
Heritage Statement

Four Acres, George Road, Kingston Upon Thames, KT2 7PD

REF: P20-3078

DATE: 20th May 2021

Introduction

1. Pegasus Group have been commissioned by Unilever to prepare a Heritage Statement to assess the impact of the proposed gates at Four Acres, George Road, Kingston Upon Thames, KT2 7PD on the historic environment.
2. The site includes the Grade II Listed Four Acres Lodge and Gatepiers and also falls within the boundaries of the Coombe Wood Conservation Area.
3. This Built Heritage Statement provides information with regards to the significance of the historic environment to fulfil the requirement given in paragraph 189 of the Government's National Planning Policy Framework (the NPPF) which requires:

"an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting."

4. In order to inform an assessment of the acceptability of the scheme in relation to impacts to the historic environment, following paragraphs 193 to 197 of the NPPF, any harm to the historic environment resulting from the proposed development is also described, including impacts to significance through changes to setting.

Methodology

5. The following assessment has been informed by *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*¹ (henceforth referred to as *GPA 2: Managing Significance*) and English Heritage's Conservation Principles.²
6. In order to relate to key policy, the following levels of harm may potentially be identified when assessing potential impacts of development on heritage assets, including harm resulting from a change in setting:

¹ Historic England, 2015, *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*

² English Heritage, 2008, *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment*

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- **Substantial harm or total loss.** It has been clarified in a High Court Judgement of 2013³ 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; and
 - **No harm** (preservation). A High Court Judgement of 2014 is relevant to this⁴, in which it was held that with regard to preserving the setting of Listed building or preserving the character and appearance of a Conservation Area, preserving means doing no harm.
7. Preservation does not mean no change; it specifically means no harm. *GPA 2: Managing Significance* states that "Change to heritage assets is inevitable but it is only harmful when significance is damaged". Thus, change is accepted in Historic England's guidance as part of the evolution of the landscape and environment, it is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.
8. With specific regard to the content of this assessment, Paragraph 189 of the National Planning Policy Framework 2019 states:
- "...The level of detail should be proportionate to an assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance..." (our emphasis)*
9. Full details of the methodology adopted are provided at **Appendix 1.**

Planning Policy Context

10. The site includes the Grade II Listed Four Acres Lodge and Gatepiers and also falls within the boundaries of the Coombe Wood Conservation Area.
11. 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.
12. 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

³ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council

⁴ EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L'Isle.

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desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

13. A judgement in the Court of Appeal ('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 version of the NPPF, the requirements of which are now given in paragraph 196 of the revised NPPF), this is in keeping with the requirements of the 1990 Act.

14. With regard to development within Conservation Area, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

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

15. Notwithstanding the statutory presumption set out above, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

16. Planning applications within Kingston are currently considered against the policies set out in the Local Plan (April 2012) and the London Plan.

17. Policy CS 8 of the Local Plan relates to 'Character, Design and Heritage', and states:

"The Council will protect the primarily suburban character of the Borough, existing buildings and areas of high quality and historic interest from inappropriate development and will seek opportunities for sensitive enhancement in these areas and in areas of poorer environmental quality, where the character has been eroded or needs improving. It will use the Borough Character Study and Residential Design SPD to require good design and guide the assessment of development proposals and will seek to ensure that new development:

- *recognises distinctive local features and character*
- *has regard to the historic and natural environment*
- *helps enhance locally distinctive places of high architectural and urban design quality*
- *accords with Neighbourhood 'strategies for delivery' set out under 'Character, Design and Heritage'*
- *relates well and connects to its surroundings*

Tall buildings may be appropriate in the Borough's town centres; however, some parts of these areas will be inappropriate or too sensitive for such buildings. Relevant SPDs will provide further

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guidance on this matter and the Council will determine applications for such development on the basis of the criteria in the English Heritage/CABE Guidance on Tall Buildings (July 2007) and the London Plan.

The Council will also require higher standards of design generally to achieve a more attractive, sustainable and accessible environment."

18. Local Plan Policy DM 11 relates to 'Design Approach' and states:

"New developments (other than minor developments such as house extensions that do not have any visual impact on the streetscene) will be expected to be supported by a contextual statement that demonstrates a clear understanding and analysis of the local character of the area. The statement will also be expected to demonstrate how the new development will make a positive contribution to protecting and enhancing the local character of the area. The Council will resist any development that detrimentally affects the quality of the environment.

The Council may adopt a more flexible approach to new development where the existing development lacks any identifiable or cohesive character and/or is located in a lower quality environment; in these circumstances it will seek a high quality development that creates its own distinctive character."

