

OUTLINE APPLICATION FOR DEVELOPMENT COMPRISING OF UP TO 250 RESIDENTIAL DWELLINGS INCLUDING PROVISION OF ASSOCIATED INFRASTRUCTURE, ANCILLARY FACILITIES, OPEN SPACE AND LANDSCAPING, DEMOLITION OF EXISTING BUILDINGS AND FORMATION OF NEW VEHICULAR ACCESS FROM HARP HILL. ALL MATTERS RESERVED EXCEPT FOR MEANS OF ACCESS TO SITE FROM HARP HILL.

STATEMENT OF COMMON GROUND ON HERITAGE MATTERS

between

ROBERT HITCHINS LIMITED

and

CHELTENHAM BOROUGH COUNCIL

**OAKLEY FARM, PRIORS ROAD, CHELTENHAM
GLOUCESTERSHIRE GL52 5AQ**

TOWN & COUNTRY PLANNING ACT 1990 (AS AMENDED)

STATUS: AGREED

DATE: 17.08.21

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1. INTRODUCTION

- 1.1 This Statement of Common Ground (SoCG) is prepared on behalf of Robert Hitchens Limited (the Appellant) following an appeal against the non-determination of the application by the Local Planning Authority (LPA), Cheltenham Borough Council, of an outline application for residential development at Oakley Farm, Priors Road, Cheltenham, Gloucestershire.
- 1.2 This Statement concerns matters relating to heritage.

2. AREAS OF AGREEMENT

- 2.1 The Heritage Legislation and Planning Policy Context (Appendix 1) is agreed.
- 2.2 The Heritage Assessment Methodology (Appendix 2) is agreed.
- 2.3 It is also agreed that:
- No harm will be caused to the heritage significance of any designated heritage assets beyond the Hewlett's Reservoir complex, including the Battledown Scheduled Monument, Bouncer's Lane Cemetery (Registered Park & Garden and the listed buildings and structures within it), and Conservation Areas in Cheltenham and Prestbury.
 - If there is harm to the heritage significance of the Grade II Listed assets within the Reservoir Complex (and it is not agreed that there would be to all of them), the development as proposed would result in less than substantial harm at most.
 - It is a reasonable assumption that the Pavilion was originally constructed as a valve house.
 - The Stone Lodge and No. 3 Reservoir are considered to be curtilage Listed
 - The remaining farm buildings on the appeal site are not of special interest, and are not regarded as non-designated heritage assets

3. AREAS OF DISAGREEMENT

3.1 The areas of disagreement between the parties are as follows:

- Whether the development could be implemented without any harm to the heritage significance of the Grade II Listed Gates, Gatepiers and Boundary Walls at Hewlett's Reservoir.
- Whether the development could be implemented without any harm to the heritage significance of the Stone Lodge at Hewlett's Reservoir.
- The degree of less than substantial harm to the heritage assets at the Reservoir complex including the Grade II listed Pavilion, Grade II listed Reservoir No.1 and Grade II Reservoir No.2.

4. SIGNATURES



Signed:

Name: Will Holborow

Position: Associate, Senior Heritage Consultant, Purcell

Date: 17th August

For and on behalf of Cheltenham Borough Council
as the Local Planning Authority

Signed:



Name: Gail Stoten

Position: Executive Director (Heritage), Pegasus Planning Group

Date: 17/08/21

For and on behalf of Robert Hitchins Limited
as the Appellant

APPENDIX 1: LEGISLATION AND PLANNING POLICY

National Planning Legislation, Policy and Guidance

Legislation

- 4.1 Legislation relating to the Historic Environment is primarily set out within the Planning (Listed Buildings and Conservation Areas) Act 1990 which provides statutory protection for Listed Buildings and Conservation Areas.
- 4.2 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that:
- "In considering whether to grant planning permission [or permission in principle] 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".*
- 4.3 In the 2014 Court of Appeal judgement in relation to the **Barnwell Manor** case¹, Sullivan LJ held 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."*
- 4.4 A judgement in the Court of Appeal² ('Mordue') has clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular paragraph 134 of the 2012 draft of the NPPF, the requirements of which are now given in paragraph 196 of the revised NPPF, see below), this is in keeping with the requirements of the 1990 Act.
- 4.5 With regards to development within Conservation Areas, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

¹ *East Northamptonshire District Council v SSCLG (2015) EWCA Civ 137, Core Document K24*

² *Jones v Mordue Anor (2015) EWCA Civ 1243 Core Document K30*

"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."

