



## Proof of Evidence - Heritage

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Land to the north of  
Droitwich Spa,  
Droitwich, WR9 0NU

Dr Jonathan Edis

PINS REF: APP/H1840/W/22/3305934

LPA REF: W/22/00201/OUT

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# 1. Introduction

## Qualifications and experience

- 1.1** I am Dr Jonathan Edis. I hold the degrees of BA (Hons) in History, MA with distinction in Architectural Building Conservation, and PhD,<sup>1</sup> and I am a Member of the Chartered Institute for Archaeologists (MCIfA) and a Member of the Institute of Historic Building Conservation (IHBC). I have forty years of professional experience of the historic built environment in the public and private sectors, including six years with the Royal Commission on the Historical Monuments of England (RCHME),<sup>2</sup> ten years as a Conservation Officer with Bedfordshire County Council, and ten years as Head of Historic Buildings in CgMs Limited (now RPS) 2000-2010.
- 1.2** I am a founding director of HCUK Group, a company which since 2010 has provided independent heritage consultancy and other services. The company works in all sectors (e.g. housing, renewables, commercial, infrastructure etc) throughout the country.
- 1.3** I have advised on thousands of cases involving change to heritage assets and their settings. I have provided expert heritage evidence at more than 150 public inquiries and many other appeals involving heritage assets, and I have given expert evidence on heritage in both civil and criminal courts.

## Statement of truth

- 1.4** I understand my duty to the inquiry and have complied, and will continue to comply, with that duty. I confirm that this evidence identifies all facts which I regard as being relevant to the opinion that I have expressed and that the Inquiry's attention has been drawn to any matter which would affect the validity of that opinion. I believe that the facts stated within this proof are true and that the opinions expressed are correct. I do not have a conditional fee arrangement.

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<sup>1</sup> My MA dissertation and my PhD thesis both covered aspects of funerary monuments in English churches between c.1485 and c.1625, so I am familiar with buildings such as the Church of St Mary.

<sup>2</sup> During which I qualified as a Cartographic Draughtsman trained in the interpretation of vertical and oblique air photographs for the purposes of mapping cropmarks, soilmarks, earthworks, and other archaeological features.

## Background to this appeal (APP/H1840/W/22/3305934)

**1.5** Outline planning application W/22/00201/OUT, for the erection of up to 102 dwellings and associated works on land to the north of Droitwich Spa, Droitwich, WR9 0NU,<sup>3</sup> was validated by Wychavon District Council on 3 February 2022, and was subsequently appealed because it had not been determined within the prescribed period. A delegated report was published on 19 October 2022 setting out how the council would have determined the proposals if it had remained the determining authority. Three reasons were given, of which the second related to heritage, as follows:

*"The character of Hampton Lovett is of linear development of period properties set within large plots surrounded by farmed land. Hampton Lovett is not a nucleated village with a central core and therefore the character of the settlement is dependent upon the retention of the rural setting along the lane. It is considered that the proposal to develop the existing farmed land with dwellings would alter the character of Hampton Lovett causing harm to the setting of the Grade I listed church of St Mary and the period properties which form the settlement. This represents a less than substantial harm, which is not outweighed by public benefits. The significant and demonstrable harm identified provides a clear reason for refusing the development. The proposal fails to accord with policies SWDP6, 21 & 24 of the South Worcestershire Development Plan as well as guidance contained in Section 16 of National Planning Policy Framework. As such the proposal would not constitute sustainable development."*

**1.6** My evidence is provided on behalf of the Appellants, Beechcroft Land Limited and Henry Bouskell, c/o Trustees of the Wimbush Droitwich Settlement. It addresses the second reason for refusal of outline planning permission, quoted above.

## My involvement in this case

**1.7** HCUK Group was not involved in the preparation of outline planning application W/22/00201/OUT, or any other application relating to the appeal site. I was first approached on the matter by Ridge & Partners LLP on 15 June 2022, and I undertook a site visit on 17 July 2022. I later confirmed to my client that I would

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<sup>3</sup> The land is east of Kidderminster Road, in the historic parish of Hampton Lovett.

be able to provide expert heritage evidence in the event of an appeal, and that this was a case that involved “less than substantial harm” to the significance of the Church of St Mary, listed grade I, as a result of the change that would occur within its setting.<sup>4</sup> This conclusion differed from previous heritage advice that had been given, including evidence given on behalf of the appellant during an earlier appeal (APP/H1840/W/18/3218814, arising from the refusal of application 17/01631/OUT).

## Scope of my evidence

**1.8** My evidence is limited to the assessment of the significance of heritage assets, and the effect of change on the significance of those assets. It does not comment in detail on the planning balance, which is contained in the evidence of Mr Wakefield, other than to point out that the appeal proposal can deliver some heritage-related public benefits, which are explained further below. Consideration of effects on the setting of heritage assets inevitably has some connection with landscape and visual matters, so my evidence should be read in conjunction with that of Ms Joanna Ede, and with the Landscape Strategy prepared for the appeal proposal by Turley Design and in conjunction with the visually verified montage and photograph prepared by NPA Visuals (Appendix 18).

**1.9** The effect of the proposal on the grade I listed church and the grade II listed lych gate form the second main issue in this appeal, as agreed in the case management conference held on 31 October 2022. In my evidence I also mention the Pakington memorial, a grade II listed structure that stands in the churchyard between the church and the lych gate. While I agree that the main heritage issues are to do with the church and the lych gate, it seems to me that the Pakington memorial is part of their context, and that the change within its surroundings is something to which the Inspector must have special regard.

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<sup>4</sup> See subsequent chapters for the discussion of harm, within the context of paragraph 202 of the National Planning Policy Framework.