19. Local Plan Policy DM 12 relates to 'Development in Conservation Areas and Affecting Heritage Assets' and states:

"The Council will:

a. continue to identify, record and designate assets, and periodically review existing designated assets within the Borough that are considered to be of special historic significance in order to ensure that future development will preserve or enhance locally distinctive heritage assets. These records will be maintained in the form of a Historic Environment Record.

b. preserve or enhance the existing heritage assets of the Borough through the promotion of high quality design and a focus on heritage-led regeneration

c. allow alterations which preserve or enhance the established character and architectural interest of a heritage asset, its fabric or its setting

d. ensure that development proposals affecting historic assets will use high quality materials and design features which incorporate or compliment those of the host building or the immediate area

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e. respect features of local importance and special interest through the consideration of form, scale, layout, and detailed designs of a site, area or streetscape

f. seek the conservation and improvement of the natural and built historic environment which contribute to the character of the Borough's historic riverside setting

g. where possible, provide access for all to encourage public enjoyment of the historic environment and Kingston's heritage assets"

20. Policy HC1 of The London Plan concerns 'Heritage conservation and growth' and states:

"A. Boroughs should, in consultation with Historic England, local communities and other statutory and relevant organisations, develop evidence that demonstrates a clear understanding of London's historic environment. This evidence should be used for identifying, understanding, conserving, and enhancing the historic environment and heritage assets, and improving access to, and interpretation of, the heritage assets, landscapes and archaeology within their area.

B. Development Plans and strategies should demonstrate a clear understanding of the historic environment and the heritage values of sites or areas and their relationship with their surroundings. This knowledge should be used to inform the effective integration of London's heritage in regenerative change by:

1) setting out a clear vision that recognises and embeds the role of heritage in place-making

2) utilising the heritage significance of a site or area in the planning and design process

3) integrating the conservation and enhancement of heritage assets and their settings with innovative and creative contextual architectural responses that contribute to their significance and sense of place

4) delivering positive benefits that conserve and enhance the historic environment, as well as contributing to the economic viability, accessibility and environmental quality of a place, and to social wellbeing.

C. Development proposals affecting heritage assets, and their settings, should conserve their significance, by being sympathetic to the assets' significance and appreciation within their surroundings. The cumulative impacts of incremental change from

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development on heritage assets and their settings should also be actively managed. Development proposals should avoid harm and identify enhancement opportunities by integrating heritage considerations early on in the design process.

D. Development proposals should identify assets of archaeological significance and use this information to avoid harm or minimise it through design and appropriate mitigation. Where applicable, development should make provision for the protection of significant archaeological assets and landscapes. The protection of undesignated heritage assets of archaeological interest equivalent to a scheduled monument should be given equivalent weight to designated heritage assets.

E. Where heritage assets have been identified as being At Risk, boroughs should identify specific opportunities for them to contribute to regeneration and place-making, and they should set out strategies for their repair and reuse.”

21. Details of the full policy context are provided at **Appendix 2**.

The Site

22. For the purposes of historic mapping, an outline of the Four Acres grounds has been drawn, although this does not reflect the boundary of the site for the application.
23. In the second half of the 19th century, the site and its surroundings were rural with Coombe Wood nearby. Between 1879 and 1896, the first building was constructed on the site and called Fairview. The building was positioned in the centre of the current Four Acres boundary, although the Fairview grounds covered a smaller area. The area to the north did not have built form, but some had been constructed to the east and south in the form of large houses as well.

