



LAND WEST OF CROSS ROAD,
DEAL

HERITAGE DESK- BASED ASSESSMENT

PREPARED BY PEGASUS
GROUP ON BEHALF OF
GLADMAN DEVELOPMENTS LTD

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DESIGN | **ENVIRONMENT** | **PLANNING** | **ECONOMICS** | **HERITAGE**

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1. Introduction

1.1 Pegasus Group have been commissioned by Gladman Developments Ltd to prepare a Heritage Desk-Based Assessment to consider the proposed development site at Cross Road, Deal as shown on the Site Location Plan provided at Plate 1.

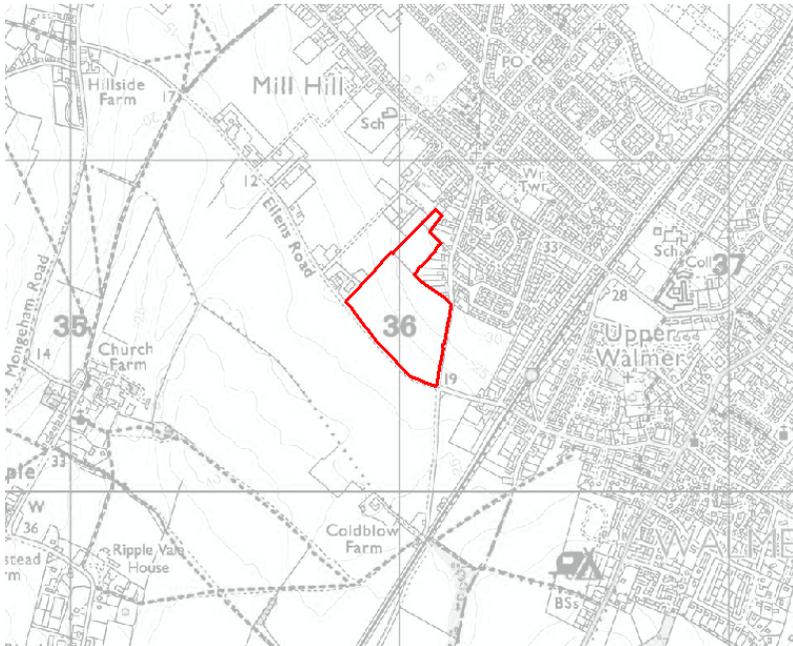


Plate 1: Site Location Plan

¹ Ministry of Housing, Communities and Local Government (MHCLG), *National Planning Policy Framework (NPPF)* (London, February 2019).

1.2 This Heritage Desk-Based Assessment provides information with regards to the significance of the historic environment and archaeological resource to fulfil the requirement given in paragraph 189 of the Government’s National Planning Policy Framework (the NPPF¹) which requires:

“an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting.”²

1.3 In order to inform an assessment of the acceptability of the scheme in relation to impacts to the historic environment and archaeological resource, following paragraphs 193 to 197 of the National Planning Policy Framework (NPPF), any harm to the historic environment resulting from the proposed development is also described, including impacts to significance through changes to setting.

1.4 As required by paragraph 189 of the NPPF, the detail and assessment in this Report is considered to be *“proportionate to the asset’s importance”³*.

² MHCLG, *NPPF*, paragraph 189.

³ MHCLG, *NPPF*, paragraph 189.

2. Site Description and Planning History

2.1 The proposed development site, henceforth referred to as 'the Site', is composed of an area of agricultural land located to the south of the town of Deal and to the west of the town of Walmer in Kent. The Site is composed of three distinct parcels in different uses; The western extent comprises an area of woodland, the southern extent is in arable use, and the northern extent of the site is an area of scrubland. The proposed development site covers a total area of approximately 8.71 hectares.

2.2 There is no fenced or other strong boundary between the areas of agricultural land, scrubland and woodland within the site. The site is slightly lower than its surrounding roadways, these slight embankments form the site's external boundaries to the south and southeast. The site's boundaries to properties within Deal are formed by a mix of hedgerow, brick walling and wood panel

fencing. The site's external boundaries to the west are partially formed by chain-linked fencing and otherwise by hedgerows/irregular tree-planting.

2.3 The site's boundary to the southeast is formed by Cross Road whilst its boundary to the south and southwest are formed by Ellens Road both of which are single-track roads. Beyond these roads, to the south and southeast of the Site, are agricultural fields. To the immediate east of the proposed development site is residential development which fronts onto Cross Road whilst to the north of the site is a mix of scrubland, agricultural land and industrial units.

Planning History

2.4 No planning history for the site was identified within recent planning history records held online by Dover District Council.

3. Methodology

3.1 The aims of this Heritage Desk-Based Assessment are to assess the significance of the heritage resource within the site, to assess any contribution that the site makes to the heritage significance of the surrounding heritage assets, and to identify any harm or benefit to them which may result from the implementation of the development proposals, along with the level of any harm caused, if relevant. This assessment considers the archaeological resource, built heritage and the historic landscape.

Sources

3.2 The following key sources have been consulted as part of this assessment:

- **The National Heritage List for England for information on designated heritage assets;**
- **The Kent Historic Environment Record (HER) for information on the recorded heritage resource and previous archaeological works;**
- **Archival sources, including historic maps, available online;**
- **Aerial photographs and documentary sources held at the Historic England Archives, Swindon; and**
- **Online resources including Ordnance Survey Open Source data; geological data available**

from the British Geological Survey and Cranfield University's Soilscales Viewer; Google Earth satellite imagery; and LiDAR data from the Environment Agency.