- 4.6 Unlike Section 66(1), Section 72(1) of the Act does not make reference to the setting of a Conservation Area. This makes it plain that it is the character and appearance of the designated Conservation Area that is the focus of special attention.

National Planning Policy Framework (July 2021)

- 4.7 The National Planning Policy Framework (NPPF) was published in July 2021 and replaces the majority of Planning Policy Guidance Notes (PPGs), Planning Policy Statements (PPSs) and the former NPPF (February 2019) which in turn superseded the former NPPFs (July 2018, March 2012).
- 4.8 **Paragraph 194** states that in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum, the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary. In this case, no issue has been raised with regards to the level of the information provided. There is sufficient information on which a decision can be reached.
- 4.9 **Paragraph 195** states that Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal.
- 4.10 **Paragraph 197** states that, in determining planning applications, local authorities should take account of the desirability of sustaining and enhancing the significance of heritage assets by putting them to viable uses consistent with their conservation; and the desirability of new development making a positive contribution to local character and distinctiveness.

- 4.11 **Paragraphs 199 and 200** state that when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. This paragraph also discusses how substantial harm to different assets should be considered. Substantial harm is not alleged in this case.
- 4.12 **Paragraph 201** deals with circumstances where a proposed development would lead to substantial harm to or total loss of significance of a designated heritage asset. Substantial harm is not alleged in this case.
- 4.13 **Paragraph 202** deals with circumstances where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, confirming that this harm should be weighed against public benefits of the proposal, including, where appropriate, securing its optimum viable use.
- 4.14 **Paragraph 203** deals with circumstances where a development proposal would affect the significance of a non-designated heritage asset, requiring a balanced judgement, having regard to the scale of any harm or loss and the significance of the heritage asset.

National Planning Guidance

- 4.15 The then Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government (MHCLG) launched the planning practice web-based resource in March 2014, accompanied by a ministerial statement which confirmed that a number of previous planning practice guidance documents were cancelled.
- 4.16 This also introduced the national Planning Practice Guidance (PPG) which comprised a full and consolidated review of planning practice guidance documents to be read alongside the NPPF.
- 4.17 The PPG has a section on the subject of '*Conserving and enhancing the historic environment*' which at paragraph 007 (ID: 18a-007-20190723 revision date

23.07.2019) confirms that consideration of 'significance' in decision taking and states:

"Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals."

4.18 Paragraph 013 (ID: 18a-013-20190723) considers what the setting of a heritage asset is and how it can be taken into account:

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

All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not. The setting of a heritage asset and the asset's curtilage may not have the same extent.

The extent and importance of setting is often expressed by reference to the visual relationship between the asset and the proposed development and associated visual/physical considerations. Although views of or from an asset will play an important part in the assessment of impacts on setting, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust, smell 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 of way or an ability to otherwise access or experience that setting. The contribution may vary over time.

When assessing any application which may affect the setting of a heritage asset, local planning authorities may need to consider the implications of cumulative change. They may also need to consider the fact that developments which materially detract from the asset's significance may

also damage its economic viability now, or in the future, thereby threatening its ongoing conservation.

- 4.19 In terms of assessment of substantial harm, paragraph 018 (ID: 18a-017-20190723 revision date 23.07.2019) confirms that whether a proposal causes substantial harm will be a judgement for the individual decision taker having regard to the individual circumstances and the policy set out within the NPPF. It goes on to state:

"In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

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

Local Planning Policy

- 4.20 Local planning policy relating to the Historic Environment is contained in the Joint Core Strategy of 2017, Policy SD8: Historic Environment.

