DELEGATED FILE NOTE

CASE OFFICER: ...Heather Lai.....

APPLICATION REFERENCE	BRIEF DESCRIPTION OF DEVELOPMENT	APPLICATION SITE
18/01388/FP	Retention of existing timber shed (containing a disabled persons earth toilet) and associated timber fence enclosure.	St Marys Church Church Road Kings Walden Hertfordshire

Submitted Plan Nos

Location plan Floor plan photos shed description heritage information

1.0 Policies

1.1. **National Planning Policy Framework (NPPF, revised July 2018)**
Section 16: Conserving and enhancing the historic environment

1.2. **Emerging Local Plan 2011-2031 (Approved by Full Council 11th April 2017)**
SP1: Sustainable development in North Hertfordshire
SP9: Design and Sustainability
SP13: Historic environment
HE1: Designated heritage assets
D1: Sustainable design

2. Site History

18/01389/LBC: Associated listed building consent application. It has been confirmed by the Conservation Officer that as the works abut, but do not formally touch the listed building, LBC is not required. In addition if the works did touch the building, this would fall under faculty jurisdiction.

3. Representations

Parish Council: No response.
Historic England: No objection, defer to the Local Authority Conservation Officer.
County Archaeologist: No objection, unlikely to have an impact on archaeological assets.
Conservation Officer: There is an identified harm and a convincing justification for the implemented scheme has not been provided. Ultimately, the decision will rest on whether the public benefit outweighs the less than substantial harm.

A site notice was displayed, however no responses have been received from local residents.

4. Planning Considerations

4.1. **Site and Surroundings**
The application site is St Mary's Church, Kings Walden. The site is outside a conservation area, but falls within the Green Belt and an archaeological area.

St Mary's Church is grade I listed and according to the list entry is:

*"C12-C13 origin, early C13 nave arcades, **late C14 W tower**, C15 clearstorey, early C17 brick NE Hale family mortuary chapel now the vestry. Restored 1868 by Eden Nesfield when in partnership with Norman Shaw, with new S porch, refacing of nave, chancel and aisles, and part rebuilding of chancel and aisles……Flint rubble with coursed knapped flint facing and deep ashlar parapets to all except tower and vestry, with stone dressings. **Tower has remains of plaster facing**… A village church of square ended chancel, N vestry, 3-bays nave, aisles, S porch, **and large W tower**….. The **massive W tower** is of 3 stages marked by chamfered stone bands, stepped corner buttresses, projecting polygonal stair turret at SE carried higher than the parapet, C14 2-lights bell-opening on each face with quartrefoil in pointed head, small single-light window to middle stage, 2-lights C14 W window, and pointed W door with old oak door…."*

4.2. **Proposal**

Both listed building consent and planning permission were retrospectively sought for the retention of an earth toilet located within a timber shed and associated timber fence enclosure. The proposal is put forward to provide a disabled access toilet.

4.3. **Key Issues**

The key issue here is to consider the impact of the proposal upon the setting of this Grade I Listed building, and whether any public benefits outweigh the harm to the building, namely the provision of a disabled toilet.

4.3.1. **Impact on the setting of the listed building:**

At para 194 of the NPPF it states that:

"*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****…."*

Whilst at para 196 it states:

"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."*

In my opinion, a convincing justification has not been provided (i.e. no commentary provided of alternative locations, alternative designs or alternative materials) for the earth closet and the shed floor plan does not adequately show that the earth toilet is wheelchair accessible (i.e. manoeuvrability and no ramps provided). It is also understood that the enclosure also seeks to screen a relatively recent boiler installation but this point is not made as part of the justification for this scheme.

While it is acknowledged there has been some form of fenced enclosure to the northern side of the west tower since 1988, this enclosure does not appear to have ever benefitted from planning permission.

Furthermore, I disagree with the applicants assertion that the approximately 2m high vertical slatted timber fence in situ is 'like for like' with any pre-existing 'historic' fence.

An officer's photo on the Council's archives from 1988 shows there was, at that time a smaller, lower timber fence of approximately 1m high which was confined within the buttresses of the tower and the side chapel (image 1). This appeared to have been formed of untreated timber with vertical slats.

The Council's Conservation Officer has sourced an image taken from Google Maps in April 2010 (image 2) which shows a taller, horizontal slatted timber fence with vertical posts. In this image the fencing appears to be treated timber, and projects further from the church, encroaching towards the buttresses. Images 3 and 4 below also appear to show the same fencing in 2012 and 2016, however unfortunately beyond their website references these cannot be independently verified.

