respect of all three grounds. At the forefront of his appeal was the submission that Lang J had erred in concluding that section 66(1) required the inspector, when carrying out the balancing exercise, to give "considerable weight" to the desirability of preserving the settings of the many listed buildings, including Lyveden New Bield. He submitted that section 66(1) did not require the decision-maker to give any particular weight to that factor. It required the decision-maker to ask the right question--would there be some harm to the setting of the listed building--and if the answer to that question was "yes"--to refuse planning permission unless that harm was outweighed by the advantages of the proposed development. When carrying out that balancing exercise the weight to be given to the harm to the setting of the listed building on the one hand and the advantages of the proposal on the other was entirely a matter of planning judgment for the decision-maker.

**14** Turning to the policy ground, he submitted that Lang J had erred by taking an over-rigid approach to PPS5 and the practice guide which were not intended to be prescriptive. Given the way in which those objecting to the proposed wind farm had put their case at the inquiry, the inspector had been entitled to focus on the extent to which the presence of the turbines in views to and from the listed buildings, including Lyveden New Bield, would affect the ability of the public to appreciate the heritage assets.

**15** In response to the reasons ground, he submitted that the question whether any significant view from the lodge or garden at Lyveden New Bield was planned or intended was a subsidiary, and not a "principal important controversial", issue. In any event, he submitted that on a natural reading of para 50 of the decision letter the inspector had simply found that the turbines would not intrude into such significant views, *if any*, as were obviously planned or intended, so it had been unnecessary for him to resolve the issue that he had left open in para 47 of the decision.

### **Discussion**

#### **Ground 1**

**16** What was Parliament's intention in imposing both the section 66 duty and the parallel duty under section 72(1) of the Listed Buildings Act to pay "special attention ... to the desirability of preserving or enhancing the character or appearance" of conservation areas? It is common ground that, despite the slight difference in wording, the nature of the duty is the same under both enactments. It is also common ground that "preserving" in both enactments means doing no harm: see *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141,150, per Lord Bridge of Harwich.

[2015] 1 WLR 45 at 53

**17** Was it Parliament's intention that the decision-maker should consider very carefully whether a proposed development would harm the setting of the listed building (or the character or appearance of the conservation area), and if the conclusion was that there would be some harm, then consider whether that harm was outweighed by the advantages of the proposal, giving that harm such weight as the decision-maker thought appropriate; or was it Parliament's intention that when deciding whether the harm to the setting of the listed building was outweighed by the advantages of the proposal, the decision-maker should give particular weight to the desirability of avoiding such harm?

**18** Lang J analysed the authorities in paras 34-39 of her judgment. In chronological order they are: *The Bath Society v Secretary of State for the Environment* [1991] 1 WLR 1303; the *South Lakeland* case (see para 16 above); *Heatherington (UK) Ltd v Secretary of State for the Environment* (1994) 69 P & CR 374; and *Tesco Stores Ltd v Secretary of State for the Environment* [1995] 1 WLR 759. The *Bath Society* case and the *South Lakeland* case were concerned with (what is now) the duty under section 72. The *Heatherington* case is the only case in which the section 66 duty was considered. The *Tesco* case was not a section 66 or section 72 case, it was concerned with the duty to have regard to "other material considerations" under section 70(2) of the Town and Country Planning Act 1990 ("the Planning Act").

**19** When summarising his conclusions in the *Bath Society* case [1991] 1 WLR 1303, 1318 F-H about the proper approach which should be adopted to an application for planning permission in a conservation area, Glidewell LJ distinguished between the general duty under (what is now) section 70(2) of the Planning Act, and the duty under (what is now) section 72(1) of the Listed Buildings Act. Within a conservation area the decision-maker has two statutory duties to perform, but the requirement in section 72(1) to pay "special attention" should be the first consideration for the decision-maker. Glidewell LJ continued, at p 1319:

"Since, however, 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 ... As I have said, the conclusion that the development will neither enhance nor preserve will be a consideration of considerable importance and weight. This does not necessarily mean that the application for permission must be refused, but it does in my view mean that the development should only be permitted if the decision-maker concludes that it carries some advantage or benefit which outweighs the failure to satisfy the section [72(1)] test and such detriment as may inevitably follow from that."