## 2. Relevant Planning Policy Framework

**2.1** The Inspector is required by section 66(1) of the Planning (Listed Building and Conservation Areas) Act 1990 to have special regard to the desirability of preserving listed buildings and their settings when exercising planning functions. The Inspector must give considerable importance and weight to the desirability of preserving the significance of the listed buildings, and there is a strong presumption against the grant of permission for development that would harm their heritage significance.<sup>5</sup> My understanding is that the council's case is that the significance of the Church of St Mary (listed grade I) and its lych gate (listed grade II) will be harmed by the change that the appeal proposal will bring about within the setting of those heritage assets. A third listed building, known as the Pakington Memorial (listed grade II) stands between the Church and the Lych Gate.

**2.2** For the purposes of this assessment, preservation equates to an absence of harm.<sup>6</sup> Harm is defined in paragraph 84 of Historic England's Conservation Principles as change which erodes the significance of a heritage asset.<sup>7</sup>

**2.3** The significance of a heritage asset is defined in the National Planning Policy Framework (NPPF) as being made up of four main constituents: architectural interest, historical interest, archaeological interest and artistic interest. The assessments of heritage significance and impact are normally made with primary reference to the four main elements of significance identified in the NPPF.

**2.4** The setting of a heritage asset can contribute to its significance. Setting is defined in the NPPF as follows:

*"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."*

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<sup>5</sup> Barnwell Manor Wind Energy Limited v East Northamptonshire District Council and others [2014] EWCA Civ 137.

<sup>6</sup> South Lakeland v SSE [1992] 2 AC 141.

<sup>7</sup> Conservation Principles, 2008, paragraph 84.

- 2.5** Historic England has published guidance on development affecting the setting of heritage assets in *The Setting of Heritage Assets* (second edition, December 2017), better known as GPA3. The guidance proposes a stepped approach to assessment in which Step 1 involves the identification of the relevant heritage assets, Step 2 establishes their significance, and Step 3 describes how the change within the setting of the assets might affect their significance. In cases where there is a resultant loss in significance, amounting to harm, Step 4 is engaged, requiring the discussion of mitigation.
- 2.6** The NPPF requires the impact on the significance of a designated heritage asset<sup>8</sup> to be considered in terms of either “substantial harm” or “less than substantial harm” as described within paragraphs 201 and 202 of that document. National Planning Practice Guidance (NPPG) makes it clear that substantial harm is a high test, and case law describes substantial harm in terms of an effect that would vitiate or drain away much of the significance of a heritage asset.<sup>9</sup> The Scale of Harm is tabulated at Appendix 1.
- 2.7** Paragraphs 201 and 202 of the NPPF refer to two different balancing exercises in which harm to significance, if any, is to be balanced with public benefit. Paragraph 18a-020-20190723 of National Planning Practice Guidance (NPPG) online makes it clear that some heritage-specific benefits can be public benefits. Paragraph 18a-018-20190723 of the same NPPG makes it clear that it is important to be explicit about the category of harm (that is, whether paragraph 201 or 202 of the NPPF applies, if at all), and the extent of harm, when dealing with decisions affecting designated heritage assets, as follows:
- “Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.”*
- 2.8** Paragraph 199 of the NPPF states that great weight should be given to the conservation of a designated heritage asset when considering applications that affect its significance, irrespective of how substantial or otherwise that harm might be.

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<sup>8</sup> The seven categories of designated heritage assets are World Heritage Sites, Scheduled Monuments, Listed Buildings, Protected Wreck Sites, Registered Park and Gardens, Registered Battlefield and Conservation Areas, designated under the relevant legislation.

<sup>9</sup> Bedford Borough Council v SCLG and Nuon UK Limited [2013] EWHC 4344 (Admin).

**2.9** Policies SWDP 6, 21 and 24 of the South Worcestershire Development Plan are relevant to this appeal.

**2.10** I note that in a recent Secretary of State decision,<sup>10</sup> wherein the Secretary of State endorsed<sup>11</sup> the following observations from Inspector Griffiths as regards the extent of harm where a development only affects the setting of a designated heritage asset:

*"12.49 The point was not made in these terms at the Inquiry but for my part I see little between the decision of the High Court in Bedford, the Court of Appeal in Bramshill, and the PPG. Essentially, substantial harm is set at a high bar, such that a good deal (or all) of the significance of a designated heritage asset would have to be removed for it to be reached. That means that the range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar.*

*12.50 In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see how an impact on its setting can advance a long way along the scale towards substantial harm to significance."*

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<sup>10</sup> Appeal Reference APP/H5390/V/21/3277137 (dated 4 July 2022)

<sup>11</sup> Paragraph 13 of the SoS' decision

## 3. Statement of Significance

### Introduction

**3.1** This chapter of my evidence establishes the significance of the relevant heritage assets in the terms set out in the NPPF and it comments on the contribution of setting to significance. The identification of the heritage assets equates in part to Step 1 of GPA3, and the assessment of significance equates to Step 2 of GPA3. Steps 2 and 3 of GPA3 are closely connected, so this chapter should be read in conjunction with Chapter 4 (Heritage Impact Assessment) and with the tabular methodology at Appendix 2.

### Historical development of the area

**3.2** A mid-19<sup>th</sup> century visitor to Hampton Lovett might have read the following account of the village on arrival, as set out in the *National Gazetteer of Great Britain and Ireland*, 1868:

*"HAMPTON LOVETT, a parish in the upper division of the hundred of Halfshire, county Worcester, 1½ mile N. of Droitwich, its post town. It is a small agricultural parish situated on the road from Droitwich to Kidderminster. The Birmingham and Worcester canal and the Birmingham and Gloucester railway pass within a few miles of the village. Hampton Court, the seat of the Pakington family, to whom the manor has belonged for several centuries, was destroyed during the civil war of Charles I. The tithes have been commuted for a rent-charge of £323 10s., including the tithes of the glebe. The living is a rectory<sup>[12]</sup> in the diocese of Worcester, value £300. The church, dedicated to St. Mary, is an ancient stone structure, with a tower containing three bells. Adjoining is the mortuary chapel of the Pakington family, where Dr. Hammond was buried in 1660. West Park, the principal residence, is the seat of the Right Hon. Sir John Pakington, Bart."*

**3.3** While the above description of the village in 1868 has a rather antiquarian character, much of it is still recognisable to the modern visitor to the Church of St Mary. The only practical way to get to the church is from the road from Droitwich

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<sup>12</sup> An asterisk at this point in the original text denoted that there was a parsonage and glebe belonging to the living.

to Kidderminster. The railway still passes just to the east of the church,<sup>13</sup> and the church itself is still an “ancient stone structure” clearly bound up with the history of the Pakington family, who are evident in memorials inside and outside the building.

