

## 12 ARCHAEOLOGY AND CULTURAL HERITAGE

### 12.1 Introduction

12.1.1 This Chapter assesses the potential effects of the proposed development on the archaeological resource and built heritage, known collectively as the cultural heritage resource. It is supported by Appendix 12.1, the heritage desk-based assessment. This chapter describes the assessment approach, the heritage baseline conditions, likely significant effects and mitigation.

### 12.2 Assessment Approach

#### Methodology

12.2.1 This assessment is informed by a heritage desk-based assessment (reproduced in Appendix 12.1) and has been prepared by an Accredited Member of the Chartered Institute for Archaeologists.

#### Policy Framework

12.2.2 Notwithstanding the statutory presumption set out within the Planning (Listed Buildings and Conservation Areas) Act 1990, Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that all planning applications are determined in accordance with the Development Plan unless material considerations indicate otherwise.

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

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

12.2.4 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 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.”**

12.2.5 With regards to Conservation Areas, Section 72(1) of the 1990 Act states that:

**“...with respect to any buildings or other land in a conservation area...special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.”**

12.2.6 Recent judgement in the Court of Appeal (Jones v Mordue Anor (2015) EWCA Civ 1243) has clarified that, with regards to the setting of Listed Buildings, where the principles of the NPPF are applied (in particular paragraph 134, see below), this is in keeping with the requirements of the 1990 Act.

**The National Planning Policy Framework**

12.2.7 National policy and guidance is set out in the Government's National Planning Policy Framework (NPPF) published in March 2012.

12.2.8 The NPPF sets out the Government's economic, environmental and social planning policies for England. Taken together, these policies articulate the Government's vision of sustainable development, which should be interpreted and applied locally to meet local aspirations. The NPPF continues to recognise that the planning system is plan-led and that therefore Local Plans, incorporating Neighbourhood Plans where relevant, are the starting point for the determination of any planning application, including those which relate to the historic environment.

12.2.9 The overarching policy change applicable to the proposed development is the presumption in favour of sustainable development. This presumption in favour of sustainable development (the 'presumption') sets out the tone of the Government's overall stance and operates with and through the other policies of the NPPF. Its purpose is to send a strong signal to all those involved in the planning process about the need to plan positively for appropriate new development; so that both plan making and development management are proactive and driven by search for opportunities to deliver sustainable development, rather than barriers. Conserving historic assets in a manner appropriate to their significance forms part of this drive towards sustainable development.

12.2.10 The purpose of the planning system is to contribute to the achievement of sustainable development and the NPPF sets out three 'dimensions' to sustainable development: an economic role, a social role, and an environmental role. The presumption is key to delivering these ambitions, by creating a positive pro-development framework which is underpinned by the wider economic, environmental and social provisions of the NPPF.

12.2.11 The NPPF also sets out 12 no. core planning principles for delivering sustainable development. For the purposes of this Statement, particular regard should be had to the tenth core principle, which identifies at paragraph 17 of the NPPF that planning should:

**"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"**

12.2.12 Heritage Assets are defined in Annex 2 of the NPPF (page 52) as:

**"A building, monument, site, place, area or landscape meriting consideration in planning decisions, because of its heritage interest. Heritage assets include designated heritage assets and assets identified by the Local Planning Authority (including Local Listing)"**

12.2.13 The NPPF goes on to define a Designated Heritage Asset on page 51 as:

**"World Heritage Site, Scheduled Monument, Listed Building, Protected Wreck Site, Registered Park and Garden, Registered Battlefield or Conservation Area designated under relevant legislation" (our emphasis)**

12.2.14 Significance is also defined (page 56) 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"**

12.2.15 Section 12 of the NPPF relates to 'Conserving and enhancing the historic environment' and states at paragraph 129 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 assessment into account when considering the impact of a proposal on a heritage asset, to avoid or minimise conflict between the heritage asset's conservation and any aspect of the proposal"**

12.2.16 Paragraph 131 goes on to state that:

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

**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"**

12.2.17 With regard to the impact of proposals on the significance of a heritage asset, paragraph 132 is relevant and reads 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. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alterations or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II\* listed buildings, grade I and II\* registered parks and gardens, and World Heritage Sites should be wholly exceptional"**

12.2.18 Paragraph 134 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 securing its optimum viable use"**

12.2.19 With regards to non-designated heritage assets, paragraph 135 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 affect directly or indirectly 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 asst.**

