

Parish of Quarndon

**Neighbourhood Development Plan
2018-2033**

Pre-Submission Consultation

On behalf of the Kedleston Estate

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1.0 Introduction

- 1.1 This Statement has been prepared by Fisher German LLP on behalf of the Kedleston Estate with regard to the Parish of Quarndon Neighbourhood Development Plan (NDP) 2018-2033: Pre-Submission Consultation Revision v.09.06 (July 2018).
- 1.2 This Statement should also be read alongside representations made by EDP – ‘Statement in Respect of Heritage Matters’, located at **Appendix 1**, with particular regard to Policy QSS2 and the setting of Kedleston Hall.

2.0 Representations

Housing Needs Assessment

- 2.1 Paragraph 6.2.8 of the NDP sets out that from October 2017 to March 2018, AECOM planning consultants conducted a Housing Needs Assessment for the Quarndon Neighbourhood Area. The report concluded that the unconstrained new housing need for the Quarndon Neighbourhood Area, for the period 2018 to 2033, is **45 dwellings**. This figure has been refined as it did not take into account housing completions from 2011 to 2017 (34 dwellings), and reduces the unconstrained figure to **36 dwellings**, equating to an average of **2.4/year** over the Plan period.
- 2.2 The NDP however adds a further reduction to this total, due to constraints including Green Belt, heritage assets and the village's low position in the Spatial Hierarchy, leaving a total requirement of **1-2 dwellings per annum (15-30 dwellings over the plan period)**.
- 2.3 However, of the 34 dwellings that have been delivered since 2011, 23 have been at the Somme Road/Memorial Road development adjoining the Derby City Urban Fringe. Many of these houses are larger executive houses, some with a value in excess of half a million pounds. It is considered such housing is the antithesis of the housing the NDP states is required. At paragraph 7.4.2 of the NDP it states “*A clear theme from the community consultation for this Plan and also AECOM's HNA was that any future house building in Quarndon should focus on the provision of smaller homes. This provision should be suitable for older residents to downsize into and as potential starter homes for local nest-flyers who want to continue to live in the Parish.” In subtracting these larger dwellings from the requirement needed, the NDP is effectively removing the opportunity to deliver the housing needed by local people. Moreover, it is not considered that development so detached from the village could*

reasonably be expected to serve the Quarndon population. Development on the edge of Derby is likely to serve Derby, not Quarndon. This constriction of supply will further inflate house prices within the village and exasperate the problems sought to be solved in the NDP, not alleviate them.

- 2.4 Furthermore, there seems to be insufficient evidence (as published on the NDP website) to justify the NDP's reduction in housing numbers; instead the reduction in housing requirement seems to be purely generalised assumptions rather than based on published evidence. From examining the website, there seems to be no sign of a housing capacity study or similar evidence document. The reduction in housing requirement to between 1 and 2 dwellings seems to be largely arbitrary, or in evidence not obviously published on the website.
- 2.5 The NPPF is quite clear at paragraph 145 that infill within villages is not considered as inappropriate development within the Green Belt. As such the NDP should not be constraining its housing figures based on the Green Belt. It is considered that subject to a number of infill developments in both the area inset from the Green Belt and infill opportunities outside of the inset area, that the unconstrained figure could be achieved.
- 2.6 It should also be noted that whilst a strategic development of 400 dwellings has been recently granted on land adjacent to the Somme Road/Memorial Road developments after a quashing order was overturned at the Court of Appeal, like the Somme Road/Memorial Road developments, it is not considered reasonable that housing so detached from the village could reasonably be expected to meet the needs arising out of the village, especially, for example, the older population who are specifically cited within the NDP as having a specific housing need. Instead, this development will help serve unmet need arising from Derby City. It is therefore considered that this development should not further constrict vitally needed housing within and adjacent to the village of Quarndon itself and should have no influence on the NDP's housing requirement.
- 2.7 Given the above, it is considered that the housing need for the Quarndon Neighbourhood Area, for the period 2018 to 2033, should remain as per the AECOM report as **45 dwellings**.

Policy QSS1

- 2.8 Policy QSS1 sets out how new dwellings could be provided within the village, however given the restrictive nature of the policy, it is difficult to see how the housing requirement will be met.

- 2.9 The policy first states that limited new housing infill development will be supported within the area of the village of Quarndon inset from the Green Belt. The lack of development opportunities inset from the Green Belt almost renders this element of the policy redundant as the Green Belt has been drawn tightly around the existing built form of the village.
- 2.10 The policy goes on to state that infill development will not be permitted in the areas of the village which are not inset from the Green Belt. Within the reasoned justification, it states that this policy is to provide new dwellings within the village *“whilst protecting the green spaces that are important to the Village’s rural character, openness, and for wildlife in those areas that are within Green Belt outside of the inset area.”*
- 2.11 It is not considered that this policy is compatible with the NPPF, which states at paragraph 145 that limited infilling in villages is appropriate development within the Green Belt. Furthermore, no evidence has been provided to justify why the land which is designated as Green Belt is superior to land not included within the Green Belt in terms of character or biodiversity. Again, this is an example of an assumption not found in sound evidence. It may be the case that sites inset from the Green Belt have better biodiversity than those within the Green Belt. It may also be the case that the removal of green spaces within the village centre (in the area inset) may damage the character of the village more than those not inset. Without evidence however, the above is lacking robust reasoned justification to support the approach taken.
- 2.12 The interpretation text to Policy QSS1 also states that limited infilling should be restricted to 1 or 2 dwellings on the built frontage. It is considered that this is unduly restrictive and is not compatible with the NPPF, which, at paragraph 117, states that planning policies should promote an effective use of land. It is instead considered that reference to a specific number of dwellings should be removed and that the policy instead includes criteria that allows the decision maker to use their discretion to assess a proposal’s acceptability. This could include proposal’s effect on character, landscape or openness.
- 2.13 It is considered that as drafted, Policy QSS1 does not provide sufficient flexibility to deliver even the NDP’s reduced housing requirement of 15-30 dwellings. The NPPF is quite clear that infill within villages is not inappropriate development within the Green Belt and that insufficient justification has been provided to warrant such restrictions on development which may lead to a failure to deliver the housing the village needs.

- 2.14 The policies must be appropriate, having regard to national planning policy and guidance, which includes the national imperative of significantly boosting the supply of housing (paragraph 8(2)(a) of Schedule 4B of the Town and Country Planning Act 1990). The wording of Policy QSS1 fails to have regard to national planning policy and should be reworded to allow infill development within the Green Belt (as per Paragraph 145 of the NPPF).
- 2.15 It should also be noted that, at the time of writing, the examination of the Amber Valley Local Plan has been suspended, in order that work on finding additional housing sites can be undertaken. This work includes a Green Belt Boundary Review and is likely to result in the release of Green Belt sites.
- 2.16 It is considered that the Parish Council should look to positively engage with the Kedleston Estate and the Borough Council to seek limited Green Belt Release in Quarndon to promote well-designed housing schemes which could deliver much needed affordable and retirement housing, supplemented with enabling market housing development. Such developments could look to positively meet the Parish's housing requirement, whilst providing significant community benefit. The Parish Council are reminded that in seeking a 'windfall-only' approach to housing delivery, as the NDP is currently drafted, means no ability to seek affordable housing or tariff based Section 106 contributions. The Kedleston Estate therefore would be happy to discuss with the group a number of parcels of land which may be suitable for Green Belt release to deliver a scheme with significant community benefits.
- 2.17 A number of such logical sites owned by the Kedleston Estate are highlighted overleaf.

Land at The Common

The two fields outlined below measure approximately 1 hectare and could therefore deliver the majority of the housing requirement. The site already has access from The Common and is well contained by existing vegetation to its south and western boundaries. Existing residential development lie to the north and across The Common to the east. The site also lies immediately opposite a bus stop providing regular services into the village centre and onward to Derby city centre.



Land at Church Road (i) + (ii)

The field (i) outlined below measures approximately 0.75 hectare and could assist in the delivery of the NDP housing requirement. The site already has access from Church Road, past Vine Cottage and would form a logical infill, with residential properties lying to both the north and south of the site. The site also lies immediately opposite a bus stop providing regular services into the village centre and onward to Derby city centre.



An additional plot of land (ii) to the east of Church Road, measuring approximately 0.5 hectares, could also seek to deliver a modest number of units in a sympathetic form adjacent to existing residential development to the south.

2.18 It is considered that the Parish Council should look to allocate a number of sites for development within the NDP in connection with the Green Belt Boundary Review currently being undertaken by Amber Valley Borough Council. Whilst the above sites provide the Parish Council with a number of options for delivering their housing requirement, the Estate would be happy to meet with the Parish to discuss alternate proposals.

- 2.19 The allocation and subsequent delivery of appropriate sites within the Parish through the NDP could deliver much needed affordable housing and community benefits.

Policy QSS2

- 2.20 Policy QSS2 relates to development within the 'setting' of Kedleston Hall, Park and Conservation Area. The preceding text to the policy, at paragraph 8.2.3.1, refers to the Kedleston Hall Setting Study (2017). The robustness of the Study is considered in detail in the accompanying representations prepared by EDP, located at Appendix 1. The representations conclude that the 2017 Setting Study does not provide a robust or compelling evidence base to support the adoption of the NDP. The Study represents no more than a partial assessment of the setting of the Hall, Park and Conservation Area. Key elements of the development of the Estate have been disregarded in the Study, including the planting and establishment of the Derby Screen, and as such cannot be considered to be a full and impartial analysis of the Hall's setting. It is therefore considered that the policy be removed from the NDP without a robust evidence base that can be relied upon.
- 2.21 Earlier in the NDP, at section 6.5, reference is made to the rural character and setting of Quarndon and Kedleston Hall. This refers to the setting of the Hall as a bounded area defined in the 2006 Amber Valley Local Plan. An accompanying policy (EN33) sought to protect the defined area from development proposals that would have an adverse impact on the landscape setting, including views into and out of, the Historic Park and Garden. Map 4 of the NDP shows the bounded area as defined in the Local Plan as the setting of Kedleston Hall. We consider this map's inclusion within the NDP to be wholly inappropriate. The NPPF states that the setting of a heritage asset is not fixed and may change as the asset and its surroundings evolve. It is therefore not appropriate to define the setting of a heritage asset on a map. Amber Valley are no longer seeking to include such a map within their emerging Plan and as such neither should the NDP. To do so would not have regard to national planning policy and guidance and would therefore be contrary to paragraph 8(2)(a) of Schedule 4B) of the Town and Country Planning Act 1990.
- 2.22 Attention is also brought to the Court of Appeal decision dated 18th July 2018. This decision relates to the development of 400 dwellings to the south of the Parish, adjoining the Derby urban area, and within the area defined as the setting of Kedleston Hall and Park.

- 2.23 The application had been refused by Amber Valley's Planning Committee before a Planning Inspector allowed an appeal and granted permission. This decision however was subject of Judicial Review and was subsequently quashed on the basis that the Inspector erred in law in his interpretation of setting of a Listed Building. However, the 18th July Court of Appeal decision overturned the quashing order and gives support to the Inspector's interpretation of setting of a listed building and in particular his judgements relating to the proposed scheme and its impact on Kedleston Hall and its setting. This was that the scheme *"would represent less than substantial harm – sufficiently little, in fact, that the effect on the significance of the Hall, standing within its designed Park, would be negligible."*
- 2.24 Within his decision, the Inspector states exactly that which we outline above, that the setting of the Hall had been changed, in this case due to the planting of the Derby Screen. This decision is important both in plan making and decision taking. It is clear that a purely historical connection may not in itself mean a site is within the setting of a heritage asset and other considerations, particularly visual, may be required to assess a site as being within a heritage asset's setting. It is noted that much of Quarndon is a similar distance from the Hall and Park and is similarly screened.
- 2.25 With regards to the Policy therefore, in the context of the above, we consider it to be unduly restrictive and built on flawed evidence base. This is especially true when one considers the Planning Appeal and subsequent Court of Appeal decisions.
- 2.26 Furthermore, it is not considered appropriate to state that development within the setting of the named heritage assets should be of "very limited scale". This is not compatible with national policy or the aforementioned decisions. More suitable wording for example may include "is of an appropriate scale".
- 2.27 Moreover, it is considered that the second criterion of the policy, which sets out that development would be considered for approval where it comprises uses that support the community use of the landscape or the operation of the Kedleston historic estate is vague, and confusing. It does not therefore accord with the PPG (Reference ID: 41-041-20140306) which states that *"a policy in a neighbourhood plan should be clear and unambiguous. It should be drafted with sufficient clarity that a decision maker can apply it consistently and with confidence when determining planning applications."* The criterion is not considered to be clear and unambiguous. What would constitute an appropriate use for example?

2.28 The final criterion is also considered to be incompatible with national policy, in particular paragraph 195 of the Framework. The criterion is flawed because it treats 'setting' as being a 'heritage asset' which can be harmed, when in reality GPA 3 (HE 2017) is clear in stating that 'setting' is not a heritage asset, therefore cannot be harmed, and is only of value insofar as it contributes to the significance or special interest of the asset in question. As such, development cannot cause '*significant harm to the setting of Kedleston Hall, Park or Conservation Area*'. It can cause significant harm to the Hall, the Park and/or the Conservation Area, but only insofar as it would diminish the portion of those assets' heritage significance which is derived from their setting. Setting can only be changed, not harmed.

Policy QSS4

2.29 Policy QSS4 sets out that the separation of the village from the Derby urban area and from Duffield will be preserved, by way of the Green Belt.

2.30 The preceding text to the policy, at paragraph 8.2.5.1 refers to the Technical Assessment of the Derby Principal Urban Area Green Belt Purpose, September 2012, however it should be noted that a comprehensive Green Belt Boundary Review is currently being undertaken following the first week of the examination hearings into Amber Valley's proposed Local Plan. At the examination questions were raised as to whether enough sites have been identified for new housing development and whether, on certain sites, homes can be built as quickly as stated. As such, the Green Belt Boundary Review is being undertaken because the sites previously put forward and considered were the result of an extensive search and any additional sites that may need to be allocated in the Plan are likely to have to include land currently within the Green Belt. It is therefore likely that the Green Belt boundaries will be amended as a result of the Local Plan and evidence base process. Once the Green Belt Review has taken place and amended via the Local Plan process, the degree to which the separation of Quarndon and the Derby urban area currently exists may differ and would trump the NDP in any event.

Policy QEN2

2.31 Policy QEN2 refers to historical/heritage assets and the desire to conserve and enhance these. The policy is poorly worded and refers to historic heritage. The word 'historic' should be removed as all heritage is historic. Of more pressing concern, the policy uses the phrase '*shall be conserved and enhanced*'. This exceeds the requirements of legislation where s72(1) of the 1990 Act only requires that a conservation area's character or appearance is

'preserved or enhanced'. There is no statutory duty to 'enhance'. As such the policy should be reworded to replace 'conserve and enhance' with 'preserve or enhance'.

Policy QIN2

- 2.32 Policy QIN2 and Appendix 6 proposes four new footpaths within the Parish.
- 2.33 Proposed Footpath 1, on land owned by the Kedleston Estate, would link the North Lodge of Kedleston Park to Inn Lane. It is considered that this proposed footpath is entirely unnecessary given that an existing footpath (FP17) joins the Kedleston Road just 0.5km southeast of North Lodge. The verge along this short stretch northwards to the Lodge is sufficiently wide to enable safe passage from the existing footpath. As a result, we object to Proposed Footpath 1.
- 2.34 Proposed Footpath 4 would link Church Road, at the southern end of Quarndon, with North Lodge, running along Kedleston Road. Subject to satisfactory width being available within highway-controlled land, the Kedleston Estate raises no objection to this proposal.
- 2.35 Proposed Footpath 2, on land owned by the Kedleston Estate, seeks to link Burley Lane with Bunkers Hill. Existing footpath 6 provides a link from Bunkers Hill down to Montpelier / Burley Lane and, as such, the proposal is superfluous to requirements. As a result, we object to Proposed Footpath 2.

3.0 Conclusion

- 3.1 It is requested that the comments detailed above and within Appendix 1, are taken into consideration in progressing the NDP.
- 3.2 It is considered that the unconstrained housing requirement of 45 dwellings, as identified by AECOM, should be utilised. The unconstrained figure will seek to deliver the true requirement for the village which identified that housing delivery should focus on the provision of smaller homes, suitable for older residents to downsize into and as potential starter homes for local nest-flyers who want to continue to live in the Parish.
- 3.3 In terms of delivering this requirement, it is considered that Policy QSS1 does not provide sufficient flexibility in order to meet this need. The NPPF sets out that limited infill development is not considered as inappropriate development within the Green Belt and as such the policy

as drafted does not accord with national policy. The policy should be amended to take account of national policy.

- 3.4 It is considered that in order to meet the identified need that sites will be required that are currently within the Green Belt. The Parish Council should engage with the Borough Council regarding the Green Belt Boundary Review which is currently being undertaken in order to identify housing sites. A limited number of appropriate sites within Quarndon could be released from the Green belt in order to assist in delivering the housing requirement, whilst delivery community benefits which otherwise would not be delivered through windfall sites.
- 3.5 With regard to the setting of Kedleston Hall and Park, this is discussed in detail within the EDP representations at Appendix 1. This has demonstrated that the Setting Study is flawed and should not be relied upon as a robust evidence base in formulated the NDP and its associated policy QSS2.
- 3.6 The separation of Quarndon from the Derby urban area is currently preserved by the Green Belt. It should be noted that the Green Belt Boundary Review currently being undertaken may alter these boundaries.
- 3.7 Policy QEN2 should be reworded to accord with statute law given that there is no statutory duty to 'enhance'. As such the policy should be reworded to replace 'conserve and enhance' with 'preserve or enhance'.
- 3.8 Finally, the proposed footpaths 1 and 2 require consent from the landowner. It is considered that neither are necessary given existing footpath provide adequate routes. As such the provision of these footpath is not supported. No objection is raised however to the proposed multi-user path, subject to satisfactory width being available within highway-controlled land.

APPENDIX 1

Representations by EDP

STATEMENT IN RESPECT OF HERITAGE MATTERS

**Parish of Quarndon Neighbourhood Development Plan 2018-2033:
Pre-Submission Consultation Revision v.09.06
Statement in Respect of Heritage Matters
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1. Introduction

- 1.1 This Statement has been prepared by Andrew Crutchley, a Director at The Environmental Dimension Partnership Ltd (EDP), for Kedleston Estate and with regard to the *Parish of Quarndon Neighbourhood Development Plan 2018-2033: Pre-Submission Consultation Revision v.09.06* (July 2018).
- 1.2 It responds to Policy QSS2 which addresses ‘*new development in the setting of Kedleston Hall, Park and Conservation Area*’, and more specifically the evidence base that underpins this draft policy, where Paragraph 6.5.5 sets out that: ‘*The National Trust commissioned a ‘setting study’ for Kedleston Hall that was published in October 2017 (Ref. 10.3)*’.
- 1.3 This ‘setting study’ for Kedleston Hall was issued by the National Trust on 9 October 2017 and was co-authored by Deborah Evans and Melanie Morris. For ease, it will henceforth be referred to as Evans & Morris (2017), where it comprises the main body of text and Part II which is the evidence base with supporting plans, photographs and appendices.
- 1.4 Having reviewed the setting study (Evans & Morris 2017), the purpose of this Statement is to consider its robustness as an evidence base to support Policy QSS2, particularly in light of the authors’ previous involvement with the Public Inquiry for *Land at Kedleston Road and Memorial Road, Allestree* [APP/M1005/W/153132791], where Melanie Morris provided expert witness evidence, on heritage matters, for Amber Valley Borough Council in its role as the Local Planning Authority for the two outline planning applications.

2. The Purpose of the Study

- 2.1 The first paragraph on Page 1 of Evans & Morris (2017) first sets out that ‘*the purpose of this assessment is to provide a strategic, robust, independent analysis of the setting of the heritage*



assets [Kedleston Hall, Park and Conservation Area] to help inform understanding of the contribution of setting to the significance of the heritage assets’, and then the final paragraph adds that its end use will be as follows: ‘This new assessment therefore seeks to consider the setting of Kedleston Hall in the round and offers a new baseline understanding against which to test future change in the local landscape’.

2.2 It can only be assumed that this means for the purposes of the National Trust in making representations on Planning Applications which have the potential to affect their interests at Kedleston Hall/Park. Comments to this effect are presented under ‘*threats and opportunities*’ on Pages 77 to 80 of the document.