**3.4** Nearly half a century after the description in the *National Gazetteer of Great Britain and Ireland*, Hampton Lovett was the subject of a more detailed antiquarian study by the Victoria County History. Published in 1913, the description and analysis of the church is detailed, so it appears in Appendix 4, with an associated phasing diagram in Appendix 5. The account enlarges on the manorial histories of the various manors in the parish, referring not only to the Pakingtons, but also to the Lovetts, Cornwalls and Blounts, and numerous of their relations who made up the local gentry in the medieval and post-medieval periods.

**3.5** Turning to the morphology of the area immediately around the parish church, the road called The Forest was laid out by the time of the O.S. map of 1885, together with six residential plots along the north side, and two on the southern corner by Kidderminster Road. The houses were smaller at that time than they are today, and they seem to have mostly (or all) been rebuilt or extended since the 19<sup>th</sup> century. As a road, The Forest takes its name from the field to the south, within which Doverdale Park and the appeal site are now situated, called The Forest on the tithe apportionment of 1839 (for the tithe map see Appendix 9). There is no evidence that the field was wooded in recent times. In the tithe apportionment it is described as being under pasture.<sup>14</sup>

**3.6** The history of Doverdale Park, on the site of the former Hampton Lovett Camp, is explained further in Appendix 7.

## Church of St Mary

**3.7** Listed grade I on 14 March 1969, the official description of the Church of St Mary is provided in Appendix 3.

**3.8** The church is self-evidently a building of outstanding architectural, archaeological, artistic and historic significance which has been at the heart of the parish

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<sup>13</sup> The railway is described on the O.S. map of 1885 as the Oxford, Worcester and Wolverhampton branch of the Great Western Railway.

<sup>14</sup> There is no suggestion, in the entry for Hampton Lovett in British History online (i.e. the VCH, 1913), that The Forest is a name that predates the 19<sup>th</sup> century, or that anything of historical note attaches to it.

community for at least nine centuries. It provides a physical link with a remote time in the past, and it continues to be of considerable communal value. Only by visiting the church will the Inspector be able to fully experience the significance of the building, but my Appendices and Figures (separately bound, see in particular Appendix 4, 5 and 10 to 14, and Figures 1 to 15) attempt to illustrate some of the chief characteristics mentioned in the NPPF, which I summarise here as follows:

Historic interest: Historic interest is bound up, to some degree, with the communal value of the church. I have already noted that the building is a direct link with the distant past, allowing us to reach out, metaphorically, to identifiable individuals who lived and worshipped here centuries ago. The church is a historical record in its own right. It may have been altered, adapted, extended, repurposed, reordered and restored on many occasions in the past 900 years, but it is the sum total of those events, and it is the distillation of activity at the spiritual heart of the parish throughout the centuries. In short, the church is of considerable historic and communal value.

Architectural interest: Two main architectural traditions are represented in the structural fabric of the church, the earlier of which is the Romanesque or Norman style, best seen in the now blocked north doorway of the nave (Figures 2 and 12). Exact dating is not possible, but the round shape of the arch, and the style of the external architrave, suggest an early 12<sup>th</sup> century date, perhaps c.1125. Later reworkings in the Gothic styles of the 14<sup>th</sup> to 16<sup>th</sup> centuries erased much of the Romanesque detail throughout the nave and chancel.<sup>15</sup> Pointed Gothic arches are most clearly seen in the large internal openings leading from the nave into the chancel, and from the nave and chancel into the north chapel. In some cases, there is tracery of the Decorated style, which prevailed in the 14<sup>th</sup> century. Later Gothic architecture of the Perpendicular style, typical of the late 15<sup>th</sup> and 16<sup>th</sup> centuries, can be seen in the windows in the south wall of the chancel. At all times, one has to be aware of the Gothic “survival” into the 17<sup>th</sup> century, and the Gothic “revival” of the 19<sup>th</sup> century, which can sometimes be misleading when considering the architectural development of churches.

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<sup>15</sup> Paragraph 25 of the previous appeal decision letter (APP/H1840/W/18/3218814) reads as though the chancel dates entirely to the 14<sup>th</sup> century, but the evidence in Appendices 4 and 5 suggests that its essential plan and form has earlier origins.

Artistic interest: A wide range of artistic and architectural themes can be seen in the fittings and fixtures associated with the church, mostly dating from the 18<sup>th</sup> and 19<sup>th</sup> centuries. Some of these, such as the Victorian pulpit, follow the Gothic traditions of the main building. A notable departure into the classical style can be seen in the monument to Sir John Pakington (d. 1727), now fixed to the west wall of the north chapel, which has Renaissance and Baroque characteristics. Within the east wall of the north chapel is a five-light window of Victorian date containing stained glass in a style evocative of the religious illustrations that one might see in a 15<sup>th</sup> or early 16<sup>th</sup> century illuminated manuscript. Although not physically fixed to the church, some of the 18<sup>th</sup> and 19<sup>th</sup> century monuments in the churchyard are also of intrinsic artistic interest, some of the older examples being rustic interpretations of the classical styles represented within the building.

