

Proof of Evidence Appendices– Heritage.

Land South of Park House Farm, Meriden Road, Fillongley.

Appeal by Enviromena Project Management UK Ltd.

Date: 10/03/2025 | Pegasus Ref: P24-2740

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1. Methodology.

Key Documents

1.1. The key documents that have been used in the preparation of my Evidence:

- *Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment*¹ (henceforth referred to as 'GPA 2');
- *Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition)*², the key guidance of assessing setting (henceforth referred to as 'GPA 3');
- *Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (henceforth referred to as 'HEAN12')³;
- *Local Heritage Listing: Identifying and Conserving Local Heritage, Historic England Advice Note 7 (Second Edition)*⁴; and
- *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment*⁵ (henceforth referred to as 'Conservation Principles').

Assessment of Significance

1.2. 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."⁶

1.3. 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.

¹ Historic England, *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2* (2nd edition, Swindon, July 2015) – Core Document 6.35.

² Historic England, *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* (2nd edition, Swindon, December 2017) – Core Document 6.7.

³ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (Swindon, October 2019) – Core Document 6.37.

⁴ Historic England, *Local Heritage Listing: Identifying and Conserving Local Heritage, Historic England Advice Note 7 (Second Edition)* (Swindon, October 2021), p. 18 – Core Document 6.50.

⁵ English Heritage, *Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment* (London, April 2008) – Core Document 6.36.

⁶ MHCLG, *NPPF*, Annex 2 – Core Document 6.26.

- 1.4. In order to do this, GPA 2 also advocates considering the four types of heritage value an asset may hold, as identified in *Conservation Principles*.⁷ These essentially cover the heritage 'interests' given in the glossary of the NPPF⁸ and the national Planning Practice Guidance (PPG) which are **archaeological, architectural and artistic** and **historic**.
- 1.5. 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 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
- 1.6. Significance results from a combination of any, some or all of the interests described above.
- 1.7. HEAN12¹⁰ advises using the terminology of the NPPF and PPG, and thus it is that terminology which is principally used in my Evidence.

Levels of Significance

- 1.8. In accordance with the levels of significance articulated in the NPPF and the PPG, three levels of significance are identified:
- **Designated heritage assets of the highest significance**, as identified in paragraph 213 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

⁷ English Heritage, *Conservation Principles* – Core Document 6.36. These heritage values are identified as being 'aesthetic', 'communal', 'historical' and 'evidential', see idem pp. 28–32.

⁸ MHCLG, NPPF – Core Document 6.26.

⁹ MHCLG, PPG, paragraph 006, reference ID: 18a-006-20190723 – Core Document 6.34.

¹⁰ Historic England, *Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12* (Swindon, October 2019) – Core Document 6.35.

archaeological interest which are demonstrably of equivalent significance to Scheduled Monuments, as identified in footnote 75 of the NPPF;¹¹

- **Designated heritage assets of less than the highest significance**, as identified in paragraph 213 of the NPPF, comprising Grade II Listed Buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);¹² 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”.¹³

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

Setting and Significance

1.10. As defined in the NPPF:

“Significance derives not only from a heritage asset’s physical presence, but also from its setting.”¹⁴

1.11. ‘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.”¹⁵

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

Assessing Change Through Alteration to Setting

1.13. How ‘setting’ might contribute to these values has been assessed within this my Evidence with reference to GPA 3 particularly the checklist given on page 11. This advocates the clear articulation of “*what matters and why*”.¹⁶

¹¹ MHCLG, NPPF, para. 213 and fn. 75 – Core Document 6.26.

¹² MHCLG, NPPF, para. 213 – Core Document 6.26.

¹³ MHCLG, PPG, paragraph 039, reference ID: 18a-039-2019072 – Core Document 6.34.

¹⁴ MHCLG, NPPF, Annex 2 – Core Document 6.26.

¹⁵ Ibid.

¹⁶ Historic England, *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* (2nd edition, Swindon, December 2017), p. 8 – Core Document 6.7.

- 1.14. 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 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.
- 1.15. 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.
- 1.16. 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)¹⁷:

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.”

- 1.17. When considering changes in 'setting', a recent Secretary of State Appeal Decision (henceforth referred to as the 'Edith Summerskill House Decision') has clearly set out that:

“In cases where the impact is on the setting of a designated heritage asset, it is only the significance that asset derives from its setting that is affected. All the significance embodied in the asset itself would remain intact. In such a case, unless the asset concerned derives a major proportion of its significance from its setting, then it is very difficult to see

¹⁷ Catesby Estates Ltd. V. Steer [2018] EWCA Civ 1697, para. 25 and 26 – Core Document 7.20.

how an impact on its setting can advance a long way along the scale towards substantial harm to significance.¹⁸ (my emphasis)

- 1.18. The Inspector for the 'Edith Summerskill House Decision' also provides the following narrative on substantial harm and the less than substantial harm 'spectrum':

"... substantial harm is set at a high bar, such that a good deal (or all) of the significance of a designated heritage asset would have to be removed for it to be reached. That means that the range for a finding of less than substantial harm is very wide indeed, from a harmful impact that is hardly material, to something just below that high bar."¹⁹

- 1.19. I do not consider that the subsequent High Court Judgement *London Historic Parks And Gardens Trust v Minister of State for Housing & Anor [2022] EWHC 829 (Admin)* alters the approach set out above. This is based upon my reading of the Judgement. It is also noted that whilst the Edith Summerskill House Decision was issued prior to the handing down of this Judgement, it postdated the hearing at the High Court and the Inspector demonstrates a knowledge of the considerations that had taken place.²⁰

Assessment of Harm

- 1.20. Assessment of any harm will be articulated in terms of the policy and law that the proposed development will be assessed against and articulate the scale of any harm in order to inform a balanced judgement/weighting exercise as required by the *NPPF*.

- 1.21. 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.** The PPG sets out that "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."²¹ and
- **Less than substantial harm.** Harm of a lesser level than that defined above.

- 1.22. 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."²²

¹⁸ APP/H5390/V/21/327713 [2023] – Edith Summerskill House, Clem Attlee Court, London, SW6 7TW, Paragraph 12.5 of main Decision – Core Document 7.25.

¹⁹ Ibid, Paragraph 12.4 of main Decision.

²⁰ Ibid, Paragraph 12.3 of main Decision.

²¹ MHCLG, *PPG*, Paragraph: 018 Reference ID: 18a-018-20190723 – Core Document 6.34.

²² Ibid.

- 1.23. 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 lower end, middle of the spectrum and upper end of the less than substantial harm scale.
- 1.24. The PPG clarifies that "*substantial harm*" is a high test, and that it may not arise in many cases. It makes it clear that it is the degree of harm to the significance of the asset, rather than the scale of development, which is to be assessed.²³
- 1.25. 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'.²⁴
- 1.26. Preservation does not mean no change; it specifically means no harm.
- 1.27. GPA 2 which states that "*Change to heritage assets is inevitable but it is only harmful when significance is damaged*".²⁵ 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.
- 1.28. 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.
- 1.29. It should be noted that this key document confirms that:

"Setting is not itself a heritage asset, nor a heritage designation..."²⁶
- 1.30. 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'.
- 1.31. 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".²⁷ (my emphasis)
- 1.32. 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

²³ Ibid.

²⁴ *R (Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin) – Core Document 7.50.

²⁵ Historic England, *Managing Significance in Decision-Taking in the Historic Environment: Historic Environment Good Practice Advice in Planning: 2* (2nd edition, Swindon, July 2015), p. 9. – Core Document 6.35.

²⁶ Historic England, *The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3* (2nd edition, Swindon, December 2017), p. 4. – Core Document 6.7.