2.3 Indeed, tucked away in the bullet points at the top of Page 80, it is stated that, in the context of enhancement to Kedleston Hall’s setting coming forward through cooperation between existing landowners, the following should be undertaken: ‘*Monitor planning applications to allow for a timely response to development proposals which in terms of scale, massing, location or other factors which might have an adverse effect on the setting of Kedleston Hall and the character of the local landscape*’.

2.4 Of course, in planning terms it is not possible to affect the setting of Kedleston Hall, only to bring about a change which might alter the contribution which it makes to the heritage assets and thus affect their significance; i.e. cause harm.

2.5 It must be recognised that development within the setting of a heritage asset (even at Kedleston) is not automatically harmful. It is a question of whether, how, to what extent and in what way(s) the setting of the asset (such as Kedleston Hall) makes a contribution to its significance.

2.6 Pages 67 to 70 of Part II: Evidence Base are given over to the 2016 Public Inquiry and the High Court judgement handed down in 2017, but it is not clear how this background assists in the assessment of the assets’ setting or its contribution to their significance.

2.7 Paragraph B.7.1 of Part II: Evidence Base proposes that:

‘The planning history illustrates how the existing understanding of the setting of Kedleston Hall has been established. National planning policy and guidance has witnessed a refinement of the



concept of setting. It has moved away from primarily visual considerations to a more comprehensive interrogation of subjects such as the historic record, landscape character and especially an identification of significance through the experience and appreciation of a place, or of specific heritage assets within it, by consistent assessment’.

- 2.8 Paragraph 3.15 of the main Setting Study (see Evans & Morris 2017) takes this matter a stage further, through an analysis of the Inspector’s Decision following the Public Inquiry of 2016 and the subsequent High Court judgement. This paragraph identifies that:

‘Recent Planning applications tested against the NPPF and [Local Plan] Policy EN33 are AVA/2014/1928 and AVA/2015/1243 which concerned the development of 400 and 195 dwellings respectively on land to the west of Kedleston Road, Allestree on the approach to Kedleston Hall. These were examined at Public Inquiry in 2016. The Inspector’s decision was subsequently examined at the High Court in 2017. The Appeal Decisions focused on the need for greater visual or physical connectivity between the heritage assets and the appeal site, and the role of designed views within the landscape, as key contributory factors to the setting. The role of the Derby Screen in affecting the experience of land to the east was influential in the appeal decision. However, the High Court judgement which overturned this decision, stated that the interpretation of setting conveyed by the Planning Inspector was too narrow, had prioritised visual concerns and had not provided adequate reasons for disagreeing with evidence provided on the topic of setting by experts following national policy and guidance’.

- 2.9 This approach of course raises a key issue; namely that planning guidance and case law is inevitably fluid and not fixed, so, whilst statements such as the above might be true at the time when they are written (September 2017 in this case apparently), it is clearly far from certain that they will remain true in perpetuity.

- 2.10 So, of course, when Paragraph 3.16 of Evans & Morris (2017) states that the *‘existing understanding of the setting of Kedleston Hall has been established by its planning history during which time national planning policy and guidance has witnessed a refinement of the concept of setting’*, the same must also be true in reverse.

- 2.11 In other words, if national planning policy or guidance changes our understanding of the concept of setting and (in particular) the contribution which it makes to Kedleston Hall, the current



Setting Study (2017) will inevitably be flawed, and the weight which can be given to it as the evidence base for a Development Plan document diminished accordingly.

2.12 Needless to say, Evans & Morris (2017) can perhaps be forgiven for not being aware of the fact that Catesby Estates (the applicant/appellant for the conjoined Kedleston Road sites) were granted leave to appeal Justice Lang's High Court judgement on 23 August 2017; in other words slightly before the preparation of the 'Current Planning Context' section of the Evans & Morris Setting Study in September 2017.

2.13 However, it is rather more surprising that neither the 'Definitions and Clarifications' section of the Setting Study nor the Planning History chapter identifies or considers the most up to date legal position on the setting of listed buildings, which was handed down by the Court of Appeal on 9 June 2017 (i.e. less than two weeks before the High Court judgement on the Steer case) and referenced as [2017] EWCA Civ 427.

2.14 Paragraph 56 of this judgement is clearly of particular relevance with respect to the assessment of setting impacts for Kedleston Hall as a Grade I listed building:

'The setting of a listed building is not a concept that lends itself to an exact definition, applicable in every case. This is apparent, I think, from the deliberately broad definitions of the setting of an historic - or heritage - asset in Cadw's document and in the NPPF (see paragraphs 26 and 42 above). I would not wish to lay down some universal principle for ascertaining the extent of the setting of a listed building. And in my view it would be impossible to do so. Clearly, however, if a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two - a visual relationship which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape. This will often require the site of the proposed development and the listed building to be reasonably close to each other, but that will not be so in every case. Physical proximity is not always essential. This case illustrated the possible relevance of mutual visibility - or "intervisibility", as the judge described it - and also of more distant views from places in which the listed building and the proposed development can be seen together - "co-visibility", as it was described in submissions before us. But this does not mean that the mere possibility of seeing both listed building and development at the same time established that the development will affect the setting of the listed building'.



2.15 Clearly, the Court of Appeal's judgement in respect of 'setting' should take precedence over the High Court's judgement in respect of the Steer case and the Kedleston Road schemes which Evans & Morris appear to place great store by in the completion of their assessment, especially when Paragraph 56 obviously recognises that:

'Clearly, however, if a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape'.

2.16 In a situation where the *'understanding of the setting of Kedleston Hall has been established by its planning history during which time national planning policy and guidance has witnessed a refinement of the concept of setting'*, the failure to acknowledge or take into account this recent Court of Appeal judgement seriously undermines both the credibility and the robustness of the Evans & Morris's Setting Study, more so given that Catesby Estates had already been given leave to appeal the High Court judgement handed down by Justice Lang in respect of the Steer Case when Chapter 3 of Evans & Morris was prepared for the National Trust in September 2017.

2.17 For obvious reasons, set within that context, the Court of Appeal's recent forensic repudiation of Justice Lang's High Court judgement in respect of Peter Steer and Historic England and Catesby Estates [2017] EWCA Civ 427 is quite evidently a 'game changer' because of the endorsement of Inspector John L Gray's Appeal Decision regarding *Land at Kedleston Road and Memorial Road, Allestree* and the agreement from Historic England in Paragraph 37 of the Court of Appeal judgement [2018] EWCA Civ 1697 that the planning inspector was entitled to reach the verdict he did on the merits of the case. The full judgement is included in **Appendix EDP 1**.

2.18 In short, the approach to the setting of Kedleston Hall, Park and Conservation Area adopted by Evans & Morris (2017) is quite clearly out of step with not only case law in respect of the setting of these particular assets, but also with case law on 'setting' more generally; to the extent that they place great weight on a High Court judgement from summer 2017 and fail to give any weight to the Williams judgement handed down by the Court of Appeal within the same month.



- 2.19 The eagerly awaited Court of Appeal judgement regarding the Steer case and the setting of Kedleston Hall only highlights the extent to which the Evans & Morris Setting Study should not be relied upon as the evidence base for the draft Neighbourhood Plan.
- 2.20 The Appeal Decision (dated 22 August 2016) is included here as **Appendix EDP 2**, and it is not intended to extensively reproduce paragraphs from it. Nonetheless, it is quite clearly important to highlight those aspects of the Decision that serve to inform our understanding of the setting of Kedleston Hall and the impact resulting from the development at Kedleston Road.
- 2.21 First of all, Paragraph 32 sets out the difference between the setting of the Hall and that of the registered park and conservation area; i.e.:

'The Council, Kedleston Voice and English Heritage (as it was then) argue that Kedleston Hall and its Park are an integral whole and that, accordingly, their settings are the same. It was also argued that the historical, social and economic connection – the appeal site being part of the estate of which the Hall and Park were the hub – brought the appeal site within the setting of the Hall. There has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting. The appellant takes the view that the Park provides the setting for the Hall. That is not an unreasonable approach to take; for example, the Historic England guidance recognises that a conservation area will include the settings of listed buildings and will have a setting of its own'.

- 2.22 Paragraph 33 then (for the first time) sets out the importance of the Derby Screen, which was established in the mid 20th century, as follows:

'The planting of the Derby Screen, around 1960, brought about a very significant change. Originally, there were views out from the Hall and Park towards Derby – and, for those approaching the Hall, there would have been a first view into the Park, with a glimpse of the Hall, across the appeal site from Kedleston Road. The Derby Screen was planted to obscure the view of Allestree, development having encroached over the horizon, and the night-time glare from the increasingly large built-up area of Derby. Its planting was a deliberate decision, based on the changing surroundings, to make the Park more enclosed and inward-looking; and the Derby Screen has since been significantly extended into the Park by the National Trust. Thus, today, the appeal site forms no part of the setting of Kedleston Hall [Grade I listed building]'.



2.23 This is a theme that the Inspector picks up in subsequent paragraphs of the Decision, most specifically at Paragraphs 51 and 79, where it is set out that s66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990* is not engaged for either of the two different development scenarios being considered.

2.24 Paragraphs 34 and 35 consider views between Kedleston Road and Kedleston Hall, which was a central theme:

'If one takes a more historical approach, however, then there was an open view where the Derby Screen now is. Moreover, the evidence suggests it was a designed view – documentary, in the references to the vista including Derby; physical, in the ditch of a sunken fence, akin to a ha-ha, which would have kept stock out (or in) without obstructing the view. The appellant argued that the sunken fence may have been a ditch predating the laying out of the Park but that does not exclude the proposition of a designed view'.

'The view was, clearly, a wide vista. The spire of Derby Cathedral is referred to as being seen in the panorama, though it could only have been seen from relatively close to the boundary of the Park, not from the Hall. The particular view to or from Kedleston Road is only a very small segment and is, from the Hall, at its very eastern extremity. There is no evidence that the view from Kedleston Road towards the Hall and Park was also part of the design; nor is it logical to draw the inference that the view towards the Hall and Park was designed simply because the view in the other direction was'.

2.25 In these paragraphs, the Inspector sets out his assessment that this 'designed view' was from the very eastern edge of the Park (as opposed to being from the Grade I listed Hall) and was from the interior of the park looking out, rather than necessarily looking in from Kedleston Road towards the internal arrangement of the registered park or the listed building.

2.26 This then leads the Inspector to propose that *'if one holds the opinion that the view both to and from Kedleston Road was a deliberate part of the design of the Park and that the Derby Screen, or part of it, could be opened out to restore that view, then the appeal site does indeed fall within the setting of Kedleston Hall'*; thus placing a clear emphasis on any management proposals for the existing trees defining the park's eastern boundary.



2.27 In Paragraph 38, the Inspector clearly identifies what he sees as the differences between the setting of the Park and the setting of the listed Kedleston Hall, when he observes that:

'The appeal site may be considered to lie within the setting of the Park because of its relative proximity. There are clear views of the boundary of the Park, though it is debatable whether its trees and woodland, designed and laid out in a naturalistic manner, can actually be distinguished as such by anyone unfamiliar with designed parkland. The only views into the Park from or across the appeal site, or out from the Park towards it, have been obscured by the planting of the Derby Screen'.

2.28 Paragraphs 42 to 44 set out the Inspector's assessment of the appeal scheme's impact on the Grade I listed building:

'The Derby Screen is key to any impact on the significance of Kedleston Hall. At the present time, the existence of the Screen means that the proposed development would have no impact whatsoever on the setting of the Hall. The questions to be addressed, therefore, are about the prospect of the Screen being removed or opened up and, if it were, the resultant impact of the proposed development on the significance of the Hall'.

'It is not absolutely clear that the view across the appeal site between Kedleston Road and the Hall and Park was designed. Ms Morris, for the Council, said at the inquiry that the view now blocked by the Screen was an "incidental"⁴ view out of the Park or from the Hall. That is consistent with the approach taken to the design of a Park such as this. Whether it was also a designed view into the Park, affording a glimpse of the Hall, remains open to debate. It is clear that there are (or were) designed views along the road north of the Kedleston Hotel, less clear that this view, so much further south, was also intentionally designed'.

'There is no debate that the Screen was planted to obscure views of Allestree and the night-time glare from the lighting of the expanding urban area of Derby. Its planting was a deliberate response to changing circumstances. It may be seen as part of the evolution of the Park. Moreover, for whatever reason, the depth of the Screen has been substantially increased by the National Trust so that it is now some 40m or more wide. To remove it now, or to open it up in some way, raises a number of issues, as well as being a substantial and costly task'.



2.29 Paragraphs 45 to 49 give proper consideration to the merits and disbenefits of removing the Derby Screen to open up the Park's eastern boundary. This matter is then brought to a close in Paragraph 50 when the Inspector sets out the following assessment:

'Thus, it is unclear that the view from Kedleston Road was a designed view, intended to give a glimpse of the Hall; it is known that the Derby Screen was planted as a response to changing circumstances; there is no firm intention to consider removal the Derby Screen; even if there were, there are a number of attendant issues that would have to be resolved; such indications as there are relate only to views from the south-eastern corner of the Park and to thinning the Screen. There is nothing to suggest that a view from Kedleston Road giving a glimpse of the Hall might at some time be restored'.

2.30 In reality, the Inspector acknowledges that there is some uncertainty regarding a designed view of Kedleston Hall from Kedleston Road. However, he cuts through this particular debate by observing that the planting of the Derby Screen in the mid 20th century changed the nature of the Park's eastern boundary anyway, and that, with there being absolutely no evidence to infer or suggest it might be clear-felled at some point in the future, there is no chance of any such view being reinstated whatever the consensus.

2.31 So, whether or not there was historically a view may be a matter of intellectual debate, but what is important is that the establishment of the Derby Screen represents a valid phase in the park's developmental chronology, so that not only is its wholesale clearance a highly unrealistic proposition, but one that would be counter-productive anyway. This is on the basis that it would open up views of modern Allestree looking out from within the Park, but also because it would introduce a paradox, insofar as it would return this element of the asset to a stage in its evolution that is out of keeping with much of the rest. It is thus not only impractical, but also undesirable.

2.32 So, whilst the Inspector concludes that the two appeal sites at Kedleston Road are within the setting of the Registered Park and Garden (RPG) and conservation area, so that some limited harm would result from development, his view is steadfastly different insofar as the Grade I listed Hall is concerned. Thus, in Paragraph 62 he advises that:

'At the present time, the appeal site lies beyond the setting of Kedleston Hall, which extends no further than the Derby Screen. It could only be said to lie within the setting if, firstly, it were



known that the view to the Hall from Kedleston Road was deliberately designed and, secondly, if there were any prospect of the Derby Screen being removed or opened out to restore that view. On the evidence, the first is open to debate and the second is very unlikely. Even giving the benefit of the doubt, however, the harm that would be caused by either appeal proposal to the significance of the Hall would be less than substantial to the point of being negligible'.

2.33 In respect of the RPG and conservation area, Paragraph 81 makes clear that the impact from development at Kedleston Road derives from its 'encroachment' towards the Park. It would be of sufficiently limited impact to be at the lowest end of less than substantial harm and requiring a balance to be made against the public benefits from the development.

2.34 Given the weight attached by Inspector John L Gray to the establishment and maintenance of the Derby Screen in defining the setting of the Grade I listed Hall, it would be reasonable to expect that this matter will have been thoroughly explored in the Setting Study (2017), and its role in the chronological development of the Park understood and assessed.

3. Review of the Principal Issues

3.1 As far as the setting of Kedleston Hall, Park and Conservation Area are concerned, three key issues were identified and debated at length by the heritage witnesses engaged for the 2016 Public Inquiry. These three issues then formed the basis of the Inspector's Decision in deciding to allow both of the appeals, as well as in the Court action which followed:

1. The existence of a 'designed view' of Kedleston Hall from Kedleston Road;
2. The role of the Derby Screen; and
3. The interaction between the Hall, the Park and the wider Estate.

3.2 These three issues go to the heart of the inter-relationship between the Hall and its setting in particular. They will be addressed within the following paragraphs.



The Existence of a 'Designed View' from Kedleston Road

- 3.3 The Inspector at the 2016 Public Inquiry heard a significant amount of evidence from both the Council's witnesses (including Melanie Morris) and the witness for Kedleston Voice Rule 6 Party on the existence of a designed view of Kedleston Hall Grade I listed building looking west from Kedleston Road across the low-lying land now closed off by the Derby Screen.
- 3.4 Paragraphs 34 and 35 of the Appeal Decision deal with this evidence and clearly set out the Inspector's conclusion. It is the second of these paragraphs which is of more relevance here, when it states that the outward view was '*a wide vista. The spire of Derby Cathedral is referred to as being seen in the panorama, though it could only have been seen from relatively close to the boundary of the Park, not from the Hall*' and then continues by setting out the following: '*There is no evidence that the view from Kedleston Road towards the Hall and Park was also part of the design; nor is it logical to draw the inference that the view towards the Hall and Park was designed simply because the view in the other direction was*'.
- 3.5 Section 6.2 of the main Setting Study (Evans & Morris 2017) sets out a detailed analysis of views into, out of and across the park, including a detailed discussion on the evidence for design of a view from Kedleston Road towards the Grade I listed building.
- 3.6 However, the problem with the 'evidence' in the 2017 Setting Study is clearly the same as with the evidence presented to the 2016 Public Inquiry, which is perhaps not surprising as much of the information is recycled from the evidence submitted by the Council and then later moderated or rejected by the Inspector.
- 3.7 Quite simply, the Setting Study and Part II: Evidence Base see '*design*' and the aesthetic influence of Lord Scarsdale in pretty much every aspect of the landscape within the Park and also outwards across the Estate.
- 3.8 Whilst this *potentially could* be the case, for every aspect of the 'evidence' put forward, a prosaic and pragmatic alternative interpretation can just as easily be advanced, leading to the end conclusion that there *may* have been a view into the Park from the northwards approach on Kedleston Road, but the evidence is ambiguous and not compelling.



3.9 In terms of Part II: Evidence Base, Paragraph A.2.5 focuses on the relocation of the main road through the Park by Sir Nathaniel Curzon under an Act of Parliament dated 1760, in order to create what is now Kedleston Road. This in itself is frequently highlighted as a key aspect of a design intention for the approach to the Hall northwards from Derby (see Paragraph 6.2.4 of the Setting Study); whereas in reality the more likely explanation, which was advanced by the appellants' witness at the Public Inquiry, is that Sir Nathaniel Curzon simply seized the opportunity to remove passers-by from the front lawn of his house, in the same way that he relocated the medieval village from north of the church to beyond the western boundary.

3.10 The ready ability of a wealthy and well-connected landowner to enclose such an enormous expanse of land for his enjoyment, his family's enjoyment, and for the enjoyment of close friends and associates, was clearly attractive and persuasive (as it was for many landowners elsewhere) and was most likely the principal objective in relocating the road away from the Park. It should be contrasted with the following commentary at Paragraphs 4.25 and 4.27 of the Evans & Morris Setting Study:

'The notion of Kedleston Hall as a private and inward-looking place is a recent one, as has been demonstrated by recent interpretations at the Kedleston Road Planning Inquiry'.

'Its greater purpose therefore [referring to the interior of the Hall] was in expressing the vision of a gentleman whose wealth could achieve a place for entertainment of guests and generously share his values with a wide audience'.

3.11 Of course, relocating the main road beyond the boundary of the Park, and thereby moving both passers-by and guests alike to a distance of no less than 2.0 kilometres from the Hall, might also be perceived as a means of achieving some degree of exclusivity, if not privacy, rather than a method of embracing this 'wide audience'.

3.12 No doubt, had Sir Nathaniel Curzon had really wanted a 'wide audience' to share the values he espoused within the development of his Park, he could have ensured that by enabling it retain a right of access across his land, instead of relocating passers-by to a circuitous route running east and then north of what was a substantial tract of land enclosed and maintained solely for the private enjoyment of the Curzons and invited guests.



