

**DORSET COUNCIL**

**LAND WEST OF CHURCH HILL AND LAND OFF BUTTS CLOSE AND  
SCHOOLHOUSE LANE, MARNHULL**

**APPEAL REF: APP/D1265/W/24/3353912**

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**OPENING STATEMENT  
ON BEHALF OF THE COUNCIL**

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1. At its core, this appeal concerns whether the “public benefit” of the appeal scheme outweighs the harm it would cause to the significance of the three relevant designated heritage assets, i.e. the NPPF para. 215 test. That is of course harm to which considerable importance and weight must be given, even though the harm to the relevant assets is “less than substantial” in NPPF terms (though, within that scale, it is at a high level).
2. The courts have made it clear that less than substantial heritage harm does not equate to a less than substantial objection to the grant of planning permission,<sup>1</sup> and the NPPF indicates that any harm to heritage assets requires “clear and convincing justification”. That is all particularly so where, as here, one of the assets in question (St Gregory’s Church) is Grade I listed and is of “exceptional” historic interest and of the highest order of significance nationally speaking.
3. These orthodox – yet important – principles of heritage conservation planning have been entirely ignored by Ms. Spiller. She refers to the alleged “slight harm” that the scheme would cause in heritage terms (which is incorrect, as will be explored in evidence) but there is no indication whatsoever in her POE that she has understood that

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<sup>1</sup> East Northamptonshire DC v SSCLG [2015] 1 WLR 45 at [29] per Sullivan LJ.

great weight must be given to all heritage harm, even where it is less than substantial. Her NPPF para. 215 balance is a straightforward balance, therefore, and does not comply with the policy or indeed the legislative framework. It should not carry weight.

4. As to the extent of that harm, and whether the public benefits outweigh that harm (when the statutory great weight is given to it), it is necessary to take the two development zones in turn.

#### Tess Square

5. Both the Council and Historic England<sup>2</sup> are clear that the Tess Square scheme would “fundamentally” alter the setting of St Gregory’s Church and that would, in turn, adversely affect its significance and the ability to appreciate that significance. In particular, it would introduce a significant amount of built development and activity into the open, undeveloped farmland that sits at the core of the settlement of Marnhull and which currently (1) articulates its historic agrarian/agricultural character and (2) illustrates the historic fact that Marnhull is comprised of two former settlements, now joined by modern housing to the east of Church Hill.
6. St Gregory’s was the centre of much of historic life in the former separate linear settlements now comprising Marnhull (i.e. both the New Street and the Burton Street settlements) and its rural hinterland. These elements (i.e. (1) and (2) above) of St Gregory’s setting illustrate the church’s important role in respect of these separate settlements and their rural hinterland, and as such are an important component of its significance today. The same is also true of the two Conservation Areas in present day Marnhull: part of their significance derives from their separateness vis a vis one another.

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<sup>2</sup> See **CD 8.09**. Decision-makers are expected to give due weight to the view of the Historic England expressed in formal statutory consultation. The classic exposition of the relevant principle is contained at [72] in Shadwell Estates v Breckland DC [2013] EWHC 12 (Admin) in which Beatson J. said as follows: “a decision-maker should give the views of statutory consultees, in this context the “appropriate nature conservation bodies”, “great” or “considerable” weight. A departure from those views requires “cogent and compelling reasons.” Shadwell Estates concerned the advice of Natural England which was an “appropriate nature conservation body” for the purposes of the DMPO but the principle is of general application. Historic England is a statutory technical consultee under the DMPO.

7. The Tess Square scheme would consolidate the former settlements of Marnhull (doing the same to the land west of Church Lane as the 20thC development did to the east of it) and in doing so would create a new ‘village centre’ with a modern farm shop, significant car parking and formalised (cf. agricultural) open space. This would compete for prominence with St Gregory’s on a spatial and perceptual level and would make it seem as if St Gregory’s was historically the associational and confessional centre of *one* rural settlement (namely. modern day Marnhull) instead of its wider precinct comprising the villages, hamlets and hinterlands of the wider agricultural landscape.
8. Marnhull’s centre has always been co-terminous and synonymous with St Gregory’s. The commercial village centre proposed in the Tess Square scheme would undermine St Gregory’s prominence. It would also enlarge, significantly, the modern 20thC N-S development axis (i.e. along Church Lane) and would dilute the historic W-E ridge/hill top development pattern (i.e. the two conservation areas). This would cause high levels of less than substantial harm, in respect of both the church and the two CAs, and a lesser degree of harm to the Grade II\* Senior’s Farmhouse.

#### Butt’s Close

9. Many of the same points apply. St Gregory’s Church would be harmed to a high extent, within the LTS scale. Historic England put it as follows:

*“This new application has expanded the development to 120 houses, and now proposes to entirely fill the field which is bounded by Chippel Lane and Schoolhouse Lane. At present, the grade I listed church is viewed from the south across open agricultural land. This development will therefore fundamentally change this relationship between church and landscape, creating a densely developed foreground in views towards the Conservation Area and church. We accept that a gap through the development has been left in order that views from the junction between Chippel Lane and Schoolhouse Lane towards the church are not blocked. However, it remains the case that the*

*visual prominence of the tower and the historically open, rural setting of the church would be eroded by development in this location.*” (emphasis added)

10. The Butts Close scheme would compound the N-S development axis that the Tess Close scheme would cause, referred to above. It would materially affect the historic settlement pattern and would reduce the legibility of Marnhull as a settlement that comprises a number of smaller linear settlements on higher ground, running in E-W axis (roughly) and with an agricultural setting. For the same reasons, the Conservation Area would be harmed to a moderate extent.