**20** In the *South Lakeland* case [1992] 2 AC 141 the issue was whether the concept of "preserving" in what is now section 72(1) meant "positively preserving" or merely doing no harm. The House of Lords concluded that the latter interpretation was correct, but in his speech (with which the other members of the House agreed) Lord Bridge described the statutory intention in these terms, at p 146 E-G:

"There is no dispute that the intention of section [72(1)] is that planning decisions in respect of development proposed to be carried out

[2015] 1 WLR 45 at 54

in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the development will be permitted or refused in the application of ordinary planning criteria."

**21** In the *Heatherington* case 69 P & CR 374, the principal issue was the interrelationship between the duty imposed by section 66(1) and the newly imposed duty under section 54A of the Planning Act (since repealed and replaced by the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004). However, Mr David Keene QC, at p 383, when referring to the section 66(1) duty, applied Glidewell LJ's dicta in the *Bath Society* case (see para 19 above), and said that the statutory objective "remains one to which considerable weight should be attached".

**22** Mr Nardell submitted, correctly, that the inspector's error in the *Bath Society* case [1991] 1 WLR 1303 was that he had failed to carry out the necessary balancing exercise. In the present case the inspector had expressly carried out the balancing exercise, and decided that the advantages of the proposed wind farm outweighed the less than substantial harm to the setting of the heritage assets. Mr Nardell submitted that there was nothing in Glidewell LJ's judgment which supported the proposition that the court could go behind the inspector's conclusion. I accept that (subject to grounds 2 and 3, see para 29 et seq below) the inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell LJ's judgment is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give "considerable importance and weight."

**23** That conclusion is reinforced by the passage in the speech of Lord Bridge in the *South Lakeland* case [1992] 2 AC 141 to which I have referred: see para 20 above. It is true, as Mr Nardell submits, that the ratio of that decision is that "preserve" means "do no harm". However, Lord Bridge's explanation of the statutory purpose is highly persuasive, and his observation that there will be a "strong presumption" against granting permission for development that would harm the character or appearance of a conservation area is consistent with Glidewell LJ's conclusion in the *Bath Society* case. There is a "strong presumption" against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight."

**24** While I would accept Mr Nardell's submission that the *Heatherington* case 69 P & CR 374 does not take the matter any further, it does not cast any doubt on the proposition that emerges from the *Bath Society* case [1991] 1 WLR 1303 and the *South Lakeland* case [1992] 2 AC 141: that Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise. [2015] 1 WLR 45 at 55

**25** In support of his submission that, provided he asked the right question--was the harm to the settings of the listed buildings outweighed by the advantages of the proposed development--the inspector was free to give what weight he chose to that harm, Mr Nardell relied on the statement in the speech of Lord Hoffmann in the *Tesco* case [1995] 1 WLR 759, 780 H that the weight to be given to a material consideration is entirely a matter for the local planning authority (or in this case, the inspector): "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."

**26** As a general proposition, the principle is not in doubt, but the case was concerned with the application of section 70(2) of the Planning Act. It was not a case under section 66(1) or 72(1) of the Listed Buildings Act. The proposition that decision-makers may be required by either statute or planning policy to give particular weight to certain material considerations was not disputed by Mr Nardell. There are many examples of

planning policies, both national and local, which require decision-makers when exercising their planning judgment to give particular weight to certain material considerations. No such policies were in issue in the *Tesco* case, but an example can be seen in this case. In para 16 of his decision letter the inspector referred to planning policy statement 22: Renewable Energy (PPS22) which says that the wider environmental and economic benefits of all proposals for renewable energy, whatever their scale, are material considerations which should be given "significant weight". In this case, the requirement to give "considerable importance and weight" to the policy objective of preserving the setting of listed buildings has been imposed by Parliament. Section 70(3) of the Planning Act provides that section 70(1), which confers the power to grant planning permission, has effect subject to, inter alia, sections 66 and 72 of the Listed Buildings Act. Section 70(2) of the Planning Act, as substituted by section 143(2) of the Localism Act 2011, requires the decision-maker to have regard to "material considerations" when granting planning permission, but Parliament has made the power to grant permission having regard to material considerations expressly subject to the section 66(1) duty.

