

# Planning applications, planning appeals & public inquiries



Christopher Gallagher – historic landscape consultant

# Planning applications

- Will talk today about 2 applications that led to Appeals –
  - (i) Golding, Shropshire (not Registered) - four intensive poultry rearing sheds with solar panels & associated infrastructure
  - (ii) Kedleston, Derbyshire – two linked applications for 150 & 400 houses within the setting of Kedleston Hall Grade I RPAG
- Kedleston also went to Judicial Review & will go to the High Court in London (in July 2018)

# Planning appeals

- Applicants have right to appeal against a decision
- Appeals usually decided by **Planning Inspectorate**
- c.20,000 appeals / year
- Vast majority decided by **written representations** or a **hearing**
- Around 5% of appeals decided through Public Inquiry
- Applications can also be '**called in**' – may lead to Inquiry

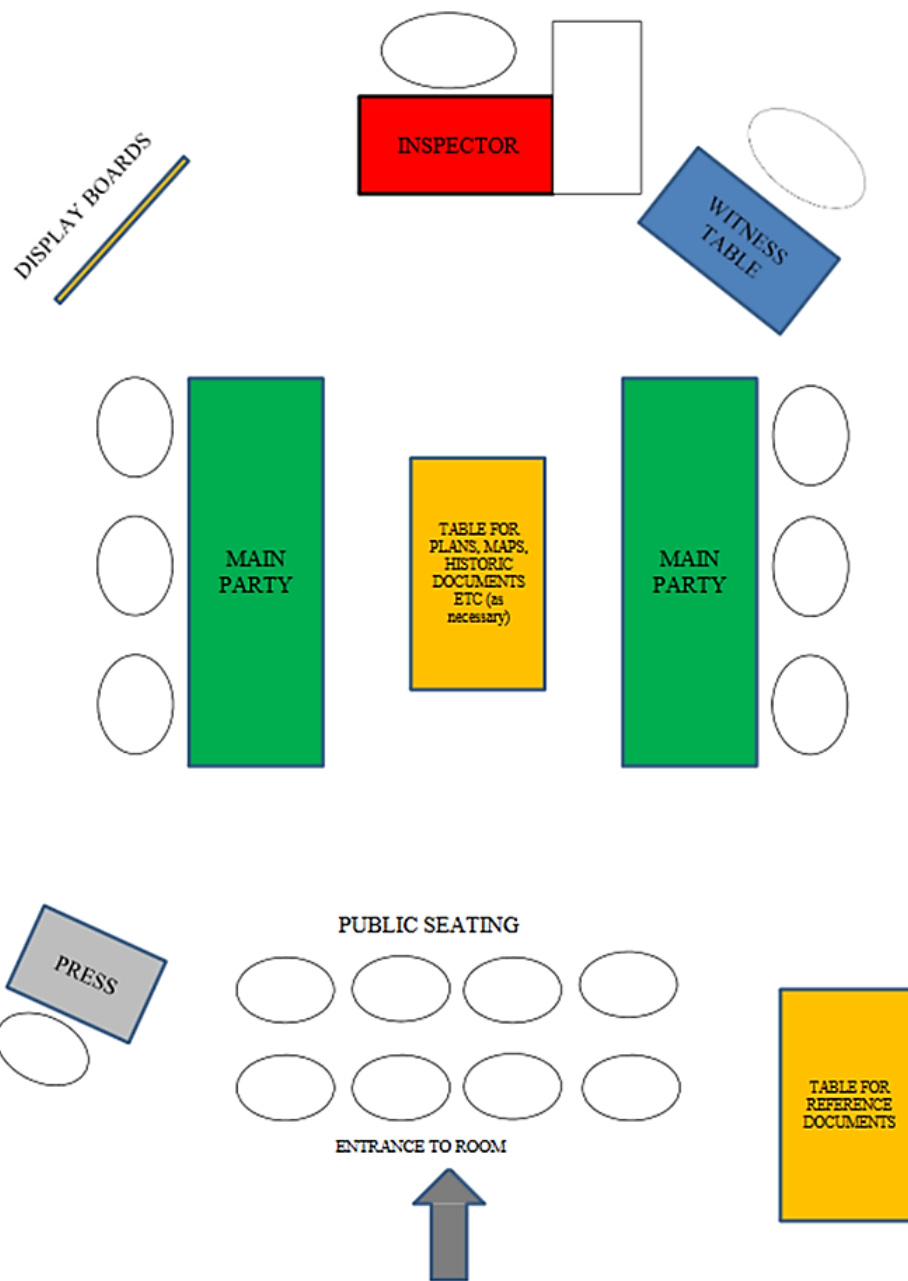
# How do you find out about an appeal?

