

# Gate Burton Energy Park

Preliminary Environmental Information Report

Volume 3, Appendix 7-A: Legislation and Policy

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Gate Burton Energy Park Limited

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## 7. Introduction

### 7.1 Purpose of this appendix

- 7.1.1 This PEI Report appendix identifies and describes the legislation, policy and supporting guidance considered relevant to the assessment of the likely significant effects of the Scheme on cultural heritage.
- 7.1.2 Legislation and policy are considered at national and local levels.
- 7.1.3 This PEI Report appendix does not assess the Scheme against legislation and policy; instead the purpose of considering legislation and policy in the EIA is twofold:
- To identify legislation and policy that could influence the determination of important heritage assets (and therefore the significance of effects) and any requirements for mitigation; and
  - To identify legislation and policy that could influence the methodology of the EIA. For example, a policy may require the assessment of an impact or the use of a specific methodology.
- 7.1.4 The following sections identify and describe the legislation, policy and supporting guidance considered specifically relevant to the cultural heritage assessment (the assessment) as presented in **PEI Report Volume 1, Chapter 7: Cultural Heritage**.

### 7.2 Legislation

#### Ancient Monuments and Archaeological Areas Act 1979 (as amended)

- 7.2.1 The Ancient Monuments and Archaeological Areas Act 1979 (Ref 7-1) imposes a requirement for Scheduled Monument Consent for any works of demolition, repair, and alteration that might affect a Scheduled Monument. These sites are afforded statutory protection and Scheduled Monument Consent is required before any works are carried out which would have the effect of demolishing, destroying, damaging, removing, repairing, altering, adding to, flooding or covering up a Scheduled Ancient Monument. This Act also provides for the designation of areas of archaeological interest in which statutory provisions for access to construction sites for the purpose of carrying out archaeological works apply.

#### Planning (Listed Buildings and Conservation Areas) Act 1990

- 7.2.2 The Planning (Listed Buildings and Conservation Areas) Act 1990 (Ref 7-2) (excluding normal planning procedures, which are disapplied by the DCO, which if granted, would encompass all of the normal consents) requires the Secretary of State to hold a list of buildings of special architectural or historical interest, which are accorded statutory protection. In addition, it

expects local planning authorities to designate conservations which are parts of their area considered to be “areas of special architectural or historic interest, the character or appearance of which it is desirable to preserve or enhance.”

- 7.2.3 The Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) sets out the principal statutory provisions that must be considered in the determination of any application affecting listed buildings and conservation areas.
- 7.2.4 Section 66 of the Act states that in considering whether to grant planning permission 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. By virtue of Section 1(5) of the Act a listed building includes any object or structure within its curtilage.
- 7.2.5 Section 72 of the Act establishes a general duty on a local planning authority or the Secretary of State with respect to any buildings or other land in a Conservation Area to pay special attention to the desirability of preserving or enhancing the character or appearance of a Conservation Area.

### **The Infrastructure (Decisions) Regulations 2010**

- 7.2.6 The Infrastructure (Decisions) Regulations 2010 (Ref 7-3) sets out the duties of the Secretary of State in the DCO process which include having regard to the desirability of:
- Preserving listed buildings, their setting or any features of special architectural or historic interest which they possess;
  - Preserving or enhancing the character or appearance of conservation areas; and
  - Preserving scheduled monuments and their settings.

## **7.3 National Planning Policy**

### **National Policy Statement (NPS) for Energy EN-1 and EN-5**

- 7.3.1 The NPS EN-1 (DECC, 2011) (Ref 7-4) sets out the government’s overarching policy statement for energy. With regard to the Historic Environment, the NPS provides a series of requirements and recommendations for the appropriate level of assessment of energy proposals that have the potential to impact upon the historic environment, and decision-making policies. These are consistent in accordance with the policies outlined in the NPPF.
- 7.3.2 NPS EN-1 states (paragraph 5.8.17) *‘Where loss of significance of any heritage asset is justified on the merits of the new development, the IPC should consider imposing a condition on the consent or requiring the*

*applicant to enter into an obligation that will prevent the loss occurring until it is reasonably certain that the relevant part of the development is to proceed.’.*