 Image 1: (Council archives)	 Image 2: April 2010 (Google Maps)
 Image 3: 25 July 2012 (according to Wikipedia)	 Image 4: 2016 according to 'Grave Concerns'

The in situ enclosure projects further away from the base of the tower, presumably to accommodate the shed, and is formed of vertical slats, with concrete posts between them, and to the ground. This appears to be higher than either of the previous enclosures, reaching to just below the projecting slope of the buttresses. While no details of the height of the fenced enclosure have been provided, a site visit confirmed it is approximately 2m in height, and is built up onto (but abuts) the buttresses. It has also been formalised with a concrete base to the enclosed area, which no evidence demonstrates was previously there.

Setting

Setting is defined in the National Planning Policy Framework (NPPF) 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 the asset, may affect the ability to appreciate that significance or may be neutral."* (Annexe 2: Glossary, NPPF).

The setting itself is not designated. Every heritage asset, whether designated or not, has a setting. Its importance, and therefore the degree of protection it is offered in planning decisions, depends entirely on the contribution it makes to the significance of the heritage asset or its appreciation.

Historic England has produced guidance entitled *'The Setting of Heritage Assets - Historic Environment Good Practice Advice in Planning Note 3 (Second Edition)'* which was published in December 2017 within which it outlines 4 steps for dealing with the setting of heritage assets.

Step 1: Identify which heritage assets and their settings are affected

In this particular case, I am considering the setting of the grade I listed church.

Step 2: Assess the degree to which these settings and views make a contribution to the significance of the heritage asset(s) or allow significance to be appreciated



The ecclesiastical use of this site is well-established and the building is situated (as one might expect) within a churchyard setting and it is this open 'landscape' within which exists a significant number of headstones, which enables the building's size and form to be fully appreciated on what is a relatively exposed historic site. In my opinion, the approach from the lych-gate (erected 14th August 1894) is a key part of this experience as the path leading up to the church is focused upon the 'massive west tower'. With paragraph 30 of the HE guidance in mind, it is therefore the characteristics of the site and the building itself which means that 'the view allows that significance to be appreciated'.

Step 3: Assess the effects of the proposed development, whether beneficial or harmful, on the significance or on the ability to appreciate it

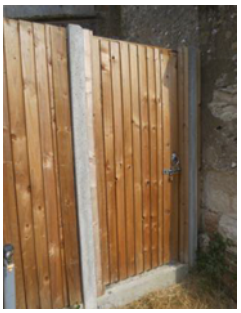
The development is described by the applicant as follows (see extract below)

> The timber shed is located behind a historic fence (which was replaced a couple of years ago like for like) and is for the use of disabled persons visiting the church.
>
> Only the very top of the shed is visible above the fence line
>
> The shed / WC is accessed via an existing lockable gate in the existing fence
>
> It is housing a specialist earth closet purchased from Canada for the use of parishioners and is fitted with disabled person hand rails

Whilst the earth toilet may serve a public benefit and help to sustain the present use of the church building, the shed and fencing installation is conspicuous and insensitive in terms of the building's significance. Although the installation has a temporariness and reversibility, whereby it could be removed without harming the heritage asset, this is unlikely to be removed unless a more permanent (and acceptable) solution were to be found in due course. The facility will assist with maintaining a sustainable use for this building but it is unclear as to whether this facility is fully wheelchair accessible (DDA compliant; considered below), considering the size of the shed and the fact that there is a concrete step threshold to the enclosure followed by a timber step threshold into the 'shed' itself? Ultimately, the question is whether the functionality of this facility outweighs the perceived harm to the setting of a heritage asset of the very highest category?

Step 4: Explore ways to maximise enhancement and avoid or minimise harm

Due to this being a retrospective application any opportunity to consider the proposal in light of para 37 of HE's guidance i.e. 'Maximum advantage can be secured if any effects on the significance of a heritage asset arising from development likely to affect its setting are considered from the project's inception…..' has not been realised. It is noted that a small brick outbuilding exists close to the lych-gate i.e. close to the road. It is assumed that this is either vacant or used to store grounds maintenance equipment, however, if this were capable of adaptation to a WC and perhaps any equipment subsequently stored in a garden shed alongside then this may enable the existing structures to be removed with perhaps a more modest, lower screen (if one at all) placed in front of the boiler/tank.





It is disappointing that the applicant did not engage in pre-application discussion. Having said that, Historic England has issued a 'non-intervention' letter and has subsequently reiterated via email that it will not be raising an objection. It is understood that a decision by the DAC on the faculty application will follow **after** the LPA has determined this application and the Parish Council has not, as yet, responded.