**27** Mr Nardell also referred us to the decisions of Ouseley J and this court in *R (Garner) v Elmbridge Borough Council* [2011] EWHC 86 (Admin); [2011] PTSR D25; [2011] EWCA Civ 891; [2012] PTSR D7, but the issue in that case was whether the local planning authority had been entitled to conclude that no harm would be caused to the setting of another heritage asset of the highest significance, Hampton Court Palace. Such was the weight given to the desirability of preserving the setting of the palace that it was common ground that it would not be acceptable to grant planning

[2015] 1 WLR 45 at 56

permission for a redevelopment scheme which would have harmed the setting of the palace on the basis that such harm would be outweighed by some other planning advantage [2011] EWCA Civ 891 at [14]. Far from assisting Mr Nardell's case, the *Garner* case is an example of the practical application of the advice in policy HE9.1: that substantial harm to designated heritage assets of the highest significance should not merely be exceptional, but "wholly exceptional".

**28** It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE9.4 and HE10.1 should ignore the overarching statutory duty imposed by section 66(1), which properly understood (see the *Bath Society* case [1991] 1 WLR 1303, the *South Lakeland* case [1992] 2 AC 141 and the *Heatherington* case 69 P & CR 374) requires considerable weight to be given by decision-makers to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings. That general duty applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer have to be "wholly exceptional"), but it does not follow that the "strong presumption" against the grant of planning permission has been entirely removed.

**29** For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The second defendant's skeleton argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the inspector's planning judgment. In his oral submissions Mr Nardell contended that the inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the "significant weight" which the inspector expressly gave in para 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the



many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.

[2015] 1 WLR 45 at 57

## Ground 2

**30** Grounds 2 and 3 are interlinked. The applicants contend that the inspector either misapplied the relevant policy guidance, or if he correctly applied it, failed to give adequate reasons for his conclusion that the harm to the setting of the listed buildings, including Lyveden New Bield, would in all cases be less than substantial. I begin with the policy challenge in ground 2. Lang J set out the policy guidance relating to setting in PPS5 and the practice guide in [2013] 2 P & CR 94, paras 62-64. The contribution made by the setting of Lyveden New Bield to its significance as a heritage asset was undoubtedly a "principal controversial" issue at the inquiry. In his proof of evidence on behalf of the local planning authority Mr Mills, its senior conservation officer, said, at para 4.5.1:

"To make an assessment of the indirect impact of development or change on an asset it is first necessary to make a judgment about the contribution made by its setting."

Having carried out a detailed assessment of that contribution he concluded, at para 4.5.17:

"In summary, what Tresham created at the site was a designed experience that was intimately linked to the surrounding landscape. The presence of the four prospect mounts along with the raised terrace provide a clear indication of the relationship of the site with the surrounding landscape."

Only then did he assess the impact of the proposed development on the setting by way of "a discussion as to the impact of the proposal on how the site is accessed and experienced by visitors".

**31** In its written representations to the inquiry English Heritage said of the significance and setting of Lyveden New Bield:

"The aesthetic value of the Lyveden heritage assets partly derives from the extraordinary symbolism and quality of the New Bield and the theatrical design of the park and garden. However, it also derives from their visual association with each other and with their setting. The New Bield is a striking presence when viewed on the skyline from a distance. The New Bield and Lyveden park and garden are wonderfully complemented by their undeveloped setting of woodland, pasture and arable land."

In para 8.23, English Heritage said:

"The New Bield and Lyveden park and garden were designed to be prominent and admired in their rural setting, isolated from competing structures. The character and setting of the Lyveden heritage assets makes a crucial contribution to their significance individually and as a group."