POLICY SD8: HISTORIC ENVIRONMENT

1. The built, natural and cultural heritage of Gloucester City, Cheltenham town, Tewkesbury town, smaller historic settlements and the wider countryside will continue to be valued and promoted for their important contribution to local identity, quality of life and the economy;

2. Development should make a positive contribution to local character and distinctiveness, having regard to valued and distinctive elements of the historic environment;
3. Designated and undesignated heritage assets and their settings will be conserved and enhanced as appropriate to their significance, and for their important contribution to local character, distinctiveness and sense of place. Consideration will also be given to the contribution made by heritage assets to supporting sustainable communities and the local economy. Development should aim to sustain and enhance the significance of heritage assets and put them to viable uses consistent with their conservation whilst improving accessibility where appropriate;
4. Proposals that will secure the future conservation and maintenance of heritage assets and their settings that are at risk through neglect, decay or other threats will be encouraged. Proposals that will bring vacant or derelict heritage assets back into appropriate use will also be encouraged;
5. Development proposals at Strategic Allocations must have regard to the findings and recommendations of the JCS Historic Environment Assessment (or any subsequent revision) demonstrating that the potential impacts on heritage assets and appropriate mitigation measures have been addressed.

This policy contributes towards achieving Objectives 1, 2, 4 and 5'.

APPENDIX 2: METHODOLOGY

Key Documents

Assessment of Significance

4.21 In the NPPF, heritage significance is defined as:

“the value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site’s Statement of Outstanding Universal Value forms part of its significance .”

Assessing Value

4.22 *Planning Note 2*³ gives advice on the assessment of significance as part of the application process. It advises understanding the nature, extent, and level of significance of a heritage asset. In order to do this, *Planning Note 2* also advocates considering the four types of heritage value an asset may hold (page , as identified in *Conservation Principles*⁴; aesthetic, communal, historic and evidential. These essentially cover the heritage ‘interests’ given in the glossary of the NPPF and online Planning Practice Guidance, which comprise **archaeological, architectural, artistic and historic interest**. The most-recently issued guidance on assessing heritage significance, Historic England’s *Statements of Heritage Significance* (October 2019)⁵, advises using the terminology of the NPPF and Planning Practice Guidance, and so that terminology has been used.

4.23 *The online Planning Practice Guidance* provides further information on the heritage values it identifies⁶:

³ Historic England, 2015, *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*, Core Document H1

⁴ English Heritage 2008 *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment*, Core Document H3

⁵ Historic England 2019 *Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12*; Core Document H4

⁶ *Online Planning Practice Guidance on the Historic Environment, Paragraph: 006 Reference ID: 18a-006-20190723 C*

- **Archaeological interest** There will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point.
- **Architectural and artistic interest** These are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skills, like sculpture.
- **Historic Interest** An interest in past lives and events (including pre-historic). Heritage assets can illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity.

4.24 Significance results from a combination of any, some or all of the values described above.

4.25 Listed Buildings are designated for their special architectural and historic interest.

Setting and significance

4.26 As defined in the NPPF:

"Significance derives not only from a heritage asset's physical presence, but also from its setting." (NPPF Annex 2).

4.27 Setting is defined as:

"The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may contribute to the significance of an asset, may affect the ability to appreciate that significance or may be neutral." (Annex 2)

4.28 Setting is not, in itself a heritage asset. Rather, setting can contribute to or affect an appreciation of significance or be neutral with regards to heritage values. The importance of the setting is as a component of the significance of the heritage asset.