- If you wrote to the LPA
- LPA's website
- Newspapers
- 'Appellant' must display details at site of proposed development
- Your CGT
- TGT

# Who (normally) takes part in an inquiry?

- Appellant
- LPA
- 'Rule 6' parties
- Members of the public
- *others*

**ANNEX 1 – SUGGESTED LAYOUT OF AN INQUIRY ROOM**



# What you can do

- write in & state your case – time limited
- you may also speak at inquiry, if Inspector agrees
- you may apply for ‘Rule 6’ status yourself –
  - offers a leading role in inquiry
  - may appoint planning solicitor / barrister
  - call witnesses
  - cross-examine appellant’s (or other’s) witnesses
- you may give evidence as an ‘expert witness’ called on behalf of Appellant, LPA or a ‘Rule 6’ party

# What you can do

- Stick to planning matters – *National Planning Policy Framework (NPPF) &/or LPA Local Plan*
- Relevant sections (*not exhaustive*):
  - Section 12 – ‘*Conserving & enhancing the historic environment*’ (paras.126-141)
  - ‘*Plan Making – Local Plans*’ (*Historic environment* paras.169-170)
  - ‘*Glossary*’ Key Terms – *Conservation, Heritage asset; Significance; Setting;*



# NPPF

- ‘Conservation’:

*‘...the process of maintaining and managing change to a heritage asset in a way that sustains and where appropriate, enhances **its significance**’ (2012)*

- ‘Significance’:

*‘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**’*

# NPPF

- ‘Setting’ (NPPF & HE):

*‘The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as an 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’*

# Your statement

- begins with the *first document* you send to an LPA in connection with a planning application
  - everything published *at any point* has to be defensible in an inquiry
- maintain consistency between statements
- *but...* don't just repeat what you have already said
- stick to the facts & say what you know
- add your own judgements – and say so... 'in my view' 'my judgement is...' 'it is my opinion that...'
- **value** your specialist knowledge & understanding

# Your statement

- Description of planning application
- Address of proposed development
- LPA planning application reference no.
- Planning appeal reference no.
- Date of appeal hearing
- Your name, address & contact details
- Who you are speaking for
- Don't forget to *number your pages*

Acton Pigot Planning Inquiry  
*Statement by Christopher Gallagher  
for Shropshire Parks & Gardens Trust*

## **Shropshire Council**

### **Planning Application by Mr J G Owen**

**Erection of four intensive poultry rearing buildings with roof mounted solar panels; 10 feed bins; biomass heating building and other ancillary buildings; formation of vehicular access; landscaping scheme including earth bund**

**Original LPA Planning Application Reference: 11/03978/EIA**

**Appeal Reference: APP/L3245/A/12/2187514**

*Statement by:*

**Christopher Gallagher BSc (Hons)**

The Laurels, Church Pulverbatch  
Shrewsbury, Shropshire SY5 8BZ  
Tel: 01743718439

e: [info@christopher-gallagher.co.uk](mailto:info@christopher-gallagher.co.uk)

to be given at public inquiry commencing 8<sup>th</sup> May 2013

#### **1. Witness details**

- 1.1 My name is Christopher Gallagher. I am an historic landscape consultant with a specialist knowledge of historic parks and gardens. I hold a degree of Bachelor of Science from Liverpool University. I have been an Associate Member of the Landscape Institute (*formerly Science Division*) since about 1990. I sit on the Joint Conservation Committee of