### **National Planning Guidance**

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

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

12.2.22 The NPPG has a discrete section on the subject of 'Conserving and enhancing the historic environment' which a paragraph 009 (ID: 18a-009/20140306 revision date 06.03.2014) confirms that the consideration of 'significance' in decision taking is important and states:

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

12.2.23 In terms of assessment of substantial harm, paragraph 017 (ID: 18a-017-20140306 revision date 06.03.2014) confirms that whether a proposal causes substantial harm will be a judgement for the individual decision taker having regard to the individual circumstances and the policy set out within the NPPF. It goes on to state:

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

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

**The Development Plan**

12.2.24 Local planning policy is contained within the North Warwickshire Local Plan 2006 Saved Policies. These include:

**“Policy ENV16 – Listed Buildings, Non-Listed Buildings of Local Historic Value and Sites of Archaeological Importance (Including Scheduled Ancient Monuments)****Listed Buildings:**

- 1. There will be a presumption in favour of the preservation of Listed Buildings within the Borough.**
- 2. Development that would detract from the character, appearance or historic value of a Listed Building (including any building within its curtilage) in terms of historic form and layout or its setting, will not be permitted.**
- 3. The removal of later additions or alterations that detract from the character and appearance of a Listed Building will be encouraged, and will be required where substantial works are proposed.**

...[Non-Listed Buildings of Local Historic Value, not applicable]...

**Sites of Archaeological Importance:**

- 6. Sites of archaeological importance will be protected, enhanced and preserved.**
- 7. Development affecting sites of known or potential archaeological importance and their settings will not be permitted unless it can be shown that any remains will be preserved and protected.**
- 8. There will be a presumption in favour of physical in-situ preservation of remains of national importance whether Scheduled or otherwise. The design, siting and layout of new development should reflect this.**
- 9. In the case of remains of regional or local importance, the Council will assess the case for in-situ preservation against factors such as the importance of the remains and the need for the new development.**
- 10. Where it is considered that in-situ preservation of remains is not merited, in the light of expert advice, developers will be expected to make provision for a programme of archaeological works.**
- 11. Tree planting or other activities that could adversely affect archaeological remains or their settings will be resisted.**
- 12. Conditions and/or legal agreements will be used to ensure the management, enhancement and interpretation of historical and archaeological sites.”**

12.2.25 Local Planning Policy is also contained within the North Warwickshire Core Strategy (adopted 2014). This includes the following:

**“NW14: Historic Environment**

**The Council recognises the importance of the historic environment to the Borough’s local character, identity and distinctiveness, its cultural, social, environmental and economic benefits. The quality, character, diversity and local distinctiveness of the historic environment will be conserved and enhanced. In particular:**

**Within identified historic landscape character areas development will conserve, enhance and where appropriate, restore landscape character as well as promote a resilient, functional landscape able to adapt to climate change. Specific historic features which contribute to local character will be protected and enhanced and,**

**The quality of the historic environment, including archaeological features, Listed Buildings, Scheduled Ancient Monuments, Registered Parks and Gardens, Conservation Areas and any non-designated assets; buildings, monuments, archaeological sites, places, areas of landscapes positively identified in North Warwickshire’s Historic Environment Record as having a degree of significance meriting consideration in planning decisions, will be protected and enhanced, commensurate to the significance of the asset.**

**Wherever possible, a sustainable reuse of redundant historic buildings will be sought, seeking opportunities to address those heritage assets identified as most at risk.”**

12.2.26 Appendix B of the Core Strategy states that Policy ENV16 of the 2006 Local Plan continues to be Saved.

**Local Plan Policies with regards to NPPF and the 1990 Act**

12.2.27 Regarding Local Plan policies paragraph 215 of NPPF states that:

**“due weight should be given to relevant policies in existing plans according to their degree of consistency with this framework (the closer the policies in the plan to the policies in the Framework, the greater the weight that may be given)”.**

12.2.28 Where local plan policy does not allow for the weighing of harm against public benefit for designated heritage assets (see NPPF paragraph 134) or a balanced judgement with regards to harm to a non-designated heritage asset (see NPPF paragraph 135) then policies are considered to be overly restrictive compared to NPPF, limiting the weight they may be given. This is the case with Policy BN5 of the Northamptonshire Joint Core Strategy Local Plan which requires that designated and non-designated heritage assets are “conserved and enhanced” and, in the absence of any allowance for a balancing exercise, is overly restrictive compared to NPPF.