Assessing change through alteration to setting

- 4.29 How setting might contribute to these values has been assessed with reference to *GPA Note 3: The Setting of Heritage Assets*⁷, particularly the checklist given on page 11. *The Setting of Heritage Assets* advocates the clear articulation of 'what matters and why'. This approach is endorsed by Historic England's most recent guidance on Statements of Significance⁸.
- 4.30 In *The Setting of Heritage Assets*⁹, a stepped approach is recommended, of which:
- **Step 1** is to identify which heritage assets and their settings are affected.
 - **Step 2** is to 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'. Four primary considerations are listed, comprising: the asset's physical surrounds; the asset's intangible associations and patterns of use; the contribution made by noises and smells; and the ways views allow the significance of an asset to be appreciated. The guidance includes a (non-exhaustive) check-list of elements of the potential attributes of a setting that may help elucidate its contribution to significance, among other things: topography, aspect, other heritage assets, green space, formal design, functional relationships, and degree of change over time. It also lists points associated with the experience of the asset which might be considered, including: surrounding landscape/townscape character, views, intentional intervisibility, dominance, tranquillity, sense of enclosure, accessibility, rarity and cultural associations.
 - **Step 3** is to assess the effect of the proposed development, whether beneficial or harmful, on the significance or on the ability to appreciate it.
 - **Step 4** is 'Explore ways to maximise enhancement and avoid or minimise harm'.
 - **Step 5** is 'Make and document the decision and monitor outcomes'.
- 4.31 A Court of Appeal judgement¹⁰ has recently confirmed that whilst issues of visibility are important when assessing setting, other factors should also be considered, with

⁷ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets*, Core Document H2

⁸ *Historic England 2019 Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12*; Core Document H4

⁹ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets*, Core Document H2

¹⁰ *Catesby Estates Ltd v. Steer*, EWCA Civ 1697, Core Document K31

Lindblom LJ stating at paragraphs 25 and 26 of the judgement (referring to an earlier Court of Appeal judgement):

Paragraph 25 - But – again in the particular context of visual effects – I said that if “a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one’s experience of the listed building in its surrounding landscape or townscape” (paragraph 56).

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

Levels of significance

4.32 In accordance with the levels of significance articulated in the NPPF, four levels of significance are identified:

- **Designated heritage assets of the highest significance**, as identified in paragraph 194 of the NPPF comprising Grade I and II* Listed buildings; Grade I and II* Registered Parks and Gardens; Scheduled Monuments; Protected Wreck Sites and Registered Battlefields (and also including some Conservation Areas);
- **Designated heritage assets of less than the highest significance**, as identified in paragraph 194 of the NPPF, comprising Grade II Listed buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);

- **Non-designated heritage assets;**
- Sites, buildings or areas of **no heritage significance.**

Assessment of harm

4.33 In order to relate to key policies, the following levels of harm may potentially be identified:

- Substantial harm or total loss - It has been clarified in a High Court Judgement of 2013¹¹ that this would be harm that would 'have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced';
- Less than substantial harm - Harm of a lesser level than that defined above. The online Planning Practice Guide stipulates that the extent of the harm within this category should be clearly articulated¹²; and
- No harm (preservation) - The principle that preserving means doing no harm was clearly articulated by the House of Lords in 1992¹³, as well as a High Court Judgement of 2014¹⁴ which concluded that with regard to preserving the setting of a Listed building or preserving the character and appearance of a Conservation Area, '*preserving*' means doing '*no harm*'.

4.34 For an evaluation of any harm to significance through changes to setting, this assessment follows the methodology given in *The Setting of Heritage Assets*, described above. Fundamental to the methodology set out in this document is stating '*what matters and why*'. Of particular relevance is the checklist given on page 13 of *GPA Note 3: The Setting of Heritage Assets (Second Edition)*.

4.35 It should be noted that this document states that:

"setting is not itself a heritage asset, nor a heritage designation"

¹¹ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council, Core Document K32