²⁷ Ibid., p. 8.

harming the 'setting' of a Listed Building, that cannot mean that any harm, however minor, would necessarily require Planning Permission to be refused.²⁸

Benefits

- 1.33. 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.
- 1.34. The NPPF (at §214 and §215) requires harm to a designated heritage asset to be weighed against the public benefits of the development proposals.
- 1.35. High Court judgements have confirmed that enhancement to the historic environment should be considered as a public benefit under the provisions of §214 and §215.
- 1.36. The PPG provides further clarity on what is meant by the term 'public benefit', including how these may be derived from enhancement to the historic environment ('heritage benefits'), as follows:

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

Examples of heritage benefits may include:

- ***sustaining or enhancing the significance of a heritage asset and the contribution of its setting***
- ***reducing or removing risks to a heritage asset***
- ***securing the optimum viable use of a heritage asset in support of its long-term conservation.*”²⁹**

²⁸ *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061. – Core Document 7.22.

²⁹ MHCLG, PPG, paragraph 020, reference ID: 18a-020-20190723 – Core Document 6.34.

2. Background Information on Identified Designated Heritage Assets.

Introduction

- 2.1. This appendix provides background information regarding the designated heritage assets discussed in **Section 4** of my Evidence.

Scheduled Ringwork Castle 80m South of West Castle Farm

- 2.2. The Scheduled 'Ringwork Castle 80m South West of Castle Farm' was Scheduled on 16th May 1951, with the List Entry subject to amendment on 28th June 1995 (NHLE Ref. 1013152). The extent of the designated area is detailed at Plate 5.1, with the following description of the asset provided within the List Entry.

"The monument is situated approximately 80m south west of Castle Farm on the southern outskirts of the village of Fillongley. It includes the masonry and earthwork remains of Castle Yard, a ringwork castle and its associated bailey. The site occupies an area of approximately 2ha and has been constructed on an area of land which is defined by two stream channels. The stream to the north of the ringwork flows west-east and forms the northern boundary to the site, whilst the second stream, situated in the eastern part of the site, flows from east to north. A third stream channel runs through the central part of the site and flows northwards into the stream defining the site's northern edge. The streams are thought to have been diverted at the time of the castle's construction in order to form its southern outer defences. They also provided the water supply for the inner defensive ditches. The ringwork itself, is situated in the western part of the site and is surrounded by a 12m wide ditch which, with the exception of its waterlogged northern section, is mostly dry. The water supply for the ditch originally entered from the west and the south. An external rampart is visible beyond the western, northern and southern sides of the ditch. The ringwork has a roughly circular plan and has been artificially raised above the surrounding ground surface. Traces of an inner bank are visible along the north eastern and western sides of the ringwork enclosure; this bank is thought to have been present originally on all sides. Access into the ringwork is thought to have been by means of a causeway across the eastern section of its enclosing ditch. The ringwork enclosure itself has an uneven surface, indicating the survival of buried features beneath the ground surface. In the north eastern part of the ringwork a large block of in situ masonry is visible standing to a height of c.1.9m. It is built of local sandstone and represents a rectangular building. The remains of a circular staircase, situated adjacent to the block of standing masonry, have been uncovered in the past though they now lie buried beneath the ground surface. Fragments of masonry are also visible in the north eastern parts of the enclosure. To the north east, east and south east of the ringwork is a polygonal-shaped bailey. It is bounded along its north western side by the northern stream channel, and to the east and south, by a 6m wide ditch; the ringwork ditch defines the bailey's western side. The north eastern section of the bailey ditch has been infilled and is no longer visible on the ground surface. It is thought to have connected with the northern stream channel and will survive as a buried feature. A stream channel now flows north/south through the central part of the bailey. A

dry, 10m wide channel, aligned south west-north east, is visible in the northern part of the bailey. This feature is thought to be original and divides the bailey into two courts. Castle Yard was occupied by the Hastings family from the early 12th century and the site became their chief residence in Warwickshire. The last of the Hastings line died in 1389 and the site became part of the Bergavenny baronry which was held by the Beauchamps and the Nevilles. Castle Yard is thought to have been abandoned during the late 14th or early 15th century. All fence posts at the site are excluded from the scheduling, but the ground beneath them is included."

2.3. Under the heading 'Reasons for Designation', the List Entry sets out the following:

"Castle Yard survives well and is one of only two known examples of this class of monument in Warwickshire. The foundations of medieval structures will survive as buried features within both the ringwork and the bailey, while the accumulated fill of the ringwork and bailey ditches will retain information valuable for an understanding of the environment and economy of the site's inhabitants. Additionally, the buried land surface beneath the ringwork enclosure will retain environmental evidence relating to the landscape in which Castle Yard was constructed."

2.4. A full copy of the List Entry is provided at Core Document 7.56.

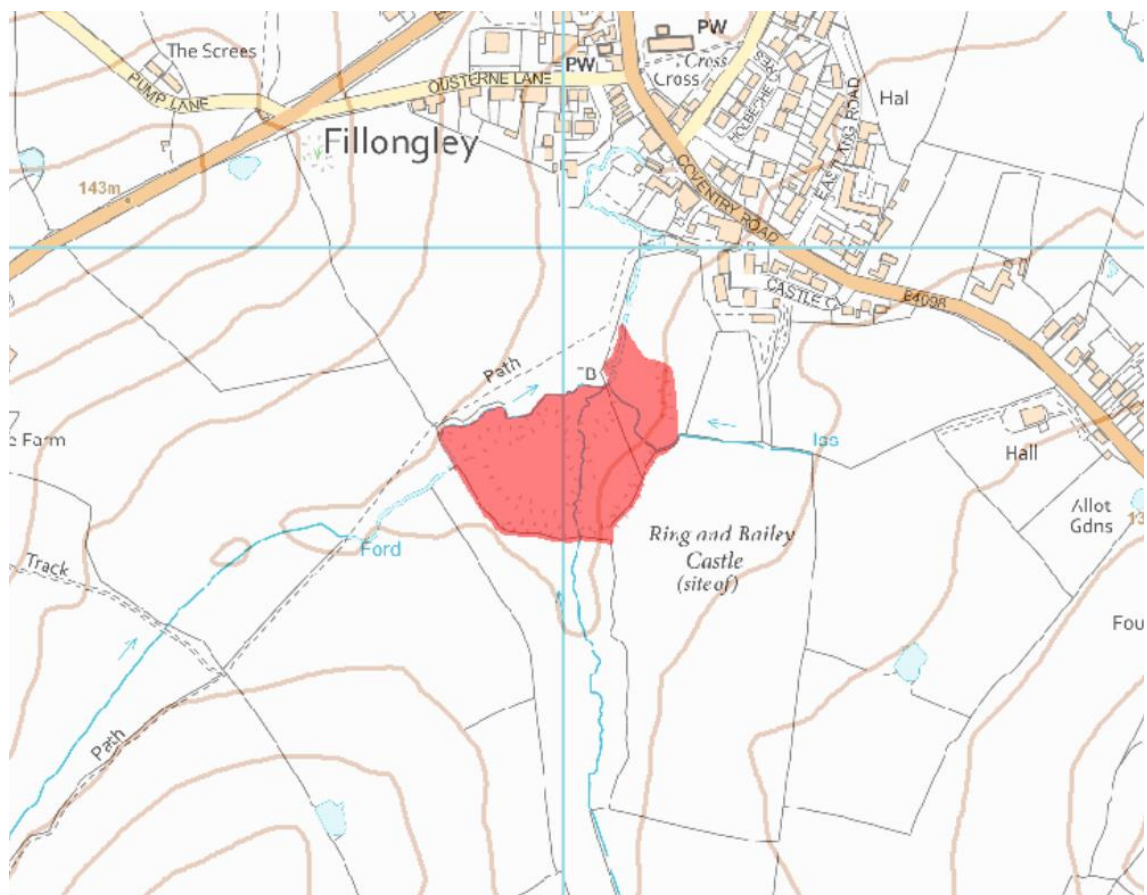


Plate 2.1: Extract from Historic England mapping detailing the extent of the Scheduled area.



Plate 5.2: View across the Scheduled Monument from within the Scheduled area.



Plate 5.3: View across the Scheduled Monument from within the Scheduled area.