- 7.3.3 Paragraph 5.8.18 notes that ‘*When considering applications for development affecting the setting of a designated heritage asset, the IPC should treat favourably applications that preserve those elements of the setting that make a positive contribution to, or better reveal the significance of, the asset. When considering applications that do not do this, the IPC should weigh any negative effects against the wider benefits of the application. The greater the negative impact on the significance of the designated heritage asset, the greater the benefits that will be needed to justify approval.’.*
- 7.3.4 Paragraph 5.8.22 states that ‘Where the IPC considers there to be a high probability that a development site may include as yet undiscovered heritage assets with archaeological interest, the IPC should consider requirements to ensure that appropriate procedures are in place for the identification and treatment of such assets discovered during construction.’.
- 7.3.5 The NPS EN-5 (DECC, 2011) (Ref 7-7) sets out the government’s policy statement in regards to electricity networks infrastructure. Although there is no specific statement with regards to cultural heritage the potential effect on heritage assets from overhead lines and buried cables contribute to the consideration of the options.
- 7.3.6 Paragraph 2.8.8 states that ‘Although Government expects that fulfilling this need through the development of overhead lines will often be appropriate, it recognises that there will be cases where this is not so. Where there are serious concerns about the potential adverse landscape and visual effects of a proposed overhead line, the IPC will have to balance these against other relevant factors, including the need for the proposed infrastructure, the availability and cost of alternative sites and routes and methods of installation (including undergrounding)’. It goes on to say in footnote 13 on the same page that ‘Proposed underground cables do not require development consent under the Planning Act, but they may form part of a scheme of new infrastructure which is the subject of an application under the Act, and requirements or obligations regarding undergrounding may feature as a means of mitigating some of the adverse impacts of a proposal which does require and is granted development consent.’

### **Draft National Policy Statements**

- 7.3.7 The Government is currently reviewing and updating the Energy NPSs. It is doing this in order to reflect its policies and strategic approach for the energy system that is set out in the Energy White Paper (Ref 7-8), and to ensure that the planning policy framework enables the delivery of the infrastructure required for the country’s transition to net zero carbon emissions. As part of the Energy NPS review process, the Government published a suite of Draft Energy NPSs for consultation on 6 September 2021. These include the following Draft NPSs, which are expected to be important and relevant to the Secretary of State’s decision, and therefore will be taken into account by the EIA:
- Draft Overarching National Policy Statement for Energy (EN-1) (Draft NPS EN-1) (Ref 7-8);

- Draft National Policy Statement for Renewable Energy Infrastructure (EN-3) (Draft NPS EN-3) (Ref 7-9); and
- Draft National Policy Statement for Electricity Networks Infrastructure (EN-5) (Ref 7-7).

### National Planning Policy Framework

- 7.3.8 The NPPF (Ministry of Housing, Communities and Local Government, 2021) (Ref 7-10) sets out the Government's planning policies for England and how these should be applied to contribute to the achievement of sustainable development. While the EIA methodology forms part of a separate planning regime, the planning decision still takes account of national guidance. As such, it is important to understand where the development fits within this.
- 7.3.9 Section 16 of the NPPF deals specifically with the historic environment. Where changes are proposed, the NPPF sets out a clear framework to ensure that heritage assets are conserved, and where appropriate enhanced, in a manner that is consistent with their significance.
- 7.3.10 The NPPF sets out the importance of being able to assess the significance of heritage assets that may be affected by a development. Significance is defined in Annex 2 as being 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 is not only derived from an asset's physical presence, but also from its setting. The setting of a heritage asset is defined in Annex 2 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*".
- 7.3.11 Paragraph 194 of the NPPF states that "*in determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance*". Similarly, paragraph 195 includes a requirement on local planning authorities, having assessed the particular significance of any heritage asset that may be affected by a proposal, to take this into account when considering the impact of a proposal on a heritage asset.
- 7.3.12 In determining planning applications, local planning authorities should take account of the following points:
- The desirability of sustaining and enhancing the significance of heritage assets and putting them to viable uses consistent with their conservation;
  - The positive contribution that conservation of heritage assets can make to sustainable communities including their economic vitality; and
  - The desirability of new development making a positive contribution to local character and distinctiveness (paragraph 197).
- 7.3.13 Paragraphs 199 to 203 of the NPPF introduce the concept that heritage assets can be harmed or lost through alteration, destruction or development



within their setting. This harm ranges from less than substantial through to substantial. With regard to designated assets, paragraph 199 states that great weight should be placed on its conservation, irrespective of whether any potential harm is considered to be substantial or less than substantial. The paragraph goes further to say that the more important the asset, the greater the weight should be on its conservation. In paragraph 200, a distinction is made in respect of those assets of the highest significance (e.g. scheduled monuments, Grade I and Grade II\* listed buildings) where substantial harm to or loss should be wholly exceptional.