12.2.29 This interpretation of the requirements of the NPPF has been accepted by a number of Appeal Inspectors and also ratified by the Secretary of State in their

consideration of the Appeal by Gallagher Estates Ltd at Land South of Gallows Hill/West of Europa Way, Warwick (PINS ref: APP/T3725/A/14/2229398).

### Assessment of Significance (Value)

#### **Articulating Significance (Value)**

12.2.30 As defined in NPPF, significance is “the value of a heritage asset to this and future generations because of its heritage interest”.

12.2.31 Historic England provides advice on assessing significance and advocates considering four types of heritage value: **evidential**, **historical**, **aesthetic** and **communal**. Evidential value: the potential of a place to yield evidence about past human activity. This value is derived from physical remains, such as archaeological remains, and genetic lines.

- **Evidential value:** the potential of a place to yield evidence about past human activity. This value is derived from physical remains, such as archaeological remains, and genetic lines.
- **Historical value:** the ways in which past people, events and aspects of life can be connected through a place to the present - it tends to be illustrative or associative. Illustration is the perception of a place as a link between past and present people and depends on visibility. It has the power to aid interpretation of the past through making connections with and providing insights into past communities and their activities through shared experience of a place. By contrast, associative value need not necessarily be legible at an asset. But gives a particular resonance through association with a notable family, person, event or movement.
- **Aesthetic value:** the ways in which people draw sensory and intellectual stimulation from a place. Aesthetic values can be the result of conscious design or fortuitous outcome or a combination of the two aspects. The latter can result from the enhancement of the appearance of a place through the passage of time.
- **Communal value:** the meanings of a place for the people who relate to it, or for whom it figures in their collective experience or memory. This can be through widely acknowledged commemorative or symbolic value that reflects the meaning of the place, or through more informal social value as a source of identity, distinctiveness, social interaction and coherence. Spiritual value may also be part of communal value.

12.2.32 Significance results from a combination of any, some or all of the values described above.

12.2.33 These four values essentially cover the heritage ‘interests’ given in the glossary of NPPF, which comprise archaeological, architectural, artistic and historic interest. Listed Buildings and Conservation Areas are designated for their special architectural and historic interest. Scheduling is predominantly, although not exclusively, associated with archaeological interest.

**Setting and Significance**

12.2.34 As defined in NPPF:

**Significance derives not only from a heritage asset's physical presence, but also from its setting. (NPPF Annex 2)**

12.2.35 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 contribute to the significance of an asset, may affect the ability to appreciate that significance or may be neutral. (Annex 2)**

12.2.36 Therefore, setting can contribute to, detract from or be neutral with regards to heritage values, and so change to setting has the potential to diminish, enhance or leave unchanged the significance of a heritage asset through change to the value(s).

**Levels of Significance**

12.2.37 Significance is articulated in terms that directly relate to key policy, principally NPPF. Four levels of significance are identified:

- **Designated heritage assets of the highest significance**, as identified in paragraph 132 of NPPF comprising Grade I and II\* Listed buildings; Grade I and II\* Registered Parks and Gardens; Scheduled Monuments; Protected Wreck Sites and Registered Battlefields (and also including some Conservation Areas);
- **Designated heritage assets of less than the highest significance**, as identified in paragraph 132 of NPPF, comprising Grade II Listed buildings and Grade II Registered Parks and Gardens (and also some Conservation Areas);
- **Non-designated heritage assets;**
- Sites, buildings or areas of **no heritage significance**.

**Assessment of significance of effect of development**

12.2.38 The assessment of the significance of effect of development is articulated in qualitative terms that directly relate to key policy, principally NPPF. The following levels of harm may potentially be identified:

- **Substantial harm or total loss**. It has been clarified in a High Court Judgement of 2013<sup>1</sup> that this would be harm that would 'have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced';
- **Less than substantial harm**. Harm of a lesser level than that defined above; and

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<sup>1</sup> EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council

- **No harm (preservation).** A High Court Judgement of 2014 is relevant to this<sup>2</sup>, in which it was held that with regard to preserving the setting of Listed building or preserving the character and appearance of a Conservation Area, preserving means doing no harm.