3.3 For digital datasets, information was sourced for a 1km study area measured from the boundaries of the site however this was reduced to 500m to present only the most relevant data. Information gathered is discussed within the text where it is of relevance to the potential heritage resource of the site. A gazetteer of recorded sites and findspots is included as Appendix 1 and maps illustrating the resource and study area are included as Appendix 2.

3.4 Historic cartographic sources and aerial photographs were reviewed for the site, and beyond this where professional judgement deemed necessary.

3.5 Heritage assets in the wider area were assessed as deemed appropriate (see Section 6).

Site Visit

3.6 A site visit was undertaken by Executive Heritage Director from Pegasus Group on 10th July 2021, during which the site and its surrounds were assessed. Selected heritage assets were assessed from publicly accessible areas.

3.7 The visibility on this day was clear. Surrounding vegetation was

in full leaf at the time of the site visit, and thus the potential screening that this affords was also considered when assessing potential intervisibility between the site and surrounding areas.

Assessment of significance

3.8 In the NPPF, heritage significance is defined as:

*"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. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance."*⁴

3.9 Historic England's *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2*⁵ (hereafter GPA 2) gives advice on the assessment of significance as part of the application process. It advises understanding the nature, extent, and level of significance of a heritage asset.

3.10 In order to do this, GPA 2 also advocates considering the four types of heritage value an asset may hold, as identified in

⁴ MHCLG, *NPPF*, p. 71.

⁵ Historic England, *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2* (2nd edition, Swindon, July 2015).

⁶ English Heritage, *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (London, April 2008). These

English Heritage's *Conservation Principles*.⁶ These essentially cover the heritage 'interests' given in the glossary of the NPPF⁷ and the online Planning Practice Guidance on the Historic Environment⁸ (hereafter 'PPG') which are **archaeological**, **architectural and artistic** and **historic**.

3.11 The PPG provides further information on the interests it identifies:

- **Archaeological interest:** "As defined in the Glossary to the National Planning Policy Framework, there will be archaeological interest in a heritage asset if it holds, or potentially holds, evidence of past human activity worthy of expert investigation at some point."
- **Architectural and artistic interest:** "These are interests in the design and general aesthetics of a place. They can arise from conscious design or fortuitously from the way the heritage asset has evolved. More specifically, architectural interest is an interest in the art or science of the design, construction, craftsmanship and decoration of buildings and structures of all types. Artistic interest is an interest in other human creative skills, like sculpture."
- **Historic interest:** "An interest in past lives and events (including pre-historic). Heritage assets can

heritage values are identified as being 'aesthetic', 'communal', 'historical' and 'evidential', see *idem* pp. 28–32.

⁷ MHCLG, *NPPF*, p. 71.

⁸ Ministry of Housing Communities and Local Government (MHCLG), *Planning Practice Guidance: Historic Environment (PPG)* (revised edition, 23rd July 2019), <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment>.

illustrate or be associated with them. Heritage assets with historic interest not only provide a material record of our nation's history, but can also provide meaning for communities derived from their collective experience of a place and can symbolise wider values such as faith and cultural identity.”⁹

- 3.12 Significance results from a combination of any, some or all of the interests described above.
- 3.13 The most-recently issued guidance on assessing heritage significance, Historic England's *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12*,¹⁰ advises using the terminology of the NPPF and PPG, and thus it is that terminology which is used in this Report.
- 3.14 Listed Buildings and Conservation Areas are generally designated for their special architectural and historic interest. Scheduling is predominantly, although not exclusively, associated with archaeological interest.

Setting and significance

- 3.15 As defined in the NPPF:

“Significance derives not only from a heritage asset's physical presence, but also from its setting.”¹¹

⁹ MHCLG, *PPG*, paragraph 006, reference ID: 18a-006-20190723.

¹⁰ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (Swindon, October 2019).

¹¹ MHCLG, *NPPF*, p. 71.

- 3.16 Setting is defined as:

“The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.”¹²

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

Assessing change through alteration to setting

- 3.18 How setting might contribute to these values has been assessed within this Report with reference to *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3*¹³ (henceforth referred to as 'GPA 3'), particularly the checklist given on page 11. This advocates the clear articulation of “what matters and why”.¹⁴
- 3.19 In GPA 3, a stepped approach is recommended, of which Step 1 is to identify which heritage assets and their settings are affected. Step 2 is to assess whether, how and to what degree settings make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated. The guidance

¹² MHCLG, *NPPF*, p. 71.

¹³ Historic England, *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* (2nd edition, Swindon, December 2017).

¹⁴ Historic England, *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* (2nd edition, Swindon, December 2017), p. 8.

includes a (non-exhaustive) checklist of elements of the physical surroundings of an asset that might be considered when undertaking the assessment including, among other things: topography, other heritage assets, green space, functional relationships and degree of change over time. It also lists aspects associated with the experience of the asset which might be considered, including: views, intentional intervisibility, tranquillity, sense of enclosure, accessibility, rarity and land use.