Archaeological interest: The complex phasing of the church is illustrated in Appendix 5. The diagram in that appendix dates from c.1913, and the dating of the various phases will have been influenced, to a large degree, by the style of the openings in the walls, including the shapes of doors and windows, and details such as tracery and architraves. At the time the diagram was drawn, the restorations of 1858-1859 would have been barely more than 50 years old, and they would have been relatively unweathered, making it easier to visually distinguish between older and newer work than is the case today. Antiquarian interest in the phasing and dating of churches was far from being a new or unusual pursuit in 1913, but it is worth bearing in mind that the classification of styles of architecture had been in place for less than a century at that time; Thomas Rickman's ground-breaking book on the subject, *An Attempt to Discriminate the Styles of English Architecture from the Conquest to the Reformation*, was not published until 1817.

**3.9** Generally speaking, English parish churches have their towers at the west end of the nave, often with a large internal arch linking the two components of the building. The Church of St Mary is relatively unusual in having a tower attached to the south wall of the nave, doubling up as a porch. The reason for this is not immediately obvious; the two-stage tower itself, follows the normal form, shape and structure of most other church towers that have medieval origins.

**3.10** The church stood in an isolated position in the 19<sup>th</sup> century (Appendices 9 and 10), although it seems to have once been part of a medieval settlement that was later

depopulated or “deserted” (Figure 8).<sup>16</sup> In the 19<sup>th</sup> century its surroundings were further influenced on the east by the railway (1852) and on the west by the housing in The Forest (between 1839 and 1885) – see the map sequence in Appendices 9 to 14. The railway had the effect of separating the church and churchyard from Hampton Pool Brake, an event that is discussed in more detail below under the heading of the lych gate. In the mid-20<sup>th</sup> century, the field of pasture to the south of the church was influenced by a P.O.W. camp (Appendix 7) that was later replaced by what is now Doverdale Park; some contemporary structures seem to have been placed quite close to the church, even to the north of the public right of way, next to the churchyard (Appendix 7). These have since been demolished. Therefore, the setting of the church is not unaltered, and it has not been constant over the centuries. A once wholly rural setting has been significantly modified by transport infrastructure (the railway), by the response to national crisis (the former P.O.W. camp) and by the need for housing (in The Forest and in what is now Doverdale Park). It has adapted to the introduction of close and massive structures such as the railway, which probably seemed like a very intrusive change in 1852, but that gradually became a familiar part of the surroundings over the past 150 years. As a piece of industrial archaeology, the railway is not only acceptable to most modern eyes, but it has some heritage value as part of the story of the village, and of the church itself. It is an example of the way in which the surroundings of historic buildings can sometimes absorb significant change successfully.

## Lych Gate

- 3.11** The lych gate to the south of the church was listed grade II on 3 March 1969 (see illustrations in Figures 18 to 22). Its official description appears in Appendix 3. The gate was a memorial gift of the Reverend Joseph Amphlett, erected in 1885 to the design of the architect J. Smith of Droitwich,<sup>17</sup> and built by Messrs Tolley of Salwarpe (Figure 6).
- 3.12** The word *lych* has survived from the Old English word for corpse, the medieval purpose of a lych gate being to provide overnight shelter for a body before burial.

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<sup>16</sup> Archaeological Desk Based Assessment, CgMs Limited, November 2014, Appendix 1.

<sup>17</sup> John Smith was the architect of the Methodist chapel in Droitwich in 1859, and he superintended the building of the Church of St Nicholas, Ombersley Road, Droitwich, in 1869. He seems to have specialised in ecclesiastical buildings.



As a general rule, lych gates were less frequently used or needed after the religious changes of the 16<sup>th</sup> century, and many original examples fell into disrepair, and were lost. However, the Gothic revival of the 19<sup>th</sup> century saw a resurgence in the restoration, reconstruction and provision of lych gates, simply to mark the entrance to a churchyard or cemetery. This second wave of Victorian gates rarely, if ever, acted as shelters for corpses, unless perhaps associated with mortuary chapels. There was a further ripple of activity c.1920, when more lych gates were erected as war memorials. A wide variety of shapes, sizes and roof forms were employed, but they were usually timber framed and they often incorporated Domestic Revival features evoking late medieval and Tudor themes.

**3.13** In the case of the lych gate at Hampton Lovett, the architect and builder worked together to create a design that was loosely of 16<sup>th</sup> century style and appearance – at least in the eyes of the late Victorian observer (Figures 18 to 22). No doubt they were influenced by the Reverend Joseph Amphlett himself, who would probably have had strong views on the propriety of traditional architecture with a Gothic theme. Amphlett had taken in BA and MA degrees in 1823 and 1826, when at Trinity College, Oxford,<sup>18</sup> so he was a near-contemporary of John Henry Newman (1801-1890), and he must surely have been aware of the Oxford Movement, which was ideologically linked to Roman Catholicism, and, by inference, to the architecture of the medieval period. Whatever Amphlett’s own private views on the subject, he had been rector of the Church of St Mary since 1834, and he would have been present during the major restoration in 1858-1859. He had also lived in the parish during the arrival of the railway in 1852, which separated the church from Hampton Pool Brake, and which transformed the boundaries of the churchyard and the immediate surroundings of the church itself. The new houses in The Forest were further innovations that took place under Amphlett’s rectorship. In effect, his lych gate set the seal on half a century of rapid change, providing a new and quite prominent entrance feature on the front boundary of the churchyard.<sup>19</sup>

**3.14** We are so accustomed to seeing lych gates in the context of traditional churches and cemeteries that we can sometimes take them for granted as part and parcel of the surroundings. They can seem to have sprung up organically. The Hampton

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<sup>18</sup> Crockford’s Clerical Directory, 1874, page 14.

<sup>19</sup> The changes that took place to the boundaries of the churchyard in the second half of the 19<sup>th</sup> century, some of them involving local changes in ground level, are noted in the captions relating to Figures 8, 13 and 17.