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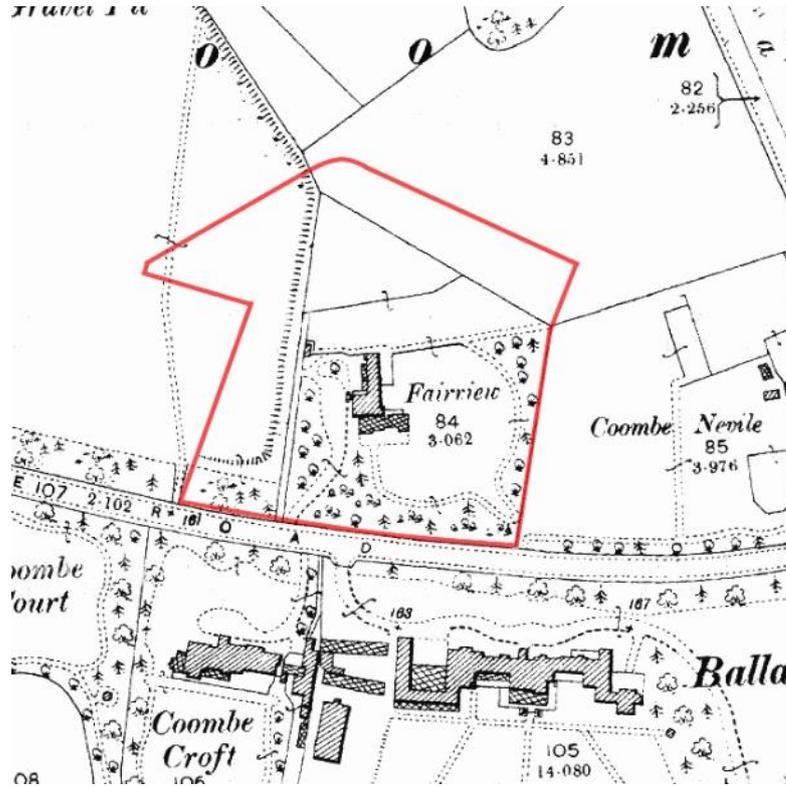


Plate 1: 1896 Ordnance Survey extract.

24. By 1913, Fairview was still present on the site as well as some further outbuildings to the north, including a greenhouse on the boundary, and a lodge beside George Road. The area to the north and west remained open with built form still limited to the east and south.

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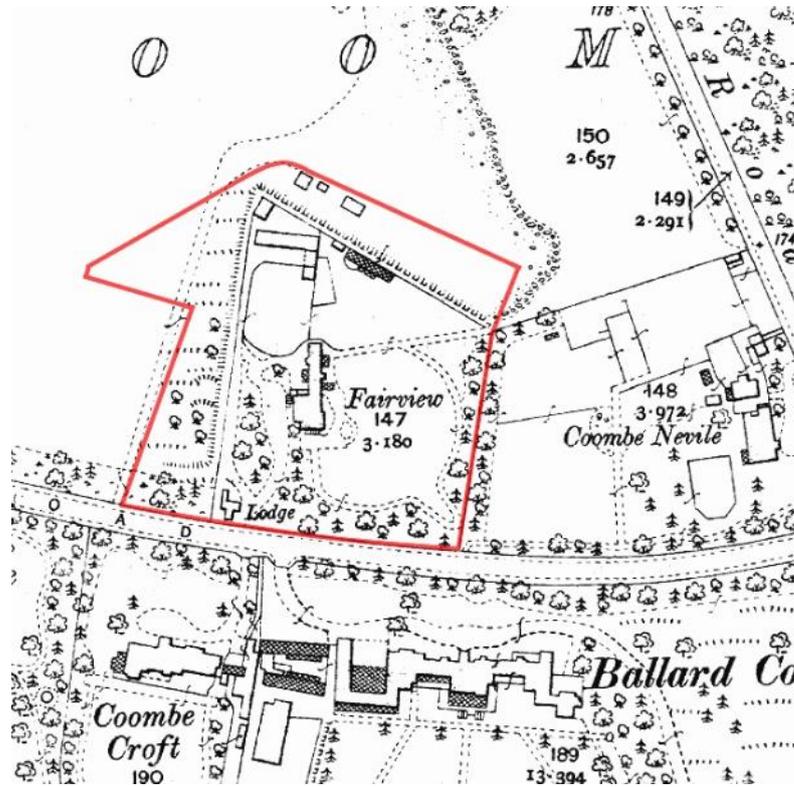


Plate 2: 1913 Ordnance Survey extract.

25. However, the 1935 map shows that Fairview had been replaced with Four Acres, and further buildings were constructed in the immediate and wider surroundings. Four Acres and its lodge and gatepiers were built in 1929 and designed by George Warren in the vernacular revival style.
26. The north of the site remained open and lacking built form. Four Acres itself was shown in a different position to the previous Fairview, with access on the eastern boundary and looping around to the north. The building overlooked its gardens to the south. Outbuildings still remained to the north; however, including a greenhouse along the boundary wall. Features within the grounds included a pond and tennis court. The site is also shown with a new lodge at the main entrance to the east, whilst the lodge to the former Fairview was retained towards the west.