- 3.20 Step 3 is to assess the effect of the proposed development on the significance of the asset(s). Step 4 is to explore ways to maximise enhancement and minimise harm. Step 5 is to make and document the decision and monitor outcomes.
- 3.21 A Court of Appeal judgement has confirmed that whilst issues of visibility are important when assessing setting, visibility does not necessarily confer a contribution to significance and also that factors other than visibility should also be considered, with Lindblom LJ stating at paragraphs 25 and 26 of the judgement (referring to an earlier Court of Appeal judgement)¹⁵:

Paragraph 25 – “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)“.

Paragraph 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.”

Levels of significance

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

¹⁵ *Catesby Estates Ltd. V. Steer* [2018] EWCA Civ 1697, para. 25 and 26.

NPPF and the PPG, three levels of significance are identified:

- **Designated heritage assets of the highest significance**, as identified in paragraph 194 of the NPPF, comprising Grade I and II* Listed buildings, Grade I and II* Registered Parks and Gardens, Scheduled Monuments, Protected Wreck Sites, World Heritage Sites and Registered Battlefields (and also including some Conservation Areas) and non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments, as identified in footnote 63 of the NPPF;
- **Designated heritage assets of less than the highest significance**, as identified in paragraph 194 of the NPPF, comprising Grade II Listed buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas); and
- **Non-designated heritage assets.** Non-designated heritage assets are defined within the PPG as “buildings, monuments, sites, places, areas or landscapes identified by plan-making bodies as having a degree of significance meriting consideration in planning decisions, but which do not meet the criteria for designated heritage assets”.¹⁶

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

Assessment of harm

3.25 Assessment of any harm will be articulated in terms of the policy

¹⁶ MHCLG, PPG, paragraph 039, reference ID: 18a-039-20190723.

¹⁷ *Bedford Borough Council v Secretary of State for Communities and Local Government* [2013] EWHC 2847 (Admin), para. 25.

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

3.26 In order to relate to key policy, the following levels of harm may potentially be identified for designated heritage assets:

- **Substantial harm or total loss.** It has been clarified in a High Court Judgement of 2013 that this would be harm that would “have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced”;¹⁷ and
- **Less than substantial harm.** Harm of a lesser level than that defined above.

3.27 With regards to these two categories, the PPG states:

“Within each category of harm (which category applies should be explicitly identified), the extent of the harm may vary and should be clearly articulated.”¹⁸

3.28 Hence, for example, harm that is less than substantial would be further described with reference to where it lies on that spectrum or scale of harm, for example low end, middle of the spectrum and upper end of the less than substantial harm scale.

¹⁸ MHCLG, PPG, paragraph 018, reference ID: 18a-018-20190723.

- 3.29 With regards to non-designated heritage assets, there is no basis in policy for describing harm to them as substantial or less than substantial, rather the NPPF requires that the scale of any harm or loss is articulated. As such, harm to such assets is articulated as a level of harm to their overall significance, with levels such as negligible, minor, moderate and major harm identified.
- 3.30 It is also possible that development proposals will cause **no harm or preserve** the significance of heritage assets. A High Court Judgement of 2014 is relevant to this. This concluded that with regard to preserving the setting of a Listed building or preserving the character and appearance of a Conservation Area, 'preserving' means doing 'no harm'.¹⁹
- 3.31 Preservation does not mean no change; it specifically means no harm. GPA 2 states that "*Change to heritage assets is inevitable but it is only harmful when significance is damaged*".²⁰ Thus, change is accepted in Historic England's guidance as part of the evolution of the landscape and environment. It is whether such change is neutral, harmful or beneficial to the significance of an asset that matters.
- 3.32 As part of this, setting may be a key consideration. For an evaluation of any harm to significance through changes to

setting, this assessment follows the methodology given in GPA 3, described above. Again, fundamental to the methodology set out in this document is stating "what matters and why". Of particular relevance is the checklist given on page 13 of GPA 3.

- 3.33 It should be noted that this key document also states that:

"Setting is not itself a heritage asset, nor a heritage designation..."²¹

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

- 3.35 With regards to changes in setting, GPA 3 states that:

"Conserving or enhancing heritage assets by taking their settings into account need not prevent change".²²

- 3.36 Additionally, it is also important to note that, as clarified in the Court of Appeal, whilst the statutory duty requires that special regard should be paid to the desirability of not harming the setting of a Listed Building, that cannot mean that any harm, however minor, would necessarily require Planning Permission to be refused.²³

Benefits

¹⁹ *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin).

²⁰ Historic England, *GPA 2*, p. 9.

²¹ Historic England, *GPA 3*, p. 4.

²² Historic England, *GPA 3.*, p. 8.

²³ *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061.

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

4. Planning Policy Framework

4.1 This section of the Report sets out the legislation and planning policy considerations and guidance contained within both national and local planning guidance which specifically relate to the site, with a focus on those policies relating to the protection of the historic environment.

Legislation

4.2 Legislation relating to the built historic environment is primarily set out within the *Planning (Listed Buildings and Conservation Areas) Act 1990*,²⁴ which provides statutory protection for Listed Buildings and Conservation Areas.