- 3.13 The only 'non-theoretical' evidence for a designed view west from Kedleston Road comes from the 1762 Survey of Quarndon Parish (reproduced and discussed on Page 73), where two slight bulges in the width of the new turnpike road are taken by the authors as representing evidence for '*informal viewing places*' because they are recorded without any '*formal additions*' such as widened road surfaces or surfaced pull-ins.
- 3.14 Of course, this is clearly not evidence for there being a designed view, or for there being a designed view of the Hall from Kedleston Road. In the same way, the detailed analysis of the earthworks along the eastern boundary of the Park within the supporting evidence base leads only to the conclusion that there may have been views out from the boundary of the Park to the adjacent landscape, rather than designed views from the listed Hall.
- 3.15 Moreover, evidence was discussed at the 2016 Public Inquiry to the effect that it was not always necessary to accept the great cost of planting a band of trees along the boundary of a park where the topography and a more modest and targeted scatter of plantations and clumps could achieve a comparable sense of enclosure.
- 3.16 Therefore, in and of itself, the presence of a 'fosse' (or 'sunken fence'), which has since been subsumed by the planting and subsequent reinforcement of the Derby Screen since the 1950s, is not evidence that there was a designed view of Kedleston Hall looking west from the turnpike road, or even that there was a view of the house of any form when Sir Nathaniel Curzon first made these improvements to his Park.
- 3.17 In a similar way, much is made of a sketch made by Lord Scarsdale in c.1760 within the Evidence Base for the Setting Study (Page 13 in particular) as an illustration of his intent to aesthetically enhance the agricultural environs of the Park, which his family had been progressively acquiring for the Estate.
- 3.18 However, whilst this sketch annotates that three hedgerows were to be 'taken away', it is also noted that (1) these were the ones positioned closest to the Park's eastern edge, (2) subsequent maps still illustrate numerous hedgerows across the farmland running east towards Kedleston Road, also part of the Kedleston Estate and not removed; and (3) there is also some evidence for the establishment of additional hedgerow field boundaries within this farmed landscape. Accordingly, where this is taken as evidence for a 'designed' landscape outside of the park by



Evans & Morris (2017), the question has to be asked why this process was not taken further to genuinely open up a clear inwards view from the turnpike road, if the intention was solely design based and not practical/pragmatic.

3.19 The patchwork of hedged fields between the road and the park would still have served to limit views 'in', when the land control which Lord Scarsdale had developed would have offered an opportunity to craft and frame these in a more demonstrable way. Instead, his focus on those hedgerows closest to the eastern boundary of the park suggests his intention was to highlight the position of the Park in the wider landscape, rather than to create a view of the Hall positioned a further 0.8 kilometres away.

3.20 The debate between 'conscious design' on the one hand and 'serendipity' on the other is clearly summed up in Paragraph 7.2 of Evans & Morris (2017), when it states that:

'Whether this continuity [between the Park and the surrounding Estate] is deliberate or a subconscious response to what can commonly be perceived as a beautiful landscape is perhaps unimportant. What matters is that the landscape holds inherent and recognizable qualities, which convey historic, aesthetic, cultural and social significance, which were intended to be seen, discovered, experienced and appreciated (its setting).'

3.21 Whilst this might usually be fair enough, in a situation where the interplay between the Grade I listed Hall, its Grade I registered parkland and the associated estate is being used to determine applications for planning permission, it would be naïve at best to conclude that it is not relevant whether there is an intended inter-relationship between the three; in view of the fact that planning policy places an emphasis on the contribution made by the setting of the heritage assets to their significance to be understood and described where there is an application for planning permission. It is therefore clearly important to identify whether an element of the wider agricultural estate formed part of the designed landscape or simply performed an ancillary economic function for its owners; in other words, whether any relationships make a contribution to the significance of the heritage assets being considered.

3.22 Of course, the weight which should be given to the interplay between the Hall, the Park and wider Kedleston Estate of agricultural farmland might be swayed one way or another by the evidence of contemporary depictions or accounts which illustrate it. This matter was explored at length at



the 2016 Public Inquiry, where no evidence was brought forward by either the Council or the Kedleston Voice Rule 6 Party to demonstrate the presence of a designed view of the Hall from Kedleston Road which included the appeal site(s).

- 3.23 Indeed, none of the identified historic depictions of either the Hall or the Park are prepared from the perspective of a visitor or a passer-by on Kedleston Road. Perhaps unsurprisingly, they focus on the internal aspects of the park and the appearance of the Hall within that, with some limited depiction of the hillsides outside as a background. Even then, they generally focus on the rising landform to the north around Quarndon, rather than to the east and Kedleston Road, where we are repeatedly advised by Evans & Morris (2017) that a ‘designed approach’ was laid out and ornamented by Sir Nathaniel Curzon.
- 3.24 Furthermore, the only written account of the approach to Kedleston Hall submitted to the Public Inquiry in 2016 identifies the first view of the Hall as being further north beyond the Kedleston Hotel, and at a point where there is still today a clearly designed and identifiable view south west through the parkland trees to focus on the Hall’s main elevation.
- 3.25 Within that context, Appendix 3 of Evans & Morris (2017) reproduces an account that was written by William Pontey and dated May 1811. This is of course some 50 years after Lord Scarsdale first set about creating the designed parkland landscape at Kedleston.
- 3.26 The account is notable, as it recommends *‘either doing away or sinking the fences that are seen to join that end of the Plantation. Thirdly, reducing the number of trees in the fences between the Derby Road and Park to shew more of both the ground & Trees in it; and Lastly by taking down a few trees in the Old Park, as before suggested, on the east end more particularly, so as to appear in Masses, Groups and Single Trees’*, thus suggesting that there was not a particularly clear view from Kedleston Road towards and into the designed parkland around the Hall.
- 3.27 It is also worth recording that, whilst William Pontey makes clear that it was *possible* to see Kedleston Hall looking west from Kedleston Road, the thrust of his commentary must cast doubt on whether this was intended:

‘It has been said that the first view of Kedleston from the Derby Road is a very good one, but it should be noted that observation applies to the planting on the ridge only, & not to either the



House or the Park generally. The first impression made upon myself by the House from this point of View was that it appeared low in proportion to its size an effect this which I doubt not is to be imparted to the Ground near it being too high, in consequence of which several feet in height of the Base of the South West angle of the House cannot be seen'.

3.28 Pontey's response to this view is to propose '*partial shutting in*', thereby highlighting that as a first impression of Kedleston Hall from Kedleston Road this evidently failed to exert the intended impact which one might hope for.

3.29 Therefore, it might reasonably be asked whether the availability of this view was the result of an unintended development within the Park in the half-century since Lord Scarsdale set about re-working the designed landscape, in view of the fact that it evidently did not serve to evoke the sense of awe and anticipation that a first impression might otherwise intend, and instead created a desire to in fact conceal it with some new woodland around the eastern boundary.

3.30 Therefore, whilst this account indicates that it was possible to see the Hall from Kedleston Road at a particular point in the early 19th century, this should not be confused with there being a designed or intended view from this location on the approach, nor with a longevity that suggests it ought to be recreated through the clearance of the Derby Screen planted since.

The Role of the Derby Screen

3.31 In his Appeal Decision, Inspector John L Gray pays specific attention to the evidence for a designed view of Kedleston Hall looking west from Kedleston Road; this being an aspect of the Inquiry which expert witnesses for both the Council and Kedleston Voice (a Rule 6 Party) concentrated on in alleging heritage impacts from the two proposed developments.

3.32 However, Inspector John L Gray sums the issue up perfectly in Paragraph 50 of his Decision, when he states that:

'it is unclear that the view from Kedleston Road was a designed view, intended to give a glimpse of the Hall; it is known that the Derby Screen was planted as a response to changing circumstances; there is no firm intention to consider removal the Derby Screen; even if there were, there are a number of attendant issues that would have to be resolved; such indications



as there are relate only to views from the south-eastern corner of the Park and to thinning the Screen. There is nothing to suggest that a view from Kedleston Road giving a glimpse of the Hall might at some time be restored’.

- 3.33 So, in other words, the matter at stake is not whether there was or was not a designed view of the Hall from Kedleston Road, but whether it is in any way likely that it would be reinstated or made available due to the landscape changes which have taken place in the meantime.
- 3.34 It is therefore particularly surprising that *Part II: Evidence Base* of the Setting Study makes no more than passing references to the existence of the Derby Screen, other than in respect of the Public Inquiry of 2016 (Pages 67 to 69).
- 3.35 Otherwise, the only two references are on Page 7, where the ‘fosse’ along the eastern side of the 18th century Park is described as ‘*now part hidden by the Derby Screen*’ and again on Page 32, where a list of ‘*Woods and Plantations*’ contains reference to the Derby Screen and its likely date of establishment.
- 3.36 Despite the Planning Inspector clearly accepting that the creation of the Derby Screen was an important aspect in the chronological development of the Park, which the National Trust had sought to maintain and reinforce by increasing its width during the early years of this century; there is no mention of it whatsoever within what is an extensive and in-depth commentary on the development of Kedleston Park from the 1720s, which is based on a ‘map regression’ and set out in Pages 10 to 25.
- 3.37 In fact, Paragraph A.4.31 observes that ‘*it is a landscape of subtle change and adaptation. With shifting emphasis, but on balance there has been little change to the infrastructure of the Park and character of the Estate land since the 1760s, with subsequent phases of new plantations and clumps polishing the structure of the landscape*’ and the commentary for the 20th century ceases to identify or consider any developmental change to either the Park or the associated Estate after 1932.
- 3.38 The statement that there has been ‘*little change to the infrastructure of the Park and character of the Estate land since the 1760s*’ clearly does not stand up to examination.



- 3.39 There are more (c15) references to the Derby Screen in the main Setting Study, specifically where the first, on Page 27, recognises that: *'The role of the Derby Screen in affecting the experience of the land to the east was influential in the appeal decision'*.
- 3.40 Set within this context, where (in reality) the establishment, management and more recent reinforcement by the National Trust was influential in respect of any visual interrelationship between the appeal site(s) and the Hall, it is highly surprising that most of the subsequent mentions of the Derby Screen are made in respect of descriptions of photoviewpoints taken from within and around the Park (on Pages 39 to 69).
- 3.41 In this context, it is worth noting the inconsistency throughout the Setting Study in terms of the date when the Derby Screen was planted. This is either described as 'the 1950s' or 'the 1960s'; whereas the evidence presented by Melanie Morris to the 2016 Public Inquiry, where she was representing Amber Valley Borough Council, was that there was solely a line of trees present in June 1952, but a relatively broad band of mature trees by October 1971. Thus, it is properly understood that the Derby Screen may have been planted as early as the early 1950s and then became established prior to 1970, as it is depicted on the 1970 Ordnance Survey map revision.
- 3.42 Either way, there should be no misunderstanding that this represents a key phase in the later development of Kedleston Park, specifically given that the Ordnance Survey also very clearly illustrates the expansion of the Allestree suburb of Derby west to the eastern side of Kedleston Road and along the north-south ridgeline above.
- 3.43 The relevance of this interaction; i.e. the establishment and growth of the Derby Screen and the westward expansion of Derby across the ridge at Allestree; is referred to in Evans & Morris (2017) at Paragraph 6.2.8, when they state that *'the removal of the oblique view of the Hall from the south-east, through the planting of the Derby Screen, established from the 1960s, was not carried out to remove public views of the Hall, but reputedly to reduce the intrusion of night-time glare from Derby⁶⁶'*. It does not matter whether the planting was to remove public views or eliminate night-time glare from Derby because the effect is the same. It is merely semantics.
- 3.44 The final reference to the Derby Screen is found on Page 77 of the Setting Study (2017), in the context of *'Threats and Opportunities for Enhancing the Setting'*.



- 3.45 The reference starts out by proposing that *'the main areas of loss of significance, or threats to significance, are...the walks within the south eastern part of the Park, along the eastern boundary of the park, loss of views across the 'fosse' and loss of views across farmland to the east within the Markeaton Valley (introduction of the Derby Screen)' and '...the first view of the Hall from Derby (development along the eastern edge of Kedleston Road and the planting of the Derby Screen, although the screen also serves the beneficial purpose, looking from within the Park, of reducing visual intrusions into the Park'.*
- 3.46 Setting to one side the recognition and realisation that the growth of the Derby Screen does perform, a function in the appreciation and enjoyment of the Park; in contrast to the remark above in Paragraph 6.2.8 of Evans & Morris (2017); this assertion raises a key point in that one can only conclude that there has been a loss of significance from the asset ('harm'), or there is a threat of a loss of significance, if the contribution that the Derby Screen makes to the significance of the asset (or its 'special interest') has previously been identified and assessed. The judgement is otherwise wholly baseless.
- 3.47 English Heritage guidance (i.e. Conservation Principles, 2008) is clear in recognising that the significance of a 'place' or an asset is not necessarily derived from the oldest aspects, and that proper and robust assessment is required.
- 3.48 No assessment has been undertaken by the authors of the Setting Study, in respect of the role of the Derby Screen in the chronological development of the Park and the contribution that it makes to the special interest of the asset, let alone the special interest of the listed Hall. This is clearly at odds with the robust assessment made by the Planning Inspector following the 2016 Public Inquiry, which must be preferable as a basis for decision-making in this respect.
- 3.49 Either way, the contention (at Paragraph 6.2.14 of the Setting Study) that *'the engagement of the public in views of the Hall has slowly been eroded over a period of 50 years but these changes are reversible, in whole or in part'* is obviously at odds with the conclusions of the Inspector and also finds no weight or support in any of the evidence which was brought before the Public Inquiry, including management proposals which were drawn up by the National Trust.
- 3.50 This assertion should also be contextualised by adding that, even if the National Trust was minded to reduce, remove or substantially thin the Derby Screen at some point in the future, it



is the case that the Kedleston Estate retains control of the adjoining farmland beyond the Park boundary and continues to occupy a wing of the Hall, such that a **new** Derby Screen could easily be planted to preserve the screening effect the trees were planted to achieve in the first place. As such, this contention lacks any substance.

- 3.51 Indeed, it is worth noting that the Derby Screen is controlled by **two** landowners – the National Trust and the Kedleston Estate, so even in the event that the Trust clearfelled their part of the Derby Screen, it would not make any material difference to the views into or out of the Park. This is because there is simply no realistic prospect that the owners of Kedleston Estate would not retain/maintain the tree stock in their portion of the Derby Screen, which runs along its entire length. As set out above, this could also be reinforced as necessary by planting additional trees on the farmland controlled by the Estate adjoining the eastern boundary of Kedleston Park. The prospect of any views being created into or out of the Park through the eastern boundary through the Derby Screen is minimal.

The Interaction between the Hall, the Park and the Kedleston Estate

- 3.52 This third and final issue is picked up by the Planning Inspector (for the 2016 Public Inquiry) in Paragraph 32 of his Appeal Decision:

‘It was also argued that the historical, social and economic connection – the appeal site being part of the estate of which the Hall and Park were the hub – brought the appeal site within the setting of the Hall. There has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting. The appellant takes the view that the Park provides the setting for the Hall. That is not an unreasonable approach to take; for example, the Historic England guidance recognises that a conservation area will include the settings of listed buildings and will have a setting of its own’.

- 3.53 This assessment clearly resonates with the Court of Appeal’s recent 9 June 2017 judgement regarding the Williams Case, where it is identified that:

‘I would not wish to lay down some universal principle for ascertaining the extent of the setting of a listed building. And in my view it would be impossible to do so. Clearly, however, if a proposed development is to affect the setting of a listed building there must be a distinct visual



relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one’s experience of the listed building in its surrounding landscape or townscape. This will often require the site of the proposed development and the listed building to be reasonably close to each other, but that will not be so in every case. Physical proximity is not always essential’.

3.54 In other words, simple ownership (whether past or present) in and of itself is not sufficient to automatically mean that a piece of land or a building falls within the setting of a heritage asset, such as a listed building like Kedleston Hall.

3.55 Historic England guidance (GPA 3, 2017) makes clear that setting is not solely about visual inter-relationships, and also adds that ‘intangible’ relationships can contribute to significance in the same way that visual relationships can. This is taken up by the Court of Appeal in overturning the High Court judgement in respect of Steer and Historic England v Catesby Estates; where it is stated that this all comes down to a matter of planning judgement.

3.56 In this instance, Evans & Morris (2017) do not get to grips with the issue of the historic, intangible relationships between the Hall as a listed building and the estate farmland that was owned and managed by its occupants.

3.57 Paragraph 4.15 of the 2017 Setting Study (Evans & Morris 2017) asserts that:

‘The Hall lies at the centre of a large landed estate. As the headquarters of that estate, which was managed by the Curzons from the 12th century, a role they continue in part, it has very high historic significance, which was, and continues to be, far-reaching, influencing the housing, land management and employment of people within the parishes and villages of Kedleston, Weston Underwood and Quarndon. The Estate still exerts an influence on each of these settlements, which combine historic tenanted Estate property with new developments. The Estate farms occupy a much wider area and there is continuity in the Estate management of the landscape’.

3.58 Paragraph 4.18 follows this up by adding that:

‘There is no doubt that the Hall was designed to have a relationship with both its parkland and the wider agricultural landscape, which was embellished with strategic planting where the



farmed estate was and still is visible in views in conjunction with the Hall – the Hall is often a part of the composition, in the same way that a temple would be in the subject of an Arcadian landscape’.

3.59 Finally, Paragraph 4.19 states that:

‘The transitions between types and phases of planned landscaping and planned development outside the park demonstrates a conscious awareness of the significance of the Hall, and its predecessor, and the relationship between the Hall and the cultural landscape, which bears witness to the long association between the estate, the family and this part of Derbyshire’.

3.60 However, whilst Paragraph 6.2.17 of Evans & Morris (2017) states that *‘even when lost from sight, as when travelling along the footpath in the bottom of the Quarndon Valley, the presence of the Hall and its park remained apparent through the woodland planting along Inn Lane and distinctive planting such as Bath Plantation. These experiences all remain today and provide the same sense of connection’*, it remains highly questionable to what extent this provides an identifiable element in the experience of the Grade I listed Hall; but also the key question still surrounds the spatial extents that might reasonably be considered subject to this effect.

3.61 For instance, it might reasonably be assumed that ‘estate land’ within the general environs of the Hall and Park might still possess some visual inter-relationship, even if that is either filtered or intermittent. To what extent does the ‘influence’ of Kedleston Hall over its wider Estate extend to the farmland it owns (or has owned), where there is no prospect of a visual inter-relationship, but yet it still provided a functional and/or economic contribution that facilitated Kedleston Hall’s development and subsequent operation.

3.62 The appellant’s heritage evidence to the August 2016 Public Inquiry for *Land at Kedleston Road and Memorial Road, Allestree* [APP/M1005/W/153132791] reproduced an extract from *Robert Adam and Kedleston: The Making of a Neo-Classical Masterpiece*, which was published by the National Trust in 1987 for Leslie Harris. This extract provided information on the Kedleston Estate’s historic extent:

‘Successive generations added modestly to the property, but it was in the hundred years after 1650 that the estate grew to 10,000 acres, with properties in Derbyshire and the surrounding



counties of Leicestershire, Nottinghamshire and Staffordshire, as well as in London. By judicious management and a fairly modest life-style, income had risen to approaching £10,000 per annum in 1759, rentals were certainly over £7,000.'

- 3.63 So, in other words, at its height, the Kedleston Estate covered land far removed from the Hall and unquestionably at a distance which would preclude any visual inter-relationships. As the guidance on Page 5 of GPA3 (December 2017) identifies, this in no way precludes the land contributing 'in principle' to the setting or significance of the heritage assets concerned, even if the relationships are intangible.
- 3.64 So, in a comprehensive study of the form and scope involved in Evans & Morris (2017), it would be reasonable to expect some assessment of the extent to which historic estate land far removed from the surroundings of Kedleston Hall does or does not make a contribution to the significance of the Grade I listed building and its Grade I Registered Park.
- 3.65 This, after all, was the focus of Historic England's consultation response on the first outline planning application (Ref. AVA/2014/0928) and then formed the basis for its engagement in the High Court action that followed planning permission being granted on appeal. It was explicitly identified by Historic England that this was a 'non-visual' relationship unrelated to views to, from or including the listed building; so accordingly it must be true to say that at least in theory estate land located far away in Staffordshire or Leicestershire *could* make a comparable contribution to the significance of the listed Hall as historic Kedleston Estate land in Quarndon Parish, if there are no visual inter-relationships.
- 3.66 Evans & Morris make no credible attempt to grapple with this issue; and to identify how, in what ways and to what extent the Estate's historic ownership of land makes a contribution to the significance of the Hall. Insofar as the estate land is considered within the study, it is solely in respect of land within the immediate surroundings of the Park and where there is most likely a visual inter-relationship anyway, even if only intermittently.
- 3.67 It is quite evidently important to have some clarity on the role of remote estate land in the understanding and appreciation of the Hall's significance.