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# Your statement

- Witness details:
  - Establish your credentials, experience, credibility
  - Why they should listen to you & take notice of what you say
- Scope of statement:
  - What you are going to say & why this matters
- Background & Context
  - Summarise key facts about the site
  - Provide the Inspector with a sense of the property and of its key *Significances*



1.11 To the best of my knowledge, the evidence presented in this statement is true, as are our previous statements, and the opinions expressed are my true and professional opinions.

**2. Scope of statement**

2.1 This statement is given on behalf of the Shropshire Parks and Gardens Trust, which is affiliated to the national Association of Gardens Trusts and has close links with the Garden History Society. The Garden History Society is, with English Heritage, a statutory consultee

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Acton Pigot Planning Inquiry  
*Statement by Christopher Gallagher*  
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in cases of proposed developments affecting Registered Parks and Gardens, and has written in support of our objections to this proposed development.

2.2 Our previous statements and correspondence relating to this application, dated November 2011, March 2012 and May 2012, contain an assessment both of the proposed development itself and of its likely effects on the setting of Golding and more especially of its gardens, and it is not intended to repeat that evidence in detail here. What we wish to do, through this statement, is to bring to the attention of this Inquiry the quite exceptional nature of the gardens at Golding, and to update our earlier analysis in the light of the National Planning Policy Framework.

### 3. The historic gardens at Golding Hall

- 3.1 The gardens at Golding Hall are not currently included on the English Heritage *Register*, but they do appear on the Shropshire *Historic Environment Record* (HER). In this, they are described as ‘an excellent example of a gentleman’s garden of the later 17<sup>th</sup> century’<sup>1</sup>. In their present form, and in the absence of other information, it is assumed that they date largely to the 1660’s rebuilding of the main house at Golding, but there is evidence also of earlier gardens on the site, as there is evidence for an earlier 17<sup>th</sup> century core within the structure of the existing house<sup>2</sup>.
- 3.2 The earliest known reference to a garden at Golding is in a document of February 1294, which is extraordinary enough in itself. To put it into context, this was during the reign of Edward I and at a time when the nearby Chirk Castle was being built. The Battle of Shrewsbury had yet to take place and it was to be two centuries before Christopher Columbus would sail to the Americas.
- 3.3 Even more surprising however, is that the document referred to above describes the gardens at Golding as a ‘*green garden*’, indicating an ornamental or pleasure garden which in turn suggests that, even then, it was of high status<sup>3</sup>.
- 3.4 Sadly, we currently know little more of these early gardens at Golding, but other surviving fragments indicate that the later-17<sup>th</sup> century gardens – for which there is ample written and/or physical evidence - may well have been built upon earlier remains.
- 3.5 Firstly, there is the presence of earlier buildings on the site, including the 15<sup>th</sup>/16<sup>th</sup> century cruck barn (Listed Grade II) and the older fabric within the house itself, referred to above.

# Your statement

- Impact of the proposed development(s):
  - Where necessary, refer to documents submitted previously
- How the proposals will damage ***Significance***:
  - *directly*, by impacting upon fabric
  - *indirectly*, by damaging ***Setting***