4.3 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states that:

*"In considering whether to grant planning permission [or permission in principle] for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State, shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."*²⁵

4.4 In the 2014 Court of Appeal judgement in relation to the

Barnwell Manor case, Sullivan LJ held that:

*"Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise."*²⁶

4.5 A judgement in the Court of Appeal ('Mordue') has clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular paragraph 134 of the 2012 draft of the NPPF, the requirements of which are now given in paragraph 196 of the revised NPPF, see below), this is in keeping with the requirements of the 1990 Act.²⁷

4.6 With regards to development within Conservation Areas, Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 states:

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

²⁴ UK Public General Acts, *Planning (Listed Buildings and Conservation Areas) Act 1990*.

²⁵ *Planning (Listed Buildings and Conservation Areas) Act 1990*, Section 66(1).

²⁶ *Barnwell Manor Wind Energy Ltd v (1) East Northamptonshire DC & Others* [2014] EWCA Civ 137. para. 24.

²⁷ *Jones v Mordue* [2015] EWCA Civ 1243.

of preserving or enhancing the character or appearance of that area.”

- 4.7 Unlike Section 66(1), Section 72(1) of the Act does not make reference to the setting of a Conservation Area. This makes it plain that it is the character and appearance of the designated Conservation Area that is the focus of special attention.
- 4.8 Scheduled Monuments are protected by the provisions of the *Ancient Monuments and Archaeological Areas Act 1979* which relates to nationally important archaeological sites.²⁸ Whilst works to Scheduled Monuments are subject to a high level of protection, it is important to note that there is no duty within the 1979 Act to have regard to the desirability of preservation of the setting of a Scheduled Monument.
- 4.9 In addition to the statutory obligations set out within the Planning (Listed Buildings and Conservations Area) Act 1990, Section 38(6) of the *Planning and Compulsory Purchase Act 2004* requires that all planning applications, including those for Listed Building Consent, are determined in accordance with the Development Plan unless material considerations indicate otherwise.²⁹

National Planning Policy Guidance

The National Planning Policy Framework (February 2019)

- 4.10 National policy and guidance is set out in the Government’s

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

- 4.11 The NPPF sets out the Government’s economic, environmental and social planning policies for England. Taken together, these policies articulate the Government’s vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The NPPF continues to recognise that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans, where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.
- 4.12 The overarching policy change applicable to the proposed development is the presumption in favour of sustainable development. This presumption in favour of sustainable development (the ‘presumption’) sets out the tone of the Government’s overall stance and operates with and through the other policies of the NPPF. Its purpose is to send a strong signal to all those involved in the planning process about the need to plan positively for appropriate new development; so that both plan-making and development management are proactive and driven by a search for opportunities to deliver sustainable

²⁸ UK Public General Acts, *Ancient Monuments and Archaeological Areas Act 1979*.

²⁹ UK Public General Acts, *Planning and Compulsory Purchase Act 2004*, Section 38(6).

development, rather than barriers. Conserving historic assets in a manner appropriate to their significance forms part of this drive towards sustainable development.

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

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

For plan-making this means that:

- a. plans should positively seek opportunities to meet the development needs of their area, and be sufficiently flexible to adapt to rapid change;*
- b. strategic policies should, as a minimum, provide for objectively assessed needs for housing and other uses, as well as any needs that cannot be met within neighbouring areas, unless:
 - i. the application of policies in this Framework that protect areas or assets of particular importance**

provides a strong reason for restricting the overall scale, type or distribution of development in the plan area; or

- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

For decision-taking this means:

- a. approving development proposals that accord with an up-to-date development plan without delay; or*
- b. where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:
 - i. the application policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
 - ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.³⁰**

- 4.14 However, it is important to note that footnote 6 of the NPPF applies in relation to the final bullet of paragraph 11. This

³⁰ MHCLG, NPPF, para. 11.

provides a context for paragraph 11 and reads as follows:

*"The policies referred to are those in this Framework (rather than those in development plans) relating to: habitats sites (and those sites listed in paragraph 176) and/or designated as Sites of Special Scientific Interest; land designated as Green Belt, Local Green Space, an Area of Outstanding Natural Beauty, a National Park (or within the Broads Authority) or defined as Heritage Coast; irreplaceable habitats; designated heritage assets (and other heritage assets of archaeological interest referred to in footnote 63); and areas at risk of flooding or coastal change."*³¹ (our emphasis)

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

4.16 Heritage Assets are defined in the NPPF as:

*"A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing)."*³²

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

"World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and

*Garden, Registered Battlefield or Conservation Area designated under relevant legislation."*³³ (our emphasis)

4.18 As set out above, significance is also defined as:

*"The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. For World Heritage Sites, the cultural value described within each site's Statement of Outstanding Universal Value forms part of its significance."*³⁴

4.19 Section 16 of the NPPF relates to 'Conserving and enhancing the historic environment' and states at paragraph 190 that:

*"Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal."*³⁵

4.20 Paragraph 192 goes on to state that:

³¹ MHCLG, *NPPF*, para. 11, fn. 6.

³² MHCLG, *NPPF*, p. 67.

³³ MHCLG, *NPPF*, p. 66.

³⁴ MHCLG, *NPPF*, p. 71.

³⁵ MHCLG, *NPPF*, para. 190.

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

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;*
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and*
- c. the desirability of new development making a positive contribution to local character and distinctiveness."³⁶*

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

"When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance."³⁷

"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting),

should require clear and convincing justification. Substantial harm to or loss of:

- a. grade II listed buildings, or grade II registered parks or gardens, should be exceptional;*
- b. assets of the highest significance, notably scheduled monuments, protected wreck sites, registered battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional."³⁸*

4.22 Section b) of paragraph 194, which describes assets of the highest significance, also includes footnote 63 of the NPPF, which states that non-designated heritage assets of archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments should be considered subject to the policies for designated heritage assets.