Fillongley Conservation Area

- 2.5. The Fillongley Conservation Area was designated by NWBC in 1970, and is focused upon the historic core of the settlement, the Scheduled Ringwork ditch and an undeveloped area situated between the Scheduled area and the properties on Coventry Road
- 2.6. The only 'Appraisal' for the Fillongley Conservation Area published on the NWBC website is the Conservation Area Statement which was prepared in support of the designation in 1970. The document, as provided at Core Document 5.5, is useful in providing a contextual understanding as to the rationale behind the designation and its associated boundary.
- 2.7. The Conservation Area Statement sets out that the ***"The Conservation Area for Fillongley includes the old village core, together with areas of landscape value, or areas contain important trees and tree groups, related to the areas of special character."***
- 2.8. The Conservation Area Statement provides the following 'Analysis of the Character' of the Fillongley Conservation Area:

"The centre of Fillongley is attractive, but not in the same way as other Warwickshire villages are to the tourist. It is fortunate that the heart of the village has been saved from detrimental rebuilding and it remains unchanged even though modern suburbia is evident on all sides.

Fillongley has grown around the junctions of Ousterne and Church Lane with the Coventry Road. The old buildings all cluster around these roads in tight groups all leads strongly downhill into the bottom of the hollow where the stream crosses below the Manr House. In the south, Castle Farm stands at one side of the hollow looking northwards across to the Manor House where the road is closed off from view by the pinching effect of the buildings. Beyond the Manor House is the second part of the village which is focused on the church.

Fillongley owes its attractiveness to the use of just one type of brick and one type of tile. The effect is a complete integration of all buildings into a compact homely group of agricultural and village life. This is largely unspoilt in its overall form, but the intrusion of heavy traffic along the main Coventry Road destroys the atmosphere and add dangerous hazards to village life. There is a need for this problem to be resolved as soon as possible."
- 2.9. There is no explicit reference within the 'Analysis of the Character' section or the remainder of the Character Statement to the Scheduled Ringwork.

Grade II Listed Park House

- 2.10. Park House (NHLE Ref. 1186219) was added to the National List, at Grade II, on 11th November 1952, with the List Entry subject to amendment on 23rd March 1988. The List Entry provides the following description of the asset:

“Early/mid C17 and early C19 alterations. Timber-framed with red brick infill, part rendered, on sandstone plinth. Later red brick of random bond. Plain-tiled gabled roofs with side stacks of sandstone to north and south cross-wings. Red brick above the ridge. Plan of double-ended hall house with central hall and entry bay. Extended by a short service range to north cross-wing and to road side of centre range. 2 storeys. Principal elevation to the garden. Hall range has segmental arch to first floor C20 wood casement. Doorway in early C19 doorcase with moulded architrave and flat hood on scroll brackets. 6 flush panelled door and rectangular fanlight with glazing bars. South cross-wing was probably a parlour range. 2 bays. One C20 3-light wood casement above C19 canted bay with small-pane wood casement. Similar fenestration to gable end of north cross-wing. South cross-wing has exposed wall framing in small panels and at first floor a casement with original chamfered mullions. Adjoining the north cross-wing on the north side wall is a single bay service range. Timber-framed, rendered and plain-tiled roof. One storey and attic. Doorway in segmental arch. Gable end framing exposed. Interior: Centre range has early C19 stick baluster staircase. The hall is unheated. Inglenook hearth to service range and parlour hearth to south range. Cheese room with plaster floor and a ground floor room has a dairy and another thralls for beer. Through purlin wind braced roof.”

- 2.11. A full copy of the List Entry is provided at Core Document 7.55.
- 2.12. The farmhouse is located at the southwestern extent of the main element of Park House Farm complex. The Listed ancillary buildings discussed further below are arranged such that they form an enclosed farmyard to the north of the farmhouse. The Park House Farm complex also includes a number of large, modern agricultural buildings, the construction of which has resulted in the enlargement of the farmstead, and the expansion of the modern farmstead character further to the south, with a large portal frame building and a grouping of silos located c.160m south of the farmhouse. It within the context of the modern agricultural expansion that the Park House is most commonly experienced, in particular when viewed from the wider landscape to the east and south.
- 2.13. The principal elevation is understood to be to the north, with this facing out over an enclosed yard area, beyond which is Meriden Road. Enclosed domestic gardens lie to the south and west of the dwelling.
- 2.14. The recorded extent of the landholdings at the date of the Fillongley Tithe Map and Apportionment of 1843 is detailed at Plate 2.5. It is noted that there is a very slight overlap between the landholdings and the northern extent of the Appeal Site; however, this is considered to derive from very minor changes to the alignment of field boundaries and / or the accuracy of georeferencing historic mapping. Overall, the Fillongley Tithe demonstrates that the Appeal Site as a whole did not form part of the landholdings associated with Park House Farm at this date, and that this source demonstrates no historic functional or associative connections have been the asset and the Appeal Site.

- 2.15. It is understood that a mid-16th century deed could make reference to land associated with what is now Park House Farm, and the position of the farm complex away from the presumed extent of the medieval deer park could indicate that the siting of an earlier farmstead.³⁰ However, the existing structure is of an early-mid 17th century date, with this date range correlating within the common time period for the disparkment of medieval deer parks. The name 'Park House Farm' could also indicate a possible connection to the disparkment of the former deer park, a minor part of which is presumed to extend into the Appeal Site – see discussion at **Section 4** of my Evidence.



Plate 2.4: Extract from the Fillongley Tithe Map of 1843 focused on the Park House Farm farmstead ('Plot 906').

³⁰ Warwickshire County Council, 2015, Warwickshire Historic Towns Project: Fillongley Historic Character Assessment (English Heritage Project Number 5222), p. 12 – Heritage PoE Appendix 5.



Plate 2.5: Extract from the Fillongley Tithe Map of 1843 with the landholdings associated with Park House Farm shaded in blue. The Appeal Site in the vicinity of the landholdings is outlined in red.

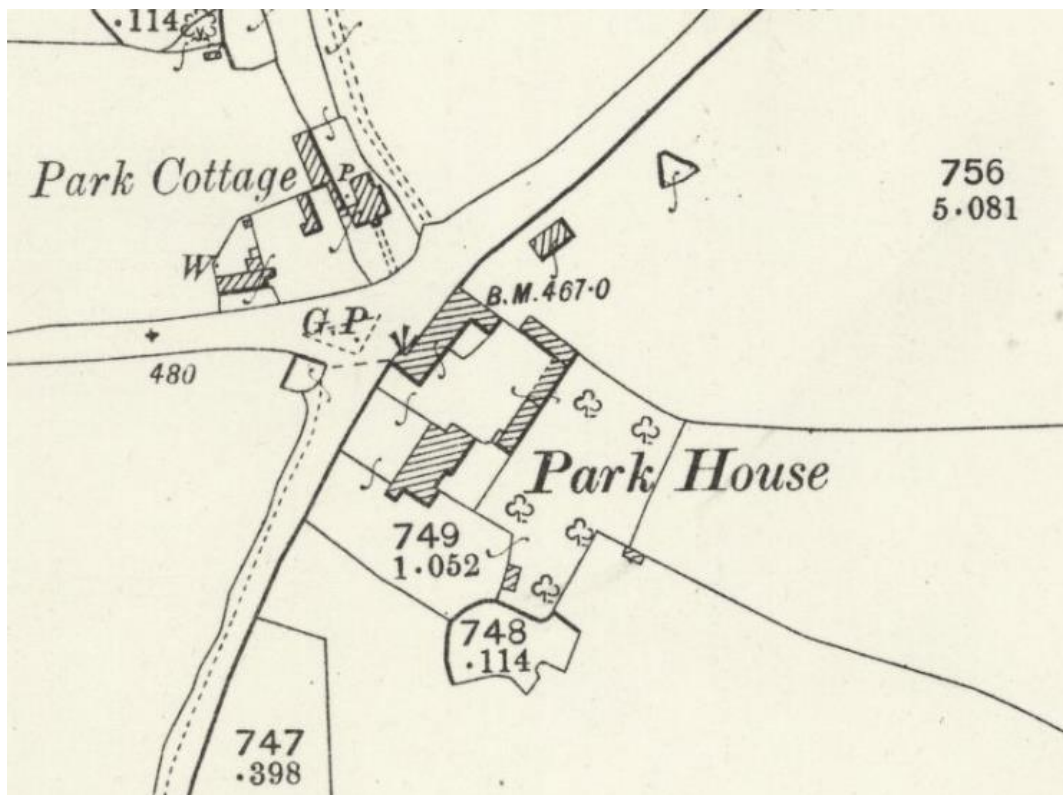


Plate 2.6: Extract from the 1902 Ordnance Survey Map focused on the Park House Farm farmstead.