12.2.39 The identification of significant effects in EIA terms is based on professional judgement. Substantial harm to a designated heritage asset is deemed to be a significant effect. Less than substantial harm to a designated heritage asset, or substantial harm to a non-designated heritage asset may also represent a significant effect, determined on the basis of professional judgement. Less than substantial harm to a non-designated heritage asset does not usually represent a significant effect in EIA terms.

12.2.40 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.

### **12.3 Baseline Conditions**

12.3.1 A detailed assessment of the archaeological and cultural heritage resource is included in Appendix 12.1, the key findings are included here.

12.3.2 The Site is located on an area of Second River Terrace gravels. Areas of River Terrace gravels were favoured locations for prehistoric activity. However, none is recorded in the immediate vicinity of the Site. Cropmarks c. 650m north-west of the Site are potentially of prehistoric origin, although a modern origin has also been suggested. The desk-based assessment has not identified any evidence to indicate significant activity focused within the Site. And previously present below-ground archaeological remains are likely to have been removed by the two-phases of sub-station construction in the earlier and mid-20th century respectively.

12.3.3 The western boundary of Hams Hall park, as mapped on the First Edition Ordnance Survey, crossed eastern area of the Site. Extant park features within and in the immediate vicinity of the Site were removed in the 20th century. No park features of heritage interest remain within the Site.

12.3.4 An earlier 20th-century sub-station is visible extending into the Site area on 1930s aerial photographs. This was replaced in the late 1950s, with a new sub-station with a different footprint. The late 1950s sub-station was largely dismantled, within the last 10 years. The boundary wall, which defines the parcel of land within which the Site is situated, is on the same alignment at the late 1950s sub-station boundary wall. The boundary wall associated with the late 1950s phase of construction at Hams Hall Power station is not considered to be a heritage asset.

12.3.5 The closest designated heritage assets are the Grade II Listed Church of St John the Baptist and associated Grade II Listed Cross c. 650m north-east of the Site. These are **designated heritage assets of less than the highest significance.**

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<sup>2</sup> EWHC 1895, R (Forge Field Society, Barraud and Rees) v. Sevenoaks DC, West Kent Housing Association and Viscount De L'Isle.

**12.4 Assessment of Likely Significant Effects**

12.4.1 The Proposed Development will not result in physical impacts on any identified heritage assets.

12.4.2 A Settings Assessment with regards to designated heritage assets is included in Appendix 12.1. The Proposed Development will not result in any adverse significant effects on designated heritage assets.

**12.5 Mitigation and Enhancement**

12.5.1 In the absence of any evidence for significant, focused activity within the Application Site prior to the establishment of the power station and given the disturbance associated with the two-phases of sub-station construction, it is considered that the current assessment provides a proportionate level of information regarding the potential below-ground archaeological resource, as required by paragraph 128 of NPPF, sufficient to determine the planning application, and no subsequent mitigation works are proposed

**12.6 Cumulative and In-Combination Effects**

12.6.1 No cumulative or in-combination effects have been identified. The proposed development will not adversely impact designated heritage asset in the wider vicinity and as such no impacts which could be compounded by cumulative impacts are identified.

**12.7 Summary**Introduction

12.7.1 This chapter has assessed the likely significant effects of the Proposed Development on the archaeological resource and built heritage (known collectively as the cultural heritage resource).

Baseline Conditions

12.7.2 No heritage assets have been identified within the Site.

12.7.3 The closest designated heritage assets are the Grade II Listed Church of St John the Baptist and associated Grade II Listed Cross c. 650m north-east of the Site. These are **designated heritage assets of less than the highest significance.**

Likely Significant Effects

12.7.4 The proposed development will not physically impact any identified heritage assets.

12.7.5 The significance of effect of the Proposed Development on designated heritage assets in the vicinity will be **no harm.**

Mitigation and Enhancement

12.7.6 No mitigation is proposed or considered necessary.

Conclusions

12.7.7 The assessment has not identified evidence for focused, significant activity within the site prior to the establishment of the power station in the earlier 20th-century. This chapter, in conjunction with Appendix 12.1, provides a proportionate level of detail (as

required by Paragraph 128 of NPPF) regarding the archaeological resource, sufficient to determine an application for development.

12.7.8 The proposed development will not result in any adverse impacts on the significance of designated heritage assets as a result of alteration to setting. As such it will be in keeping with the requirements of the Planning (Listed Building and Conservation Areas) Act 1990, NPPF, and Local Planning Policy pertaining to the setting of designated heritage assets.