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

"Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:

³⁶ MHCLG, *NPPF*, para. 192.

³⁷ MHCLG, *NPPF*, para. 193.

³⁸ MHCLG, *NPPF*, para. 194.

- a. *the nature of the heritage asset prevents all reasonable uses of the site; and*
- b. *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and*
- c. *conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible; and*
- d. *the harm or loss is outweighed by the benefit of bringing the site back into use.*³⁹

4.24 Paragraph 196 goes on to state:

*"Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use."*⁴⁰

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

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

³⁹ MHCLG, *NPPF*, para. 195.

⁴⁰ MHCLG, *NPPF*, para. 196.

⁴¹ MHCLG, *NPPF*, para. 200.

reveal its significance) should be treated favourably."⁴¹

4.26 Paragraph 201 goes on to recognise that "*not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance*"⁴² and with regard to the potential harm from a proposed development states:

*"Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 195 or less than substantial harm under paragraph 196, as appropriate, taking into account the relative significance of the element affected and its contribution to the significance of the Conservation Area or World Heritage Site as a whole."*⁴³ (our emphasis)

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

*"The effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset."*⁴⁴

4.28 Footnote 62 of the NPPF clarifies that non-designated assets of

⁴² MHCLG, *NPPF*, para. 201.

⁴³ Ibid.

⁴⁴ MHCLG, *NPPF*, para. 197.

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

4.29 Overall, the NPPF confirms that the primary objective of development management is to foster the delivery of sustainable development, not to hinder or prevent it. Local Planning Authorities should approach development management decisions positively, looking for solutions rather than problems so that applications can be approved wherever it is practical to do so. Additionally, securing the optimum viable use of sites and achieving public benefits are also key material considerations for application proposals.

4.30 As set out later in this Report, it can be demonstrated that the proposals would serve to preserve the heritage significance of all identified assets. Thus, planning permission should be granted as per the requirements of paragraph 38 which state that:

*"Local planning authorities should approach decisions on proposed development in a positive and creative way. They should use the full range of planning tools available, including brownfield registers and permission in principle, and work proactively with applicants to secure developments that will improve the economic, social and environmental conditions of the area. Decisions-makers at every level should seek to approve applications for sustainable development where possible."*⁴⁵

⁴⁵ MHCLG, NPPF, para. 38.

National Planning Practice Guidance

4.31 The then Department for Communities and Local Government (now the Ministry for Housing, Communities and Local Government (MHCLG)) launched the planning practice guidance web-based resource in March 2014, accompanied by a ministerial statement which confirmed that a number of previous planning practice guidance documents were cancelled.

4.32 This also introduced the national Planning Practice Guidance (PPG) which comprised a full and consolidated review of planning practice guidance documents to be read alongside the NPPF.

4.33 The PPG has a discrete section on the subject of the Historic Environment, which confirms that the consideration of 'significance' in decision taking is important and states:

*"Heritage assets may be affected by direct physical change or by change in their setting. Being able to properly assess the nature, extent and importance of the significance of a heritage asset, and the contribution of its setting, is very important to understanding the potential impact and acceptability of development proposals."*⁴⁶

4.34 In terms of assessment of substantial harm, the PPG confirms that whether a proposal causes substantial harm will be a judgement for the individual decision taker having regard to the individual circumstances and the policy set out within the NPPF.

⁴⁶ MHCLG, PPG, paragraph 007, reference ID: 18a-007-20190723.

It goes on to state:

"In general terms, substantial harm is a high test, so it may not arise in many cases. For example, in determining whether works to a listed building constitute substantial harm, an important consideration would be whether the adverse impact seriously affects a key element of its special architectural or historic interest. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed. The harm may arise from works to the asset or from development within its setting.

*While the impact of total destruction is obvious, partial destruction is likely to have a considerable impact but, depending on the circumstances, it may still be less than substantial harm or conceivably not harmful at all, for example, when removing later inappropriate additions to historic buildings which harm their significance. Similarly, works that are moderate or minor in scale are likely to cause less than substantial harm or no harm at all. However, even minor works have the potential to cause substantial harm."*⁴⁷ (our emphasis)

Local Planning Policy

- 4.35 Planning applications within Deal, Kent are currently considered against the policy and guidance set out within the Dover District Core Strategy (adopted February 2010). No policies relevant to the heritage potential of the site are contained within this document.

Emerging Policy

⁴⁷ MHCLG, PPG, paragraph 018, reference ID: 18a-018-20190723.

- 4.36 Dover District are in the process of producing a new Local Plan to govern planning policies and proposals for new development in the district over the period from 2020 to 2040. Relevant draft policies published for the new local plan comprise:

- 4.37 Draft **Strategic Policy 18** states the district's general stance for *Protecting the District's Historic Environment*. It states:

"The heritage assets of the District are an irreplaceable resource and should therefore be conserved and enhanced in a manner appropriate to their significance. The Council will work with partners to ensure that the heritage of the District can positively contribute to the character, environment and economy of the District and the quality of life of existing and future generations of residents and visitors."