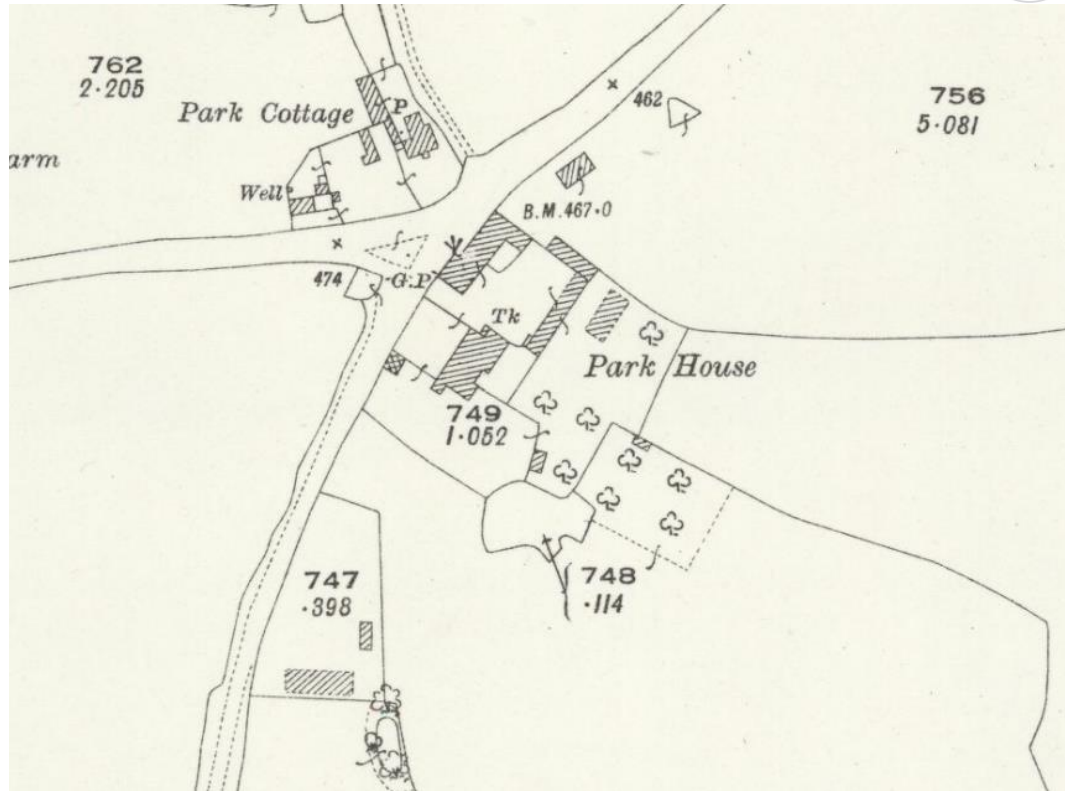


Plate 2.7: Extract from the 1923 Ordnance Survey Map focused on the Park House Farm farmstead.



Plate 2.8: The Park House Farm farmstead as seen from the junction of Meriden Road and Green End Road. The building adjacent to the road is the Grade II 'Barn 20 Metres North of Park Farmhouse' (see further below).



Plate 2.9: The Park House Farm farmstead as seen from the east.

Grade II Listed Ancillary Buildings at Park House Farm

- 2.16. The 'Barn 20 Metres North of Park Farmhouse' (NHLE Ref. 1034838) was added to the National List, at Grade II, on 11th November 1952, with the List Entry subject to amendment on 23rd March 1988. The List Entry provides the following description of the asset:

"Threshing barn. Early C17 and C19. Timber-frame with red brick infill. Plain-tiled roof. In north west side wall a wagon door opening with boarded doors. At north end a pitch door opening. 3 bays of timber-frame barn with framing of height of three panels to each wall. Straight upward wall bracing. Extended early C19 at south end in red brick and rear wall to yard rebuilt with diaper pattern breathers. Interior: 4 bays. 2 tiers of wind braced through purlins and raking struts to tie beams and collars."

- 2.17. The 'Cartshed and Granary 5 Metres North East of Park House' (NHLE Ref. 1034837) was added to the National List, at Grade II, on 23rd March 1988. The List Entry provides the following description of the asset:

"Cartshed and granary. Late C18/early C19. Red brick, Flemish bond, with plain-tiled, half hipped roof with weathervane of wrought iron. 2 storeys. Segmental header brick arches to 2 ground floor openings, one to a stable with split door, the other for a carriage. External single straight flight staircase with landing. Flared brick treads and coping. First floor boarded door. Casement in gable end."

- 2.18. Full copies of the List Entries is provided at Core Documents 7.51 and 5.72.
- 2.19. These buildings enclose the historic farmyard to the north of Park House Farm to the west and east respectively, as demonstrated at Plate 16 of my Evidence.
- 2.20. The principal elevation of the 'Barn 20 Metres North of Park Farmhouse' is to the south, facing inwards to the farmyard. The north elevation is blind, as demonstrated at Plate 2.8 above. The principal elevation of the 'Cartshed and Granary 5 Metres North East of Park House' is understood to be to the north, again facing inward to the farmyard.

Grade II Listed Fillongley Mount

- 2.21. Fillongley Mount (NHLE Ref. 1299309) was added to the National List, at Grade II, on 23rd March 1988, with the List Entry providing the following description of the asset:

"House. C16 origin, late C17, and mainly mid-C19. Brick, rendered. Hipped and gabled plain-tiled roofs with ridge stacks of red brick. Pierced bargeboarding to eaves and gable end. Plan of C16 house of 3 units with lobby-entry. 2 storeys. C19 fenestration on the north-west front. First floor small-pane hung sashes. 2 canted bays at ground floor with full length hung sashes. North-east gable end has iron casements with C19 lozenge lights. The mid C19 wing added to the south-east front is of 2 storeys. Symmetrical facade. At first floor 2 larger casements with lozenge shaped lights on either side of similar smaller casements. Central porch with gabled plain-tiled roof with apex finial and pendant and similar pierced bargeboarding. Open sided timber walls on brick plinth with turned balusters and quatrefoils to spandrels in pointed arches. Gable ends of the porch have the initials W.D. Interior: Mid C19 except for C16 chamfer and moulding to quartered ceiling beams in centre room. Mid C19 staircase with turned balusters."
- 2.22. A full copy of the List Entry is provided at Core Document 7.54.
- 2.23. As indicated by the above, the property has 16th century origins; however, the current form and external character of the building is heavily influenced by the alterations made to the property in the mid-19th century. Such changes included the addition of a new wing and frontage to the southeast. The detailing of the southeast frontage – coupled with the accompanying garden design; see further below – would suggest that it was intended to serve as the 'principal elevation'.
- 2.24. Archival sources indicate that the grounds of the property were also subject to redesign in the 19th century, including the creation of new domestic gardens and a minor parkland.
- 2.25. The Fillongley Tithe Map of 1843 is understood to depict the property prior to the mid-19th century remodelling, based upon the footprint of the property detailed on the source. Nevertheless, the source demonstrates that even prior to remodelling the property was of a reasonable size, and the accompanying Tithe Apportionment provide an understanding as to the extent of associated landholdings (see Plate 2.10). The latter included an area to the south of the property (Plot 593) known as 'Big Mount', with which was an area of plantation (Plot 592).