3.68 However, the 2017 Setting Study really just skirts around the issue and asserts that there is a compelling relationship between Kedleston Hall, Park and Estate without ever actually explaining how a field on the edge of Allestree or Quarndon could readily be identified as forming part of the Kedleston Estate (rather than one of the other estates nearby), other than through reference to buildings and blocks of woodland which are equally unmarked or undefined in terms of their ownership by Kedleston Estate.

3.69 Moreover, if it is not necessary for land or buildings to be identifiable in some way as either forming or having formed part of the Kedleston Estate now or in the past, it would clearly be the case that there is no spatial limitation to the setting of Kedleston Hall Grade I listed building. This flies in the face of both the Court of Appeal judgement in the Williams case and its more recent judgement in respect of Steer and Historic England.

4. Conclusions

4.1 In light of the above, it is concluded that the 2017 Setting Study (Evans & Morris) prepared in respect of Kedleston Hall for the National Trust does not provide a robust or compelling evidence base to support adoption of Quarndon's *Neighbourhood Development Plan 2018-2033*, which is currently a 'pre-submission' draft.

4.2 First and foremost, it does not take account of the most up to date case law surrounding the identification and assessment of setting effects in the historic environment. Whilst the authors can be forgiven for not predicting the outcome of the Hearing for the Steer case at the Court of Appeal at the time of publication (i.e. October 2017), it is surprising that the Court of Appeal judgement in respect of the Williams case was not accounted for in identifying and assessing those aspects of the Hall's setting that underpin its *special interest*.

4.3 However, secondly, the Setting Study (2017) relies substantially on information which was submitted to the 2016 Public Inquiry in respect of Land at Kedleston Road and Memorial Road, and where much was either subsequently moderated by the Planning Inspector or totally dismissed in reaching his conclusions on the impact of the two conjoined proposals. For instance, the Inspector's assessments regarding (1) the existence of a designed view looking west towards the Hall and (2) the impact of the 'Derby Screen' in both curtailing and preventing



the reinstatement of any such view in the future are neither challenged nor disputed, but equally they not accounted for either.

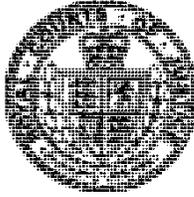
- 4.4 Therefore, it is considered to represent no more than a partial assessment of the setting of the Grade I listed building, Grade I Registered Park and Kedleston Conservation Area, which should not be relied upon as an evidence base to support a Development Plan document in the way which it currently does.
- 4.5 Whilst Evans & Morris (2017) claim (at Paragraph 2.1.1 that the National Trust's Setting Study includes a '*full analysis of the development of the Estate*' in Part II: Evidence Base, this cannot be the case when a key element in the later development of the Park, such as the planting and establishment of the Derby Screen, has simply been disregarded because it does not reflect the authors' chosen narrative that the landscape at and around the Park has barely changed since Lord Scarsdale created it in the mid 18th century.
- 4.6 This narrative clearly does not stand up to scrutiny, particularly when the interplay between the growth of the trees in the Derby Screen and the growth of Derby as a place is properly understood and assessed. It is quite evident that this is the case from the Appeal Decision for *Land at Kedleston Road and Memorial Road, Allestree*, where Melanie Morris proposed the same limited narrative in evidence for the Council.
- 4.7 Therefore, the Kedleston Hall Setting Study should be seen for what it is - an assessment which was commissioned by a landowner to inform the management of their property, and not an impartial, objective and robust assessment that has been prepared specifically to underpin the preparation of a strategy and supporting policies controlling development within the Parish now and into the future.
- 4.8 In that regard, the use of this National Trust document as the evidence base for the consultation draft *Neighbourhood Development Plan 2018-2033* repeats the same mistake as the adopted Amber Valley Local Plan 2006, where Policy EN33 addressing the setting of Kedleston Hall used an evidence base prepared for the National Trust by the Derek Lovejoy Partnership in 2001 and for a purpose that was quite obviously at-odds with the function of the council in its role as the Local Planning Authority. The same mistake should not be repeated in this case, and the role of



the National Trust's current setting study should be properly scrutinised and robustly evaluated at the forthcoming Neighbourhood Plan examination.



Appendix EDP 1
Court of Appeal Judgement [2018] EWCA Civ 1697



Neutral Citation Number: [2018] EWCA Civ 1697

Case Nos: C1/2017/1840 and C1/2017/1934

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE ADMINISTRATIVE COURT
PLANNING COURT
MRS JUSTICE LANG DBE
[2017] EWHC 1456 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18 July 2018

Before:

Lord Justice McFarlane
Lord Justice Lindblom
and
Lady Justice Asplin

Between:

C1/2017/1840

Catesby Estates Ltd.

Appellant

- and -

Peter Steer

Respondent

- and -

Historic England

Intervener

Mr Rupert Warren Q.C. (instructed by **Eversheds Sutherland (International) LLP**) for the **Appellant**
Ms Nina Pindham (instructed by **Richard Buxton Environmental & Public Law**) for the **Respondent**
Ms Emma Dring (instructed by **Sharpe Pritchard LLP**) for the **Intervener**

And between:

C1/2017/1934

**Secretary of State for Communities and
Local Government**

Appellant

- and -

Peter Steer

Respondent

- and -

Historic England

Interested Party

Ms Jacqueline Lean (instructed by **the Government Legal Department**) for the **Appellant**
Ms Nina Pindham (instructed by **Richard Buxton Environmental & Public Law**) for the **Respondent**
Ms Emma Dring (instructed by **Sharpe Pritchard LLP**) for the **Interested Party**

Hearing date: 17 April 2018

**Judgment Approved by the court
for handing down
(subject to editorial corrections)**

Lord Justice Lindblom:

Introduction

1. Did an inspector deciding an appeal against the refusal of planning permission err in law in his understanding of the concept of the “setting” of a grade I listed building? That is the main question in these two appeals.
2. The appellant in the first appeal is Catesby Estates Ltd.. The appellant in the second appeal is the Secretary of State for Communities and Local Government. The appeals are against the order of Lang J., dated 22 June 2017, upholding an application by the respondent, Mr Peter Steer, under section 288 of the Town and Country Planning Act 1990. Mr Steer’s challenge was to the decision of an inspector appointed by the Secretary of State, in a decision letter dated 22 August 2016, allowing two appeals by Catesby Estates under section 78 of the 1990 Act, after an inquiry held in July 2016. The first of those appeals was against the refusal by Amber Valley Borough Council of an application for planning permission for a development of housing – up to 400 dwellings and a convenience store – on a site of about 17 hectares on land at Kedleston Road and Memorial Road, Allestree in Derbyshire. The second was against the council’s failure to determine another application for a development of up to 195 dwellings on about 7 hectares in the southern part of the same site. Mr Steer was an objector to the proposals, and a member of a group called Kedleston Voice, which also opposed the development. Historic England objected, and has taken part in the proceedings too.
3. The site is farmland, about 1.7 kilometres to the south-east of Kedleston Hall, which is a grade I listed building, and about 550 metres from the grade I listed Kedleston Hall registered park and garden and the Kedleston Conservation Area, whose boundary on its south-eastern side extends to the edge of the park. About 1.5 kilometres to the north of the site are the grade II* listed Kedleston Hotel and the Quarndon Conservation Area. The site itself was part of the manorial land owned by Sir Nathaniel Curzon, the first Lord Scarsdale, when, in 1761, he set about reconstructing his house and laying out the park. The land was beside the main road from Derby, by which most visitors to Kedleston Hall would arrive. From it one could see the park. And from the park there were views of the house. There were also views from the park towards Derby. In the 1960’s, however, as the city expanded to the north-west, a screen of trees – the “Derby Screen” – was planted to block them. The Hall is widely acknowledged to be of exceptional historic and architectural interest. It is described by Pevsner as “one of the most magnificent apartments of the C18 in England” and “the most splendid Georgian house in Derbyshire, in extensive grounds”. The park was largely the creation of the architect Robert Adam. Both the Hall and the park are now managed by the National Trust, and attract many visitors – about 120,000 in 2013.
4. Several objectors, including Historic England, maintained that the appeal site lay within the settings of both Kedleston Hall and Kedleston Park, largely because of the historic connections between the Hall and park and the farmland within the surrounding estate. In refusing planning permission for the larger scheme, the council asserted that the proposed development would harm the settings and significance of several heritage assets, including Kedleston Hall as a grade I listed building, contrary to government policy in paragraphs 132 and 134 of the

National Planning Policy Framework (“the NPPF”). It opposed the second scheme for the same reason.

The issue in the appeal

5. The single issue in the appeal is whether the inspector erred in law in his approach to the effects of the development on the setting of Kedleston Hall, thus failing to discharge the duty in section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (“the Listed Buildings Act”).

Section 66(1)

6. Section 66(1) of the Listed Buildings Act provides:

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

Government policy and guidance

7. In the “Glossary” to the NPPF a “Heritage asset” is defined 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 ...”. The “Setting of a heritage asset” is defined in this way:

“... 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.”

The definition of “Significance (for heritage policy)” is:

“... The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset’s physical presence, but also from its setting”.

8. Paragraph 128 of the NPPF says that “[in] determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting”. Paragraph 132 states:

“132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset’s conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”

Paragraph 133 says that “[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 four specified considerations apply. Paragraph 134 says that “[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 securing its optimum viable use”.

9. The definition of the “Setting of a heritage asset” in the “Glossary” to the NPPF is explained in paragraph 18a-013-20140306 of the Planning Policy Guidance (“the PPG”), under the heading “What is the setting of a heritage asset and how should it be taken into account?”:

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

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

The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.

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

...”.

Historic England's guidance

10. In July 2015 Historic England published a revision of the first edition of a guidance document entitled “The Setting of Heritage Assets – Historic Environment Good Practice Advice in Planning: 3” (“GPA3”). The second edition was published in December 2017. We are concerned only with the first edition, current at the time of the inspector’s decision in this case. The “Introduction” to GPA3 made clear that its purpose was “to provide information on good practice”, and it did “not constitute a statement of Government policy” (paragraph 1).
11. Under the heading “The extent of setting”, it adopted the definition of the “Setting of a heritage asset” in the NPPF. It acknowledged that “[while] setting can be mapped in the context of an individual application or proposal, it does not have a fixed boundary and cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset because what comprises a heritage asset’s setting may change as the asset and its surroundings evolve or as the asset becomes better understood or due to the varying impacts of different proposals”. It also recognized that “[a] conservation area will include the settings of listed buildings and have its own setting, as will the village or urban area in which it is situated ...” (paragraph 4). On “Views and setting”, it said that “[the] contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, including a variety of views of, across, or including that asset, and views of the surroundings from or through the asset, and may intersect with, and incorporate the settings of numerous heritage assets” (paragraph 5). Under the heading “Setting and the significance of heritage assets”, it emphasized that the contribution made by the setting of a heritage asset to its significance “depends on a wide range of physical elements within, as well as perceptual and associational attributes pertaining to, the heritage asset’s surroundings” (paragraph 9). On “Designed settings”, it said (*ibid.*):

“Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create experiences of drama or surprise and these designed settings may also be regarded as heritage assets in their own right. Furthermore they may, themselves, have a wider setting: a park may form the immediate surroundings of a great house, while having its own setting that includes lines-of-sight to more distant heritage assets or natural features beyond the park boundary. Given that the designated area is often restricted to the ‘core’ elements, such as a formal park, it is important that the extended and remote elements of design are included in the evaluation of the setting of a designed landscape[.]”

12. “A Staged Approach to Proportionate Decision-Taking” was suggested, in five steps (paragraphs 10 to 31). On “Step 1: identifying the heritage assets affected and their settings” the guidance was that “... if the development is capable of affecting the contribution of a heritage asset’s setting to its significance or the appreciation of its significance, it can be considered as falling within the asset’s setting” (paragraph 13). This apparently circular proposition did not appear in the second edition of GPA3. “Step 2: Assessing whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s)” would be to consider, first, “the physical surroundings of the asset, including its relationship with other heritage assets”; second, “the way the asset is appreciated”; and third, “the asset’s associations

and patterns of use” (paragraph 18). For “Step 3: Assessing the effect of the proposed development on the significance of the asset(s)”, the “(non-exhaustive) check-list of the potential attributes of a development affecting setting that may help to elucidate its implications for the significance of the heritage asset” included several “effects” that were not visual (paragraph 25).

Evidence at the inquiry

13. At the inquiry, as Lang J. said (in paragraph 51 of her judgment), there was “a significant body of evidence, from [Historic England], the National Trust, the Gardens Trust, the Development Control Archaeologist at Derbyshire County Council, and the experts called on behalf of the local community, Kedleston Voice, that the appeal site was part of the setting of both the Grade I listed Hall and the park, as well as the conservation area, even though the proposal would not intrude upon views to and from the Hall”. The thrust of that evidence, said the judge, was that “the appeal site was part of the setting of the Hall because it had formed part of the estate, managed historically as an economic and social entity, and it remained in its historic agricultural use, with hedges and mature trees characterising the field boundaries”. From the Hall and the park, “the surrounding rural context was important in preserving a sense of a parkland landscape at the centre of a managed rural estate, rather than in a suburban context”. The site was on “the primary visitor route to the Hall and Park and so visitors would experience the historical narrative, and the concentric influence of the Hall on its landscape, as they traversed the agricultural estate, then entered the enclosed, designed park and gardens, enjoying the drama of anticipation as a great English country house was revealed to them”.

The inspector’s decision letter

14. The inspector described the “main issue” in both appeals as “the impact either proposal would have on the landscape character of the area and on the heritage assets of Kedleston Hall, Kedleston Hall Registered Park and Garden and Kedleston Conservation Area, Kedleston Hotel and Quarndon Conservation Area” (paragraph 4 of the decision letter). And “the matters to be covered” included “... landscape impact both in itself and also bearing in mind the historic connection with the Kedleston Hall estate, the statutory and policy background against which impacts on the heritage assets should be considered and, in the event of harm to any of those assets, the nature of the planning balance to be undertaken” (paragraph 6).
15. Under the heading “Landscape impact”, the inspector found it “difficult to dissociate landscape impact from heritage impact”. It was “not unreasonable to look at landscape quality and impact in purely physical or visual terms and to consider historical value and significance separately, in the context of the impact on the Hall and Park” (paragraph 17). He concluded that “setting aside for the moment the historical association with the Hall and Park, the appeal site exhibits no features that could qualify it as a valued landscape in the terms of paragraph 109 of the Framework” (paragraph 21). There was, he said, “no reason why, in physical or visual terms, harm to the landscape should compel dismissal of the appeals”, and “[the] question of its historical value may be addressed in relation to the settings of Kedleston Hall and its registered Park and Garden” (paragraph 30).

16. Turning to “The settings of the heritage assets and the statutory and policy context”, he began by directing himself (in paragraph 31) on the relevant definitions and policies in the NPPF:

“31. The definition of setting in the Framework is the “surroundings in which a heritage asset is experienced”. Further, the extent of a setting “is not fixed and may change as the asset and its surroundings evolve”. Setting is not itself a heritage asset but elements of a setting “may make a positive or negative contribution to the significance of an asset”. And paragraphs 126-141 of the Framework make it clear that, in considering a development proposal, what has to be assessed is the effect there would be, not on the setting, but on the significance of the heritage asset concerned.”

He considered the setting of each heritage asset, in turn. On the setting of Kedleston Hall he said (in paragraphs 32 to 36):

“32. The Council, Kedleston Voice and English Heritage (as it was then) argue that Kedleston Hall and its Park are an integral whole and that, accordingly, their settings are the same. It was also argued that the historical, social and economic connection – the appeal site being part of the estate of which the Hall and Park were the hub – brought the appeal site within the setting of the Hall. There has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting. The appellant takes the view that the Park provides the setting for the Hall. That is not an unreasonable approach to take; for example, the Historic England guidance recognises that a conservation area will include the settings of listed buildings and will have a setting of its own. That said, there are two ways to look at the setting of Kedleston Hall.

33. The planting of the Derby Screen, around 1960, brought about a very significant change. Originally, there were views out from the Hall and Park towards Derby – and, for those approaching the Hall, there would have been a first view into the Park, with a glimpse of the Hall, across the appeal site from Kedleston Road. The Derby Screen was planted to obscure the view of Allestree, development having encroached over the horizon, and the night-time glare from the increasingly large built-up area of Derby. Its planting was a deliberate decision, based on the changing surroundings, to make the Park more enclosed and inward-looking; and the Derby Screen has since been significantly extended into the Park by the National Trust. Thus, today, the appeal site forms no part of the setting of Kedleston Hall.

34. If one takes a more historical approach, however, then there was an open view where the Derby Screen now is. Moreover, the evidence suggests it was a designed view – documentary, in the references to the vista including Derby; physical, in the ditch of a sunken fence, akin to a ha-ha, which would have kept stock out (or in) without obstructing the view. The appellant argued that the sunken fence may have been a ditch predating the laying out of the Park but that does not exclude the proposition of a designed view.

35. The view was, clearly, a wide vista. The spire of Derby Cathedral is referred to as being seen in the panorama, though it could only have been seen from relatively close to the boundary of the Park, not from the Hall. The particular view to or from Kedleston Road is only a very small segment and is, from the Hall, at its very eastern extremity. There is no evidence that the view from Kedleston Road towards the Hall and Park was also part of the design; nor is it logical to draw the inference that the view towards the Hall and Park was designed simply because the view in the other direction was.
36. However, if one holds the opinion that the view both to and from Kedleston Road was a deliberate part of the design of the Park and that the Derby Screen, or part of it, could be opened out to restore that view, then the appeal site does indeed fall within the setting of Kedleston Hall.”

He reached somewhat different conclusions on the setting of the registered park and garden and the Kedleston Conservation Area (in paragraphs 37 and 38):

- “37. The Registered Park and the Conservation Area are coterminous and the designations have similar purposes in mind. The Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire). The agricultural land around the Park certainly forms part of its setting in historical and cultural terms. In visual terms, what comes within the setting is less extensive. There were, and still are, places within the Park where the surrounding agricultural landscape contributes to views out; and there are places outside the Park which afford views in, not only of the Park but also, sometimes, of the Hall.
38. The appeal site may be considered to lie within the setting of the Park because of its relative proximity. There are clear views of the boundary of the Park, though it is debatable whether its trees and woodland, designed and laid out in a naturalistic manner, can actually be distinguished as such by anyone unfamiliar with designed parkland. The only views into the Park from or across the appeal site, or out from the Park towards it, have been obscured by the planting of the Derby Screen.”

As for the setting of Kedleston Hotel, he said this (in paragraph 39):

- “39. Kedleston Hotel stands on the site of an earlier inn but what is seen today dates from the same period as the Hall and Park and was built to cater for visitors to the Park and its Sulphur Bath. There is thus a close historic relationship between the Hotel and the Hall and Park. The appeal site lies within the setting of the Hotel in as much as it can be seen from the Hotel looking south – but the focus of views from the Hotel, in so far as there are any, is to the west and north-west, towards the Hall and Park. The Hotel is not visible, or certainly not noticeable, from the appeal site or Kedleston Road alongside it. There are views in which the Hotel and Hall can both be seen, for example from Common Hill, just west of Quarndon; from there, though, the appeal site lies in a wholly different direction, by about 90°.”

and on the setting of the Quarndon Conservation Area, this (in paragraph 40):

“40. Quarndon Conservation Area is drawn tightly round the historic core of the village. It has relatively recent development virtually all around it. There is a significant amount of that to the south of the Conservation Area, in the direction of the appeal site. Because of this, it is debatable that the appeal site actually lies within the setting of the Conservation Area. It may be thought to do so, however, to the extent that it may be seen in winter views (when the trees are bare).”

17. He then considered the “Impact on the significance of the heritage assets”, again taking each in turn.

18. As for Kedleston Hall, he began by considering the status and “significance” of the listed building itself (in paragraphs 41 to 44):

“41. There is no doubting that Kedleston Hall, a grade I listed building, is a heritage asset of the very greatest importance. Statute requires special regard to be had to the desirability of preserving not only the building but also its setting. Any harm to the significance of the Hall must be given very great weight when considering development proposals within its setting.

42. The Derby Screen is key to any impact on the significance of Kedleston Hall. At the present time, the existence of the Screen means that the proposed development would have no impact whatsoever on the setting of the Hall. The questions to be addressed, therefore, are about the prospect of the Screen being removed or opened up and, if it were, the resultant impact of the proposed development on the significance of the Hall.

43. It is not absolutely clear that the view across the appeal site between Kedleston Road and the Hall and Park was designed. ...