#### Benefits of the scheme

11. What then of the claimed benefits of the scheme? The principal benefit of the scheme is the provision of 120 units of market housing with a policy compliant proportion of affordable housing. Both of the planning witnesses agree that these benefits are substantial: that is not in dispute. There would also be generic economic benefits associated with the scheme (construction and supply chain spend, provision of labour, and a permanent population of economically active people) but no real attempt has been made to quantify the level of benefit, real though that benefit would be. The open space and PROW upgrades would be somewhat beneficial, given that they would be an improvement to the baseline.
12. Importantly, though, the benefits of the housing can only in principle justify the less than substantial harm that the housing causes to the relevant heritage assets (and, the Council do not consider that it can do that, given the high LTS harm it would cause to the assets).
13. It would be logically unsound in principle to carry forward any spare change of the housing scheme (to the extent that its own impact on heritage assets can be justified in para. 215 terms, which it cannot) to the retail/commercial scheme at Tess Square. This is because the appellant advances no claim (and there is not a shred of evidence to demonstrate) that the housing is needed as enabling development to cross-subsidise the delivery of Tess Square. In that context, it would be wrong to say that the harm that Tess Square would cause to heritage assets can be justified by the delivery of a separate

housing scheme in a different development zone that is in fact functionally decoupled from Tess Square.

14. To the extent that Tess Square causes harm in heritage terms, it is Tess Square that must be justified. In other words in NPPF para. 215 terms, the development that is doing the harming must be justified by sufficient quantum of public benefit. That public benefit cannot be carried over from somewhere else in circumstances where the schemes are functionally and financially interdependent.
15. This is critical, in this appeal, because the commercial/retail element of the scheme does not comprise a benefit properly so called of the scheme. It is, for a start, entirely contrary to the development plan and in particular NDLP Policies 11 and 12 given that it relies on a 4km catchment zone to establish need. That is well beyond a “local need”, indeed that catchment zone is one which is in fact supposed to be supporting the designated service centres. For that reason Tess Square derives no support from NPPF paras 88 and 89.
16. Note that the way that the commercial/retail component of the scheme is sought to be justified by Ms. Spiller at POE 7.10 is that the creation of a “local centre” in Marnhull would “help to bolster self-containment” and “give residents more choice on modes of transport to reach these services”. So, it is in effect an argument to do with reducing the use of private cars, a lower order benefit in the grand scheme of things, particularly because the thrust of the NDLP (Policies 2,11 and 12) is in fact to encourage the development of these uses/facilities in the main service centres and not in the villages (even the larger villages). So, reducing trips to (say) Sturminster Newton is not in fact a benefit: it undermines the role of Sturminster Newton as a service centre and deprives the businesses there (which policy is seeking to encourage) of linked custom.
17. The retail/commercial scheme does not comprise “small scale rural development”. That is true in purely objective terms because it is “major development” in DMPO terms (being over 2 x the threshold 1000m<sup>2</sup>) and in proportional locally-specific terms,<sup>3</sup> in

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<sup>3</sup> Note that that the approach in NPPF respects the principle laid down by the courts that the circumstances of a LPA’s area may be relevant in determining the extent to which the objectives of a national policy are applicable (if at all), or the amount of weight they carry, in that area (Surrey Heath Borough Council v

that “*the proposed foodstore is of a size that would significantly exceed that of the anchor foodstore in Sturminster Newton and would be more than 6 times the combined size of the existing provision in the village. This scale of development is neither appropriate for a village location, nor can it be supported by available expenditure in the area*” (CD 10.03 p.19). That being so, the Tess Square scheme must be sequentially justified, and it cannot be for the reason set out in the Council’s evidence: see CD 10.03 Section 6. At the very least the appellant’s sequential analysis should carry reduced weight, and that is relevant to the scale of public benefit associated with Tess Square.

18. It is also relevant that no identified operator of the proposed food store has been identified. This is importance because the Council’s evidence is that the proposed size of the food store, being large scale, yet in a countryside location, would make it highly unattractive to a commercial operator. That raises the very real prospect of a planning white elephant: a scheme that cause significant less than substantial heritage harm, yet provides no real benefits on the ground.

### Conclusion

19. For these reasons the NPPF para. 215 test is not met. That would be a strong reason for refusal for the purposes of NPPF para. 11(d), axiomatically. The housing would be substantially beneficial. Yet it would not, in the Council’s judgment, outweigh the heritage harm to which great weight must be given. Tess Square provides no real benefits, it is not even arguable that it meets the para. 215 threshold. The appeal should be dismissed.

**GEORGE MACKENZIE**

**8 April 2025**

**Francis Taylor Building, Temple**

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Secretary of State for the Environment (1987) 53 P & CR 428, 433; Camden London Borough Council v Secretary of State for the Environment (1989) 59 P & CR 117; R (West Berkshire District Council v Secretary of State for Communities and Local Government [2016] 1 WLR 3923).