- 2.26. The remodelled property, and its designed grounds, are detailed on the Ordnance Survey Map of 1887, with further detail provided by the Ordnance Survey Map of 1903. These sources detail the establishment of a principal route from Green End Lane terminating adjacent to the southeast frontage. A secondary approach provided access directly to the ancillary buildings to the north. Gardens are shown to the south, northeast and southwest of the dwelling, beyond which was the wider 'parkland'. The Ordnance Survey Map of 1905 provides further detail as to the extent of the 'parkland' via the shading included on this source.
- 2.27. The arrangement detailed on early 20th century Ordnance Survey Mapping was retained into the mid-20th century. At some point during the mid-late 20th century the boundary of the immediate grounds of the property were redefined to establish the existing curtilage with the remainder of the former grounds amalgamated into the fields beyond. These areas, alongside the former parkland, was turned over to arable use and the parkland character identifiable on archival sources lost.
- 2.28. The design of the frontage and its positioning would highly indicate that views across the valley to the southeast, with the parkland in the foreground ('Mount Park'), formed part of the design intent of the property, from at least the mid-19th century.
- 2.29. Modern aerial photographs would suggest that southeasterly views from the ground floor of the property and its immediate surrounds may be to some degree be screened or filtered by the vegetation boundary of the revised curtilage. Irrespective of any screening that may be present it is important to recognise that composition and character of the southeasterly views has been subject to change during the mid-late 20th century. Such changes include the aforementioned removal of the parkland character to the land west of Meriden Road, a change to the character of the agricultural field morphology (including within the Appeal Site) and the introduction of the M6 motorway.



Plate 2.10: Extract from the Fillongley Tithe Map of 1843 with the landholdings associated with Fillongley Mount shaded in blue. The Appeal Site in the vicinity of the landholdings is outlined in red.

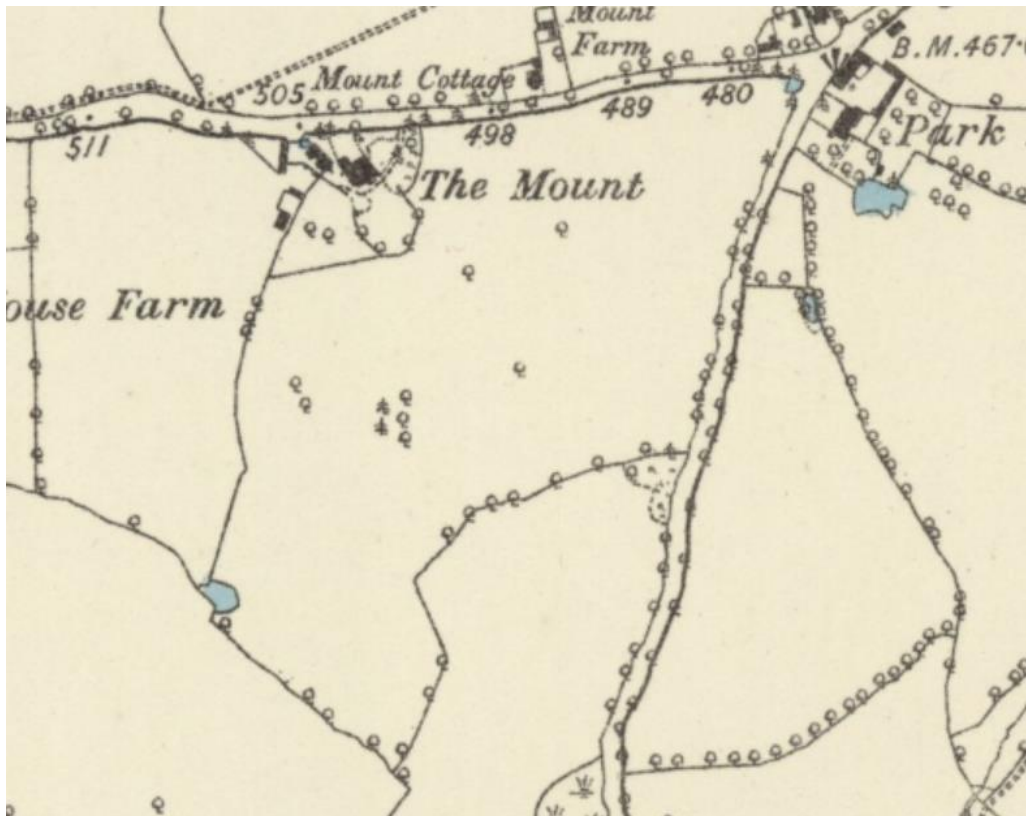


Plate 2.11: Extract from the 1887 Ordnance Survey Map focused on Fillongley Mount and its immediate surrounds.

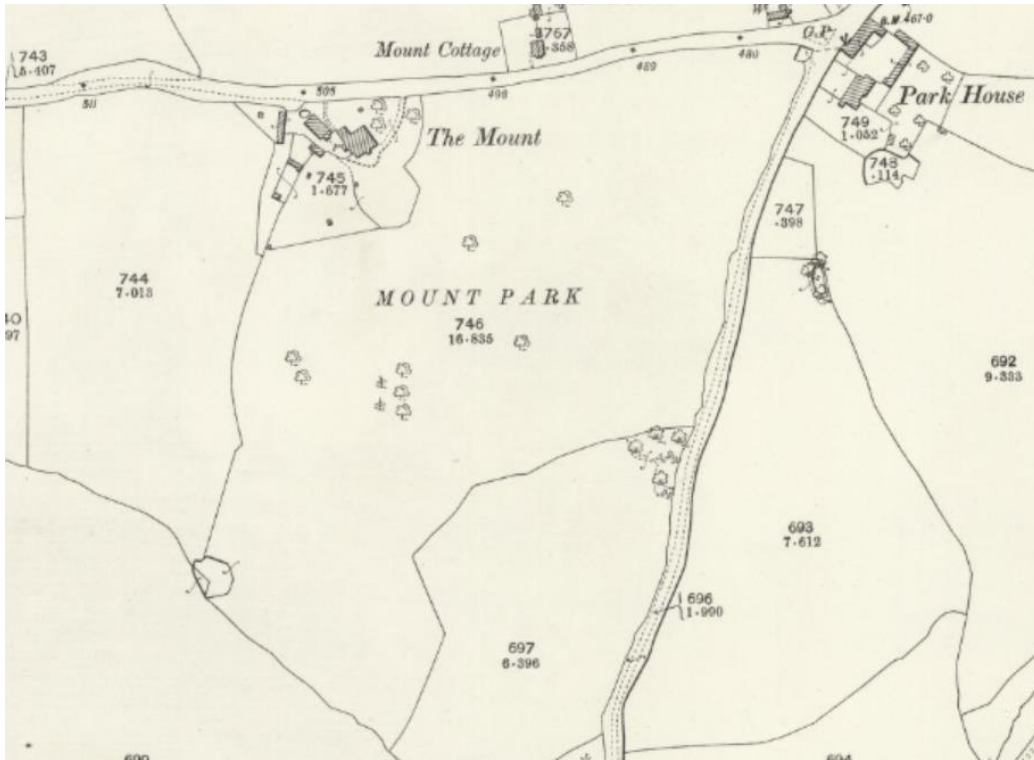


Plate 2.12: Extract from the 1903 Ordnance Survey Map focused on Fillongley Mount and its immediate surrounds.



Plate 2.13: Extract from the 1905 Ordnance Survey Map focused on Fillongley Mount and its immediate surrounds. The extent of the 'parkland' at this date is shaded.



Plate 2.14: Extract from the 1938 Ordnance Survey Map focused on Fillongley Mount and its immediate surrounds.



Plate 2.15: Extract from the 1955 Ordnance Survey Map focused on Fillongley Mount and its immediate surrounds.



Plate 2.16: 2021 aerial photograph of Fillongley Mount and its immediate surrounds.