**32** In its written representations to the inquiry the National Trust said, at para 11, that each arm of the cruciform New Bield "was intended to offer extensive views in *all directions* over the surrounding parks and the Tresham estate beyond". The National Trust's evidence, at para 12, was that "one if not *the principal designed view from* within the lodge was from the

[2015] 1 WLR 45 at 58

withdrawing rooms which linked to the important Great Chamber and Great Hall on the upper two levels of the west arm of the lodge". The Trust contended that this vista survived today, and was directly aligned with the proposed wind farm site. (Emphasis in both paragraphs as in the original.)

**33** In his proof of evidence, the planning witness for the Stop Barnwell Manor Wind Farm Group said that:

"the views of Lyveden New Bield from the east, south-east and south, both as an individual structure and as a group with its adjoining historic garden and listed cottage, are views of a very high order. The proposed turbines, by virtue of their monumental scale, modern mechanical appearance, and motion of the blades, would be wholly alien in this scene and would draw the eye away from the New Bield, destroying its dominating presence in the landscape."

**34** This evidence was disputed by the second defendant's conservation witness, and the second defendant rightly contends that a section 288 appeal is not an opportunity to re-argue the planning merits. I have set out these extracts from the objectors' evidence at the inquiry because they demonstrate that the objectors were contending that the undeveloped setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset; that the New Bield (the lodge) had been designed to be a striking and dominant presence when viewed in its rural setting; and that the lodge had been designed so as to afford extensive views in all directions over that rural setting. Did the inspector resolve these issues in his decision, and if so, how?

**35** I endorse Lang J's conclusion that the inspector did not assess the contribution made by the setting of Lyveden New Bield, by virtue of its being undeveloped, to the significance of Lyveden New Bield as a heritage asset. The inspector did not grapple with (or if he did consider it, gave no reasons for rejecting) the objectors' case that the setting of Lyveden New Bield was of crucial importance to its significance as a heritage asset because Lyveden New Bield was designed to have a dominating presence in the surrounding rural landscape, and to afford extensive views in all directions over that landscape; and that these qualities would be seriously harmed by the visual impact of a modern man-made feature of significant scale in that setting.

**36** The inspector's reason for concluding in para 51 of the decision that the presence of the wind turbine array, while clearly having a detrimental effect on the setting of Lyveden New Bield, would not reach the level of substantial harm, was that it would not be so distracting that it would not prevent, or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield or Lyveden Old Bield or their relationship to each other.

**37** That is, at best, only a partial answer to the objectors' case. As the practice guide makes clear, the ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset. The contribution that setting makes does not depend on there being an ability to access or experience the setting: see in particular paras 117 and 122 of the practice guide, cited in Lang J's judgment [2013] 2 P & CR 94, para 64.

*[2015] 1 WLR 45 at 59*

### Ground 3

**38** The inspector said that his conclusion in para 51 of the decision letter that 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 had been reached on the basis of his conclusions in para 50. In that paragraph, having said that the wind turbine 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 ... orchard, and various other places around the site, at a separation distance of between one and two kilometres",

the inspector gave three reasons which formed the basis of his conclusion in para 51.

**39** Those three reasons were: (a) 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. (b) The turbine array would not intrude on any obviously intended, planned view out of the garden or the garden lodge (which has windows all around its cruciform perimeter). (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.

**40** Taking those reasons in turn, reason (a) does not engage with the objectors' contention that the setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset because Lyveden New Bield was designed to be the dominant feature in the surrounding rural landscape. A finding that the "readily visible" turbine array would not dominate the outlook from the site puts the boot on the wrong foot. If this aspect of the objectors' case was not rejected (and there is no reasoned conclusion to that effect) the question was not whether the turbine array would dominate the outlook from Lyveden New Bield, but whether Lyveden New Bield would continue to be dominant within its rural setting.