4. **The impacts of the proposed development on the setting of Golding and of its gardens**
- 4.1 Our previous statement includes photographs which show the landscape around Golding, as well as indicating the likely visual impact of the proposed development on one of the views from its gardens. Recent analysis of these photographs, as part of the applicant's Appeal preparation, has confirmed that they accurately represent both the location of the proposed development and its physical dimensions. While these portray the gross visual impact of the development from one viewpoint, however, they do not convey its likely effects upon the *setting* of the gardens, or indeed of the other heritage assets at Golding.
- 4.2 *Setting* is defined as 'the surroundings in which a heritage asset is experienced'<sup>3</sup> and is an important aspect of *Significance*<sup>6</sup>. The proposed development site, and the view of it from Golding, as outlined above and described previously, is clearly a part of the setting of Golding and of its gardens.
- 4.3 *Setting*, however, encompasses all the places *from* which and all the ways *in* which heritage assets may be experienced. It is not limited merely to views, nor is it restricted to those areas that are publicly accessible (e.g. via footpaths or public highways). Negative effects on the experience of setting will also include those attributable to odour, dust and noise.
- 4.4 The National Planning Policy Framework (NPPF) puts *sustainable* development at the heart of the planning system. Sustainable development is described briefly as '*meeting the needs of the present without compromising the ability of future generations to meet their own needs*'<sup>7</sup>.
- 4.5 Sustainable development has three dimensions – economic, social and environmental. For a development to be judged sustainable, all three dimensions must be present. Of particular relevance to the built and other heritage assets at Golding, including its gardens, is the *environmental* dimension, which is concerned with '*protecting and enhancing our natural, built and historic environment*'<sup>8</sup>.
- 4.6 The NPPF identifies 12 *core planning principles*, including the need to '*conserve heritage assets in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations*'<sup>9</sup>. Importantly, it also states

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<sup>3</sup> English Heritage *The Setting of Heritage Assets* (2011)

<sup>6</sup> English Heritage *Conservation Principles, Policies and Guidance* (2008) p.30. Setting is an aspect of the *Aesthetic Value* of a heritage asset, which is defined as 'the ways in which people draw sensory and intellectual stimulation from a place'.

<sup>7</sup> National Planning Policy Framework (2012) p.2 '*Achieving sustainable development*'

<sup>8</sup> *Ibid* para.7

<sup>9</sup> *Ibid.* para.17

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# Your statement

- Finally –
  - Assess extent & nature of harm to Significance
  - this is likely to be '*less than Substantial*'

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- Finally –
  - Assess extent & nature of harm to Significance
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## NPPF Para.134:

*‘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...’*

# 'Public benefits'

- *NPPF online guidance on this paragraph:*

*“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 should 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....*



# 'Public benefits'

*...Public benefits may include heritage benefits, such as:*

- 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” .*

*[www.gov.uk](http://www.gov.uk) online guidance: **Conserving and enhancing the historic environment** -*

*Paragraph: 020 Reference ID: 18a-020-20140306; Revision date: 06 03 2014*

# Your statement

- Finally –
  - Assess extent & nature of harm to Significance
  - this is likely to be *‘less than Substantial’*
  - *but* you can still give an assessment of degree:  
*e.g. Limited, Moderate, Significant*
  - Say why this is the case
- Do this for *every aspect* of each ‘heritage asset’ at the property that will be affected
- Don’t forget their ***Setting(s)***

8.4 **Historic Parks and Gardens –**

8.5 **Policy EN32:**

*'...Planning permission will not be granted for development proposals that would have an adverse impact on the landscape character of a registered Historic Park and Garden as shown on the Proposals Map or its setting...'*

**Policy EN33:**

*"Within the defined setting of the Historic Park and Garden at Kedleston Hall, as shown on the Proposals Map, planning permission will not be granted for any development proposals that would have an adverse impact on the landscape setting, including views into and out of, the Historic Park and Garden"*

8.6 (ii) National Planning Policy Framework (NPPF) – :

8.7 **Paragraphs 132-134** of the NPPF relate to the impact of a proposed development and distinguish between *substantial harm* and *less than substantial harm* to the significance of a heritage asset. This is related also to the importance of the heritage asset.

8.8 *Substantial harm* is not specifically defined but would normally be understood to mean actual loss of fabric or significance, for example damage to a Listed Building or the loss of large or significant areas of a heritage asset such as Kedleston Park, &/or its setting.