- 4.38 Designated and non-designated heritage assets within Dover District are considered in policy **DM Policy 44**. This draft policy states:

"Proposals which conserve or enhance the heritage assets of the District, sustaining and enhancing their significance and making a positive contribution to local character and distinctiveness will be supported. In particular, proposals that bring redundant or under-used buildings and areas, including those on the Heritage at Risk Register, into appropriate and viable use consistent with their conservation, will be encouraged.

Development will not be permitted where it will cause total loss or substantial harm to the significance of a designated heritage asset or its setting, unless it can

be demonstrated that substantial public benefits will be delivered that outweigh the harm or loss caused, or

- where the nature of the heritage asset prevents all reasonable or viable uses of the site, and no viable use of the heritage asset can be found in the medium term through appropriate marketing that will enable its conservation; and*
- conservation through grant funding is not possible, and the harm to or loss of the asset is outweighed by the benefits of bringing the site back into use.*

Where a development proposal will lead to less than substantial harm to the significance of a designated heritage asset, or where a non-designated heritage asset is likely to be impacted, harm will be weighed against the public benefits of the proposals, including, where appropriate, securing the optimum viable use of the heritage asset.

For development that involves the installation of energy efficiency improvements to heritage assets, applications should also demonstrate a whole building approach, including an assessment of the suitability of the proposed measures for the particular property, its construction and materials, in addition to the impact on its heritage significance.

All applications with potential to affect a heritage asset or its setting must be supported by a Heritage Statement, which should draw on the evidence contained in the Dover District Heritage Strategy, including referencing the heritage themes of the Strategy that apply. Such a Statement should include an assessment of the asset's historic, architectural or archaeological significance and the likely impact of

the proposals on its significance, proportionate to the importance of the asset.

- 4.39 Draft policy DM Policy 46 relates to archaeology. This policy states:

"The archaeological and historic integrity of Scheduled Monuments and other important archaeological sites, together with their settings, will be protected and where possible enhanced. Development which would adversely affect such heritage assets will be assessed in line with DM Policy 44.

Planning applications, on sites where there is, or is the potential for, an archaeological heritage asset, must include an appropriate desk-based assessment of the asset.

In addition, where the assessment reveals that important or potentially significant archaeological heritage assets may exist, developers will be required to, where necessary, arrange for field evaluations to be carried out by an appropriately qualified contractor in advance of the determination of the planning application. Such an evaluation should define:

a. The character, significance and condition of any archaeological deposits or structures within the application site; and

b. The likely impact of the proposed development on the archaeology, its significance and setting (including the limits to the depth to which groundworks can go on the site); and

c. The means of mitigating the effect of the proposed development including a statement setting out the impact of the development.

Where the case for development affecting a heritage asset of archaeological interest is accepted, the archaeological remains should be preserved in situ. Where this is not possible or justified, appropriate provision for preservation by record may be an acceptable alternative dependent upon their significance. In such instances archaeological recording should be undertaken by an approved archaeological body, deposited with the Kent Historic Environment Record and should take place in accordance with a specification and programme of work to be submitted to and approved by the District Council in advance of development commencing.

For applications in the Dover Urban Area (as shown on the Proposals Map) the Dover Town Archaeology SPD should be consulted and applicable requirements in such detailed advice should be followed.”

5. The Historic Environment

This section provides a review of the recorded heritage resource within the site and its vicinity in order to identify any extant heritage assets within the site and to assess the potential for below-ground archaeological remains.

- 5.1 Designated heritage assets are referenced using their seven-digit NHLE number, HER 'event' numbers have the prefix 'EKE' and HER 'monument' numbers have the prefix 'MKE'.
- 5.2 A gazetteer of relevant heritage data is included as Appendix 1. Designated heritage assets and HER records are illustrated on Figures 1, 2 and 3 in Appendix 2.

Previous Archaeological Works

- 5.3 The proposed development site has been subject to a number of previous archaeological works. These comprise:
 - **An archaeological appraisal of the proposed development site completed in April 2017 (HER ref. EKE16353);**
 - **A built heritage statement covering the entire site completed in April 2017 (HER ref. EKE16355);**
 - **Geophysical Surveys across the site in March 2017 (HER ref. EKE16354, Appendix 3) recorded limited potential anomalies of archaeological origin; and**
 - **A watching brief for a pipeline in 1993 which**

runs through the site's eastern extent (HER ref. EKE5037).

- 5.4 Further archaeological works recorded within the site's near vicinity comprise:

- **A single trial trench at the rear of 30 Cross Road in 2014 c.30m east of the site's northernmost point (HER ref. EKE14811); and**
- **A 1995 evaluation to the rear of 14-26 Cross Road (HER ref. EKE5206).**

- 5.5 The results of these works and others beyond the site's immediate vicinity are discussed below, where relevant to the potential archaeological resource of the site.

Topography and geology

- 5.6 The topography of the proposed development site generally trends towards lower elevations within its southern extent and higher elevations at its northern extents. The lowest point within the Site is along its southern boundary at approximately 17m AOD. The highest point of the Site, at its northernmost extent is at approximately 31m AOD.
- 5.7 The geology of the proposed development site has been mapped

by the British Geological Society (BGS⁴⁸). The majority of the bedrock archaeology for the Site comprises Seaford Chalk Formation chalk. The northern and northeastern extent of the Site's bedrock geology is composed of Margate Chalk Member chalk. There is no superficial geology recorded within the proposed development site.