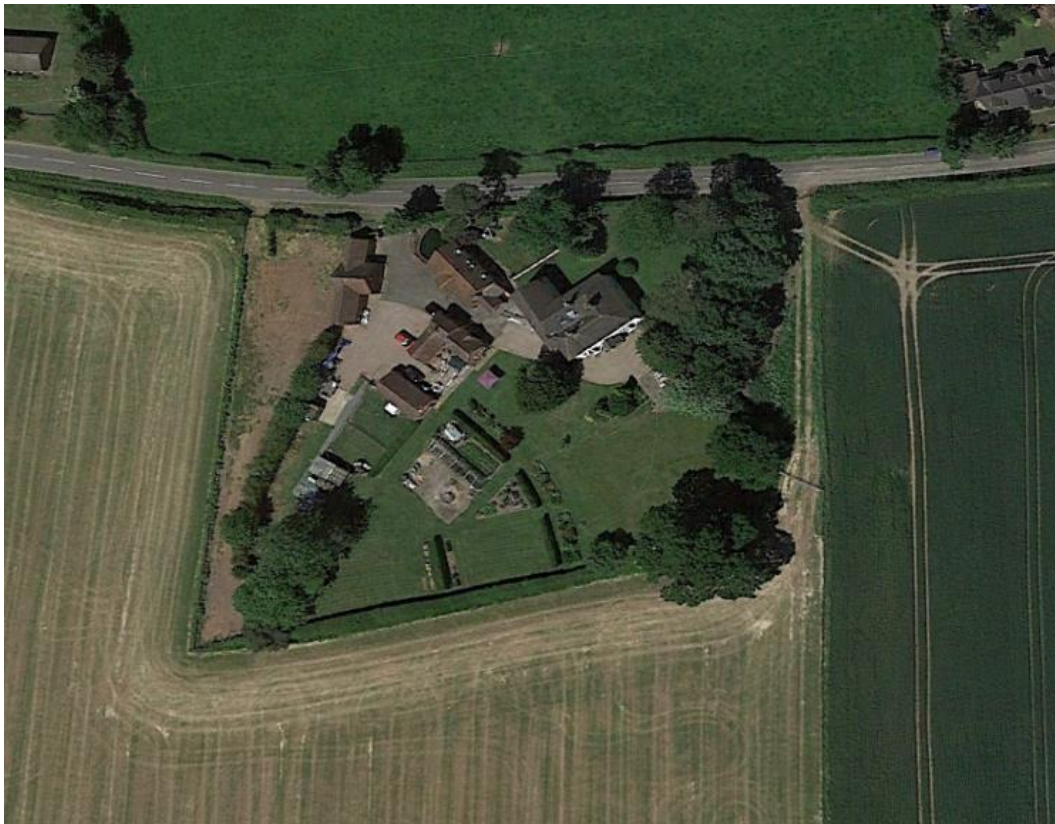


Plate 2.17: 2021 aerial photograph of focused on Fillongley Mount and its associated demise.

Grade II Listed White House Farmhouse

- 2.30. White House Farmhouse (NHLE Ref. 1034868) was added to the National List, at Grade II, on 23rd March 1988, with the List Entry providing the following description of the asset:

“Farmhouse. Early C19 possibly of earlier origin. Red brick, Flemish bond. Plain-tiled roof with end stacks. 2 storeys. Symmetrical facade of 3 twelve-pane hung sashes under flat arches of stone with raised key blocks. Sandstone steps lead to central doorway in round arch. Broken pedimented doorcase on fluted pilasters. Radial glazing bars to fanlight.”

- 2.31. A full copy of the List Entry is provided at Core Document 7.57.
- 2.32. White House Farmhouse is situated amongst grouping of historic and modern buildings, with the latter including large brick and metal clad structures. The principal elevation is to the east, facing onto an extensive area of and enclosed gravelled forecourt and domestic lawn, beyond which is an agricultural field. Modern aerial photographs and photographs associated with the sale of the property in c.2014³¹ demonstrate that the surrounds of the White House Farmhouse have been extensively modernised, and represent a departure from the composition of detailed on archival sources.



Plate 2.18: 2021 aerial photograph of the White House Farm complex.

³¹ <https://www.rightmove.co.uk/house-prices/details/england-29532276-37542039?s=4c1ea77c4e5621b9dfccb71974e86ff8d1d86c2ab63f5ca9dbc9ab4b82645736> <Access 5th March 2025>

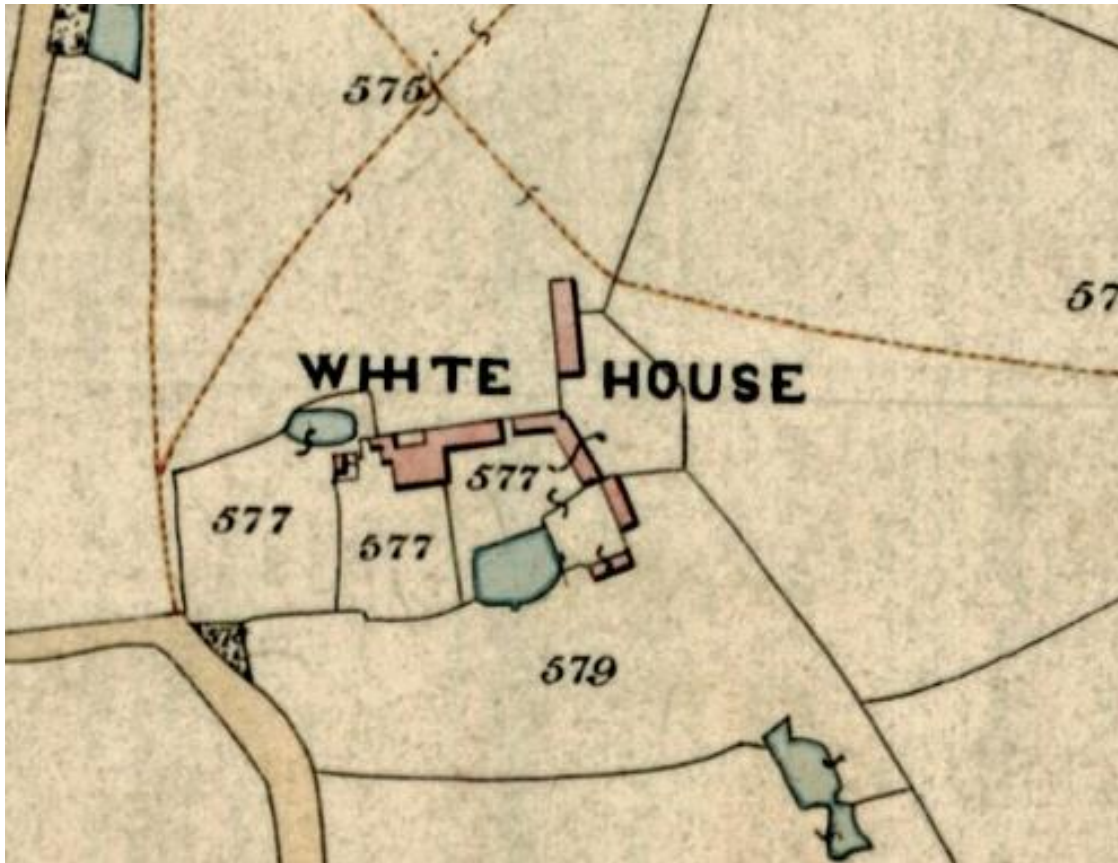


Plate 2.19: Extract from the Fillongley Tithe Map of 1843 focused on the White House farmstead ('Plot 577').