44. There is no debate that the Screen was planted to obscure views of Allestree and the night-time glare from the lighting of the expanding urban area of Derby. Its planting was a deliberate response to changing circumstances. It may be seen as part of the evolution of the Park. Moreover, for whatever reason, the depth of the Screen has been substantially increased by the National Trust so that it is now some 40m or more wide. To remove it now, or to open it up in some way, raises a number of issues, as well as being a substantial and costly task.”

He then (in paragraphs 45 to 51) discussed the possibility of the “Derby Screen” being removed, and the likely consequences of that, concluding (in paragraphs 49 to 51):

“49. It seemed, until late in the inquiry, that no consideration had ever been given to the removal of the Derby Screen, or to opening it up so that the Park and landscape beyond are inter-visible. The National Trust then wrote to the Council, attaching an extract from a conservation plan that had not hitherto been known to exist. However, while the letter mentions glimpses of the dome of the Hall from Kedleston Road, the extract talks only about views from the south-eastern corner of the Park and about managing and thinning the Derby Screen “to create more open woodland with permeable edges to the parkland”

– not the removal of part or all of the Derby Screen and not significantly different to what is in the 2013 Conservation Plan.

50. Thus, it is unclear that the view from Kedleston Road was a designed view, intended to give a glimpse of the Hall; it is known that the Derby Screen was planted as a response to changing circumstances; there is no firm intention to consider removal [of] the Derby Screen; even if there were, there are a number of attendant issues that would have to be resolved; such indications as there are relate only to views from the south-eastern corner of the Park and to thinning the Screen. There is nothing to suggest that a view from Kedleston Road giving a glimpse of the Hall might at some time be restored.

51. On that basis, it is entirely reasonable to conclude that the appeal site does not lie within the setting of Kedleston Hall and that section 66(1) of [the Listed Buildings Act] and policy in the Framework do not come into play.”

He also considered the impact of the development assuming the “Derby Screen” had been removed (in paragraph 52):

“52. If the issues considered above were to be resolved in favour of removing all or part of the Derby Screen to restore a view to and from Kedleston Road, a question then arises as to what would be the impact of the proposed developments. The view from Kedleston Road would be lost. It could never be more than a glimpse across open countryside, rather than a designed view through parkland, but at least it might indicate that one was nearing the Hall and Park. The view from the Hall would be little changed. The cross-section provided by Dr Hickie [one of the council’s witnesses] in his evidence suggests that the land itself would be all but invisible from the Hall, though houses upon it would be seen to bring the boundary of the urban area closer to the Park. All that would represent less than substantial harm – sufficiently little, in fact, that the effect on the significance of the Hall, standing within its designed Park, would be negligible.”

19. In his conclusions on the impact on the setting of the registered park and garden and the Conservation Area the inspector said (in paragraphs 53 to 58):

“53. There is no dispute that the Park, registered in grade I, is, like the Hall, a heritage asset of the very highest importance. There is also no dispute that the appeal site lies within the setting of the Park and the Conservation Area; and that the harm caused to the significance of both would be less than substantial. The term ‘less than substantial’ does, however, cover a wide range of harm – and the question is just how great that harm would be.

54. There are two aspects to the impact on the setting of the Park – visual and historical. The Park was carefully designed and laid out in a naturalistic manner. There are (or were) designed views into the Park, with glimpses of the Hall, most notably (in the context of these appeals) from Kedleston Road between the Hotel and the Park entrances. The farmland surrounding the Park was historically part of the estate – and still is in that, while ownership may have changed, the estate is still managed from the

Hall. The farmland acts as a visual setting for the Park; and that is more important than might be thought at first blush – because the Park was designed naturalistically, not in a more formal style which may not have had, or needed, a measure of continuity with its surroundings.

55. The appeal site is part of that setting. So too is the built-up area of Allestree, which stands on land formerly part of the estate. And, of course, the Derby Screen was planted around 1960 because of the incursion of Allestree (and night-time glare from Derby) into the previously rural views from the Park. Much of what is said above about the Derby Screen applies equally to the Park. There would, however, have been views south-eastwards from within the Park, whether intentionally designed or not, from the Backgrounds and from the Long Walk. In historical terms, that brings the appeal site more firmly within the setting of the Park than if there had never been any inter-visibility. ...

...

58. To sum up, there would be harm to the setting of the Park from development within it – but that would be mitigated to a degree by the extent of the existing built-up area, the existing vegetation and the remaining open land between the Park and the built-up area. That also applies to views out from the Park if the Derby Screen were removed or opened out; views towards the Park would, though, be less extensive and more oblique than possible at present. In terms of the significance of the Park and Conservation Area, though, the harm would be at the lower end of ‘less than substantial’.”

He concluded that there would be no “material impact” on the setting of the Kedleston Hotel if the proposed development was “[appropriately] designed and landscaped”, and “no harm to its significance as a grade II* listed building” (paragraph 60). He found there would be “no harm to the significance” of the Quarndon Conservation Area (paragraph 61).

20. That assessment was carried into the inspector’s “Conclusions on the main issue” (in paragraphs 62 to 64) and his “Overall conclusions” (in paragraphs 79 to 89). He acknowledged that “Kedleston Hall and its Park are heritage assets of the greatest importance” and that “[any] harm to their significance must carry very great weight in the balance against the public benefits of the appeal proposals required by paragraph 134 of the Framework”. There was, however, “no harm to the significance of the Hall and only very modest harm to the significance of the Park and Conservation Area”. And “[even] if the Derby Screen were removed or opened out, the harm to the significance of the Hall would be very limited indeed and the harm to the Park still no more than modest”. Against that harm there was “the very great public benefit of market and affordable housing which is much needed, especially in Amber Valley but also in Derby City”. This was, said the inspector, “more than sufficient to tip the balance in favour of the appeal proposals” (paragraph 83). Applying the policy for the “presumption in favour of sustainable development” in paragraph 14 of the NPPF, there was “no doubt that the adverse impacts of either development would not significantly and demonstrably outweigh the benefits from providing much-needed housing” (paragraph 87).

The judge's conclusions

21. Lang J. said the inspector had “rejected the evidence and submissions that the appeal site was part of the setting of the Hall, despite the historic social and economic connections” (paragraph 54 of the judgment). She concluded (in paragraph 60):

“60. In my view, the Inspector’s findings ... clearly indicate that [his] focus was upon identifying a visual connection, and assessing the proposal’s impact upon it. The historic social and economic connections were set to one side in this exercise. I therefore cannot accept the Secretary of State’s submission that the Inspector merely formed a planning judgment that the historic social and economic factors were of insufficient weight, as there was no assessment of the weight to be accorded to them in the Inspector’s decision-making process.”

In the judge’s view the inspector’s approach to the other heritage assets “confirms that he treated the physical and visual connection as determinative” (paragraph 61). Her crucial conclusion was this (in paragraph 64):

“64. In my judgment, although the Inspector set out the NPPF definition of setting ... , he adopted a narrow interpretation of setting which was inconsistent with the broad meaning given to setting in the relevant policies and guidance which were before him Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. 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.”

The inspector’s “justification for his narrow interpretation” was, said the judge, “misplaced because the term “*surroundings*” in the NPPF definition of setting does place a geographical limitation on the extent of the setting” (paragraph 67). He had “adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative”, and “[in] adopting this approach, [he] made an error of law” (paragraph 69).

Did the inspector err in law in his understanding of the “setting” of a heritage asset?

22. Mr Rupert Warren Q.C., for Catesby Estates, and Ms Jacqueline Lean, for the Secretary of State, submitted that the inspector made no error of law when identifying the extent of the setting of Kedleston Hall and assessing the likely effect of the development on that setting. He took into account the relevant facts, did not misunderstand the relevant policy and guidance, and exercised his planning judgment reasonably when applying that policy and guidance. He did not disregard historic considerations. The suggestion that he did is based on a misreading of paragraph 32 of the decision letter. His approach there was consistent with authority, and correct. And as one can see from previous and subsequent paragraphs – in particular, paragraphs 17, 21 and 30, where he assessed the likely effects of the development on the landscape, and paragraphs 54, 55 and 57, where he assessed its likely effects on the settings of the other heritage assets, both with and without the “Derby Screen” – he had considerations

other than the visual and physical well in mind. The idea that he simply put those considerations to one side is wrong.

23. Ms Nina Pindham, for Mr Steer, and Ms Emma Dring, for Historic England, supported the judge's analysis. They submitted that the inspector's approach was unduly narrow. In identifying the setting of Kedleston Hall and assessing the likely effects of the development on that setting, he had considered only views and the impact on views. He did not consider historical factors. When dealing with the other heritage assets, the inspector also focused on visual impacts alone. Historical factors, Ms Pindham and Ms Dring submitted, can be enough on their own to bring a site within the setting of a listed building. And that was so with Kedleston Hall. A visual connection is not necessary in every case.
24. Although the "setting" of a listed building is a concept recognized by statute, it is not statutorily defined. Nor does it lend itself to precise definition (see *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427, at paragraphs 53 to 58). Implicit in section 66 of the Listed Buildings Act, however, is that the setting of a listed building is capable of being affected in some discernible way by development, whether within the setting or outside it. Identifying the extent of the setting for the purposes of a planning decision is not a matter for the court, but will always be a matter of fact and planning judgment for the decision-maker. And as Sullivan L.J. said in *R. (on the application of The Friends of Hethel Ltd.) v South Norfolk District Council* [2011] 1 W.L.R. 1216, "the question whether a proposed development affects, or would affect the setting of a listed building is very much a matter of planning judgment for the local planning authority" (paragraph 32 of the judgment).
25. In *Williams* – where judgment on the appeal was given after the hearing in this case, and shortly before Lang J.'s judgment was handed down – the grant of planning permission for a wind turbine was challenged on the ground that the local planning authority had failed lawfully to consider the likely visual effects of the development on the settings of several heritage assets, including two scheduled monuments and a grade II* listed church. The only potential effects on the settings of the heritage assets in that case were visual. It was in this context that I distinguished between the "site" of a scheduled monument and its "setting", which, I said, "encompasses the surroundings within which the monument may be experienced by the eye" (paragraph 31). I went on to say that the circumstances in which the section 66(1) duty has to be performed for the setting of a listed building will vary with a number of factors – typically, "the nature, scale and siting of the development proposed, its proximity and likely visual relationship to the listed building, the architectural and historic characteristics of the listed building itself, local topography, and the presence of other features – both natural and man-made – in the surrounding landscape or townscape", and possibly "other considerations too", depending on "the particular facts and circumstances of the case in hand" (paragraph 53). To "lay down some universal principle for ascertaining the extent of the setting of a listed building" would be, I thought, "impossible". But – again in the particular context of visual effects – I said that if "a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape" (paragraph 56).

26. This does not mean, however, that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building's setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in *Williams* (see also, for example, the first instance judgment in *R. (on the application of Miller) v North Yorkshire County Council* [2009] EWHC 2172 (Admin), at paragraph 89). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in paragraph 18a-013-20140306 of the PPG, that the Government recognizes the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, “the historic relationship between places”. Historic England's advice in GPA3 was broadly to the same effect.
27. It has also been accepted in this court that the effect of development on the setting of a listed building is not necessarily confined to visual or physical impact. As Lewison L.J. said in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 (in paragraph 5 of his judgment), “[although] the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell”. In that case the potential harm to the setting of the listed building was by noise and odour from four poultry broiler units.
28. Three general points emerge. First, the section 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, makes it necessary for the decision-maker to understand what that setting is – even if its extent is difficult or impossible to delineate exactly – and whether the site of the proposed development will be within it or in some way related to it. Otherwise, the decision-maker may find it hard to assess whether and how the proposed development “affects” the setting of the listed building, and to perform the statutory obligation to “have special regard to the desirability of preserving ... its setting ...”.
29. Secondly, though this is never a purely subjective exercise, none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building's setting. Nor could it. In every case where that has to be done, the decision-maker must apply planning judgment to the particular facts and circumstances, having regard to relevant policy, guidance and advice. The facts and circumstances will differ from one case to the next. It may be that the site of the proposed development, though physically close to a listed building, has no real relationship with it and falls outside its setting, while another site, much further away, nevertheless has an important relationship with the listed building and is within its setting (see the discussion in sections 14.3, 15.2 and 15.8 of Mynors and Hewitson's “Listed Buildings and Other Heritage Assets”, fifth edition). Under current national planning policy and guidance in England, in the NPPF and the PPG, the decision-maker has to concentrate on the “surroundings in which [the heritage] asset is experienced”, keeping in mind that those “surroundings” may change over time, and also that the way in which a heritage asset can be “experienced” is not limited only to the sense of sight. The “surroundings” of the heritage asset are its physical surroundings, and the relevant “experience”, whatever it is, will be of the heritage asset itself in that physical place.
30. Thirdly, the effect of a particular development on the setting of a listed building – where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the “significance”

of the listed building as a heritage asset, and how it bears on the planning balance – are all matters for the planning decision-maker, subject, of course, to the principle emphasized by this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2015] 1 W.L.R. 45 (at paragraphs 26 to 29), *Jones v Mordue* [2016] 1 W.L.R. 2682 (at paragraphs 21 to 23), and *Palmer* (at paragraph 5), that “considerable importance and weight” must be given to the desirability of preserving the setting of a heritage asset. Unless there has been some clear error of law in the decision-maker’s approach, the court should not intervene (see *Williams*, at paragraph 72). For decisions on planning appeals, this kind of case is a good test of the principle stated by Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (at paragraph 25) – that “the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly”.

31. With those three points in mind, I believe the submissions made to us by Mr Warren and Ms Lean are correct. When one reads the relevant parts of the inspector’s decision letter together and in their full context, I do not think one finds the errors contended for by Ms Pindham and Ms Dring. I cannot agree with the judge’s conclusion (in paragraph 60 of her judgment) that the inspector simply “set to one side” the historical considerations said to be relevant to the setting of Kedleston Hall. He recognized the relevance of those considerations to the setting of the listed building, to the impact of the proposed development upon that setting, and its impact on the “significance” of the listed building as a heritage asset. He did not concentrate on visual and physical factors to the exclusion of everything else. In the passages I have quoted from the decision letter one can see that he was aware of the need to take into account not merely the visual effects of the development but also its effects on the historic value of the Hall, the park, and each of the other heritage assets he had to consider.
32. I differ from the judge’s view (in paragraph 64 of her judgment) that the inspector “adopted a narrow interpretation of setting ... inconsistent with the broad meaning given to setting in the relevant policies and guidance ... before him”. In my opinion he understood the relevant policies and guidance correctly, and applied them lawfully in assessing the likely effects of the development on the setting of each heritage asset.
33. He began (in paragraph 31 of his decision letter) by directing himself on the NPPF definition of the “Setting of a heritage asset”, and the content of relevant NPPF policy. He did this accurately, and there is no suggestion that he did not.
34. He then (in paragraph 32) summarized the argument put forward by the council, Kedleston Voice and Historic England, that Kedleston Hall and its park were an integral whole, with the same setting, and, specifically, the assertion that “the historical, social and economic connection – the appeal site being part of the estate of which the Hall and park were the hub – brought the appeal site within the setting of the Hall”. It was this argument he was dealing with when he said in the next sentence that “[there] has, though, to be more of a physical or visual connection than that” – by which he clearly meant more of a physical or visual connection than the fact that the appeal site had been “part of the [Kedleston] estate ...”.
35. That sentence should not be taken in isolation, but must be read in its full context. When this is done, its true meaning is certain and clear.

36. In the circumstances here the inspector was, in my view, entitled to look for a “physical or visual connection” of some kind as a means of establishing the extent of the setting of this listed building. The crucial question, I think, is whether his conclusion on the need for “more of a physical or visual connection than that” – meaning more of a physical or visual connection than the mere fact that the appeal site had been “part of the estate of which the Hall and Park were the hub” – is to be read as if it were a statement of general principle, or simply as a planning judgment on the facts of this particular case.
37. In the course of argument before us, Ms Dring accepted that if it was the latter, the Secretary of State’s appeal must succeed. She was, in my view, right to do so.
38. As Mr Warren and Ms Lean submitted, the expression “more of a physical or visual connection than that” conveys a relative concept, not an absolute one. The inspector was not, in my view, automatically discounting the “historical, social and economic connection” as irrelevant. He was clearly aware of the potential relevance of such a connection to the question of whether the appeal site could be regarded as lying within the setting of the listed building and to the question of whether the proposed development would affect that setting. He was not saying that land could only fall within the setting of Kedleston Hall if there was a “physical or visual connection” between them. He was simply saying that in this instance the extent of the setting of the listed building could not be determined by the fact of the “historical, social and economic connection” to which he referred. There had to be something more than this connection alone if the appeal site were to be regarded as falling within the setting of the Hall.
39. As is clear when that sentence in paragraph 32 of the decision letter is read in its context, this was not, and was not intended to be, a statement of general principle. It represented the inspector’s own exercise of planning judgment in the particular circumstances of this case. And there was a simple explanation for that planning judgment, which he gave: “otherwise”, he said, “land completely remote from the Hall could be deemed within its setting”. He was not confining himself merely to visual and physical considerations, as if he thought that, in principle, he could not take other factors into account. He was not adopting a false test or a false approach. He knew, as he went on to say (in paragraph 37), that “[the] Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire)”. But the historic connection could not be the sole criterion for judging whether a site lay within the setting of the listed building. Land historically farmed within the estate as a whole, and belonging to that social and economic entity, might be so geographically detached from Kedleston Hall as to be “completely remote”. The historic connection between the farmland of which the site of the proposed development formed part was not, in the circumstances, sufficient to bring the site within the setting of the Hall.
40. In the fourth and fifth sentences of paragraph 32 the inspector endorsed the contention put forward by Catesby Estates: “that the Park provides the setting for the Hall” – in his view, “not an unreasonable approach to take”. This was, once again, a planning judgment exercised by the inspector in the particular circumstances of this case. He found support for it in “the Historic England guidance”, which, he said, “recognises that a conservation area will include the settings of listed buildings and will have a setting of its own”. Far from ignoring the advice in GPA3, he clearly had it in mind and relied on it. And it was open to him to find that the setting

of Kedleston Hall as a listed building was different from the setting of the park as a registered park and garden and from the setting of the conservation area.

41. These were all reasonable conclusions for the inspector to reach on the facts, taking into account all relevant considerations, and notwithstanding the case put forward by the council, Kedleston Voice and Historic England. They show a lawful approach to identifying the setting of Kedleston Hall, which did not neglect historical, social and economic considerations.
42. But the inspector went further. He acknowledged (at the end of paragraph 32) that there were “two ways to look at the setting of Kedleston Hall”. He then set out (in paragraphs 33 to 36) a careful description of the setting of the Hall as it has changed over time. He considered the views of the Hall originally available from across the appeal site, the evidence of a “designed view” from the Hall, and the interposition of the “Derby Screen”, which, in his judgment, now prevented the appeal site from forming part of the setting of the listed building. He also considered the relevant documentary and physical evidence on views to and from Kedleston Hall, and the interruption of those views by the “Derby Screen”. He was conscious of the relevance of historical considerations in forming his own conclusion on the extent of the setting of the listed building. This strengthens the conclusion that his approach was not restricted to visual and physical considerations alone, but was comprehensive and complete. I think his relevant conclusions are unassailable.
43. The same may be said of his conclusions on the impact of the proposed development on the setting of the Hall (in paragraphs 41 to 52). Here too he grappled with the evidence on historic views, the loss of such views, and the possible implications of the “Derby Screen” being removed – unlikely as that was. Once again, his approach cannot be faulted, and his conclusions were well within the limits of lawful planning judgment. He was entitled to conclude (in paragraph 51) that, with the “Derby Screen” in place, the appeal site did “not lie within the setting of Kedleston Hall” and that that the section 66(1) duty and corresponding guidance in the NPPF did “not come into play”; and (in paragraph 52) that even if the “Derby Screen” were to be removed, or partly removed, the effect of the development “on the significance of the Hall, standing within its designed Park, would be negligible”. Those conclusions were available to him on the evidence, and in these proceedings they are secure. They do not betray an unlawful approach, in which considerations other than the visual and physical were disregarded.
44. That the inspector grasped the concept of the setting of a listed building is demonstrated in the parts of his decision letter where he considered the settings of the other heritage assets and the likely effects of the development on each. Those passages serve to confirm the lawfulness of his approach to identifying the setting of Kedleston Hall, and of his conclusion that the potential effect of the development upon it was no more than “negligible”. His approach to identifying the setting of each heritage asset he had to consider was, in my view, consistent and sound. So were his conclusions on the likely effect of the proposed development – or its lack of effect – on the setting in question and its impact – or lack of impact – on “significance”. At no stage did he exaggerate the importance of physical and visual considerations, or unduly diminish the significance of the historical, the social and the economic.