8.9 *Less than substantial harm* caused to the significance of a heritage asset, does not however mean that the extent or degree of harm is insignificant.

8.10 In cases of *less than substantial harm*, I categorise the extent of harm on a scale of *limited, moderate, significant*.

9. **Assessments of harm**

9.1 **With reference to Amber Valley B.C.'s Policy EN24:** it has been shown above that the appeal site forms a part of the setting of the Grade I Listed Kedleston Hall and contributes positively to its significance. Both proposed developments would negatively impact upon the setting and hence detract from this significance. This negative effect would be greater for the larger proposed development.

9.2 It has similarly been shown also that key surviving views towards Kedleston Hall and its adjacent parkland areas, from the public road immediately adjacent to the appeal site as well as most likely from the appeal site itself, would be damaged by the proposed developments. The larger development would completely eradicate these views by blocking areas from which they are currently possible, while the smaller development would similarly block around 4/5<sup>th</sup> of the areas from which they are currently possible.

9.3 For both proposed developments, I consider that the level of harm would be *less than substantial*.

9.4 For the larger proposed development, I consider the degree of harm to be *significant* due to its extent and hence also the loss of fabric of the setting, to the possible ineffectiveness of the planted screening, to the heightened visibility of the southern part of the proposals and due to the complete loss caused by it of the key views.

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- 9.2 It has similarly been shown also that key surviving views towards Kedleston Hall and its adjacent parkland areas, from the public road immediately adjacent to the appeal site as well as most likely from the appeal site itself, would be damaged by the proposed developments. The larger development would completely eradicate these views by blocking areas from which they are currently possible, while the smaller development would similarly block around 4/5<sup>ths</sup> of the areas from which they are currently possible.
- 9.3 For both proposed developments, I consider that the level of harm would be less than substantial.
- 9.4 For the larger proposed development, I consider the degree of harm to be significant due to its extent and hence also the loss of fabric of the setting, to the possible ineffectiveness of the planted screening, to the heightened visibility of the southern part of the proposals and due to the complete loss caused by it of the key views.

- 9.10 *With reference to Amber Valley B.C.'s Policy EN32 & Policy EN33:* it has been shown above that the appeal site falls within the setting of the Registered Park and Garden of Kedleston Hall and at present contributes positively to its significance. Both of the proposed developments would negatively impact upon this setting as outlined above and hence detract from this significance. This negative effect would be greater for the larger proposed development.
- 9.11 It has similarly been shown that both proposed developments are likely also permanently to obstruct sightlines along the final surviving stretch of the Kedleston Road from which the important historic views described above are possible. The larger development would damage these key views by blocking completely the areas from which they are currently possible, while the smaller development would similarly block around 4/5<sup>th's</sup> of the areas from which they are currently possible.
- 9.12 For both proposed developments, I consider that the level of harm would be *less than substantial*.
- 9.13 For the larger proposed development, I consider the degree of harm to be *significant* due to its extent and hence also the loss of fabric of the setting, to the possible ineffectiveness of the planted screening, to the heightened visibility of the southern part of the proposals and due to the complete loss caused by it of the key views.
- 9.14 For the smaller proposed development, I consider the degree of harm to be *significant*, due to its extent and hence also the loss of fabric of the setting, as well as its visibility from

- 9.10 ***With reference to Amber Valley B.C.'s Policy EN32 & Policy EN33:*** it has been shown above that the appeal site falls within the setting of the Registered Park and Garden of Kedleston Hall and at present contributes positively to its significance. Both of the proposed developments would negatively impact upon this setting as outlined above and hence detract from this significance. This negative effect would be greater for the larger proposed development.
- 9.11 It has similarly been shown that both proposed developments are likely also permanently to obstruct sightlines along the final surviving stretch of the Kedleston Road from which the important historic views described above are possible. The larger development would damage these key views by blocking completely the areas from which they are currently possible, while the smaller development would similarly block around 4/5<sup>th's</sup> of the areas from which they are currently possible.
- 9.12 For both proposed developments, I consider that the level of harm would be **less than substantial**.