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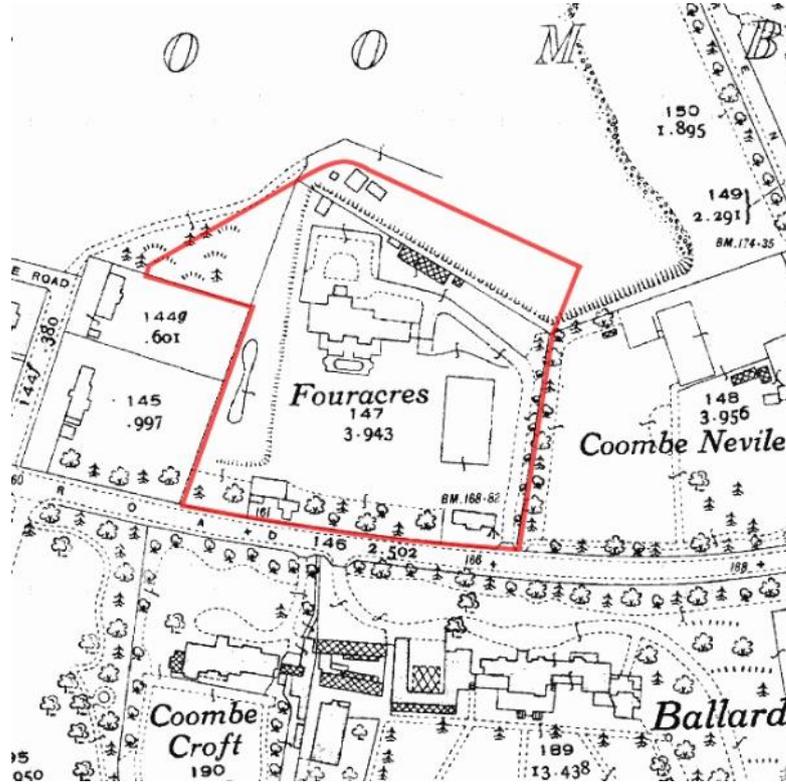


Plate 3: 1935 Ordnance Survey extract.

27. The main building on the site remained as is throughout the middle of the 20th century, in terms of its layout, but the site was acquired by Unilever in 1954 and subsequently faced changes, notably in the change of use of the building from residential to a conference centre. The lodge still remains ancillary to the main building, despite the change in use.

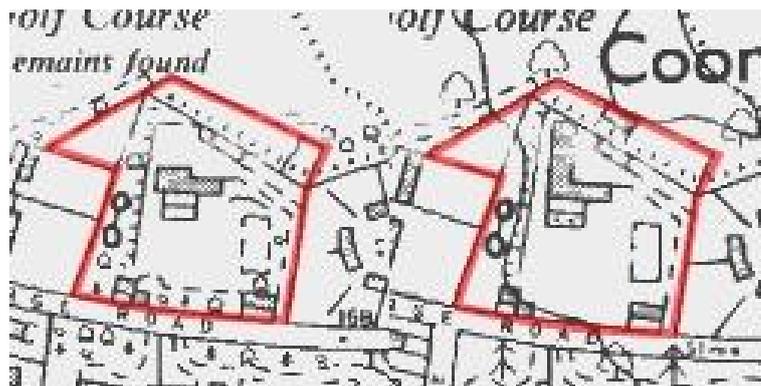


Plate 4: 1966-8 and 1975-6 Ordnance Survey extracts.

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Plate 5: Recent aerial imagery (Source: Google).

Relevant Planning History

28. **15521** | Extension comprising dormitory, lecture theatre and swimming pool | Granted | 11th August 1975
29. **02/14020/LBC** | Conversion of ground floor WC into Disabled WC and replacement of covered walkway to Jubilee Building and | Granted | 3rd September 2002
30. **02/14021/FUL** | Erection of single storey extensions to Jubilee building and replacement of covered walkway to improve existing teaching facilities. | Granted | 3rd September 2002
31. **03/14318/FUL and 03/14317/LBC** | Demolition of existing dormitory block and buildings and erection of a 3-storey dormitory extension, a detached dormitory 'pavilion' building of 3 storeys to the side of main building and single storey extension to main building | Granted | 23rd October 2003.
32. **09/14653/FUL** | Installation of security gates | Approved | 14th September 2010.
33. **20/01536/FUL** | Use of site as a whole, as management training centre for Unilever employees and external organisations 7 days a week. | Granted | 22nd September 2020.
34. **21/00734/LBC** | Minor internal alterations to Listed Building including general refurbishment and repair, removal of modern bar, installation of new bar within the

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snooker room, removal of modern partition within the mens toilets and installation of fixed island unit Open for comment icon | Pending consideration.

35. **21/00743/FUL and 21/00744/LBC** | Extension to existing reception area of main house, replacement of entrance screen and canopy and recladding of first floor link building | Pending consideration.