45. For example, when considering the setting of the park and the Kedleston Conservation Area, he acknowledged (in paragraph 37) that “[the] Hall and its Park were at the centre of a large estate” and accepted that the “agricultural land around the Park certainly forms part of its setting in historical and cultural terms”, though in “visual terms” the setting was “less extensive”. This was to give both “historical and cultural” and “visual” considerations their place and due weight in establishing the extent of the setting of the park, and to recognize that the juxtaposition of designed parkland to the surrounding farmland created a different setting for that heritage asset from the setting of the Hall as a listed building. Historical considerations again played their part in the assessment, as well as views. But the decisive factor in the inspector’s conclusion (in paragraph 38), that the appeal site fell within the setting of the park – as was common ground – was their “relative proximity” to it and “clear views of the boundary of the Park”. The Hall was further away. There was a direct visual relationship between the appeal site and the park, but not between the site and the Hall. Again, however, the “Derby Screen” had largely obstructed views in both directions – from and of the park.
46. The tenor of the inspector’s conclusions on the likely impact of the development on the setting of the park and the Kedleston Conservation Area (in paragraphs 53 to 58) is similar. As he said (in paragraph 54), there were “two aspects to the impact on the setting of the Park – visual and historical”. He considered both, and he did so impeccably. He accepted (in paragraph 55) that the appeal site was “part of that setting”, as was the built-up area of Allestree, and (in paragraph 58) that “there would be harm to the setting of the Park from development within it”, but that “[in] terms of the significance of the Park and Conservation Area, ... the harm would be at the lower end of ‘less than substantial’”. Here too, there can be no complaint that either his approach or the conclusion he reached was unlawful.
47. His conclusions on the settings of the Kedleston Hotel as a listed building and of the Quarndon Conservation Area, though informed by the relevant historical considerations, depended mainly on the visual – the “views” to which he referred (in paragraphs 39 and 40). Those conclusions are not vulnerable in a legal challenge. Nor do they reveal a mistaken approach to the setting of Kedleston Hall. Here again, the circumstances were different. The fact that there was, as the inspector observed (in paragraph 39), a “close historic relationship between the Hotel and the Hall and Park” does not mean that there was any such relationship between the hotel and the farmland where the appeal site lay. The same may also be said of the Quarndon Conservation Area – “drawn tightly round the historic core of the village”, as the inspector put it (in paragraph 40). These conclusions, and his finding (in paragraphs 60 and 61) that neither the setting of the listed hotel nor that of the conservation area would be harmed by the development, reveal no error of law. They do not suggest that he misunderstood the concept of the setting of a heritage asset. What they do show is that his approach was both consistent and correct.

Conclusion

48. For the reasons I have given, I would allow this appeal.

Lady Justice Asplin

49. I agree.

Lord Justice McFarlane

50. I also agree.



Appendix EDP 2
Appeal Decision (dated 22 August 2016)

Appeal Decisions

Inquiry held on 19-22, 26 and 28 July 2016

Site visit made on 27 July 2016

by John L Gray DipArch MSc Registered Architect

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 22 August 2016

Appeal Ref. APP/M1005/W/15/3132791

Land at Kedleston Road and Memorial Road, Allestree, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Catesby Estates Ltd against the decision of Amber Valley Borough Council.
 - The application, ref. AVA/2014/0928, dated 23 October 2014, was refused by notice dated 6 July 2015.
 - The development proposed is "the erection of up to 400 dwellings (Use Class C3), convenience store (Use Class A1 – up to 500 sqm floorspace) with associated access, earthworks and other ancillary and enabling works".
-

Appeal Ref. APP/M1005/W/16/3144743

Land at Kedleston Road and Memorial Road, Allestree, Derbyshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a failure to give notice within the prescribed period of a decision on an application for outline planning permission.
 - The appeal is made by Catesby Estates Ltd against Amber Valley Borough Council.
 - The application, ref. AVA/2015/1243, is dated 22 December 2015.
 - The development proposed is "the erection of up to 195 dwellings (Use Class C3) with associated access, earthworks and other ancillary and enabling works".
-

Decisions

1. Appeal ref. APP/M1005/W/15/3132791 is allowed. Planning permission is granted for the erection of up to 400 dwellings (Use Class C3), a convenience store (Use Class A1 – up to 500 sqm floorspace) and associated access, earthworks and other ancillary and enabling works on land at Kedleston Road and Memorial Road, Allestree, Derbyshire, in accordance with the terms of the application, ref. AVA/2014/0928, dated 23 October 2014, subject to the conditions set out in the attached schedule.
 2. Appeal ref. APP/M1005/W/16/3144743 is allowed. Planning permission is granted for the erection of up to 195 dwellings (Use Class C3) with associated access, earthworks and other ancillary and enabling works on land at Kedleston Road and Memorial Road, Allestree, Derbyshire, in accordance with the terms of the application, ref. AVA/2015/1243, is dated 22 December 2015, subject to the conditions set out in the attached schedule.
-

Clarification

3. Application ref. AVA/2014/0928 (appeal ref. APP/M1005/W/15/3132791) was refused for seven reasons. The Council has indicated that, had it retained jurisdiction, it would have refused application ref. AVA/2015/1243 (appeal ref. APP/M1005/W/16/3144743) for those same reasons.

Main Issue

4. The main issue in both appeals is the impact either proposal¹ would have on the landscape character of the area and on the heritage assets of Kedleston Hall, Kedleston Hall Registered Park and Garden and Kedleston Conservation Area, Kedleston Hotel and Quarndon Conservation Area. (Objections relating to the latter two were raised only by Kedleston Voice.)
5. Kedleston Voice also objected on a number of counts not pursued by the Council – foul and surface water drainage, visibility for traffic emerging from Quarn Drive, the single T-junction proposed for the 195-dwelling scheme, the gradients at the T-junction with Kedleston Road in both appeal schemes and the use of DATM (the Derby Area Transport Model) to model traffic generated by the proposed developments.

Reasons

Main Issue – landscape and heritage impact

6. The main issue is relatively simply described but complex in terms of the matters to be covered. They relate to the position on housing need and housing land supply in Amber Valley and Derby City, the relationship between the Development Plan and the *National Planning Policy Framework* (the Framework), landscape impact both in itself and also bearing in mind the historic connection with the Kedleston Hall estate, the statutory and policy background against which impacts on the heritage assets should be considered and, in the event of harm to any of those assets, the nature of the planning balance to be undertaken.

Housing need and supply

7. There is no dispute about housing need and land supply. The *Statement of Common Ground – Housing Land Supply* gives the total housing requirement for the period 2011-2026 as 9,770 dwellings and the *Additional Statement of Common Ground* gives the land supply at 1 April 2015 as 3.08 years.
8. Of that 9,770 requirement, 2,371 is to meet some of the requirement of Derby City Council which it cannot provide for within its own boundaries. Amber Valley Borough Council's strategy is to meet the bulk of its requirement in the four main towns of Alfreton, Belper, Heanor and Ripley but it has accepted that **Derby's "unmet need is best located adjoining the city (if a view is taken that growth is best met where the demand arises)"**.

The relationship between the Development Plan and the Framework

9. The Development Plan comprises the saved policies of the *Amber Valley Borough Local Plan 2006*, which had an end-date of 2011. An emerging Core Strategy was withdrawn in 2015 and there is, as yet, nothing to replace it.²

¹ The application site for the 195-dwelling proposal is, roughly, the southerly half of the application site for the 400-dwelling proposal. No part of the smaller site is not contained within the bounds of the larger site. For **simplicity, therefore, and unless otherwise explained, the singular term 'appeal site' is used in this decision to encompass the sites for both appeals.**

² March 2018 was said to be the very earliest a new Local Plan might be adopted.

10. **Reason for refusal no. 2 lists the saved policies which, in the Council's opinion,** render the first application contrary to the Development Plan – LS1, H5, EN1, EN7, EN9 (part), EN10, EN24, EN27, EN32 and EN33. In a sense, all of these policies are out of date – because they come from a Plan with an end-date of 2011. In itself, however, that does not limit the weight they may be given.
11. LS1 seeks sustainability, which is the golden thread running through the Framework. None of its criteria can really be criticised. The Council objects to the appeal schemes only in relation to criteria b) and c). The former expresses a preference, not a requirement, for the re-use of previously developed land and little weight can be given to it when it is accepted that **green field sites will have to be found to meet the Borough's housing** requirement. The latter seeks to protect and enhance the quality of the built and natural environment, which is clearly relevant to these appeals.
12. H5 and EN1 are clearly policies for the supply of housing, constraining housing outside defined settlement boundaries in a Plan which ran to 2011 and which are known to fall far short of enabling the amount of housing now required.
13. EN7 and EN9, not unlike LS1 c), seek to protect landscape character and are consistent with the Framework. If they are to be criticised, it is only because they do not explicitly allow for a balance between harm and benefit. EN10 seeks to protect the best and most versatile agricultural land and is consistent with the Framework; the Council, however, accepts that little weight can be given to what would be lost on the appeal site in the light of the need to find green field sites for housing and the similar qualities of other likely locations.
14. EN24 c) resists development which would not contribute to the preservation of a listed building and its setting. **EN27 does the same for development "within or adjacent" to conservation areas.** EN24 is stricter than both section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and the Framework; section 66(1) requires special regard to be had to the desirability of preserving a listed building or its setting and thereby implies that there may be a balance to be struck. The Framework differentiates between **"substantial" and "less than substantial" harm** to the significance of a heritage asset and, on the latter (no one suggested that substantial harm would arise from these appeal schemes), indicates that the harm is to be weighed against the public benefits of the proposal. Section 72 of the Act does not apply to these appeals because it requires special attention to be paid only to development within a conservation area, not within its setting; however, since a conservation area is a designated heritage asset, policy in the Framework applies in the same way as to listed buildings. The weight to be given to EN24 and EN27 is reduced in that neither allows for balancing harm against benefit, as set out in the Framework.
15. EN32, dealing with registered historic parks and gardens, takes a similar approach to EN24 and EN27. EN33 deals specifically with Kedleston Hall Registered Park and Garden (the Park), resisting development proposals that would have an adverse effect on a setting which is defined on the Proposals Map. Even so, the weight to be given to these two policies is reduced because they fail to allow for a balance between harm and benefit. It was argued that the defined setting was based on a document now out of date – but it was not suggested that the appeal site lay beyond the setting of the Park.
16. The effect of section 38(6) of the *Planning and Compulsory Purchase Act 2004* is that a planning application should be determined in accordance with the

Development Plan unless material considerations indicate otherwise. In the case of these appeals, and in relation to the Framework, the absence of an adequate supply of housing land, exacerbated by the length of time before a Plan may emerge to respond to that, means that little weight can be given to saved Policies H5 and EN1. The weight to be given to Policies EN7, EN9, EN24, EN27, EN32 and EN33 is also reduced by their inconsistency with the Framework. Accordingly, the only Development Plan policies to carry full weight in the determination of the appeals are LS1 c) and EN10 (and the latter is agreed not to play a compelling role). Otherwise, the Framework contains more up-to-date policy against which to judge the appeal proposals.

Landscape impact

17. It is difficult to dissociate landscape impact from heritage impact. That is evident from the closing submissions made to the inquiry. Both the Council and Kedleston Voice considered the appeal site a valued landscape because of its heritage connections. In similar vein, the appellant wondered whether the fact that the site lay within the setting of the Park meant that it was a valued landscape. It is not unreasonable to look at landscape quality and impact in purely physical or visual terms and to consider historical value and significance separately, in the context of impact on the Hall and Park.
18. For the Council, Dr Hickie agreed with the EDP *Landscape and Visual Impact Assessment* (LVIA) for the appellant – that the appeal site **represents “a relatively simple parcel of agricultural land”**. **The land slopes down towards the Markeaton Brook and comprises arable fields separated by hedgerows and hedgerow trees, and with some individual trees indicating former field boundaries.** There is an immature belt of trees along the northern boundary and the northern part of the western boundary. In terms of the *Landscape Character of Derbyshire*, the site lies partly within the Estate Farmlands landscape type, partly within Riverside Meadows landscape type, though the boundary and difference between them cannot be discerned on the ground.
19. The site has housing on its eastern and southern sides and part of its western side. A high hedge marks its eastern boundary with Kedleston Road; even if (when) trimmed, pedestrians and car drivers would likely find their views north-west towards the open countryside to be largely obscured. From the opposite direction, from the public footpaths and bridleways to the west and north-west, the slope of the land is evident but the fields are partially obscured by the mature vegetation along the Markeaton Brook³ and also by the immature plantation around the north-west edge of the site. That applies all the more the lower the ground one is on.
20. Dr Hickie evaluated the landscape quality, scenic quality and recreation value **as ‘medium’** – the landscape features being typical and in fairly good condition, the scenic quality being assessed as part of the wider landscape area and the recreational value lying not in the use of the site itself but in the rural views to or over it. That is not an unreasonable evaluation.
21. The Council supported its case by reference to the assessment under the AMES (Areas of Multiple Environmental Sensitivity) Study. However, the main

³ It is not clear whether the Cutler Brook, flowing from the lake in the Park, and the Markeaton Brook are one and the same or whether the Markeaton Brook flows from a little to the rear of the Kedleston Hotel, under Kedleston Road close to its junction with Church Road and is joined by the Cutler Brook a little to the north-west of the appeal site. For simplicity, this and other references to the vegetation along the Markeaton Brook should be taken to include all of the vegetation along the water course from Kedleston Road to south of the line of Memorial Road.

reason for its sensitive rating relates to the setting of and historical association with Kedleston Hall and Park. It is difficult to accept the site as being particularly tranquil when it has a busy road on one side (prompting a suggested condition on noise protection) and housing on two and half sides – suggesting that to put housing on it would not mean the loss of a piece of land notable for its tranquillity. Also, the site is accepted as having little ecological value, whatever the wider Study might indicate. Accordingly, setting aside for the moment the historical association with the Hall and Park, the appeal site exhibits no features that could qualify it as a valued landscape in the terms of paragraph 109 of the Framework.

22. It is inevitable that to develop for housing what is presently open land would bring a major change and have a major visual impact. The LVIA appears to understate the degree of change; in particular, the visual and sensory character of the site itself would be completely different if it were a housing development rather than open fields. On the other hand, harm from the loss of Estate Farmlands and Riverside Meadows landscape types would be no more than moderate given the extent of both within Derbyshire and given the unexceptional nature of the landscape across the appeal site.
23. The degree of change would be very likely, however, to be equally true of any piece of open land that was developed for housing; and the development of a significant number of green field sites somewhere in Amber Valley is inevitable. In terms of the qualities of the appeal site itself, there is nothing at all to suggest that its loss to housing would be noticeably more harmful than the development of any other green field site in the Borough. It is much more important, therefore, to look at the impact the proposed housing would have when looking towards it from beyond the site.
24. As one walks down the bridleway from Upper Vicarwood, on higher ground and looking directly towards the appeal site, the proposed housing would, indeed, be plain to see. It would, however be viewed in the context of the built-up area of Allestree. There is some depth to the development beyond the appeal site, albeit that that tapers to **two or three 'layers' of housing** beyond the southern part of the site. The wider extent of the built-up area is obvious – to the left, where recent housing development climbs the hillside and even more so to its right, where there is housing on the west side of Kedleston Road and the extent of Derby is apparent beyond.
25. Perhaps more importantly, there is a wide rural vista to the south and west from the higher points on the bridleway and, as one descends towards the appeal site, so the extent of the countryside to the north-west becomes evident, with the buildings of Quarndon playing only a secondary role in the rural scene. Descending further, whether taking the bridleway to the north-west or the south, the vegetation along the banks of the Markeaton Brook would serve to screen much of the either proposal from view; and the plantation around the north-west of the site would also help to obscure much of the 400-dwelling scheme in views from the north. Both developments would still be plain to see – but the Brook would provide a natural boundary, already mature, between countryside and built-up area. A suitable layout and appropriate landscaping within the site would further diminish the potential impact of buildings where previously there had been open fields.
26. Thus, the magnitude of the change would be major for residents overlooking the site, for users of Kedleston Road and for walkers on the public footpaths

and bridleways near to the site – but the impact of that would be diminished by the nature of the surroundings (both built-up area and countryside) and by appropriate design and landscaping of the development itself.

27. Residents who presently look over fields from the houses in Kedleston Road, Memorial Road and Somme Road would instead be looking at a housing estate – a major change but not one that should mean an inherently poor outlook or level of amenity. Users of Kedleston Road would have housing on both sides instead of just one for an additional distance of about 115m or 235m (for the 195-dwelling and 400-dwelling schemes respectively); they would then have views over countryside in an arc to the north-west, as they do at present when they have passed Memorial Road. Users of the public footpaths and bridleways would still have extensive views over countryside to the north-west and in a wide arc to the south and west; and, from lower ground, they would find existing vegetation significantly diminishing the impact the proposed housing might have on their enjoyment of the countryside.
28. Dr Hickie gives a visual impact assessment of both schemes for the Council which he compares directly with the LVIAs. It is difficult to disagree to any substantial extent with much of it. He notes the clear change from rural to urban character from the junction of Kedleston Road and Memorial Road, and from elsewhere on Kedleston Road – something that is inevitable but not necessarily any different to what would occur on any other green field site on the edge of an urban area. He distinguishes between car users, pedestrians and bus and coach passengers on Kedleston Road, which the LVIAs do not – but it is the same change from rural to urban that affects that. He addresses in detail some viewpoints which the LVIAs do not – but, with one exception, does so without identifying a visual impact other than minor or moderate.
29. Where his assessment can be disagreed with is in identifying a major impact in views from the bridleways to the west and from the public footpath near the Derby Screen – as indicated above, the extent of rural landscape to the south and west, and to the north-west, the existing influence of the built-up area (left, right and beyond the appeal site) and the existing mature vegetation along the Markeaton Brook combine to diminish the visual impact of the proposed developments to no more than moderate.
30. Accordingly, there is no reason why, in physical or visual terms, harm to the landscape should compel dismissal of the appeals. The question of its historical value may be addressed in relation to the settings of Kedleston Hall and its registered Park and Garden.

The settings of the heritage assets and the statutory and policy context

31. **The definition of setting in the Framework is the “surroundings in which a heritage asset is experienced”. Further, the extent of a setting “is not fixed and may change as the asset and its surroundings evolve”. Setting is not itself a heritage asset but elements of a setting “may make a positive or negative contribution to the significance of an asset”. And paragraphs 126-141 of the Framework make it clear that, in considering a development proposal, what has to be assessed is the effect there would be, not on the setting, but on the significance of the heritage asset concerned.**

The setting of Kedleston Hall

32. The Council, Kedleston Voice and English Heritage (as it was then) argue that Kedleston Hall and its Park are an integral whole and that, accordingly, their

settings are the same. It was also argued that the historical, social and economic connection – the appeal site being part of the estate of which the Hall and Park were the hub – brought the appeal site within the setting of the Hall. There has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting. The appellant takes the view that the Park provides the setting for the Hall. That is not an unreasonable approach to take; for example, the Historic England guidance recognises that a conservation area will include the settings of listed buildings and will have a setting of its own. That said, there are two ways to look at the setting of Kedleston Hall.

33. The planting of the Derby Screen, around 1960, brought about a very significant change. Originally, there were views out from the Hall and Park towards Derby – and, for those approaching the Hall, there would have been a first view into the Park, with a glimpse of the Hall, across the appeal site from Kedleston Road. The Derby Screen was planted to obscure the view of Allestree, development having encroached over the horizon, and the night-time glare from the increasingly large built-up area of Derby. Its planting was a deliberate decision, based on the changing surroundings, to make the Park more enclosed and inward-looking; and the Derby Screen has since been significantly extended into the Park by the National Trust. Thus, today, the appeal site forms no part of the setting of Kedleston Hall.
34. If one takes a more historical approach, however, then there was an open view where the Derby Screen now is. Moreover, the evidence suggests it was a designed view – documentary, in the references to the vista including Derby; physical, in the ditch of a sunken fence, akin to a ha-ha, which would have kept stock out (or in) without obstructing the view. The appellant argued that the sunken fence may have been a ditch predating the laying out of the Park but that does not exclude the proposition of a designed view.
35. The view was, clearly, a wide vista. The spire of Derby Cathedral is referred to as being seen in the panorama, though it could only have been seen from relatively close to the boundary of the Park, not from the Hall. The particular view to or from Kedleston Road is only a very small segment and is, from the Hall, at its very eastern extremity. There is no evidence that the view from Kedleston Road towards the Hall and Park was also part of the design; nor is it logical to draw the inference that the view towards the Hall and Park was designed simply because the view in the other direction was.
36. However, if one holds the opinion that the view both to and from Kedleston Road was a deliberate part of the design of the Park and that the Derby Screen, or part of it, could be opened out to restore that view, then the appeal site does indeed fall within the setting of Kedleston Hall.