Lovett example is quite assertive in its relationship with the church, as can be seen in Figures 19 and 20. It makes a clear statement about what is inside the churchyard, and what is outside.<sup>20</sup> Geometrically, it sets up an axis with the south door of the church (Figure 5), but the top-heavy roof of the lych gate dominates the view in both directions, whether looking north or south (Figure 21). For a visually permeable structure, it is in fact rather noticeable. That is not to say that it gets in the way of the church, in a negative sense, but it certainly has an effect on its surroundings, and its boundaries. If it did not exist, and if someone wanted to put it up as a memorial in 2022, I think it likely that strong opinions would be expressed about its appropriateness; this, in itself, is a reminder that not all change is harmful.

**3.15** I have said that the lych gate is assertive in its relationship with the church, and this is particularly the case when seen from outside the churchyard, where it can be the focus of attention (Figures 18 to 20). It has a strong visual presence here, and it exercises control over the approach towards the church, whether one arrives from the west (from The Forest) or from the east (from the public right of way). When seen from within the churchyard, the setting tends to be more intimate and enclosed, and the lych gate can blend into its surroundings, from some positions and angles (Figure 14). On leaving the churchyard, one is aware of the gate itself, but the view outward is not special, in itself (Figure 21).

**3.16** As a general observation, I would say that the churchyard is the part of the surroundings of the lych gate that sets the key note. The lych gate exists because of the churchyard. It opens into the churchyard. It defines an important edge of the churchyard, giving access to the south door of the church itself. The public road and public right of way on the south side of the church make a contribution to the setting and significance of the lych gate, by providing an enclosed and fenced space where people arrive at the building. The field to the south is more remote. It is less directly connected to the lych gate, visually, historically, and contextually.<sup>21</sup>

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<sup>20</sup> A notable exception to this is the Partington/Doverdale burial ground (Figures 15 and 16) which seems to be outside the western boundary of the walled churchyard itself. The lych gate exercises less authority here.

<sup>21</sup> Paragraph 35 of Inspector Hill's appeal decision letter (APP/H1840/W/18/3218814) also confirms that the lych gate is more closely associated with the church and churchyard, than it is with the pasture to the south.

## Pakington memorial

- 3.17** The Pakington memorial of c.1841, which stands on the east side of the path between the church and the lych gate, was listed grade II on 26 June 1985 (Figure 26). The official description appears in Appendix 3.
- 3.18** The memorial is in the tradition of medieval churchyard crosses, which is described in *A Dictionary of the Church of England* dated 1895<sup>22</sup> as follows:
- "It seems to have been the custom to erect a tall cross in every churchyard. The Emperor Justinian made a law (probably legalising an existing custom), "that none shall presume to erect a church until the bishop of the diocese hath first been acquainted therewith, and shall come and lift up his hands to heaven, and consecrate the place to God by prayer, and erect the symbol of our salvation, the venerable and truly precious rood"...it would seem that every churchyard had its churchyard cross down to the Reformation...An Irish canon of the eighth century...directs that a cross shall be set up wherever there is consecrated ground to mark the limits as well as the sanctity of the place."*
- 3.19** The account of 1895, given above, may or may not be historically accurate, but it nevertheless represents a 19<sup>th</sup> century view of the traditional importance of churchyard crosses. The example at Hampton Lovett breaks from the tradition to the extent that it seems to be a memorial to an individual family or person, rather than a general affirmation of the sanctity of the place, but it takes on the recognisable form of the churchyard cross nevertheless. It contrasts with the rather more humble gravestones that line the rest of the path between the church and the lych gate (Figure 27), adding a Gothic revival dimension which would probably have met with the approval the Reverend Joseph Amphlett.
- 3.20** There is obviously a shared grouping and setting between the Pakington memorial, the Church of St Mary, the lych gate, and the various other gravestones and memorials in the vicinity.

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<sup>22</sup> Edited by Edward Lewes Cutts.

## Summary of significance

**3.21** The church is a building of outstanding heritage significance that has been at the heart of the parish community for at least 900 years. It has been considerably altered and extended since that time, but it still provides us with a tangible connection with the past. The setting of the church, too, has been greatly altered over the centuries, notably during the past 150 years. Nevertheless, the significance of the church has survived even large interventions, such as the railway, which sliced through the parish in 1852. The boundaries of the churchyard, and the lych gate of 1885, have become structural components of an important group with a shared setting. All the surrounding spaces and structures make contributions to our understanding of the evolution of the place, and its heritage significance, and its enduring role within the community.

## 4. Heritage Impact Assessment

### Introduction

- 4.1** This chapter of my evidence describes how the proposed development will affect the setting and significance of the heritage assets identified in the preceding chapter. It equates in part to Step 3 of GPA3. Steps 2 and 3 of GPA3 are closely connected, so this chapter should be read in conjunction with Chapter 3 (Statement of Significance) and with the tabular methodology at Appendix 2.

### The proposed development

- 4.2** The proposed development is an outline application for up to 102 dwellings on land south of Forest Drive, and west of the railway.

### Effect on the Church of St Mary

- 4.3** The proposed development will alter the setting of the Church of St Mary by changing some of the pasture south of the church into to housing. Insofar as the church still has a specifically “rural” setting, it is relevant that the rural character has already been modified - a point I made in the assessment of the setting and significance of the church in Chapter 3. Even if one considers the railway to be a “not uncharacteristic” feature of open countryside,<sup>23</sup> it is hardly rural in its nature. It would have seemed un-rural when it appeared in 1852. Therefore, when the delegated report for the present appeal refers to the rural setting of the church and lych gate, it is important to bear in mind that we are not dealing with an Arcadian landscape. In my opinion, the effect of the appeal proposal on the setting of the church centres on two main issues:

- i. What the northern edge of the housing will look like, when seen looking outward from the immediate surroundings of the church - that is to say, from the churchyard, or just outside the churchyard, as seen in my Figures

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<sup>23</sup> See paragraph 20 of the previous appeal decision letter (APP/H1840/W/18/3218814).