Heritage Assets

Grade II Listed Lodge and Gatepiers

36. The Four Acres Lodge and Gatepiers were added to the National List on 26th October 2001. The List Entry describes them as follows:

"Former lodge and gate piers, now accommodation for management training centre. Circa 1929 by George Warren in Vernacular Revival style. Originally it would have housed servants from the main house, Four Acres. Built mainly of brick in stretcher bond but with central timber-framed gable with plastered infill, hipped tiled roof and two brick chimneystacks. One storey and attics: four windows. Casements replaced to original design in late C20. Front elevation has central timber-framed gable with carved bargeboards and band above eaves level. Overhang on wooden brackets to ground floor which has two plank doors. Ground floor has two casement windows. One hipped dormer window to each side and two to rear and four casement windows to ground floor. Adjoining are a pair of circular brick gatepiers with conoid tiled tops, that form an ensemble with the lodge."

37. The Grade II Listing of the building highlights the historic and architectural significance of the property, as does its inclusion within the boundaries of the Coombe Wood Conservation Area.
38. The survival of the historic fabric and overall Vernacular Revival features described thus gives the building high architectural and artistic interest. The gatepiers are also reflective of this style and are read along with the lodge. The historic interest of the building is embodied in it being an ancillary building to the replacement large house on the site constructed in this style, making the building 'of its time'. Whilst the original use as servants quarters has been superseded, it is still ancillary to the main building. Therefore, the building has both artistic and architectural and historic interests as an early 20th century former lodge.
39. The heritage significance of the Listed Building is principally embodied in its historic fabric, which has architectural and artistic and historic interest as ancillary elements purposely designed to support Four Acres.
40. The setting of the asset also contributes to the significance of the asset, although the significance derived from the setting is less than that from its historic fabric. The principal elements of the physical surrounds and experience of the asset (its 'setting') which are considered to contribute to its heritage significance comprise:

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- Group value with the Grade II Listed Four Acres, of which it is ancillary to; and
- Location adjacent to the principal entrance/access to Four Acres from George Road.

Coombe Wood Conservation Area

41. The Coombe Wood Conservation Area was first designated in March 1990.
42. Kingston has not prepared a Conservation Area Appraisal, but provides information about its special interest on their website, which states:

"The special architectural and historic interest of this area can be summarised as: Large Victorian, Edwardian, and 20th century properties set in a semi-rural street scene around the open space occupied by Coombe Wood Golf Course."

43. The historic mapping earlier in this statement illustrated the development of the site and the immediate area, including the fact that the area was largely rural until the 20th century. As confirming in the mapping and aerial views, incorporation of large properties within large grounds has allowed for the semi-rural character of the streetscene to still be understood despite some incorporation of further built form at a smaller scale. Similarly, the retention of large gardens, mature trees, a generous set back of building or boundary lines from some of the streets and the open space of the golf course contribute to the existing semi-rural feel.
44. As mentioned, built form in the Conservation Area is varied and ranges from the Victorian period to present day. Whilst the larger buildings, including the site, have changed use over time, resulting in later extensions and additions to the original historic buildings, a sense of a quiet, residential character can still be understood in the streetscene, which is predominantly the result of tall boundary treatments in the form of fences and railings.
45. With respect to the application site, the website states:

"Similarly Fouracres, of a grand mock Tudor design, built in the first part of this century, also reflects the qualities of a rural mansion protected by two lodge buildings. Fouracres was built in 1929 in the Vernacular Revival Style by George Warren. Commander Hollbrook VC and the Allied Armed Forces used the headquarters during World War II, including where the plans for the invasion of Normandy were directed. It is now used as a Management Training Centre by Unilever International."

46. Therefore, the application site is considered to make a positive contribution to the significance of the Conservation Area in its origins as an early 20th-century large, detached house within landscape grounds and relationship with the streetscene and the quality of its architecture (as confirmed by its Listing).

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Assessment of Impact

47. The proposals include the installation of replacement gates to the existing gatepiers. The existing comprises a modern timber gate, so the proposals will not result in the loss of any historic fabric.
48. Furthermore, it is unlikely that the gate was historically timber, based on the style of the host lodge and main building. Thus, the new gates are black-painted metal, which would be in keeping with the style of the building and a higher quality and better reflection of the significance of the entrance as the principal access to the site.
49. The proposed design of the gates would also be appropriate within the wider Conservation Area, which contains a variety of boundary treatments. The contribution the gatepiers and lodges make to the streetscene and thus the wider Conservation Area will be enhanced through the incorporation of the feature gates, whilst also allowing glimpses through to the main, historic access to Four Acres.
50. The proposals replicate a previous permission for replacement gates on the site which have since expired (09/14653/FUL). The Decision Notice for this permission stated:

"The proposal would conserve the character of the Listed Building and the surrounding Conservation Area therefore would confirm to Policies STR6, BE1, BE3, BE6, BE12, T1 and H1 of the Royal Borough of Kingston upon Thames Unitary Development Plan First Alteration 2005."