Archaeological Baseline

Prehistoric (pre-43 AD)

- 5.8 No archaeological remains dating to any prehistoric period have been identified within the proposed development site itself.
- 5.9 The nearest instance of prehistoric archaeology recorded within the vicinity of Site comprises the location of a Neolithic pit, approximately 80m east of the proposed development site at 17a Cross Road (HER ref. MKE15359). The pit, which was uncovered during a watching brief in 1995, contained struck flints, marine shells, animal bones, bone pins and a sandstone rubber and grooved ware which were dated to the Late Neolithic. The pottery was reconstructed and found to represent at least three vessels.
- 5.10 The site of an Iron Age settlement site was identified approximately 90m north of the Site around 1935 during the digging of a drain (HER ref. MKE7355). The settlement activity was identified from the contents of a v-shaped pit which

contained sherds of pottery from wheel-turned vessels and animal bone. The pottery was dated to the 1st century AD and is Belgic in style/origin.

- 5.11 Further pits were recorded in 1923 and dated from historic notes which identify remains of an "early" date (considered most likely Iron Age in origin), and Roman date c.90m east of the site (HER ref. MKE17357). The unspecified number of pits which were recorded contained a large quantity of pottery, evidence of fire, animal bones, burnt human bones. Further, a bronze fibula (brooch) of the La Tene III type was found within the fill of a pit. Holes in the floor of at least one of the pits contained flints and are likely to represent postholes. Other finds recorded in this area were definitively Roman-British in origin and are discussed in the appropriate section, below.
- 5.12 Further Iron Age archaeological remains were identified approximately 120m east of the site in the 1980s (HER ref. MKE7353). The area was subject to a programme of archaeological excavation prior to the residential development in 1988 which uncovered a greater extent of what had already been identified as a multi-period site. Prehistoric remains recorded during these works comprised:
- **An Iron Age inhumation cemetery;**
 - **A Bronze Age ring-ditch; and**

⁴⁸ bgs.ac.uk

- **Neolithic pits.**



Plate 2: Mill Hill Warrior's crown⁴⁹

- 5.13 The most notable of these discoveries was the discovery of the Mill Hill Warrior (also known as the Deal Warrior). The skeletal remains of a male with high-status grave goods including an iron sword with bronze and coral fittings, a bronze brooch and shield, and a crown (Plate 2). Other prehistoric finds recorded in the area of this development comprise bronze spoons, brooches, a toilet set, an urn and a conical pot, all of which were dated to the Iron Age or earlier.
- 5.14 Further prehistoric features were recorded approximately 210m east of the site during an excavation in 1984 in advance of new

housing off St. Richard's Road (HER ref. MKE7373). A shaft cut over 2m deep which led to a low side chamber was recorded during these works. A carved chalk figurine which fitted into a niche in the side chamber was recorded. The shaft and chamber were infilled by Roman debris although the structure is thought most likely to pre-date the Roman period. An early Neolithic pit was also recorded during these excavations although no notable finds are recorded.

- 5.15 A 'pre-Roman' grave and pottery were recorded approximately 160m east of the site in 1925 (HER ref. MKE7356). Details of this burial were not recorded although it is considered likely that this burial relates to Iron Age burials found in the area in 1988.
- 5.16 A spotfind of an Iron Age copper alloy coin has also been recorded approximately 160m east of the site (HER ref. MKE65847). The coin was dated to between 100 BC and 50 BC.
- 5.17 The site of an early Iron Age earthwork and a possible early Bronze Age barrow was recorded approximately 170m northeast of the site (HER ref. MKE7357). These features were recorded in 1933 during the digging of a sewer trench. The Iron Age ditch was approximately 16 feet wide and seven feet deep. Fragments of early Iron Age pottery and slag-like material were recorded in the ditch's fill.
- 5.18 A pit dated to the Iron Age was recorded a short distance away from the above earthwork, approximately 180m northeast of the

⁴⁹ britishmuseum.org

site (HER ref. MKE7401). The pit contained substantial amounts of animal bone and fragments of human skull. Sherds of wheel-turned heavy flat-based pottery (likely imported or early instances of native wheel-turned pottery) and finer pottery sherds were recorded.

- 5.19 A series of Neolithic finds comprising various flint implements, fragments of pottery, pot boilers and a made-floor surface were recorded between 1926 and 1927 approximately 240m north of the Site (HER ref. MKE7360).



Plate 3: 2007 satellite image of the possible Bronze Age barrow

- 5.20 The site of a large ring ditch has been identified approximately 170m north of the proposed development site (HER ref.

MKE39769). The ditch has been preliminarily identified as a Bronze Age barrow approximately 24m in diameter (Plate 3). A small c.10m diameter ring ditch is recorded within the northern extent of the larger feature. Approximately 50 graves can also be seen in the area around the presumed barrow. A Bronze Age burial is also recorded in this location in the earlier 20th century (HER ref. MKE7384). Grave goods found alongside this burial comprised food vessels. It is not clear from the excavation records whether this burial was from within the barrow and if so whether it was the primary inhumation at the site or a later, secondary one.