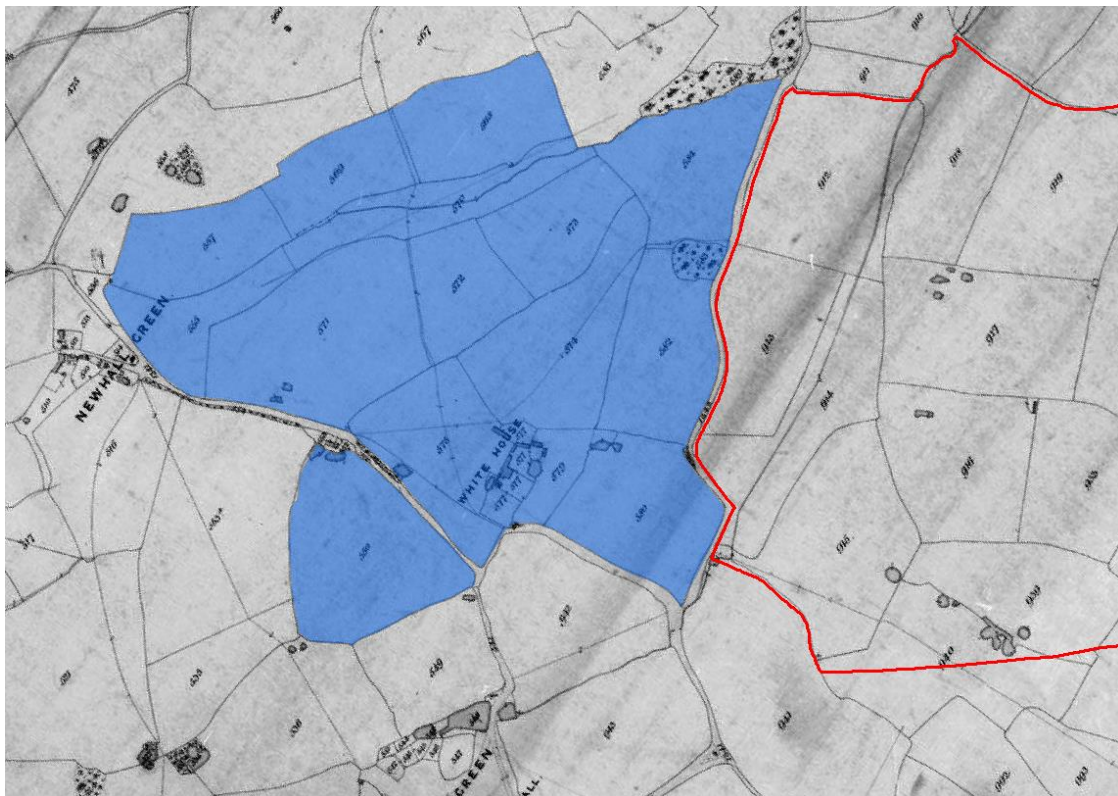


Plate 2.20: Extract from the Fillongley Tithe Map of 1843 with the landholdings associated with White House shaded in blue. The Appeal Site in the vicinity of the landholdings is outlined in red.

Grade II* Listed Church of St Mary and All Saints

- 2.33. The Church of St Mary and All Saints was added to the National List, at Grade II*, on 8th September 1961 (NHLE Ref. 1034830). The List Entry provides the following description of the asset:
- “Church. C12 chancel now mainly C15, C14 nave, C15 north chapel and C13 west tower with C15 bell stage. Coursed sandstone rubble; coursed and squared sandstone. Plain-tiled roofs with crocketed pinnacles to east gable of nave and gable end cross. Embattled west tower of 3 stages. 2 lower stages are C13. One lancet window to each stage of side wall. C15 west doorway in 4-centred arch in square head. Angle buttressing. Bell stage, C15, has in each wall two 2-light openings with foiled heads in 2-centred arches. Nave has embattled parapet. C15 clerestory of 5 windows, each of two cinquefoil lights in square head. 3, C14, windows; 2 of 3 trefoil lights in 2-centred arches of 2 chamfered orders, and one of 2 trefoil lights. 2 stage gable buttressing. Chancel: South wall has 2 windows, each of 3 lights and a C15 doorway in 4-centred arch in square head. East window of 3 trefoil lights in moulded 2-centred arch. North chapel: C15. Embattled parapet. 2 windows in north wall of 3 trefoil lights in 4-centred arches. 2 stage buttressing with offsets. Interior: South doorway to nave, C14. 2 hollow and roll moulded orders in 2-centred arch with label and mask stops. C13 tower arch of 3 chamfered orders in 2-centred arch. Original gable end of roof visible in west wall of tower. C19 roof boarded. Braced tie beams. Chancel arch 2-centred and of 2 wave moulded orders. The chancel has a C19 roof of wind braced through purlins. North chapel C15. 2 bays open to chancel. 2-centred arches of 2 hollow moulded orders on octagonal column with moulded capital and base. Original roof with moulded ridge tie beams and purlins. Carved bosses at intersections. Font, C15. Stone. Round bowl with vertical ribs dividing the panels. Wall monument, north wall of chancel. Mrs. Daniel and daughter, 1725. White marble tablet with grey marble fluted ionic pilasters and crest. Chest. Oak. 1729. Oak with iron fittings. Gift of Geo. Aley of Black Hall, Fillongley.”***
- 2.34. A full copy of the List Entry is provided at Core Document 7.53.
- 2.35. The Church is situated within a defined and enclosed churchyard, in the centre of the settlement of Fillongley. The building is situated on an area of rising ground, and occupies a slightly elevated position to the north / east of Coventry Road as it meanders through the settlement. Nevertheless, the Church can still be categorised as situated within the ‘hollow’ in which the majority of the historic core of the settlement is located.
- 2.36. The churchyard is bound primarily by built form to the north and south, with the eastern and western extends marked by Coventry Road and Church Land respectively. There are 6no. Grade II Listed monuments within the churchyard (designated under two ‘Listing’) and the remains of 2no. church crosses, both of which are Grade II Listed.



Plate 2.21: Aerial photograph detailing the Church of St Mary and All Saints (purple) situated within its defined churchyard within the settlement of Fillongley.



Plate 2.22: Extract from the Fillongley Tithe Map of 1843, focused on the settlement of Fillongley and the Church of St Mary and All Saints.



Plate 2.25: The Church of St Mary and All Saints as seen from Coventry Road.



Plate 2.26: The Church of St Mary and All Saints as seen from within the associated churchyard.



Plate 2.27: View south within the churchyard.



Plate 2.28: The Church of St Mary and All Saints as seen from Coventry Road close to the junction with Church Lane.

3. Legislation and Planning Policy.

Introduction

- 3.1. This following sets out the heritage legislation and planning policy considerations relevant to the consideration of this Appeal, and supports the discussions presented within my Evidence.

Legislation

- 3.2. Legislation relating to the built historic environment is primarily set out within the *Planning (Listed Buildings and Conservation Areas) Act 1990*,³² which provides statutory protection for Listed Buildings and Conservation Areas.
- 3.3. §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.”***³³
- 3.4. Key is the use of the terms ‘special regard’ and ‘desirability’. §66(1) does not state that where a development does not preserve or enhance a development that it must be considered contrary to legislation and should be refused.
- 3.5. This is echoed in the ‘Palmer’ case, which sets out that:
- “Although the statutory duty requires special regard to 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.”***³⁴
- 3.6. A judgement in the Court of Appeal (*Mordue*³⁵), where the principles of the NPPF (specifically that of §215) are applied this is in keeping with the duties of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires ‘special regard’ to be paid to ‘desirability of preserving the architectural and historic interest of a Listed Building, including any contribution made by its ‘setting’.

³² UK Public General Acts, *Planning (Listed Buildings and Conservation Areas) Act 1990*.

³³ *Ibid.*, Section 66(1).

³⁴ *Palmer v Herefordshire Council & Anor* [2016] EWCA Civ 1061. Paragraph 34 – Core Document 7.22.

³⁵ *Jones v Mordue* [2015] EWCA Civ 1243 – Core Document 7.23.

- 3.7. With regards to development within Conservation Areas, §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 of preserving or enhancing the character or appearance of that area.”³⁶***
- 3.8. §72(1) applies to the consideration of changes *within* the boundary of a Conservation Area only and does not extend the duty to the consideration of changes in ‘setting’.³⁷ Thus the 1990 Act, in so far as it applies to Conservation Areas, is not engaged or offended by the proposals.
- 3.9. The Ancient Monuments and Archaeological Areas Act 1979 does not extend to the consideration of the setting of Scheduled Monument. The proposals do not affect the physical fabric of the Scheduled Ringwork Castle and there is no provision within the 1979 Act for the consideration of changes in setting; thus, the Act is not engaged or offended by the proposals.