21 and 25. Viewpoint 1 ("V01") in my Appendix 18 illustrates the predicted change in view when seen from within the churchyard.

- ii. How much of the visual setting (in effect, the visual envelope) of the church will be preserved, when looking towards the building. Viewpoint 2 ("V02") in my Appendix 18 illustrates the view of the church that would remain, if an observer stood at the northern edge of the appeal development.

#### 4.4

Starting with the northern edge of the development when seen from the surroundings of the church, it is relevant that Doverdale Park forms part of the existing view. This was the subject of paragraph 20 of the previous appeal decision (APP/H1840/W/18/3218814), in which Inspector Hill said this:

*"Whilst the mobile home park creates a different built form, and is part of the immediate area, the mobile homes are physically low structures. The housing proposed might screen those mobile homes, which detract from the agricultural pastureland, from some directions. However, an estate of modern suburban dwellings would appear even more uncharacteristic, being at odds with those mobile homes, the agricultural land, the dispersed dwellings and the linear housing along The Forest and other wayside dwellings."*

#### 4.5

I note that paragraph 20, part of which is quoted above, was written in the context of character and appearance, rather than listed buildings. There seems to be no suggestion that the effect of housing on the outward view from the churchyard would be harmful, in itself. Even though Inspector Hill said that Doverdale Park detracted from the pasture, she did not say that it detracted from the church. In my opinion, it will be possible to provide a suitably landscaped northern edge to the appeal housing that preserves the setting of the listed building. This is explained further in the Landscape Strategy prepared for this appeal by Turley Design, and it is illustrated in the visually verified montages prepared by NPA Visuals. The houses may be bigger than the mobile homes, and they will certainly be nearer to the church, but there is every reason to suppose that, with careful design, a satisfactory solution can be obtained.<sup>24</sup>

#### 4.6

Turning to the second point (views towards the church), it seems to me that many public views of the surroundings of the church and its tower will be preserved,

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<sup>24</sup> In my opinion, the mobile homes should not be the yardstick by which the appeal proposal is measured or assessed.

unaffected, as illustrated in Figures 15, 23 and 24. Moreover, a greater number of public views will be opened up from the south – that is, from the remaining pasture, from the new access road, and from the northern fringe of the new development generally (see Viewpoint 2 (“V02”) in my Appendix 18). This will better reveal the significance of the church, which is a policy objective of national importance expressed in paragraph 206 of the NPPF. Rather than severing the last link between the church and its rural setting, the appeal proposal will preserve that part of the pasture that is closest to the church.<sup>25</sup>

**4.7** When one breaks down the visual components of the proposal, the effect on outward views from the church (i.e. the churchyard and parts of The Forest) is not as dramatic as the council suggests. I accept that there will be a change that could be described as causing a low level of harm to the rural setting of the church, but the effect on the significance of the church will be minimal. One also has to bear in mind that new views of the church will be revealed to the public, which is beneficial.

**4.8** I have some further observations on the effect of the proposal on the setting of the church, which I address below, under the heading of the lych gate.

## Effect on the lych gate

**4.9** The effect of the previous appeal proposal on the significance of the lych gate was assessed by Inspector Hill in paragraph 35 of her decision letter (APP/H1840/W/18/3218814) as follows:

*“...the proposed development would have a negligible impact upon the significance of the lychgate in its own right.”*

**4.10** Given that the present appeal is for a smaller development than the proposal before Inspector Hill, the conclusion of “negligible” impact either still stands, or must be reduced further. The main consideration is surely the appearance of the northern edge of the new housing when seen from the churchyard, looking southward through the lych gate, or to either side of it. In my opinion, this is an effect that can be managed, and ameliorated. I also note that the lych gate intervenes between the development and the church, and it is quite prominent in views of the church, as can be seen in Figures 19 and 20 (and even in the longer view “V02” in

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<sup>25</sup> GPA3, page 4.

my Appendix 18). It does not exactly “guard” the church, but it is capable of absorbing some of the effect of change.

**4.11** In making the observations above, I have taken into account the fact that the church is more significant than the lych gate, and that it is potentially more sensitive to change in some respects. However, Inspector Hill was explicit, in paragraph 35 of her decision letter,<sup>26</sup> that the harm to the significance of the lych gate was negligible. In doing so, she must have had regard to the effect and proximity of the proposal, and she must have given the resultant harm great weight in the balancing exercise (paragraph 199 of the NPPF). Even so, she did not even mention the lych gate in her conclusion on heritage assets in paragraph 37 of her decision letter.

**4.12** The above observations must be considered in light of the fact that:

- i. The lych gate was not named as a main issue in appeal APP/H1840/W/18/3218814.
- ii. The main parties in appeal APP/H1840/W/18/3218814 (one of which was the council) agreed that there was no harm to the setting of the lych gate,<sup>27</sup> from which it follows that they must have agreed that there was no harm to its significance.

**4.13** With the above points in mind, I am now at a loss to understand why the council’s position in the present appeal is that a smaller development will cause a greater effect on the lych gate than was the case in appeal APP/H1840/W/18/3218814.<sup>28</sup>

## Effect on the Pakington memorial

**4.14** Inspector Hill concluded (paragraph 34 of her decision letter, APP/H1840/W/18/3218814) that the proposal before her would not harm the significance of the Pakington memorial, and it does not form part of the main issues in the present appeal. While the Inspector will no doubt have regard to the memorial for the purposes of section 66(1) of the Act, it is not controversial.

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<sup>26</sup> APP/H1840/W/18/3218814.

<sup>27</sup> Paragraph 8 of decision letter APP/H1840/W/18/3218814.

<sup>28</sup> See paragraph 5.12 and 5.13 of the council’s Statement of Case, and the second putative reason for refusal of planning permission in the delegated report.