- 7.3.14 Paragraph 201 states that in instances where development would cause substantial harm to or total loss of significance of a designated asset, consent should be refused unless it can be demonstrated that it is necessary to achieve substantial public benefits that outweigh that harm or loss. Paragraph 202 says in instances where development would cause less than substantial harm to the significance of a designated asset, the harm should be weighed against the public benefits of the proposal to provide a balanced judgement.
- 7.3.15 With regard to non-designated assets, paragraph 203 states that the effect of the application on the significance of the asset should be taken into account in determining the application. A balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset.

### National Planning Practice Guidance

- 7.3.16 The Planning Practice Guidance (PPG; MHCLG 2019b) (Ref 7-11) provides further advice and guidance that expands the policy outlined in the NPPF. It expands on terms such as 'significance' and its importance in decision making. The PPG clarifies that being able to properly assess the nature, extent and the importance of the significance of the heritage asset and the contribution of its setting, is crucial to understanding the potential impact and acceptability of development proposals (paragraph 007 Reference ID: 18a-007-20190723).
- 7.3.17 The PPG states that in relation to setting a thorough assessment of the impact on setting needs to take in to account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it (Paragraph 013 Reference ID: 18a-013-20190723).
- 7.3.18 The PPG discusses how to assess if there is substantial harm. It states that what matters in assessing if a proposal causes substantial harm is the impact on the significance of the asset. It is the degree of harm to the asset's significance rather than the scale of the development that is to be assessed (Paragraph 018 Reference ID: 18a-018-20190723).
- 7.3.19 The NPPF indicates that the degree of harm should be considered alongside any public benefits that can be delivered by development. The PPG states that these benefits should flow from the proposed development and should be of a nature and scale to be of benefit to the public and not just a private benefit and would include securing the optimum viable use of an asset in

support of its long-term conservation (Paragraph 020 Reference ID: 18a-020-20190723).

## 7.4 Local Planning Policy

### Central Lincolnshire Local Plan 2012 – 2036 (2017)

- 7.4.1 The Central Lincolnshire Local Plan 2012-2036 (Ref 7-12) was adopted by the Central Lincolnshire Joint Strategic Planning Committee (CLJSPC) on 24 April 2017 (CLJSPC, 2017).
- 7.4.2 The strategy for the historic environment is achieved through the implementation of Policy LP25. The key points are:
- In instances where a development proposal would affect the significance of a heritage asset (whether designated or non-designated), including any contribution made by its setting, the applicant will be required to undertake the following, in a manner proportionate to the asset's significance:
    - Describe and assess the significance of the asset, including its setting, to determine its architectural, historical or archaeological interest; and
    - Identify the impact of the proposed works on the significance and special character of the asset, including its setting; and
    - Provide a clear justification for the works, especially if these would harm the significance of the asset, including its setting, so that the harm can be weighed against public benefits.
  - Development affecting archaeological remains, whether known or potential, designated or undesignated, should take every practical and reasonable step to protect and, where possible, enhance their significance;
  - Planning applications for such development should be accompanied by an appropriate and proportionate assessment to understand the potential for and significance of remains, and the impact of development upon them;
  - If initial assessment does not provide sufficient information, developers will be required to undertake field evaluation in advance of determination of the application. This may include a range of techniques for both intrusive and non-intrusive evaluation, as appropriate to the site; and
  - Wherever possible and appropriate, mitigation strategies should ensure the preservation of archaeological remains in-situ. Where this is either not possible or not desirable, provision must be made for preservation by record according to an agreed written scheme of investigation submitted by the developer and approved by the planning authority.

## Central Lincolnshire Draft Local Plan 2021

- 7.4.3 The Central Lincolnshire Draft Local Plan 2021 (Ref 7-13) is proposed to replace the Local Plan adopted in 2017. The Draft Local Plan has been under public consultation in 2021 and the updated local plan will be submitted to the CLJSPC in early 2022 before the second round of public consultation and submission to the planning inspectorate. As an emerging plan, the policies within it can hold weight in planning decisions.
- 7.4.4 Policy S56: The Historic Environment outlines the committee's strategy to protect and conserve the historic environment of Central Lincolnshire and, at the time of writing, includes the same points as those outlined for Policy LP25 of the adopted Local Plan.

