



Planning Appeals in Rural Areas

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Our Purpose

- We deal with planning appeals, national infrastructure planning applications, examinations of local plans and other
- planning-related and specialist casework.
- We share our expertise with communities, businesses, and local and national governments to enable good planning outcomes.



Our Vision (2021–25)

To provide our customers with **high quality, timely and efficient services** that support the nation's recovery from the COVID-19 pandemic by engaging, empowering and equipping our workforce and by delivering ambitious policy changes.



The Planning
Inspectorate

Planning Appeals in Rural Areas



Heritage Management - Statutory context

Section 16(2)

- The decision maker 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.

Section 66 (1)

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



National Policy Context - National Planning Policy Framework

199. 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*** (and 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.



National Planning Policy Framework

- 201. Where a proposed development will lead to **substantial harm** to (or total loss of significance of) a designated heritage asset, local planning authorities **should refuse consent**, unless it can be demonstrated that the **substantial harm or total loss** is necessary to achieve substantial public benefits that outweigh that harm or loss...
- 202. Where a development proposal will lead to **less than substantial harm** to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.



The Law – Bedford Judgement

In the 2013 the High Court held that in order for harm to designated assets to be considered substantial, *"the impact on significance was required to be serious such that very much, if not all, of the significance was drained away..."*



One was looking for impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced."



The NPPG at Paragraph 18a-018

*“Whether a proposal causes substantial harm **will be a judgment for the decision-maker, having regard to the circumstances of the case and the policy in the National Planning Policy Framework. 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.**”*



The Decision Makers' Approach: 3 Steps

Step 1: Identify the significance / special interest of the heritage asset(s)

Step 2: Assess the effects of the proposed development / works on the identified significance / special interest of the heritage asset(s)

Step 3: Conclude and, if necessary, carry out a balancing exercise



The Three Steps – Step 1

Step 1: Identify the significance / special interest of the heritage asset(s)

- It should focus on the asset(s) significance / special interest in as far as is relevant to the case and should include the extent to which its(their) setting(s) contributes to its(their) heritage value when relevant
- Consider – the LB description / appeal evidence (heritage statement?) / observations on site. Relate to the ‘interests’ as set out in Framework definition which is expanded upon in the PPG
- Separate out the heritage assets if there is more than one and identify the significance / special interest for each
- Do not be definitive about all aspects of the significance / special interest of the asset(s) as other evidence may come to light and different cases may be made in the future



The Three Steps – Step 2

Step 2: Assess the effects of the proposed development / works on the identified significance / special interest of the heritage asset(s)

- Focus on those elements of the significance / special interest that are relevant to the proposed development / works
- Consider the effects – relating it back to the significant / features you identified in step 1
- If there is more than one asset, reach a clear conclusion for each on the nature and scale of the effects
- Positive, Neutral or Harmful - this is a matter of planning judgment
- Reference may be made to carrying out an ‘internal heritage balance’ if there is harm and benefits
- There is no requirement to do this, you can undertake a straightforward assessment of whether there is harm and move on to stage 3



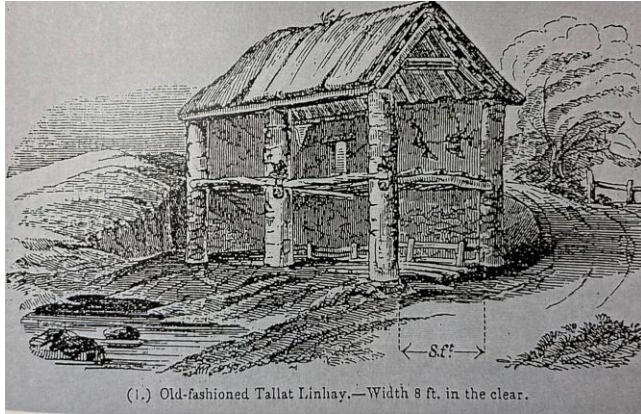
The Three Steps – Step 3

Step 3: Conclude and if necessary, carry out a balancing exercise

- If effects of the proposal to the significance / special interest would be Positive or Neutral. then they would 'preserve' - e.g.. the building or its setting or any features of special architectural or historic interest which it possesses or the character or/and appearance of the CA. No balancing exercise is required
- If effects of the proposal to the significance / special interest would be Harmful then undertake balancing exercise as per the Framework
- Substantial Harm or Less Than Substantial Harm – a decision-maker, having found harm to a heritage asset, must give that harm 'considerable importance and weight'
- Substantial Harm is a high test. Consider the requirements of para 201 of the Framework
- **Less Than Substantial Harm is not a less than substantial planning objection.** Consider the requirements of para 202 of the Framework
- You are not obliged to place the Less Than Substantial Harm on a 'spectrum' but this approach could be applied when dealing with multiple assets
- Need to include any heritage benefits of the proposal in the balance
- Public Benefits not Private Benefits – PPG sets out what can be considered to be public benefits
- Public Benefits 'Including, where appropriate, securing its optimum viable use'
- Always carry out the heritage balance before undertaking the overall planning balance



Magnitudes of Harm



Magnitudes of Harm



Magnitudes of Harm



Magnitudes of Harm



Magnitudes of Harm



Public Benefits:

Scope and weight and the heritage balance

What is a public benefit?

Apportioning weight

Balance against heritage harm



Some conclusions

Pitching it right' and 'what flies' at appeal

Understand significance – make it as objective as you can

Understand the proposal and the effect it will have

Identify harm and its magnitude

Aim for an objective assessment of harm against benefit



Top tips!

Don't assume that Inspectors know their hay from their straw...



We aren't experts in agriculture, and some of us are tourists in the countryside. We rely on appellants and agents not just to set out their grounds, but also to give us the evidence on what is happening, how the farm operates, what you want to happen, why there is a business need...

But we do know planning law and policy!



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Top tips!



- **Be realistic in making your case.**
- **Don't entrench your position, especially at hearing or inquiry.**
- **Focus your evidence on what the Inspector doesn't know.**



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