**41** Mr Nardell's submission to this court was not that the inspector had found that there were no planned views (cf the submission recorded in para 70 of Lang J's judgment), but that the inspector had concluded that the turbine array would not intrude into obviously intended or planned views *if any*. That submission is difficult to understand given the inspector's conclusion that the turbine array would be "readily visible" from the garden lodge, from the prospect mounds, and from various other places around the site. Unless the inspector had concluded that there were *no* intended or planned views from the garden or the garden lodge, and he did not reach that conclusion (see para 47 of the decision letter), it is difficult to see how he could have reached the conclusion that the "readily visible" turbine array would not "intrude" on any obviously intended or planned views from the garden lodge. I am inclined to agree with Mr Nardell's alternative submission that the inspector's conclusion that while "readily visible" from the garden lodge, the turbine array would not "intrude" on any obviously intended or planned view from it, is best

[2015] 1 WLR 45 at 60

understood by reference to his third conclusion in para 50. While visible in views from the garden lodge the turbine array would not intrude upon, in the sense of doing substantial harm to, those views, for the reasons given in the last sentence of para 50.

**42** I confess that, notwithstanding Mr Nardell's assistance, I found some difficulty, not in understanding the final sentence of para 50--plainly any reasonable observer would know that the turbine array was a modern addition to the landscape and was separate from the planned historic landscape at Lyveden New Bield--but in understanding how it could rationally justify the conclusion that the detrimental effect of the turbine array on the setting of Lyveden New Bield would not reach the level of substantial harm. The inspector's application of the "reasonable observer" test was not confined to the effect of the turbine array on the setting of Lyveden New Bield. As Lang J pointed out in para 57 of her judgment, in other paragraphs of his decision letter the inspector emphasised one particular factor, namely the ability of members of the public to understand and distinguish between a modern wind turbine array and a heritage asset, as his reason for concluding either that the proposed wind turbines would have no impact on the settings of other heritage assets of national significance (paras 28-31); or a harmful impact that was "much less than substantial" on the setting of a Grade I listed church in a conservation area: para 36.

**43** Matters of planning judgment are, of course, for the inspector. No one would quarrel with his conclusion that "any reasonable observer" would understand the differing functions of a wind turbine and a church and a country house or a settlement (para 30); would not be confused about the origins or purpose of a settlement and a church and a wind turbine array (para 36); and would know that a wind turbine array was a modern addition to the landscape (para 50); but no matter how non-prescriptive the approach to the policy guidance in PPS5 and the practice guide, that guidance nowhere suggests that the question whether the

harm to the setting of a designated heritage asset is substantial can be answered simply by applying the "reasonable observer" test adopted by the inspector in this decision.

**44** If that test was to be the principal basis for deciding whether harm to the setting of a designated heritage asset was substantial, it is difficult to envisage any circumstances, other than those cases where the proposed turbine array would be in the immediate vicinity of the heritage asset, in which it could be said that any harm to the setting of a heritage asset would be substantial: the reasonable observer would always be able to understand the differing functions of the heritage asset and the turbine array, and would always know that the latter was a modern addition to the landscape. Indeed, applying the inspector's approach, the more obviously modern, large scale and functional the imposition on the landscape forming part of the setting of a heritage asset, the less harm there would be to that setting because the "reasonable observer" would be less likely to be confused about the origins and purpose of the new and the old. If the "reasonable observer" test was the decisive factor in the inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the practice guide. If it was not the decisive factor in the inspector's

*[2015] 1 WLR 45 at 61*

reasoning, then he did not give adequate reasons for his conclusion that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paras 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the inspector had given proper effect to the section 66(1) duty.

## **Conclusion**

**45** For the reasons set out above, which largely echo those given by Lang J in her judgment, I would dismiss this appeal.

## **RAFFERTY LJ**

**46** I agree.

## **MAURICE KAY LJ**

**47** I also agree.

*Appeal dismissed.*

Alison Sylvester, Barrister

<sup>1</sup> Planning (Listed Buildings and Conservation Areas) Act 1990, s 66(1): see post, para 2.

<sup>2</sup> Planning Policy Statement 5, policies HE9.1, HE9.4, HE10.1: see post, para 3.