## Bassetlaw Core Strategy and Development Management Policies DPD (2011)

- 7.4.5 Bassetlaw Core Strategy & Development Management Policies DPD (Bassetlaw District Council, 2011) (Ref 7-12) was adopted by Bassetlaw District Council on 22 December 2011. The strategy for the historic environment is achieved through the implementation of Policy DM8: The Historic Environment. The key points are:
- Support will be given to development proposals or regeneration schemes (particularly in central Worksop, Retford and Tuxford) that protect and enhance the historic environment;
  - Such proposals must recognise the significance of heritage assets as a central part of the development; and
  - There will be a presumption against development, alteration, advertising or demolition that will be detrimental to the significance of a heritage asset.
- 7.4.6 The setting of an asset is an important aspect of its special architectural or historic interest and proposals that fail to preserve or enhance the setting of a heritage asset will not be supported.

## 7.5 Other Guidance

### Historic England

- 7.5.1 Historic England has published a series of Good Practice Advice (GPA) of which those of most relevance to this appraisal are *GPA2 - Managing Significance in Decision-taking* (2015) (Ref 7-15) , *GPA3 - The Setting of Heritage Assets* (2nd Edition) (2017) (Ref 7-16), *Advice Note 12 Statements of Heritage Significance* (2019) (Ref 7-17), and *Advice Note 15 Commercial Renewable Energy Development and the Historic Environment* (2021) (Ref 7-18). The Historic England guidance on Decisions-taking for Sites under Development (Ref 7-19).
- 7.5.2 GPA2 emphasises the importance of having a knowledge and understanding of the significance of heritage assets likely to be affected by the development and that the "first step for all applicants is to understand the significance of

any affected heritage asset and, if relevant the contribution of its setting to its significance” (paragraph 4). Early knowledge of this information is also useful to a local planning authority in pre-application engagement with an applicant and ultimately in decision making (paragraph 7).

- 7.5.3 GPA3 provides on understanding setting, and how it may contribute to the significance of heritage assets and allow that significance to be appreciated. The document also provides advice on how views contribute to setting. Paragraph 8 of the advice note confirms that the extent of the setting, as defined in the NPPF, is not fixed and may change as the asset and its surroundings evolve. Paragraph 9 states that although the setting is not itself a heritage asset, nor a heritage designation, land comprising a setting may itself be designated. The concept of a ‘core’, ‘wider’ and ‘extended’ setting is introduced in the same paragraph (under the section on Designated Views); however, it is acknowledged that there is no formal definition for these terms, and they will only apply in certain cases.
- 7.5.4 Advice Note 12 outlines a recommended approach to assessing the significance of heritage assets in line with the requirements of NPPF. It includes a suggested reporting structure for a ‘Statement of Heritage Significance’, as well as guidance on creating a statement that is proportionate to the asset’s significance and the potential degree of impact of a proposed development. The Advice Note also offers an interpretation of the various forms of heritage interest that an asset can possess, based on the terms provided in the NPPF Glossary (Annex 2: Glossary); namely archaeological, architectural and artistic, and historic.
- 7.5.5 Advice Note 15 explains how the historic environment should be taken fully into account during the planning and delivery of commercial renewable energy developments in line with national policy. It reiterates the content of other advice notes in terms of understanding the significance of assets and the contribution that their setting makes to significance in order to assess impact and consider ways to minimise harm. It encourages the use of photomontages to inform assessments of potential impact on the setting of heritage assets, but also notes how Landscape and Visual Impact Assessment is different from an assessment of setting. In relation to proposed solar farm developments the guidance highlights the potential for impacts to below ground archaeological assets and impacts through change to the setting of heritage assets. It notes that mitigation measures such as consideration of different foundation designs and technologies, and the use of tree and hedge planting to screen the development should be considered.
- 7.5.6 The historic England guidance on decision making for sites under development (Ref 7-19) is advice for developers and the planning authority on projects where the intention is to retain and protect archaeological sites within a development site. It has particular focus on waterlogged archaeological sites.

## Chartered Institute for Archaeologists

- 7.5.7 The baseline assessment has been undertaken in accordance with guidance published by the Chartered Institute for Archaeologists (CIfA), specifically the

*Standard and Guidance for Historic Environment Desk-Based Assessment* (Ref 7-20) and the *Code of Conduct* (Ref 7-21).