## Comments on the delegated report, and reasoning

**4.15** The council's conservation officer is reported to have objected to the appeal proposal on the following basis:

*"Proposal would result in "harm to the significance" of designated heritage asset through development in its setting. Notwithstanding that the level of harm would be considered "less than substantial" in the terms set out in the NPPF, this does not mean that the harm would be unimportant. The harm is at the upper end of "less than substantial" because there would a comprehensive change in the rural settings of the Grade I Church and Grade II Lychgate. The Framework requires that great weight should be given to the conservation of designated heritage assets. The public benefits would not outweigh the identified heritage harm. As such, the proposal would conflict with Policy SWDP 6, Policy SWDP 24 and those policies of the Framework relating to the historic environment."*

**4.16** I agree with the conservation officer to the extent that the category of harm is less than substantial, within the meaning in paragraph 202 of the NPPF.

**4.17** I do not agree with the conservation officer that the extent of harm would be at the upper end of less than substantial harm, for five reasons:

- i. The conservation officer's assessment of harm is overestimated, for the reasons I have given above. The harm to the significance of the designated heritage assets is low, within the context of the table in Appendix 1.
- ii. I do not agree that the change in the rural setting (insofar as the setting is still rural<sup>29</sup>) would be "comprehensive". The retention of open space to the south of The Forest affords protection to the surroundings of the heritage assets, and there will be increased public access. This will give more people a better opportunity to see the heritage assets, and to appreciate their significance.
- iii. Even if the setting of a heritage asset were to be changed comprehensively, it does not necessarily follow that there will be harm. Two examples serve to demonstrate this in the context of the present appeal, namely that (1) the privately owned pasture to the south of The Forest will be

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<sup>29</sup> See my paragraph 3.10.

comprehensively changed by a degree of public access, something that cannot be described as harmful, and (2) the arrival of the railway in 1852 would have been a comprehensive change in the setting of the listed building, which we now accept as a benign part of the surroundings of the designated heritage assets.<sup>30</sup>

- iv. The Secretary of State decision referenced at the end of my Chapter 2.
- v. Inspector Hill, at paragraph 33 of her decision, recognised that developing the appeal site would affect “a limited part” of the significance of the church (through the adverse effect on its setting). I struggle to see how affecting only a limited part of an asset’s significance could still reach the upper end of the “less than substantial” category.

**4.18** I note that the conservation officer seems to have decided, on their own analysis, that the public benefits would not outweigh the harm. However, that is not a matter for the conservation officer, or for myself.

**4.19** Turning to the council’s second putative reason for refusal of planning permission, I note the following extracts in particular:

- *“The character of Hampton Lovett is of linear development of period properties set within large plots surrounded by farmed land.”*
- *“Hampton Lovett is not a nucleated village with a central core and therefore the character of the settlement is dependent upon the retention of the rural setting along the lane.*
- *“It is considered that the proposal to develop the existing farmed land with dwellings would alter the character of Hampton Lovett causing harm to the setting of the Grade I listed church of St Mary and the period properties which form the settlement.”*
- *“This represents a less than substantial harm, which is not outweighed by public benefits.”*

**4.20** In response to the council’s reasoning, I am surprised to see that the character of Hampton Lovett is said to be defined only by a “linear development of period

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<sup>30</sup> Paragraphs 18, 20, 28 and 36 of the previous appeal decision letter (APP/H1840/W/18/3218814) say nothing negative about the railway.

properties”. Inspector Hill’s assessment of character was far more nuanced, in paragraphs 9 to 23 of her decision letter (APP/H1840/W/18/3218814), and I would ask the Inspector in this appeal to use that as a guide, rather than the council’s reasoning.

**4.21** Turning to the second bullet, above, it seems to me that the council is making more of the “rural setting along the lane”, and more of the “character of the settlement” than of the setting of the listed buildings. Only in the third bullet is the church mentioned. The lych gate is absent from the formal reasoning.

**4.22** The final bullet refers to “a” less than substantial harm, but the extent of that harm is not stated.<sup>31</sup> I note that the reasoning seems to introduce the concept of a change of the character of the settlement as having an effect on the significance of the heritage assets, which is not how I read the council’s Statement of Case. Indeed, the word “character” is not used once in that part of the council’s Statement of Case dealing with the second putative reason for refusal. On that basis, it seems to me that the council’s position has moved since the Statement of Case was issued, and that it is very different from the assessment of Inspector Hill in the previous appeal (who I note was in agreement with the Council’s evidence at that appeal as she recorded at paragraph 30 of her decision).<sup>32</sup>

## Comments on the position of Historic England

**4.23** Historic England was consulted on the effect of the proposal on the setting of the grade I listed Church of St Mary, and responded by letter dated 8 November 2022 (Appendix 17). The substance of the response was similar to Historic England’s letter dated 30 August 2017 relating to application 17/01631/OUT (Appendix 16), even to the extent of quoting the old paragraph numbers from the NPPF. I note that the recommendation at the end of the letter dated 8 November 2022 is expressed in terms of “concerns”, rather than in the form of an objection. The harm was not categorised, or described as having a particular extent.<sup>33</sup>

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<sup>31</sup> Even though the council’s own Statement of Case stated (paragraph 5.13) that the extent of harm is at the “upper end” of less than substantial.

<sup>32</sup> The word “character” does not appear once in paragraphs 24 to 37 of Inspector Hill’s decision letter, which address the effects on listed buildings APP/H1840/W/18/3218814.

<sup>33</sup> See my paragraph 2.7, and the quotation beneath it.

- 4.24** Historic England's letter dated 8 November 2022 was accompanied by a document setting out some recent research (apparently by the same author as the letter) relating to Hampton Court, a building that once stood near the Church of St Mary (Appendix 17). The notes and drawings are of antiquarian interest, and help in further understanding the former relationship between the church and Hampton Pool Brake. However, Hampton Court was erased by the railway in the 1850s, and its influence on the church and the surrounding land has long since ended.
- 4.25** Although Historic England has expressed "concerns" about the present appeal scheme, it seems to me that it is self-evidently an improvement on the scheme dismissed at appeal in 2017 (APP/H1840/W/18/3218814). This can be seen in Appendix 15, where the visual comparison between the two proposals shows the retention of much more open space to the south of the grade I listed church. This will be privately owned pasture, to which there will be public access, allowing much greater public appreciation of the church than exists at present.