The National Planning Policy Framework (December 2024)

- 3.10. National policy and guidance is set out in the Government’s *National Planning Policy Framework (NPPF)* published in December 2024. This replaced and updated the previous *NPPF* (December 2023). The *NPPF* needs to be read as a whole and is intended to promote the concept of delivering sustainable development. Section 16 of the *NPPF* relates to ‘*Conserving and Enhancing the Historic Environment*’
- 3.11. 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).”³⁸***
- 3.12. 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.”³⁹***
- 3.13. As set out in Heritage PoE Appendix 1, significance is defined in the *NPPF* 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***

³⁶ UK Public General Acts, Planning (Listed Buildings and Conservation Areas) Act 1990. Section 72(1).

³⁷ As per the High Court case of *James Hall v City of Bradford*, [2019] EWHC 2899 (Admin) Para. 17 – Core Document 7.49.

³⁸ MHCLG, *NPPF*, Annex 2 – Core Document 6.26

³⁹ *Ibid.*

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."⁴⁰

3.14. §208 of the NPPF states 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."⁴¹

3.15. §210 goes on to state that:

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

- a. the desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;**
- b. the positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and**
- c. the desirability of new development making a positive contribution to local character and distinctiveness."**⁴²

3.16. With regard to the impact of proposals on the significance of a heritage asset, §212 and §213 of the NPPF 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."⁴³

"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**

⁴⁰ Ibid.

⁴¹ MHCLG, NPPF, para. 208 – Core Document 6.26.

⁴² MHCLG, NPPF, para. 210 – Core Document 6.26.

⁴³ MHCLG, NPPF, para. 212 – Core Document 6.26.

buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.”⁴⁴

- 3.17. Section b) of §213, which describes assets of the highest significance, also includes footnote 75 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.
- 3.18. In the context of the above, it should be noted that §214 of the NPPF 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:***
- 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.”⁴⁵***
- 3.19. §215 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.”⁴⁶***
- 3.20. The Courts (*Pugh*⁴⁷) have held that where the decision-maker works through the sequence for dealing with proposals which impact upon heritage assets in the context of §212–215 of the NPPF and finds that any harm to significance is outweighed by public benefits, then the clear and convincing justification referred to at §213 of the NPPF is in place.
- 3.21. The NPPF also provides specific guidance in relation to Conservation Areas, stating at §219 that:
- “Local planning authorities should look for opportunities for new development within Conservation Areas and World Heritage Sites, and within the setting of***

⁴⁴ MHCLG, *NPPF*, para. 213 – Core Document 6.26.

⁴⁵ MHCLG, *NPPF*, para. 214 – Core Document 6.26.

⁴⁶ MHCLG, *NPPF*, para. 215 – Core Document 6.26

⁴⁷ *Pugh v SoS for Communities and Local Government* [2015] EWHC 3 (Admin) – Core Document 7.28.

heritage assets, to enhance or better reveal their significance. Proposals that preserve those elements of the setting that make a positive contribution to the asset (or which better reveal its significance) should be treated favourably.”⁴⁸

- 3.22. §220 goes on to recognise that **“not all elements of a World Heritage Site or Conservation Area will necessarily contribute to its significance”** and with regard to the potential harm from a proposed development states:

“Loss of a building (or other element) which makes a positive contribution to the significance of the Conservation Area or World Heritage Site should be treated either as substantial harm under paragraph 207 or less than substantial harm under paragraph 208, 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.”⁴⁹ (our emphasis)

- 3.23. With regards to non-designated heritage assets, paragraph §216 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.”⁵⁰

National Planning Practice Guidance

- 3.24. The then Department for Communities and Local Government (now the Ministry of Housing, Communities & 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.
- 3.25. 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.
- 3.26. The PPG has a section on the subject of the Historic Environment⁵¹, a copy of which is provided at Core Document 6.34. The content of this section has informed the Methodology which I have utilised in my assessments, as set out in Heritage PoE Appendix 1.

Local Planning Policy

- 3.27. See discussion in **Section 7** of my Evidence.

⁴⁸ MHCLG, NPPF, para 219 – Core Document 6.26.

⁴⁹ MHCLG, NPPF, para. 220 – Core Document 6.26

⁵⁰ MHCLG, NPPF, para. 216 – Core Document 6.26

⁵¹ Department for Levelling Up, Housing and Communities (DLUHC), *Planning Practice Guidance: Historic Environment (PPG)* (revised edition, 23rd July 2019), <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment> – Core Document 6.34

4. Requirement for the Notification of Historic England During the Determination of the Planning Application

- 4.1. Through the Statement of Common Ground process, the Rule 6 Party have highlighted that Historic England were not consulted by NWBC during the determination of the application. It is their position that Historic England should have been consulted under Regulation 5A(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended) and Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015.
- 4.2. Under Regulation 5A(3) of the Planning (Listed Buildings and Conservation Areas) Regulations 1990 (as amended), where an application for Planning Permission is made to a Local Planning Authority (or Secretary of State under a Section 62A application) and there relevant decision-maker is of the opinion that the development would affect a) the setting of a Grade I or Grade II* Listed Building or, b) the character and appearance of the a Conservation Area as a result of a the erection of a new building, extension of an existing building or the land is more than 1000sqm in area, then the relevant decision-maker shall notify Historic England of the application.
- 4.3. In this case, NWBC have confirmed that it is their position that no harm arises to the Grade II* Listed Church of St Mary and All Saints, via a change in 'setting'. Any Listed Building which NWBC did identify as sensitive to the proposals were Grade II Listed. Accordingly, there was no requirement for NWBC, as the then decision-maker, to consult Historic England on the basis of their own opinion, as informed by advice provided by NWBC Heritage and Conservation Officer and the Warwickshire County Archaeologist.
- 4.4. It is acknowledged that the parties consider that harm arises to the Fillongley Conservation Area, via a change in 'setting', and that the proposals involve the construction of a new 'structure'. However, my understanding is that the *Planning (Listed Buildings and Conservation Areas) Regulations 1990/1519* directly relates to the *Planning (Listed Buildings and Conservation Areas)*, and it is well established that the duty under the 1990 Act – specifically §72(1) – relates to the consideration of the character and appearance of areas within the designation boundary only – as discussed above. Accordingly, it would logically read that the reference to 'character and appearance' in the Regulations relates to changes in character and appearance within the designation, in accordance with the duties set out under the Act.
- 4.5. Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 identified that Historic England should be consulted regarding '*Development likely to affect the site of a scheduled monument*'. The wording of Article 18 of and Schedule 4 to the Town and Country Planning (Development Management Procedure)(England) Order 2015 does not make reference to 'setting', and the lack of reference correlates with the current statutory position (as discussed above).
- 4.6. In order to aid in the Appeal process, and at the request of the Inspector, NWBC contacted Historic England on 17th February 2025 regarding the need for consultation in order to provide clarity on the matter raised by the Rule 6 Party.

- 4.7. A response was received from Maria Viciano-Martinez, Inspector of Historic Buildings and Areas for the Midlands Region on 18th February 2025, with this reading as follows:

“Broadly speaking we must be consulted on applications for planning permission for development which affects a scheduled monument. I have attached the Historic England guidance document for reference.

Historic England should be consulted when development, which in the opinion of the local planning authority, falls within certain categories; including P2 – when development is likely to affect the site of a scheduled monument.

Indeed the Planning Inspector has picked up that the guidance does not make explicit reference to setting. In this case, it is for the local planning authority to determine if the proposal fell within category P2.”

- 4.8. The above confirms that it is the opinion of Historic England that in this case the need to consult was at the discretion of NWBC.

5. ***Warwickshire County Council, 2015,
Warwickshire Historic Towns Project:
Fillongley Historic Character Assessment
(English Heritage Project Number 5222)***

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