- 5.21 Two prehistoric spotfinds were recorded approximately 170m north of the site comprising Iron Age pottery (HER ref. MKE7361) and a Bronze Age burial (HER ref. MKE7361). The locations are considered to be approximations of the true findspots which were chance finds during the earlier 20th century.
- 5.22 Other prehistoric remains recorded within the 500m of the proposed development site comprise:

- **An early Iron Age settlement recorded c.320m northeast of the Site recorded in 2008 (HER ref. MKE43005);**
- **A series of Iron Age ditches, gullies, pits and post holes representing a continuation of the above settlement c.260m east of the Site (HER ref. MKE7375);**
- **A late Bronze Age Settlement on Mill Hill**

- excavated in 1928 and 1934 c.380m northeast of the proposed development site (HER ref. MKE7313);
 - A possible prehistoric post-hole c.300m east of the site (HER ref. MKE44075);
 - A fragment of late Bronze Age or early Iron Age quern built into the wall of 1 Quern Road during the 1930s c.260m northeast of the site (HER ref. MKE7405);
 - An assemblage of prehistoric flint approximately 350m north of the site (HER ref. MKE20492);
 - An assemblage of Mesolithic or Neolithic worked flints recorded in 2008/9 c.490m north-northwest of the site (HER ref. MKE80552);
 - A possible Iron Age pit c.300m northeast of the Site (HER ref. MKE17724);
 - Findspots of Iron Age (and Romano-British) pottery observed during flat extension works in 1982 approximately 300m east-northeast of the site (HER ref. MKE7374);
 - Neolithic and Bronze Age worked flints recorded c.330m northeast of the Site (HER ref. MKE90880);
 - The site of a possible Neolithic working floor along with flint flakes and tools, pot boilers and coarse pottery were recorded c.370m south of the Site (HER ref. MKE7358);
 - An Iron Age brooch dated to the earlier Iron Age approximately 330m south of the Site (HER ref. MKE7390);
 - Two Iron Age copper alloy coins found during metal detecting c.390m southwest of the proposed development site (HER ref. MKE65104, MKE65968); and
 - A surface find of a prehistoric flint core-tool approximately 430m south of the Site (HER ref. MKE91510).
- 5.23 Despite the above recorded activity, no anomalies suggestive of prehistoric activity were detected by the geophysical survey of 2017 (see Appendix 3) which covered the site.
- Romano-British (AD 43 - 410)
- 5.24 No archaeological remains dating to the Romano-British period have been identified within the proposed development site.
- 5.25 Nearby instances of Roman activity are evident from three intercutting Roman pits recorded during a watching brief c.80m east of the Site in 1995 (HER ref. MKE54761). Pottery recorded in the upper fill of the pit was dated to between the late 1st century and early 2nd century AD.
- 5.26 A Roman hoard was uncovered by field labourers in 1834 approximately 180m north of the site (HER ref. MKE7330). The hoard contained 25 copper coins of the emperor Carausius contained within a Roman urn. Emperor Carausius declared himself emperor of Britain and northern Gaul in AD 286 and ruled as the "Emperor of the North" until his assassination AD 293. The hoard is therefore likely to date from this period or

from shortly thereafter.

- 5.27 A series of pits, postholes and field ditches were recorded alongside four cremation burials and a single inhumation burial, all of Roman origin, approximately 210m east of the site in 1984 (HER ref. MKE7373).
- 5.28 A Roman ditch used as a rubbish trench was excavated c.220m northeast of the site (HER ref. MKE7354). The pit was found to contain sherds dating between the 1st and 3rd century AD and multiple red deer antlers. A series of gullies and single pit were recorded. These features were dated to the Romano-British period through pottery sherds contained within.
- 5.29 Likely Romano-British features comprising a pit and four probably gullies were recorded during evaluation works approximately 250m east of the Site in the early 21st century (HER ref. MKE17744).
- 5.30 Alongside Iron Age finds recorded c.300 east-northeast of the Site in the 1980s, a smaller assemblage of Roman pottery was also recorded (HER ref. MKE7374).
- 5.31 A field system dating to the earlier Roman period has also been identified approximately 300m east-northeast of the Site (HER ref. MKE43006). Re-use of the field system was evident until the early 3rd century.
- 5.32 'Roman finds' and 'Graves found in the railway cutting at Walmer Station' are marked on W.P.D. Stebbing's records approximately 410m east of the site (HER ref. MKE7359). Stebbing led

excavations in Deal during the 1920s and 1930s but details of the findings at Walmer station are incomplete.

- 5.33 Roman spotfinds recorded within the wider study area comprise:
- **A copper alloy coin of Claudius II dating between AD 268 and 270 approximately 270m south of the site (HER ref. MKE101843);**
 - **Two 1st-century Roman vessels found in c.1890 in a chalk quarry approximately 260m north of the site (HER ref. MKE7324); and**
 - **The head of a black pottery statuette of Hercules recorded 330m northeast of the site (HER ref. MKE7352).**
- 5.34 Despite the above recorded activity, no anomalies suggestive of Romano-British activity were detected by the geophysical survey of 2017 (see Appendix 3) which covered the site.
- Early medieval (410 AD – 1066) and Medieval (1066 – 1539)
- 5.35 Two medieval pits have been recorded just within the proposed development site's easternmost boundary (HER ref. MKE15550). The pits, cut into chalk, were recorded during a watching brief for a pipeline in 1993 and were dated by pottery sherds which were contained within their fills.