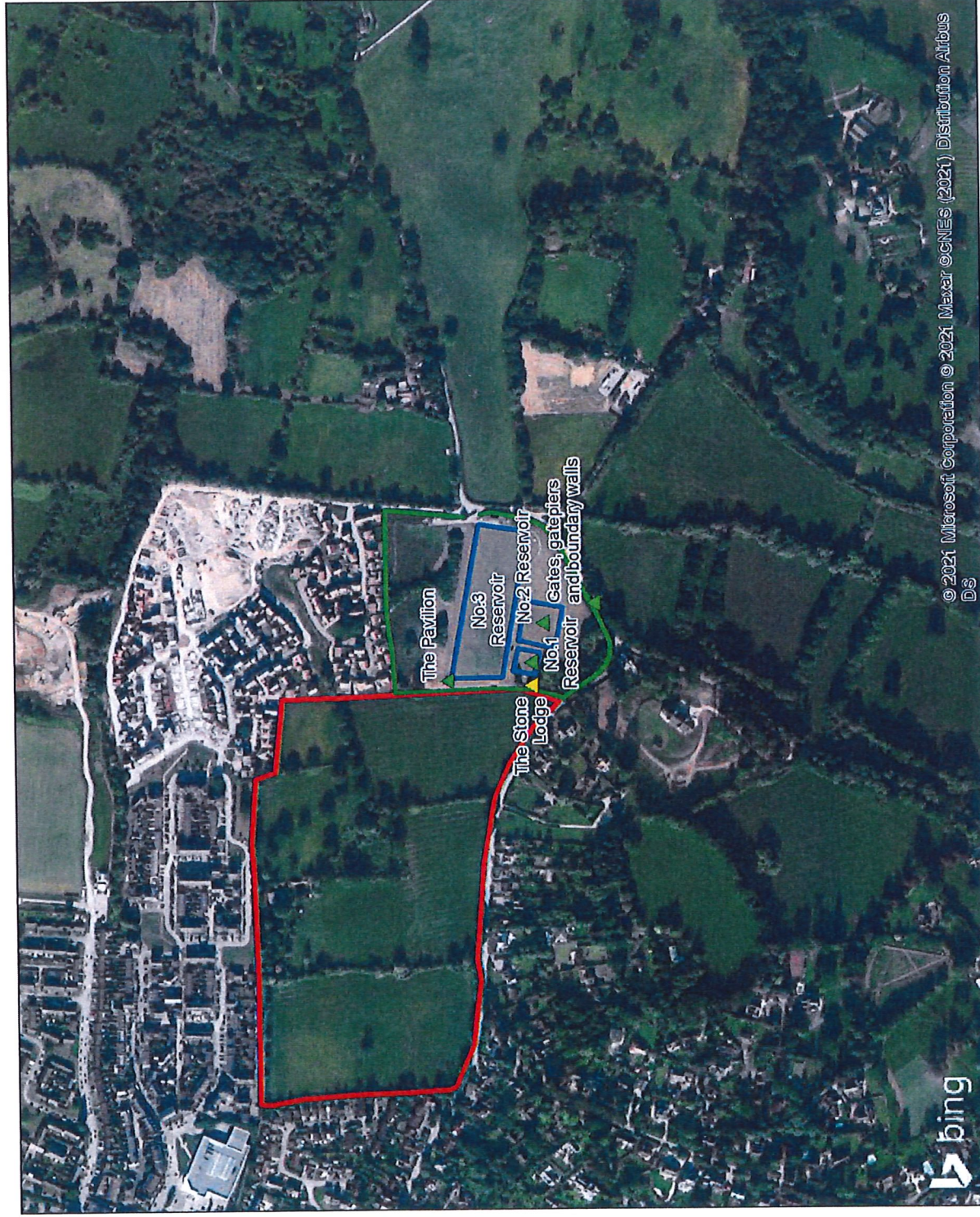
¹² Planning Practice Guidance on the Historic Environment, Paragraph 018, reference ID Reference ID: 18a-018-20190723

¹³ South Lakeland District Council Appellants v Secretary of State for the Environment and Another Respondents, [1992] 2 A.C. 14, Core Document K28

¹⁴ EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L'Isle, Core Document K33

- 4.36 Hence any impacts are described in terms of how they affect the significance of the heritage asset, and heritage values that contribute to this significance, through changes to setting.

- KEY**
- Site
 - ▲ Grade II Listed Building
 - ▲ Other Building
 - Grade II Listed Building
 - Reservoir



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Figure 1: Key Heritage Assets

Oakley Farm, Cheltenham

Client: Robert Hitchins Ltd

DRWG No:P21-0623_01 Sheet No: - REV:-

Drawn by: DS Approved by: -

Date: 10/08/2021

Pegasus

Scale: 1:7,500 @ A4 Group