## Summary of effects

- 4.26** The appeal proposal will change part of the pasture south of The Forest into housing, thereby affecting the setting of the grade I listed Church of St Mary, (dating in part from the 12<sup>th</sup> century), and the setting of a grade II listed lych gate dating to 1885. This effect will take place within the rural surroundings of the heritage assets, which have been subject to considerable change and adaptation. A low level of harm will be caused to that rural setting, which will have a consequential effect on the significance of the two heritage assets. In my assessment, the category of harm will be less than substantial, within the meaning in paragraph 202 of the NPPF, and the extent of that harm (to significance) will be low on the scale shown in the table in Appendix 1. Even within the "low" band of harm in that scale, the effect would tend towards the bottom, rather than the top. It is this level of harm that I ask the Inspector to consider, in the balancing exercise.
- 4.27** The main heritage issues in this case can, in my view, be described as concerns to be managed. In practice, the northern edge of the proposed development is the component that will have the greatest visual effect on the surroundings of the two listed buildings. In my opinion, the appearance of that edge can be managed by

careful design and landscaping. A large portion of the setting of the listed buildings will remain to allow significance to be appreciated by future generations. Indeed, public access to the retained area of pasture nearest the church and lych gate will better reveal the significance of the heritage assets, which is an objective of national policy.

- 4.28** The Council's second reason for refusal references policies SWDP 6, 21 and 24 of the South Worcestershire Development Plan.
- 4.29** Policy 6 says that proposals should conserve and enhance heritage assets. Given I recognise that the development proposal will lead to less than substantial harm, I recognise that it does not conserve and enhance heritage assets. That would typically suggest that there is conflict with this policy in that respect. However, that point needs to be seen in the context of Policy 24.
- 4.30** Policy 21 is predominantly concerned with design. Given this is an outline application, much of its contents are not applicable here. However, at the outset of the policy it does say that development will conserve and where appropriate enhance cultural and heritage assets and their settings. Again, as with Policy 6, given the harm I have found, there would be conflict with this aspect of the policy (again this needs to be read with Policy 24).
- 4.31** As regards Policy 24, this says that development proposals need to be considered in accordance with the Framework. As I have indicated, the Framework does not provide an absolute bar to harm to heritage assets. Rather, it invites a decision maker to balance this harm against the public benefits, applying the balance within paragraph 202 of the NPPF.
- 4.32** Thus, it could be seen that policies 6 and 21 provide a bar to any harm to heritage assets, whilst policy 24 takes a different approach and allows for harm where public benefits outweigh this, applying paragraph 202 of the NPPF.
- 4.33** On one view, one should read the policies together and form the view that they are to be read as consistent with one another and thus one applies the Framework. On another more literal view, there would be conflict with policies 6 and 21, whereas any conflict with policy 24 is determined by applying paragraph 202 of the NPPF (which is for Mr Wakefield to do).

**4.34** I defer to the evidence of Mr Wakefield to resolve these competing approaches to the policies.

## 5. Summary

- 5.1** The Church of St Mary is a building of outstanding heritage significance that has been at the heart of the parish community for at least 900 years. It has been considerably altered and extended since that time, but it still provides us with a tangible connection with the past. The setting of the church, too, has been greatly altered over the centuries, notably during the past 150 years. Nevertheless, the significance of the church has survived even large interventions, such as the railway, which sliced through the parish in 1852. The boundaries of the churchyard, and the lych gate of 1885, have become structural components of an important group with a shared setting. All the surrounding spaces and structures make contributions to our understanding of the evolution of the place, and its heritage significance, and its enduring role within the community.
- 5.2** The proposed development is an outline application for up to 102 dwellings on land south of Forest Drive, and west of the railway.
- 5.3** The appeal proposal will change part of the pasture south of The Forest into housing, thereby affecting the setting of the grade I listed Church of St Mary, (dating in part from the 12<sup>th</sup> century) and the setting of a grade II listed lych gate dating to 1885. This effect will take place within the rural surroundings of the heritage assets, which have been subject to considerable change and adaptation. A low level of harm will be caused to that rural setting, which will have a consequential effect on the significance of the two heritage assets. In my assessment, the category of harm will be less than substantial, within the meaning in paragraph 202 of the NPPF, and the extent of that harm (to significance) will be low on the scale shown in the table in Appendix 1. Even within the “low” band of harm in that scale, the effect would tend towards the bottom, rather than the top. It is this level of harm that I ask the Inspector to consider, in the balancing exercise.
- 5.4** In practice, the northern edge of the proposed development is the component that will have the greatest visual effect on the surroundings of the two listed buildings. In my opinion, the appearance of that edge can be managed by careful design and landscaping. A large extent of the setting of the listed buildings will remain to allow their significance to be appreciated by future generations. Indeed, public access to

the retained area of pasture nearest the church and lych gate will better reveal the significance of the heritage assets, which is an objective of national policy.

**5.5** Policies SWDP 6, 21 and 24 of the South Worcestershire Development Plan will be engaged, but there are competing approaches to how these policies can be interpreted that I leave to Mr Wakefield to resolve.

**5.6** In my opinion, the council has consistently overestimated the extent of less than substantial harm to the significance of the church. It now seeks to make more of the effect on the lych gate than in the previous appeal, which was for a large development, and the council's second putative reason for refusal of planning permission seeks to introduce a character-related dimension for the first time. I respectfully request the Inspector to take a more balanced and consistent view of the case, and to conclude that the extent of the harm is, in fact, very low.