- 9.13 For the larger proposed development, I consider the degree of harm to be significant due to its extent and hence also the loss of fabric of the setting, to the possible ineffectiveness of the planted screening, to the heightened visibility of the southern part of the proposals and due to the complete loss caused by it of the key views.
- 9.14 For the smaller proposed development, I consider the degree of harm to be significant, due to its extent and hence also the loss of fabric of the setting, as well as its visibility from

the west and by the loss of the key views outlined above, notwithstanding that this is slightly less than for the larger development above.





Neutral Citation Number: [2017] EWHC 1456 (Admin)

Case No: CO/5004/2016

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**PLANNING COURT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 22 June 2017

Before :

**MRS JUSTICE LANG DBE**

Between :

**PETER JOHN STEER**

**Claimant**

- and -

**(1) SECRETARY OF STATE FOR  
COMMUNITIES AND LOCAL GOVERNMENT**

**(2) CATESBY ESTATES LIMITED**

**(3) AMBER VALLEY BOROUGH COUNCIL**

**Defendants**

**HISTORIC ENGLAND**

**Interested Party**

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Nina Pindham (instructed by Richard Buxton) for the Claimant  
Jacqueline Lean (instructed by the Government Legal Department) for the First Defendant  
Rupert Warren QC (instructed by Eversheds LLP) for the Second Defendant  
The Third Defendant did not appear and was not represented  
Emma Dring (instructed by Sharpe Pritchard LLP) for the Interested Party

Hearing date: 24 May 2017

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**Approved Judgment**

The appeal site was situated on land which had historical, social and economic connections with Kedleston Hall, forming part of a large agricultural estate situated beyond the designed parkland around the Hall, and which had been managed from the Hall. However, the site was not visible from Kedleston Hall itself (and vice versa) because it was hidden by a belt of woodland known as the Derby Screen, introduced in the 1960s to obscure views of the development of Allestree and the night-time glare from the expanding urban area of Derby.

The Inspector recorded the argument (made by various objectors including, Historic England and the National Trust) that the historical, social and economic connections between the Hall and the appeal site brought the site within the setting of the Hall. However, he said that: *“there has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting”*. The Inspector went on to consider the current and historical visual connections, and the likelihood of any historical designed view being restored through the opening up or removal of the Derby Screen. He concluded that the appeal site was not currently part of the setting of the Hall due to the existence of the Derby Screen. It was not within the setting from a historical perspective either because there was nothing to suggest that any historical view might someday be restored.

The Court (Mrs Justice Lang DBE) agreed with the Claimant and Historic England (which joined as an Interested Party) that the Inspector had *“adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative”*, and that this had amounted to an error of law. Her judgment contains the following points of note:

- It confirms (at para 64) that the NPPF, PPG and Historic England's 'Good Practice Advice in Planning 3: The setting of Heritage Assets' ('GPA3') all support a *"broad meaning given to setting"*, and that although *"a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative"*. The word 'experienced' in the NPPF definition of 'setting' (see the Glossary) *"has a broad meaning which is capable of extending beyond the purely visual"*.

- It confirms (at para 67) that the NPPF definition of 'setting' includes the term 'surroundings', and therefore any concerns about remote land being included within the setting of a heritage asset in the absence of a physical or visual connection was "misplaced" because there was "a geographical limitation on the extent of setting".

The assessment of harm to heritage assets is sometimes conflated with the assessment of visual or landscape harm, but this judgment is a timely reminder that heritage assets can be harmed by development in their settings without there *necessarily* being any visual impact. The Court made substantial reference to Historic England's GPA3 and the guidance it contains about identifying impacts arising from development in the setting of heritage assets, including the staged approach to decision making and the list of 'attributes' (including non-visual attributes) which may help to elucidate its contribution to the significance of the asset. Decision makers should ensure that they are familiar with this guidance.