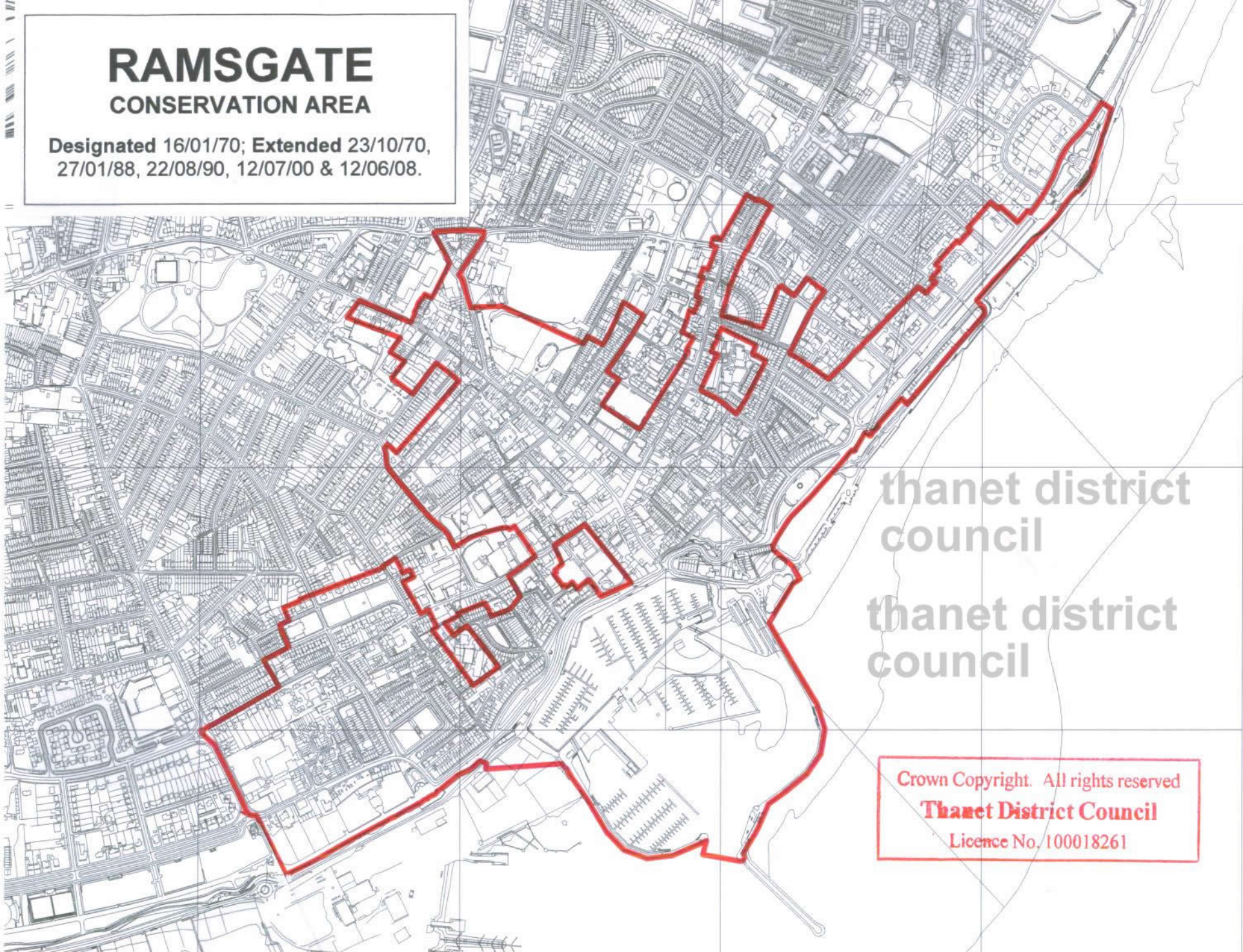
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# RAMSGATE

## CONSERVATION AREA

Designated 16/01/70; Extended 23/10/70,  
27/01/88, 22/08/90, 12/07/00 & 12/06/08.



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