The setting of the Registered Park and Garden and the Conservation Area

37. The Registered Park and the Conservation Area are coterminous and the designations have similar purposes in mind. The Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire). The agricultural land around the Park certainly forms part of its setting in historical and cultural terms. In visual terms, what comes within the setting is less extensive. There were, and still are, places within the Park where the surrounding agricultural landscape contributes to views out; and there are places outside the Park which afford views in, not only of the Park but also, sometimes, of the Hall.

38. The appeal site may be considered to lie within the setting of the Park because of its relative proximity. There are clear views of the boundary of the Park, though it is debatable whether its trees and woodland, designed and laid out in a naturalistic manner, can actually be distinguished as such by anyone unfamiliar with designed parkland. The only views into the Park from or across the appeal site, or out from the Park towards it, have been obscured by the planting of the Derby Screen.

The setting of Kedleston Hotel

39. Kedleston Hotel stands on the site of an earlier inn but what is seen today dates from the same period as the Hall and Park and was built to cater for visitors to the Park and its Sulphur Bath. There is thus a close historic relationship between the Hotel and the Hall and Park. The appeal site lies within the setting of the Hotel in as much as it can be seen from the Hotel looking south – but the focus of views from the Hotel, in so far as there are any, is to the west and north-west, towards the Hall and Park. The Hotel is not visible, or certainly not noticeable, from the appeal site or Kedleston Road alongside it. There are views in which the Hotel and Hall can both be seen, for example from Common Hill, just west of Quarndon; from there, though, the appeal site lies in a wholly different direction, by about 90°.

The setting of Quarndon Conservation Area

40. Quarndon Conservation Area is drawn tightly round the historic core of the village. It has relatively recent development virtually all around it. There is a significant amount of that to the south of the Conservation Area, in the direction of the appeal site. Because of this, it is debatable that the appeal site actually lies within the setting of the Conservation Area. It may be thought to do so, however, to the extent that it may be seen in winter views (when the trees are bare).

Impact on the significance of the heritage assets

Kedleston Hall

41. There is no doubting that Kedleston Hall, a grade I listed building, is a heritage asset of the very greatest importance. Statute requires special regard to be had to the desirability of preserving not only the building but also its setting. Any harm to the significance of the Hall must be given very great weight when considering development proposals within its setting.
42. The Derby Screen is key to any impact on the significance of Kedleston Hall. At the present time, the existence of the Screen means that the proposed development would have no impact whatsoever on the setting of the Hall. The questions to be addressed, therefore, are about the prospect of the Screen being removed or opened up and, if it were, the resultant impact of the proposed development on the significance of the Hall.
43. It is not absolutely clear that the view across the appeal site between Kedleston Road and the Hall and Park was designed. Ms Morris, for the Council, said at the inquiry that the view now blocked by the Screen was an “**incidental**”⁴ view out of the Park or from the Hall. That is consistent with the approach taken to the design of a Park such as this. Whether it was also a designed view into the Park, affording a glimpse of the Hall, remains open to

⁴ “Incidental” in this context is taken to mean incidental to the designed parkland in which the viewer was standing, not that the view of the countryside beyond was somehow accidental.

debate. It is clear that there are (or were) designed views along the road north of the Kedleston Hotel, less clear that this view, so much further south, was also intentionally designed.

44. There is no debate that the Screen was planted to obscure views of Allestree and the night-time glare from the lighting of the expanding urban area of Derby. Its planting was a deliberate response to changing circumstances. It may be seen as part of the evolution of the Park. Moreover, for whatever reason, the depth of the Screen has been substantially increased by the National Trust so that it is now some 40m or more wide. To remove it now, or to open it up in some way, raises a number of issues, as well as being a substantial and costly task.
45. Firstly, to remove all of the Screen might represent a return to what was designed in the mid-1700s – but what would be revealed would not be remotely the almost entirely rural landscape that would have been seen then. (Derby and the spire of the Cathedral are referred to as being seen in the rural panorama, though the view from the Hall would have been much narrower.) Any decision to remove all or part of the Screen would mean balancing the historical merit of the original design against the also historical (albeit relatively recent) decision to alter that design in response to the changing scene beyond the Park.
46. Secondly, should the Park boundary where the Screen stands be restored to something akin to the original design (perhaps akin to what can be seen in the 1952 aerial photograph) or should it be removed only as necessary to restore what is said to be the designed inward view? To do the latter might seem somewhat arbitrary, especially as there must be doubt about whether it was the view into the Park that was designed, or just the view out. The documentary evidence suggests that it was the wide vista towards Derby that was important, not the specific view towards the Hall and Park from a point rather towards the edge of that vista.
47. Thirdly, what else might have to be done to restore the original view from Kedleston Road? A significant number of trees have been planted close to the Hall, some of them fairly recently. If there was once a view from the first floor Drawing Room in the Hall, those trees mean that there is certainly none now. The Derby Screen cannot be seen at all. There are trees along a ditch or brook a little east-south-east of the Hall, in particular two tall poplars; the top of one is just visible from the Drawing Room. It seems highly likely that some of those trees would have to be removed if a glimpsed view of the Hall from Kedleston Road were to be restored. There is also a stand of trees in the Backgrounds that is at least partly in the line of sight to the Hall from Kedleston Road. Some of those would have to be removed.
48. Thus, any opening out of the Derby Screen would have to be accompanied by the removal of other trees within the Park. They might not be part of the original design – but they are part of it nowadays. So how far could or should one go? The golf course has altered the design of a major part of the original Park; and the clubhouse stands in the foreground of one of the designed views of the Hall from the edge of the Park. That cannot be undone – leaving the question of whether one should restore one part of the Park to its original state even though the same cannot be done for other parts.
49. It seemed, until late in the inquiry, that no consideration had ever been given to the removal of the Derby Screen, or to opening it up so that the Park and

landscape beyond are inter-visible. The National Trust then wrote to the Council, attaching an extract from a conservation plan that had not hitherto been known to exist. However, while the letter mentions glimpses of the dome of the Hall from Kedleston Road, the extract talks only about views from the south-eastern corner of the Park and about managing and thinning the Derby Screen **"to create more open woodland with permeable edges to the parkland"** – not the removal of part or all of the Derby Screen and not significantly different to what is in the 2013 Conservation Plan.

50. Thus, it is unclear that the view from Kedleston Road was a designed view, intended to give a glimpse of the Hall; it is known that the Derby Screen was planted as a response to changing circumstances; there is no firm intention to consider removal the Derby Screen; even if there were, there are a number of attendant issues that would have to be resolved; such indications as there are relate only to views from the south-eastern corner of the Park and to thinning the Screen. There is nothing to suggest that a view from Kedleston Road giving a glimpse of the Hall might at some time be restored.
51. On that basis, it is entirely reasonable to conclude that the appeal site does not lie within the setting of Kedleston Hall and that section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policy in the Framework do not come into play.
52. If the issues considered above were to be resolved in favour of removing all or part of the Derby Screen to restore a view to and from Kedleston Road, a question then arises as to what would be the impact of the proposed developments. The view from Kedleston Road would be lost. It could never be more than a glimpse across open countryside, rather than a designed view through parkland, but at least it might indicate that one was nearing the Hall and Park. The view from the Hall would be little changed. The cross-section provided by Dr Hickie in his evidence suggests that the land itself would be all but invisible from the Hall, though houses upon it would be seen to bring the boundary of the urban area closer to the Park. All that would represent less than substantial harm – sufficiently little, in fact, that the effect on the significance of the Hall, standing within its designed Park, would be negligible.

The Registered Park and Garden and the Conservation Area

53. There is no dispute that the Park, registered in grade I, is, like the Hall, a heritage asset of the very highest importance. There is also no dispute that the appeal site lies within the setting of the Park and the Conservation Area; and that the harm caused to the significance of both would be less than substantial. **The term 'less than substantial'** does, however, cover a wide range of harm – and the question is just how great that harm would be.
54. There are two aspects to the impact on the setting of the Park – visual and historical. The Park was carefully designed and laid out in a naturalistic manner. There are (or were) designed views into the Park, with glimpses of the Hall, most notably (in the context of these appeals) from Kedleston Road between the Hotel and the Park entrances. The farmland surrounding the Park was historically part of the estate – and still is in that, while ownership may have changed, the estate is still managed from the Hall. The farmland acts as a visual setting for the Park; and that is more important than might be thought at first blush – because the Park was designed naturalistically, not in a more formal style which may not have had, or needed, a measure of continuity with its surroundings.

55. The appeal site is part of that setting. So too is the built-up area of Allestree,⁵ which stands on land formerly part of the estate. And, of course, the Derby Screen was planted around 1960 because of the incursion of Allestree (and night-time glare from Derby) into the previously rural views from the Park. Much of what is said above about the Derby Screen applies equally to the Park. There would, however, have been views south-eastwards from within the Park, whether intentionally designed or not, from the Backgrounds and from the Long Walk. In historical terms, that brings the appeal site more firmly within the setting of the Park than if there had never been any inter-visibility. What, then, do the open fields of the appeal site contribute to the essential rural setting of the Park?
56. Seen from within the Park (if that were possible), the impact of development would not be so very different to what would be seen from the bridleway to Upper Vicarwood or from the public footpath running parallel to and south-east of the Derby Screen. There would not be the compensating rural vistas to the south-west and west or to the north-east (because of the tree cover that would remain around the Park boundaries even if the Derby Screen were removed). On the other hand, the proposed development would be seen (where the contours of the Park permitted) in the context of the built-up area immediately beyond and to its left and right; and it would still be screened to a significant extent by the vegetation along the Markeaton Brook and the plantation around the north-west of the site itself. There would also be nearly a kilometre between the boundary of the Park and the nearest house.
57. Looking north-westwards from Kedleston Road, it is difficult, at first glance, to discern that one is approaching the Park. That is due, in no small measure, to the naturalistic design of the Park. Development on the appeal site would delay views towards the Park by some 115m or 235m. As things are at present, one might be better able from the nearer the Park to distinguish between the more recent (and less well designed) Derby Screen and the earlier parkland planting. If, however, the Derby Screen were ever to be removed or opened out, then the first views into the Park would be from further north, at a more acute angle and less extensive than potentially available over the southern part of the appeal site (remembering that the roadside hedge, even if trimmed, does much to obscure or limit the views).
58. To sum up, there would be harm to the setting of the Park from development within it – but that would be mitigated to a degree by the extent of the existing built-up area, the existing vegetation and the remaining open land between the Park and the built-up area. That also applies to views out from the Park if the Derby Screen were removed or opened out; views towards the Park would, though, be less extensive and more oblique than possible at present. In terms of the significance of the Park and Conservation Area, though, the harm would be **at the lower end of 'less than substantial'**.

Kedleston Hotel

59. The principal (roadside) façade of the Hotel faces south-west, with views in a westerly direction towards the Park. The north-west and south-east façades are very different. The former has large windows giving views in the general direction of the Park; the latter has only small windows, conveying the impression that the southerly prospect was thought less important. That is

⁵ Though excluded from the setting defined for saved policy EN33 because it lies beyond Amber Valley Borough Council's administrative boundary.

consistent with its development as a hotel to accommodate those visiting the Park or Sulphur Bath and thus being orientated towards the Park.

60. The appeal site can be discerned in southerly views from the upper floors of the Hotel itself – but at a considerable distance, between existing vegetation and with the backdrop of the existing housing on the south side of Memorial Road. Development of either appeal scheme would be visible through gaps in the vegetation cover but would still be at a considerable distance. Nor would it intrude into the approach to the Hotel, which cannot be said to start until after one has forked left at the junction with Church Road. Even the roundabout for the 400-dwelling scheme would be no more than a piece of highway engineering some little distance before one reached what could be said to be the approach to the Hotel. Appropriately designed and landscaped, neither proposed development would have any material impact on the setting of the Hotel and would thus cause no harm to its significance as a grade II* listed building.

Quarndon Conservation Area

61. The relatively recent housing development to the south along Church Road, between the Conservation Area and the appeal site, tends to take the appeal site out of the setting of the Conservation Area. Were there winter views, which could bring it within the setting, the proposed development would have even less impact than on the setting of Kedleston Hotel. There would be no harm to the significance of the designated Conservation Area.

Conclusions on the main issue

62. At the present time, the appeal site lies beyond the setting of Kedleston Hall, which extends no further than the Derby Screen. It could only be said to lie within the setting if, firstly, it were known that the view to the Hall from Kedleston Road was deliberately designed and, secondly, if there were any prospect of the Derby Screen being removed or opened out to restore that view. On the evidence, the first is open to debate and the second is very unlikely. Even giving the benefit of the doubt, however, the harm that would be caused by either appeal proposal to the significance of the Hall would be less than substantial to the point of being negligible.
63. The appeal site does lie within the settings of the registered Park and Garden and the contiguous Conservation Area. What was agreed at the inquiry as **'less than substantial' harm is mitigated by the juxtaposition of the proposed development with the existing built-up area, the extent of screening provided by existing vegetation and the separation between the Park and the built-up area that would remain. The harm to the significance of the heritage assets would be very much at the lower end of 'less than substantial'.**
64. There would be no harm at all to the significance of either the listed Kedleston Hotel or the designated Quarndon Conservation Area.

Other issues

Foul and surface water drainage

65. The objections raised by Kedleston Voice led to discussions which culminated in a note agreed by RPS Planning and Development for the appellant and Mr Steer for Kedleston Voice. Severn Trent Water had offered no objection to the original (400-dwelling) application subject to a condition requiring the prior approval of surface water and foul drainage details.

66. On foul drainage, Mr Steer does not believe that the existing sewerage network has the capacity to cope with the proposed development. Ultimately, however, if upgrading works were required, it would be **Severn Trent Water's** responsibility under the Water Industry Act 1991 to deliver the appropriate works and facilitate a connection to its network. A planning condition can ensure a satisfactory foul drainage scheme within the site.
67. **On surface water drainage, Mr Steer's concern was primarily with the** southerly attenuation pond (and thus with both appeal schemes) and that there may be a residual flood risk for existing properties on Somme Road. He contended that two additional criteria needed to be inserted into the already-suggested condition on surface water drainage. That is considered below.

Quarn Drive

68. This matter was raised by local residents as well as by Kedleston Voice. It was not being suggested that the appeal schemes should be used to improve existing visibility for emerging drivers; rather, it was that an already dangerous situation would be made worse by the additional traffic from the proposed developments. While visibility is not as bad as indicated by some objectors, it is certainly not easy to join Kedleston Road from Quarn Drive, especially if turning right. However, the Highway Authorities (Derby City Council and Derbyshire County Council) have clearly considered the matter and concluded that there is no cause for objection.
69. A number of things would improve the existing situation. For the 400-dwelling scheme, the roundabout at Askerfield Avenue would help to slow traffic; drivers might still be able to accelerate to 40mph (the present speed limit) between the roundabout and Quarn Drive but, overall, there should be a tendency towards slower traffic. The bus stops and formal crossing points would be a further help in moderating traffic speeds. Lastly, while not the sole cause of the poor visibility, cutting back vegetation that obscures sight lines over the public highway is the responsibility of the Highway Authority.

The T-junction for the 195-dwelling scheme

70. Strictly speaking, 195 dwellings may be too many to be served from a single access point. It is guidance, though, not a requirement, that a development of more than 150 dwellings should have more than one access point, with the qualification that developments exceeding that limit may be considered on their merits. Again, the Highway Authority (Derbyshire County Council in this case) has clearly done that – and requested neither a second access nor an emergency access. The proposal does not contravene the guidance, because of the qualification, and there is no evidence that the Highway Authority has been lax in its consideration of the proposal.

The T-junction gradients

71. **Mr Steer's concern** was principally that footway gradient requirements for the disabled could not be met by the proposed T-junction access road in either scheme. It does not appear to be a concern shared by the Highway Authority. If, however, it turned out to be a problem at the detailed design stage, there is surely adequate space within the appeal sites for satisfactory arrangements for the disabled to be provided. Although access was not a reserved matter in either application, the provision of appropriate footway routes for the disabled, in addition to the vehicular accesses proposed, would not contravene the purpose of seeking an outline permission.

The use of DATM

72. Mr Benison did not argue that either appeal proposal was unacceptable in highways terms; his concern was that to use DATM to model the proposed 400-dwelling development was inappropriate, that there was no detailed modelling to address what appeared to be significant issues on the highway network surrounding the appeal site and that it was not possible to infer from the evidence up to June 2016 what the true impact of the proposal would be.
73. *The Statement of Common Ground on Highway and Transport Matters* notes that the use of DATM was agreed by all three Highway Authorities (Derby City Council, Derbyshire County Council and Highways England), a modelling brief was prepared by Peter Brett Associates (PBA) on behalf of the appellant and Systra (who operate the model on behalf of Derby City Council) was commissioned to complete the modelling. The reasons for using DATM, even though it is a strategic model potentially unsuitable for a development of fewer than 500 dwellings, are clear and entirely understandable; the results of the exercise were considered by all three Highway Authorities; local validation was undertaken, including observed traffic flows, logic checks of the DATM results against those flows, sensitivity testing, further discussion with the Highway Authorities and mitigation testing. It is all but impossible that any significant highways problem arising from the proposed development would not have been identified by one or other of the Highway Authorities.
74. Paragraph 32 of the Framework says that development should only be prevented or refused on transport grounds if the residual cumulative impacts would be severe. That cannot be said to be the case here. Even the increases in traffic on Askerfield Avenue, expressed by Mr Benison as massive percentages, turn out to be relatively low in numerical terms and well within the actual capacity of the road.

Education

75. A *Statement of Common Ground on Education* was prepared for both appeals, one signed in April 2016, the other in June 2016. Councillor Webb, speaking at the inquiry, produced a letter from the Chair of Governors at Ecclesbourne School which appeared to contradict what had earlier been agreed with the Education Authority. A subsequent email from the Education Authority suggests that the situation may not remain as set out in that letter. However, to cover all eventualities, an agreement supplementary to the two already executed (one for each appeal scheme) was prepared, executed and submitted within a week of the close of the inquiry. It enables the Post-16 Education Contributions in the original agreements to go to an alternative project, should that prove necessary, and thus brings those agreements into line with the situation as it was understood at the close of the inquiry.

Obligation and conditions

76. Executed obligations, in the form of agreements between Catesby Estates Ltd, the landowners, Amber Valley Borough Council and Derbyshire County Council (as both Highway Authority and Education Authority) were submitted to the inquiry. An executed supplementary obligation was submitted, as described in the preceding paragraph. In essence, the agreements provide for affordable housing, open space within the appeal site and its management, a contribution towards off-site open space provision, contributions towards primary, secondary and post-16 education provision, with specific projects named, a bus service to serve the development and a travel plan; in addition,

there is a marketing plan for the convenience store in the 400-dwelling scheme. The provisions of the obligations satisfy the Community Infrastructure Levy (CIL) Regulations in that they are all necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind. The Council provided CIL compliance statements in respect of each aspect of the agreements for each appeal scheme.

77. Agreed suggested conditions for each scheme were provided in the Statements of Common Ground and, following my comments and queries, amended agreed suggestions were submitted to and discussed (as necessary) at the inquiry.⁶ They deal (in the order presented) with reserved matters, temporary access from Kedleston Road, details of access roads and footpaths (and the timing of their provision), phasing and off-site highways improvements, details of the retail premises (in the 400-dwelling scheme only), the travel plan, bus stops and pedestrian/cyclist crossing points on Kedleston Road, construction methodology, noise (affecting those dwellings closer to Kedleston Road), trees to be retained, surface water and foul drainage, biodiversity enhancement and landscaping. Conditions on all of these matters are reasonable and necessary.
78. That said, the construction or wording of some conditions may be amended in favour of model conditions or in the interests of clarity and precision. Condition 11, on construction methodology, can be simplified without loss of effect. Condition 12, on noise protection, may be simplified because of its reference to the Acoustic Report submitted with the application. Condition 13, on tree retention and protection, is unnecessary since part of condition 17, on landscaping, provides the necessary control. Condition 14, on surface water drainage, may be simplified by reference to the Flood Risk Assessment submitted with the application (and without ignoring the concerns raised by Mr Steer). Street lighting should be conditioned, best as part of condition 4. And an additional condition would be appropriate simply to identify the approved plans, in particular the access roundabout and T-junction plans.