51. Thus, no negative impacts have been identified to the historic environment through the installation of replacement gates on the Listed gatepiers.

Summary Conclusions

52. With reference to the levels of harm in the NPPF, the proposals will result in 'no harm' to the significance of the Grade II Listed Four Acres Lodge and Gatepiers and the Coombe Wood Conservation Area. The proposals will therefore satisfy the statutory requirement set out in Sections 66(1) and 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. The proposals will also satisfy relevant local policies.

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Appendix 1 – Methodology

Assessment of significance

In the NPPF, heritage significance is defined as:

"The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. ⁵For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance"

Historic England's Historic Environment Good Practice advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment⁶ (henceforth referred to as 'GPA 2: Managing Significance') 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, GPA 2: Managing Significance also advocates considering the four types of heritage value an asset may hold, as identified in Historic England's Conservation Principles⁷; **evidential**, **historical**, **aesthetic** and **communal**. These essentially cover the heritage 'interests' given in the glossary of the NPPF, which comprise archaeological, architectural, artistic and historic interest.

Conservation *Principles* provides further information on the heritage values it identifies:

Evidential value: *the potential of a place to yield evidence about past human activity. This value is derived from physical remains, such as archaeological remains, and genetic lines.*

Historical value: *the ways in which past people, events and aspects of life can be connected through a place to the present - it tends to be illustrative or associative. Illustrative value is the perception of a place as a link between past and present people and depends on visibility. It has the power to aid interpretation of the past through making connections with and providing insights into past communities and their activities through shared experience of a place. By contrast, associative value need not necessarily be legible at an asset, but gives a particular resonance through association with a notable family, person, event or movement.*

Aesthetic value: *the ways in which people draw sensory and intellectual stimulation from a place. Aesthetic values can be the result of conscious design or fortuitous outcome or a combination of the two aspects. The latter can result from the enhancement of the appearance of a place through the passage of time.*

⁵ NPPF Annex 2, MHCLG, 2019

⁶ Historic England, 2015, *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*

⁷ English Heritage 2008 *Conservation Principles, Policies and Guidance for the Sustainable Management of the Historic Environment*

Communal value: *the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory. This can be through widely acknowledged commemorative or symbolic value that reflects the meaning of the place, or through more informal social value as a source of identity, distinctiveness, social interaction and coherence. Spiritual value may also be part of communal value.*

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

Listed Buildings and Conservation Areas are generally designated for their special architectural and historic interest. Scheduling is predominantly, although not exclusively, associated with archaeological interest.

Setting and significance

As defined in the NPPF:

*"Significance derives not only from a heritage asset's physical presence, but also from its setting."*⁸

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 make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."*⁹

Therefore, setting can contribute to, affect an appreciation of significance or be neutral with regards to heritage values.

It is also important to note that whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. This was recently considered in a High Court Judgement¹⁰ where it was concluded that:

"The term setting is not defined in purely visual terms in the NPPF which refers to the "surroundings in which a heritage asset is experienced". The word "experienced" has a broad meaning, which is capable of extending beyond the purely visual".

Assessing change through alteration to setting

How setting might contribute to these values has been assessed within this report with reference to *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets*¹¹ (henceforth referred to as *GPA 3: The Setting of Heritage*

⁸ NPPF Annex 2, MHCLG, 2019

⁹ Ibid

¹⁰ EWHC 1456, Steer v. Secretary of State for Communities and Local Government, Catesby Estates Limited, Amber Valley Borough Council, 2017.

¹¹ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets*

Assets), particularly the checklist given on page 11. This advocates the clear articulation of 'what matters and why'.

In *GPA 3: The Setting of Heritage Assets*, 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 "whether, how and to what degree settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciate". The guidance includes a (non-exhaustive) check-list of elements of the physical surroundings of an asset that might be considered when undertaking the assessment including, among other things: topography, other heritage assets, green space, functional relationships and degree of change over time. It also lists points associated with the experience of the asset which might be considered, including: views, intentional intervisibility, tranquillity, sense of enclosure, land use, accessibility and rarity.