There is an identified harm and a convincing justification for the implemented scheme has not, in my opinion, been provided. The fact that:

i) a means of enclosure has existed for over 30 years (albeit not so large and perhaps not with concrete support posts or flooring) and;

ii) the facility would make an important contribution to maintaining a sustainable use for this grade I listed building, are significant considerations and this is very much an 'on balance' decision. Ultimately, the decision will rest on whether the public benefit outweighs the less than substantial harm and a more convincing justification would have helped in this regard.

By reason of the lack of justification for the works, and the poor quality detailed design which has resulted in an adverse impact on the setting of the Grade I listed building, and if no public benefit can be demonstrated then there is no reasoned and justifiable harm to the listed building. This is contrary to Section 16 of the revised NPPF, Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990; and also Policies SP1, SP13, HE1 and D1 of the Council's emerging Local Plan.

4.3.2. **Accessibility:**

Given the circumstances of the application, the public benefit that the external toilet could provide must be considered, in the situation that these may outweigh the harm to the designated heritage asset. The application is proposed to provide a disabled access toilet for parishioners and therefore the accessibility considerations of this facility must be considered. It is considered that the proposed outdoor, earth toilet is not compliant with DDA requirements under Part M of the Building Regs 2015.

The shed earth toilet structure, and surrounding fenced enclosure are located to the north of the church, below the west tower and is accessible externally only by an uneven grassed area between the church and the graveyard. In addition, the enclosure has a concrete step up to enter it, of approximately 20cm in height, and is therefore not level. No accessibility rails, or ramps are proposed or have been already provided in situ.

Turning to the enclosure itself, the door is inward opening, of 1m in width and therefore would not provide the 1500mm turning circle required to be fully DDA compliant. No access rails, or lowered door handle have been provided, only a circular metal gate handle, approximately 1m above ground level.

To access the toilet within the enclosure, users must sharply turn to the north (left when entering), where a second door of 06.m in width is provided. No demonstration has been provided of how large the turning circles of either of these doors is, or how much the enclosure door would obstruct the toilet door when users try to access it.

The toilet itself measures 1.5m by 2m, with no details provided as to the features and functionality for users with mobility issues. There is a further step up into the timber framed structure, with no apparent access rails provided, in spite of the submitted documents stating there is.

It is considered the external toilet could provide accessibility issues for all users, not least those with mobility restrictions, and no attempt has been made to make this a DDA accessible toilet.

There is more flexibility in the provision of DDA compliant toilets for listed buildings and as there is no provision of a disabled toilet in this instance, it is considered there is no public benefit, and certainly not one that could outweigh the adverse impact to the listed building.

4.4 **Conclusion**

The retention of an existing timber shed with an outbuilding earth toilet and associated timber fence enclosure are considered to have an adverse impact upon the setting of this Grade I listed building, thereby, occasioning harm to its significance. No public benefit has been justified in retaining the facilities, given that they would not provide a DDA compliant toilet. Therefore it is considered that planning permission should be refused, and the Council's Enforcement Officer has been advised of the unauthorised works.

5.0 **Recommendation**

5.1 **REFUSED** for the following reasons:

1. A clear and convincing justification has not been provided (i.e. consideration of alternative locations/designs/materials), and there is not considered to be any public benefit to the proposal and thus, this proposal fails to satisfy the aims of paragraph 194 of the Revised National Planning Policy Framework.

2. The height and materials used in the construction of the vertical boarded and concrete post enclosure when also considered alongside the 'shed' with its felt roof and containing the earth toilet, the appearance of these structures and importantly, their position immediately on the north side of the 'massive west tower', will result in these structures being located in a highly prominent position when approaching the church from the lych-gate to the north. As such, these structures are considered to have an adverse impact upon the setting of this Grade I listed building, thereby, occasioning harm to its significance. The proposal will, therefore, fail to satisfy Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 and as supported by the aims of Section 16 of the NPPF.

Proactive Statement:

Planning permission has been refused for this proposal for the clear reasons set out in this decision notice. The Council has not acted proactively through positive engagement with the applicant as in the Council's view the proposal is unacceptable in principle and the fundamental objections cannot be overcome through dialogue. Since no solutions can be found the Council has complied with the requirements of the Framework (paragraphs 186 and 187) and in accordance with the Town and

Country Planning (Development Management Procedure) (England) Order 2015.

Signed  Richard Tiffin Determining Officer	Development Management North Hertfordshire District Council Council Offices Gernon Road Letchworth Herts SG6 3JF
Date: 20 August 2018	