Overall conclusions

79. As things are at present, the appeal site does not lie within the setting of Kedleston Hall. Thus, section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and policy at paragraphs 131-137 of the Framework do not apply.
80. If the Derby Screen were removed or opened out, then it might be possible to say that the appeal site fell within the setting of the Hall. However, among the issues to be resolved before any resolution could be made to do that are what should be the overall intentions for restoration of the Park and should trees within the Park be removed to allow views out from the Hall and views, or glimpses, of the Hall from Kedleston Road. Even then, neither appeal proposal would cause significant change to the view from the Hall itself. While potential views of the Hall from Kedleston Road over the appeal site would be lost, it is not entirely clear that the view in that direction was ever more than a glimpse across open countryside, rather than a designed view through parkland. Accordingly, even if the Derby Screen were removed or opened out, and the appeal site were considered to fall within the setting of the Hall,

⁶ Document 21.

the impact on the significance of the Hall would be less than substantial, indeed little more than negligible.

81. The appeal site lies within the setting of the registered Park and Garden and the Conservation Area. As it is today, less than substantial harm comes from the encroachment of development towards the Park; but it is mitigated by the context – the extent of the existing built-up area, extensive rural views in other directions, the existing vegetation along the Markeaton Brook and the remaining countryside between the Park and the built-up area. Save for the some of the views in other directions, that would apply equally to views from within the Park if the Derby Screen were removed or opened out. Views towards the Park would become less extensive and more oblique than possible at present. Overall, the harm to the significance of the Park and Conservation Area lies **very much at the lower end of 'less than substantial'**.
82. The appeal site lies within the setting of Kedleston Hotel but there would be no material harm to that setting and no harm to the significance of the heritage asset. It is highly doubtful that the appeal site can be said to be within the setting of the Quarndon Conservation Area. Even if it were, however, there would be no harm to that setting and no harm to the significance of the heritage asset.
83. Kedleston Hall and its Park are heritage assets of the greatest importance. Any harm to their significance must carry very great weight in the balance against the public benefits of the appeal proposals required by paragraph 134 of the Framework. That said, as things are today, there is no harm to the significance of the Hall and only very modest harm to the significance of the Park and Conservation Area. Even if the Derby Screen were removed or opened out, the harm to the significance of the Hall would be very limited indeed and the harm to the Park still no more than modest. Against that is the very great public benefit of market and affordable housing⁷ which is much needed, especially in Amber Valley but also in Derby City. That public benefit is more than sufficient to tip the balance in favour of the appeal proposals.
84. The proposals can also be said to be sustainable. There is no question about that in social or economic terms and the location is obviously a sustainable one in relation to the housing requirement for Derby City. There would be some environmental harm – but that would not be at all great, as concluded above, and would be far outweighed by the need for housing and the social and economic benefits from it. That brings into play the balance set out at paragraph 14 of the Framework – permission should be granted for sustainable development unless the impacts of so doing would “significantly and demonstrably outweigh the benefits”.
85. Apart from the impacts on Kedleston Hall and Park, weighed in relation to paragraph 134, there would landscape and highways impacts. In terms of paragraph 109 of the Framework, the landscape is not a valued one in its own right; the site itself displays no more than moderate landscape merit and views towards the proposed housing would be mitigated by the context (both built-up and rural). In terms of paragraph 32 of the Framework, the residual highways impacts of the proposals would not be severe. No other matters have been raised that would have any significant impact on the balance.

⁷ The 400-dwelling scheme would provide 280 market houses and 120 affordable houses; the 195-dwelling scheme 137 and 58.

86. In addition to the provision of much-needed housing, the benefits include construction jobs, support for the supply chain during construction, gross value added contribution to the East Midlands economy during construction, permanent jobs in the convenience store (in the 400-dwelling scheme), support for the convenience store supply chain, gross value added contribution to the East Midlands economy from the convenience store, an enhanced local labour force, increased resident spending power when the dwellings are occupied, support for local retail and leisure services and the New Homes Bonus.
87. It might be argued that many of these benefits would come from development elsewhere in Amber Valley – simply at a later date than on the appeal site. However, the policy situation is such that one cannot say how long the delay in finding an acceptable alternative site or sites would be. In any event, these secondary benefits do not themselves influence the balance; they simply consolidate it in favour of the proposals. There can be no doubt that the adverse impacts of either development would not significantly and demonstrably outweigh the benefits from providing much-needed housing.
88. To sum up very simply, there is no conflict with the Development Plan or with policy in the Framework. Saved Policy LS1 c) is the only relevant Development Plan policy not reduced in weight because of policy in the Framework but it also has to be viewed in the context of the inevitable need to release green field land to meet the housing requirement in Amber Valley. Policy EN10, on the loss of best and most versatile agricultural land, may be given full weight but, in the same context, what losses there would be are acknowledged by the Council to carry little weight in the overall balance. Otherwise, and as undertaken above, the proposals are more appropriately considered against up-to-date policy in the Framework rather than against the saved Local Plan policies referred to in the reasons for refusal.
89. Accordingly, both appeals may be allowed, subject to the executed obligations and the conditions set out in the attached schedules.

John L Gray

Inspector

APPEARANCES

FOR AMBER VALLEY BOROUGH COUNCIL

Jonathan Mitchell of Counsel	instructed by Venice MacDonald, Principal Solicitor, Amber Valley Borough Council.
He called	
Dr David Hickie BSc(Hons) MA PhD CEnv MIEMA IHBC	Principal Consultant, David Hickie Associates, Landscape Architecture and Environmental Planning, Atherstone, Warwickshire.
Mel Morris BA(Hons) DipArchCons IHBC MRTPI	Mel Morris Conservation, Ipstones, Staffordshire.
Derek Stafford BA(Hons) MRTPI	Assistant Director (Local Plan Manager), Amber Valley Borough Council.

FOR CATESBY ESTATES LTD

Rupert Warren QC	instructed by David Morris of Catesby Estates Ltd.
He called	
Duncan McInerney BSc(Hons) MLD CMLI	Director, EDP (Environmental Dimension Partnership Ltd), Environmental Planning, Design and Management Services, Cirencester.
Andrew Crutchley BA(Hons) PGDip(Oxon) MCIfA	Director, EDP.
Keith Fenwick BA(Hons) MRTPI	Director, WYG Environment Planning Transport Ltd, Birmingham.

FOR KEDLESTON VOICE

Jack Smyth and Nina Pindham, both of Counsel	instructed by John Wren of Kedleston Voice.
They called	
Christopher Gallagher BSc(Hons)	Historic landscape consultant.
Stephen Levrant AADipl RIBA	Principal, Heritage Architecture Ltd, London.
Peter Steer BSc CEng MIStructE	Retired civil and structural engineer.
Neil Benison BSc(Hons) IEng MICE	Associate Director, Mewies Engineering Consultants Ltd (M-EC), Consulting Development Engineers.

INTERESTED PERSONS

Mark Heppenstall	Local resident.
Roy Webb	Derby City Councillor for Allestree Ward.
David Anderson	}
Michael Richardson	}
David Eley	}
René Dobson	} Local residents.
Keith Thomas	}
Wendy Gough	}
Peter Benham	}
Graham Bennett	}

DOCUMENTS

Submitted during the inquiry

- 1 Extract from 1937-8 Estate log with handwritten note to “plant a derby screen”.
- 2 The setting of Kedleston as defined in the Amber Valley Borough Local Plan.
- 3 Copy of the agreement for the sale of Kedleston Park by the Kedleston Trustees to the National Trust, with covering letter dated 13 August 1986.
- 4 Letter of objection to the 400-dwelling application from the National Trust to the Council, dated 8 December 2014.
- 5 Letter of objection to the 195-dwelling application from the National Trust to the Council, dated 3 February 2016.
- 6 Letter of objection to the 400-dwelling application from English Heritage to the Council, dated 17 November 2014.
- 7 Kedleston Hall Parkland Conservation Plan, September 2013 (final version of draft at **Mr McInerney’s Appendix AC4**).
- 8 Google Earth aerial view of the Derby Screen.
- 9 Vertical aerial photograph superimposed with the view from Kedleston Road to Kedleston Hall as shown in Figures 13 and 14 of **Dr Hickie’s** proof of evidence.
- 10 Agreements reached on surface water and foul drainage between RPS for Catesby Estates Ltd and Mr Steer for Kedleston Voice.
- 11 Letter dated 9 December 2014 from Severn Trent Water to the Council.
- 12 Land Registry entry and plan showing the Estate boundary at the Derby Screen.
- 13 **Note by Mr Fenwick responding to the Inspector’s queries about the benefits claimed** for the appeals proposals.
- 14 Letter dated 12 July 2016 from Trent Motor Traction Co Ltd to Peter Brett Associates supporting the public transport strategy for the proposals.
- 15 Section 106 Agreement – Summary Report, Eversheds, July 2016.
- 16 Email correspondence re. Derbyshire HLC (Historic Landscape Character) project.
- 17 Letter dated 25 July 2016 from the National Trust to the Council relating to the possible opening out of the Derby Screen.
- 18 Land Registry entry and plan showing the National Trust boundary at the Derby Screen.
- 19 Statements by local people: 1. Mark Heppenstall; 2. Cllr Roy Webb; 3. David Anderson; 4. Michael Richardson; 5. David Eley; 6. René Dobson; 7. Keith Thomas.
- 20 Updated Technical Note in support of the Education Statements of Common Ground.
- 21 Amendments to the **suggested conditions in response to the Inspector’s queries**.
- 22 CIL Compliance Statements on affordable housing, open space, education and the marketing plan.
- 23 Email relating to the education provisions in the section 106 agreements.
- 24 Executed Section 106 Agreement relating to appeal ref. APP/M1005/W/15/3132791.
- 25 Executed Section 106 Agreement relating to appeal ref. APP/M1005/W/16/3144743.

Submitted after the inquiry

- 26 Executed Supplementary Agreement (relating to Documents 24 and 25).
- 27 Summary Report on the Supplementary Agreement, submitted with it.

Appeal Ref. APP/M1005/W/15/3132791
Land at Kedleston Road and Memorial Road, Allestree, Derbyshire
Schedule of conditions attached to outline planning permission

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Approved plans

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: dwg. no. 1011 (red-line plan), dwg. no. 29232-5504-015, rev. B (access roundabout at the junction with Kedleston Road and Askerfield Avenue) and dwg. no. 29232-5504-016, rev. A (priority junction with Kedleston Road).

Phasing

- 5) No development shall take place until a phasing plan has been submitted to and approved in writing by the local planning authority. The phasing plan shall include the timings for all on-site development and for the completion of the roundabout at the junction of Kedleston Road and Askerfield Avenue (dwg. no. 29232-5504-015, rev. B), the priority junction with Kedleston Road (dwg. no. 29232-5504-016, rev. A) and the signalisation of the junctions of Kedleston Road with Allestree Lane (dwg. no. 29232-5504-010) and the University access road (dwg. no. 29232-5504-020). The development shall be carried out in accordance with the approved details.
- 6) No development shall take place until a temporary access for construction purposes from Kedleston Road has been laid out, constructed and provided with visibility splays of no less than 2.4m x 83m in both directions, in accordance with details first submitted to and approved in writing by the local planning authority. The sight lines shall be clear of any obstruction higher than 1.0m above the edge of the carriageway at the junction and maintained as such throughout the construction period.
- 7) No development shall take place until details of the following, including the timing of provision in relation to development on-site, have been submitted to and approved in writing by the local planning authority:
 - a) details of bus stop locations, including bus shelters, kerbs and real-time information, on Kedleston Road;
 - b) details of the locations and design of pedestrian/cycle crossing points on Kedleston Road.

The development shall be carried out in accordance with the approved details.

- 8) No building shall be occupied or use commenced until a Travel Plan, based on that attached to the executed planning obligation and including provision for implementation, monitoring and review, has been approved in writing by the local planning authority. The Travel Plan shall be implemented as approved.

On-site roads and footpaths

- 9) No development shall take place until full details of all access roads, parking areas, footways and footpaths within the site, including the phasing of construction, details of street lighting and details of any footway junctions with Kedleston Road, have been submitted to and approved in writing by the local planning authority.

- 10) No dwelling shall be occupied until the vehicular and pedestrian access to it, both on-site and at the junctions with Kedleston Road, and the parking space for it within its curtilage, has been constructed in accordance with the approved details.

Convenience store

- 11) The retail premises hereby permitted shall not be occupied until space for service and delivery vehicles and access to it has been constructed in accordance with details first submitted to and approved in writing by the local planning authority.

Noise protection

- 12) No development shall take place until a scheme of noise mitigation, designed broadly in accordance with Sections 6 and 7 of the *Acoustic Report* by RPS dated 10 October 2014 (Document CD1o), has been submitted to and approved in writing by the local planning authority. The scheme shall provide details to ensure that all habitable rooms within dwellings and all private garden areas are protected from road traffic noise in accordance with the recommendations of the Report. No dwelling shall be occupied until the noise mitigation measures required for it have been implemented in accordance with the approved scheme.

Drainage

- 13) No development shall take place until a detailed surface water drainage scheme for the site, broadly in accordance with the *Drainage Strategy* in the *Flood Risk Assessment* by RPS dated October 2014 (Document CD1i), has been submitted to and approved in writing by the local planning authority. The scheme shall include details of discharge rates, attenuation storage and outfall arrangements and maintenance and management arrangements for the lifetime of the development. The scheme shall be implemented before any building is occupied (subject to the phasing approved under condition no. 5 above) and maintained thereafter in accordance with the approved scheme.
- 14) No development shall take place until full details of the means of disposal of foul sewage, including any phasing in accordance with condition no. 5 above, has been submitted to and approved in writing by the local planning authority. No building shall be occupied until the means of disposal of foul drainage from it has been implemented in accordance with the approved details.

Landscaping, retained trees and biodiversity

- 15) The landscaping reserved matter referred to in condition no. 1 above shall include full details of both hard and soft landscape works. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (such as street furniture, play equipment, refuse or other storage units, signs, amenity lighting); proposed functional services above and below ground (such as drainage, power and communications cables or pipelines); planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities as appropriate); the identification of all trees and hedgerows to be retained (within the site and on its boundaries) and measures for their protection throughout the course of construction works; an implementation programme; and a management and maintenance programme. All landscaping shall be carried out in accordance with the approved details.
- 16) The soft landscaping proposals in condition no. 15 above shall include measures for biodiversity enhancement in accordance with the proposals at paragraph 6.4 of the *Ecological Appraisal* by EDP dated October 2014 (Document CD1h).

Construction method statement

- 17) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The approved

statement shall be adhered to throughout the construction period and shall provide for:

- a) hours of construction, including deliveries to and removals from the site;
- b) the control of noise-generating and vibration-generating activities, including tonal reversing alarms;
- c) the parking of vehicles of site operatives and visitors;
- d) the loading and unloading of plant and materials;
- e) the storage of plant and materials used in constructing the development;
- f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
- g) wheel washing facilities;
- h) the sheeting of vehicles entering or leaving the site;
- i) measures to control the emission of dust and dirt during construction;
- j) no burning of waste materials on the site;
- k) a scheme for recycling/disposing of waste resulting from construction works.

Appeal Ref. APP/M1005/W/16/3144743
Land at Kedleston Road and Memorial Road, Allestree, Derbyshire
Schedule of conditions attached to outline planning permission

- 1) Details of the appearance, landscaping, layout, and scale, (hereinafter called "the reserved matters") shall be submitted to and approved in writing by the local planning authority before any development begins and the development shall be carried out as approved.
- 2) Application for approval of the reserved matters shall be made to the local planning authority not later than three years from the date of this permission.
- 3) The development hereby permitted shall begin not later than two years from the date of approval of the last of the reserved matters to be approved.

Approved plans

- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: drawings nos. 1013 and 29232-5504-023.

Phasing

- 5) No development shall take place until a temporary access for construction purposes from Kedleston Road has been laid out, constructed and provided with visibility splays of no less than 2.4m x 83m in both directions, in accordance with details first submitted to and approved in writing by the local planning authority. The sight lines shall be clear of any obstruction higher than 1.0m above the edge of the carriageway at the junction and maintained as such throughout the construction period.
- 6) No development shall take place until details of the following, including the timing of provision in relation to development on-site, have been submitted to and approved in writing by the local planning authority:
 - a) details of bus stop locations, including bus shelters, kerbs and real-time information, on Kedleston Road;
 - b) details of the locations and design of pedestrian/cycle crossing points on Kedleston Road.

The development shall be carried out in accordance with the approved details.

- 7) No building shall be occupied or use commenced until a Travel Plan, based on that attached to the executed planning obligation and including provision for implementation, monitoring and review, has been approved in writing by the local planning authority. The Travel Plan shall be implemented as approved.

On-site roads and footpaths

- 8) No development shall take place until full details of all access roads, parking areas, footways and footpaths within the site, including the phasing of construction, details of street lighting and details of any footway junctions with Kedleston Road, have been submitted to and approved in writing by the local planning authority.
- 9) No dwelling shall be occupied until the vehicular and pedestrian access to it, both on-site and at the junctions with Kedleston Road, and the parking space for it within its curtilage, has been constructed in accordance with the approved details.

Noise protection

- 10) No development shall take place until a scheme of noise mitigation, designed broadly in accordance with Sections 6 and 7 of the *Noise Assessment* by RPS dated 3 December 2015 (Document CDX1o), has been submitted to and approved in writing by the local planning authority. The scheme shall provide details to ensure that all habitable rooms within dwellings and all private garden areas are protected from road traffic noise in accordance with the recommendations of the Report. No dwelling shall be occupied until the noise mitigation measures required for it have been implemented in accordance with the approved scheme.

Drainage

- 11) No development shall take place until a detailed surface water drainage scheme for the site, broadly in accordance with the *Drainage Strategy* in the *Flood Risk Assessment* by RPS dated 17 December 2015 (Document CDX1g), has been submitted to and approved in writing by the local planning authority. The scheme shall include details of discharge rates, attenuation storage and outfall arrangements and maintenance and management arrangements for the lifetime of the development. The scheme shall be implemented before any building is occupied and maintained thereafter in accordance with the approved scheme.
- 12) No development shall take place until full details of the means of disposal of foul sewage has been submitted to and approved in writing by the local planning authority. No building shall be occupied until the means of disposal of foul drainage from it has been implemented in accordance with the approved details.

Landscaping, retained trees and biodiversity

- 13) The landscaping reserved matter referred to in condition no. 1 above shall include full details of both hard and soft landscape works. These details shall include proposed finished levels or contours; means of enclosure; car parking layouts; other vehicle and pedestrian access and circulation areas; hard surfacing materials; minor artefacts and structures (such as street furniture, play equipment, refuse or other storage units, signs, amenity lighting); proposed functional services above and below ground (such as drainage, power and communications cables or pipelines); planting plans; written specifications (including cultivation and other operations associated with plant and grass establishment); schedules of plants (noting species, plant sizes and proposed numbers/densities as appropriate); the identification of all trees and hedgerows to be retained (within the site and on its boundaries) and measures for their protection throughout the course of construction works; an implementation programme; and a management and maintenance programme. All landscaping shall be carried out in accordance with the approved details.
- 14) The soft landscaping proposals in condition no. 15 above shall include measures for biodiversity enhancement in accordance with the proposals at paragraph 6.4 of the *Ecological Appraisal* by EDP dated December 2015 (Document CDX1f).

Construction method statement

- 15) No development shall take place until a construction method statement has been submitted to and approved in writing by the local planning authority. The approved statement shall be adhered to throughout the construction period and shall provide for:
 - a) hours of construction, including deliveries to and removals from the site;
 - b) the control of noise-generating and vibration-generating activities, including tonal reversing alarms;
 - c) the parking of vehicles of site operatives and visitors;
 - d) the loading and unloading of plant and materials;
 - e) the storage of plant and materials used in constructing the development;
 - f) the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;
 - g) wheel washing facilities;
 - h) the sheeting of vehicles entering or leaving the site;
 - i) measures to control the emission of dust and dirt during construction;
 - j) no burning of waste materials on the site;
 - k) a scheme for recycling/disposing of waste resulting from construction works.