Step 3 is to assess the effect of the proposed development on the significance of the asset(s). Step 4 is to explore ways to "maximise enhancement and avoid or minimise harm". Step 5 is to "make and document the decision and monitor outcomes".

Descriptions of significance will naturally anticipate the ways in which impacts will be considered. Hence descriptions of the significance of Conservation Areas will make reference to their special interest and character and appearance, and the significance of Listed Buildings will be discussed with reference to the building, its setting and any features of special architectural or historic interest which it possesses.

Levels of significance

In accordance with the levels of significance articulated in the NPPF, three 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, World Heritage Sites and Registered Battlefields (and also including some Conservation Areas) and non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments, as identified in footnote 63 of the NPPF;

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); and

Non-designated heritage assets. Non-designated heritage assets are defined within the Government's Planning Practice Guidance as "buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of significance meriting consideration in planning decisions but which do not meet the criteria for designated heritage assets¹²".

Additionally, it is of course possible that sites, buildings or areas have **no heritage significance**.

¹² MHCLG, Planning Practice Guidance, Paragraph: 039 (ID: 18a-039-20190723, Revision date: 23.07.2019)

Assessment of harm

Assessment of any harm will be articulated in terms of the policy and law that the proposed development will be assessed against, such as whether a proposed development preserves or enhances the character or appearance of a Conservation Area, and articulating the scale of any harm in order to inform a balanced judgement/weighting exercise as required by the NPPF.

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

Substantial harm or total loss. *It has been clarified in a High Court Judgement of 2013¹³ 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"; and*

Less than substantial harm. *Harm of a lesser level than that defined above.*

It is also possible that development proposals will cause **no harm or preserve** the significance of heritage assets. A High Court Judgement of 2014 is relevant to this¹⁴. This 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'.

Preservation does not mean no change; it specifically means no harm. *GPA 2: Managing Significance* states that "Change to heritage assets is inevitable but it is only harmful when significance is damaged". Thus, change is accepted in Historic England's guidance as part of the evolution of the landscape and environment. It is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.

As part of this, setting may be a key consideration. For an evaluation of any harm to significance through changes to setting, this assessment follows the methodology given in *GPA 3: The Setting of Heritage Assets*, described above. Again, 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 3: The Setting of Heritage Assets*.

It should be noted that this key document states that:

*"setting is not itself a heritage asset, nor a heritage designation"*¹⁵

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

With regards to changes in setting, *GPA 3: The Setting of Heritage Assets* states that "conserving or enhancing heritage assets by taking their settings into account need not prevent change".

¹³ EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council

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

¹⁵ Historic England, 2017, *Historic Environment Good Practice Advice in Planning Note 3 (Second Edition): The Setting of Heritage Assets (paragraph 9)*

Additionally, it is also important to note that, as clarified in the Court of Appeal¹⁶, whilst the statutory duty requires that special regard should be paid to the desirability of not harming the setting of a Listed Building, that cannot mean that any harm, however minor, would necessarily require planning permission to be refused.

Benefits

Proposed development may also result in benefits to heritage assets, and these are articulated in terms of how they enhance the heritage values and hence the significance of the assets concerned.

As detailed further in Section 6, the NPPF (at Paragraphs 195 and 196) requires harm to a designated heritage asset to be weighed against the public benefits of the development proposals.

Recent High Court Decisions have confirmed that enhancement to the historic environment should be considered as a public benefit under the provisions of Paragraphs 195 and 196.

The PPG provides further clarity on what is meant by the term 'public benefit', including how these may be derived from enhancement to the historic environment ('heritage benefits'), as follows:

"Public benefits may follow from many developments and could be anything that delivers economic, social or environmental objectives as described in the National Planning Policy Framework (paragraph 8). Public benefits should flow from the proposed development. They should be of a nature or scale to be of benefit to the public at large and not just be a private benefit. However, benefits do not always have to be visible or accessible to the public in order to be genuine public benefits, for example, works to a listed private dwelling which secure its future as a designated heritage asset could be a public benefit.

Examples of heritage benefits may include:

- *sustaining or enhancing the significance of a heritage asset and the contribution of its setting*
- *reducing or removing risks to a heritage asset*
- *securing the optimum viable use of a heritage asset in support of its long term conservation."*

Any 'heritage benefits' arising from the proposed development, in line with the narrative above, will be clearly articulated in order for them to be taken into account by the Decision Maker.