## **IEMA Principles of Cultural Heritage Assessment in the UK**

- 7.5.8 Principles of Cultural Heritage Impact Assessment in the UK (Ref 7-22) is a guide to good practice in cultural heritage impact assessment published jointly by the Institute of Environmental Management and Assessment (IEMA), the Institute of Historic Building Conservation (IHBC) and the Chartered Institute for Archaeologists (CIfA). The document provides guidance on understanding cultural heritage assets and evaluating the consequences of change.
- 7.5.9 Understanding cultural heritage assets is split into three stages: Description, Significance and Importance. The description arrives at a factual statement that establishes the nature of the asset. The heritage values of the asset are then analysed (the guidance stresses that these include but are not limited to aesthetic, historic, scientific, social or spiritual values) and a statement of cultural significance given. Finally, the importance of the asset is assessed, and a conclusion drawn as to the level of protection that the asset merits in planning policy and cultural heritage legislation. The guidance notes that unlike cultural significance, importance is scaled and can be described as high, medium or low.
- 7.5.10 The process of evaluating the consequences of change is split into three stages: understanding change, assessing impact and weighting the effect. All aspects of a proposal that have the ability to change a cultural heritage asset or its setting are first explained. If these changes affect the cultural significance of the asset, the resulting impact (which could be positive or negative) and its magnitude is then assessed. The effect is a combination of the magnitude of the impact and the cultural heritage asset's importance and the scale of the effect will determine by how much the issue should influence the design of the proposal and whether the proposal is acceptable and will be permitted.

## 7.6 References

- REF 7-1 The Stationery Office, Ancient Monument and Archaeological Areas Act (1979) (as amended), 1979.
- REF 7-2 The Stationery Office, Planning (Listed Buildings and Conservation Areas) Act (1990), 1990.
- REF 7-3 D. f. C. a. L. Government, "The Infrastructure Planning (Decisions) Regulations," Stationary Office, London, 2010.
- REF 7-4 Department of Energy & Climate Change, "Overarching National Policy Statement for Energy (EN-1)," Stationary Office, 2011.
- REF 7-5 Department for Business, Energy and Industrial Strategy, "National Policy Statement for Electricity Networks Infrastructure (EN-5)," Stationary Office, London, 2011
- REF 7-6 Department for Business, Energy and Industrial Strategy, "Energy white paper: Powering our Net zero Future", Stationary Office, London, 2021.
- REF 7-7 Department for Business, Energy and Industrial Strategy, "Draft National Policy Statement for Electricity Networks Infrastructure (EN-5)," Stationary Office, London, 2021.
- REF 7-8 Department for Business, Energy and Industrial Strategy, "Draft Overarching National Policy Statement for Energy (EN-1)," Stationary Office, London, 2021.
- REF 7-9 Department for Business, Energy and Industrial Strategy, "Draft National Policy Statement for Renewable Energy Infrastructure (EN-3)," Stationary Office, London, 2021.
- REF 7-10 Ministry of Housing, Communities & Local Government, National Planning Policy Framework, 2019.
- REF 7-11 Ministry of Housing, Communities & Local Government, Planning Practice Guidance: Historic Environment, <https://www.gov.uk/guidance/conserving-and-enhancing-the-historic-environment#overview-historic-environment>, 2019.
- REF 7-12 Lincolnshire County Council, "Central Lincolnshire Local Plan 2012-2036," Lincolnshire County Council, Lincoln, 2017.
- REF 7-13 Lincolnshire County Council, "Central Lincolnshire Local Plan Review: Consultation Draft," Lincolnshire County Council, Lincoln, 2021.
- REF 7-14 Bassetlaw District Council, "Bassetlaw Core Strategy & Development Management Policies DPD," Bassetlaw District Council, Retford, 2001.
- REF 7-15 Historic England, Historic Environment Good Practice Advice in Planning Note 2 – Managing Significance in Decision Taking, 2015.
- REF 7-16 Historic England, Historic Environment Good Practice Advice in Planning Note 3 – The Setting of Heritage Assets (second edition), 2017.
- REF 7-17 Historic England, Statements of Heritage Significance: Analysing Significance in Heritage Assets. Historic England Advice Note 12. 2019.
- REF 7-18 Historic England Commercial Renewable Energy Development and the Historic Environment. Historic England Advice Note 15. 2021.
- REF 7-19 Historic England, Preserving Archaeological Remains: Decision-taking for Sites under Development. 2016.
- REF 7-20 ClfA, Standard and guidance for historic environment desk-based assessment, 2020.
- REF 7-21 ClfA, Code of Conduct, 2019.
- REF 7-22 IEMA, "Principles of Cultural Heritage Impact Assessment in the UK," Chartered Institute for Archaeologist/Institute of Historic Building Conservation/Institute of Environmental Management and Assessment, 2021.