¹⁶ Palmer v Herefordshire Council & Anor [2016] EWCA Civ 1061 (04 November 2016)

Appendix 2 – Planning Policy

Notwithstanding the statutory presumption set out within the Planning (Listed Buildings and Conservations Area) Act 1990, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

The National Planning Policy Framework (February 2019)

National policy and guidance is set out in the Government’s National Planning Policy Framework (NPPF) published in February 2019. This replaced and updated the previous National Planning Policy Framework 2018, which in turn had replaced the previous 2012 version. The NPPF needs to be read as a whole and is intended to promote the concept of delivering sustainable development.

The NPPF sets out the Government’s economic, environmental and social planning policies for England. Taken together, these policies articulate the Government’s vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The NPPF continues to recognise that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.

The overarching policy change applicable to the proposed development is the presumption in favour of sustainable development. This presumption in favour of sustainable development (the ‘presumption’) sets out the tone of the Government’s overall stance and operates with and through the other policies of the NPPF. Its purpose is to send a strong signal to all those involved in the planning process about the need to plan positively for appropriate new development; so that both plan making and development management are proactive and driven by a search for opportunities to deliver sustainable development, rather than barriers. Conserving historic assets in a manner appropriate to their significance forms part of this drive towards sustainable development.

The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF sets out three “objectives” to facilitate sustainable development: an economic objective, a social objective, and an environmental objective. The presumption is key to delivering these objectives, by creating a positive pro-development framework which is underpinned by the wider economic, environmental and social provisions of the NPPF. The presumption is set out in full at paragraph 11 of the NPPF and reads as follows:

“Plans and decisions should apply a presumption in favour of sustainable development.

For plan-making this means that:

- a) plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;*
- b) strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:*

-
- i. the application of policies in this Framework that protect areas or assets of particular importance provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

For decision-taking this means:

- c) approving development proposals that accord with an up-to-date development plan without delay; or*
- d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole."**

However, it is important to note that footnote 6 of the NPPF applies in relation to the final bullet of paragraph 11. This provides a context for paragraph 11 and reads as follows:

"The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, and Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change." (our emphasis)

The NPPF continues to recognise that the planning system is plan-led and that therefore, Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application.

Heritage Assets are defined in Annex 2 of the NPPF as:

"A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including Local Listing)."

The NPPF goes on to define a Designated Heritage Asset as a:

"World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under relevant legislation.¹⁷"

As set out above, significance is also defined as:

"The value of a heritage asset to this and future generations because of its heritage interest. The 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.¹⁸"

Section 16 of the NPPF relates to 'Conserving and enhancing the historic environment' and states at paragraph 190 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 into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal."

Paragraph 192 goes on to state that:

"In determining planning applications, local planning authorities should take account of:

- a) the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b) the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c) the desirability of new development making a positive contribution to local character and distinctiveness"*

With regard to the impact of proposals on the significance of a heritage asset, paragraphs 193 and 194 are relevant and read as follows:

"193 – 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."

¹⁷ NPPF Annex 2, MHCLG, 2019

¹⁸ IBID

"194 – 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. Substantial harm to or loss of:

- a) grade II listed buildings, or grade II registered parks or gardens should be exceptional;*
- b) assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional."*

In the context of the above, it should be noted that paragraph 195 reads as follows:

"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 loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

- a) the nature of the heritage asset prevents all reasonable uses of the site; and*
- b) no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- c) conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
- d) the harm or loss is outweighed by the benefit of bringing the site back into use"*

Paragraph 196 goes on to state:

"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 NPPF also provides specific guidance in relation to development within Conservation Areas, stating at paragraph 200 that:

"Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably."

Paragraph 201 goes on to recognise that *"not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance"* and with regard to the potential harm from a proposed development states:

"Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated as substantial harm under paragraph 195 or less than substantial harm under paragraph 196, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole" (our emphasis)

With regards to non-designated heritage assets, paragraph 197 of NPPF states that:

"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."

Non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to a Scheduled Monument will be subject to the policies for designated heritage assets.

National Planning Guidance

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.

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.

The PPG has a discrete section on the subject of the 'Historic Environment' which confirms that the consideration of 'significance' in decision taking is important 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 proposals¹⁹"

In terms of assessment of substantial harm, the PPG 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

¹⁹ MHCLG, Planning Practice Guidance, paragraph 007 (ID: 18a-007/20190723 revision date 23.07.2019)

the development that is to be assessed. The harm may arise from works to the asset or from development within its setting²⁰.

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"

²⁰ MHCLG, Planning Practice Guidance, paragraph 018 (ID: 18a-018-20190723 revision date 23.07.2019)
