

This response includes our answers to ExA's second Questions and a note of key points we made in ISH5. See also attached copy of plan of the medieval deer park agreed between Historic England and The Applicant (dated 05/04/2024)

ExA's Second Questions 2.7.9

Applicant and Historic England

Stow Park Medieval Bishops Place and Deer Park

Following on from the discussion at ISH5 in relation to the nature of the harm to the Scheduled Monument, that parties are asked to clearly set out their respective positions in relation whether and how policy provisions differentiate between physical harm to designated heritage assets and harm to their setting.

In ISH5 we set out the following key points:-

Policy does not differentiate between harm to an asset caused by direct physical action and setting impacts both are potential sources of harm, which can be less than substantial or substantial.

In EN-1 March 2023 under 5.9 Historic Environment, setting impacts are clearly and consistently framed in respect of assets, there is no differentiation between harm caused by direct physical action and harm caused to significance through change in setting. Differentiation is confined to level of harm and the importance of the assets effected. This is also the case in EN 1 2011 5.8.14 & 5.8.15.

See also EN 01 2023

3.10.109 As the significance of a heritage asset derives not only from its physical presence but also from its setting, careful consideration should be given to the impact of large-scale solar farms which depending on their scale, design and prominence, may cause substantial harm to the significance of the asset.

Fn 228 The setting of a heritage asset is the surroundings in which it is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset and may affect the ability to appreciate that significance or may be neutral.

Fn 233 Relevant guidance is given in the Historic England publication, The Setting of Heritage Assets See <https://historicengland.org.uk/images-books/publications/gpa3-setting-of-heritage-assets/>

Substantial Harm to the significance of a Scheduled Monument can be caused by setting impacts upon its significance.

Given that policy (EN-3 3.10.109) specifically recognises that setting impacts can cause substantial harm to the significance of the asset (ie without direct physical impacts on the asset itself) then one must consider the degree of impact in this case. As we set out in our response to ExA Q 1.7.7 *"The whole park, ... including the palace, pale and enclosed park as a private space cut out of the medieval landscape for the enjoyment of the Bishop and his guests. The enclosed space is intrinsic to the significance of the scheduled monument."* It is hard to envisage a more substantially harmful setting impact upon an designated heritage asset than one such as that proposed at Stow Park where the most central attribute of a park, that it encloses a space of countryside for private uses, is subverted by that space being filled with solar panels. The Bishop's Palace at Stow is first described in Gerald of Wales' life of St Hugh of Avalon 1140-1200, Bishop of Lincoln in which its woods and ponds form

the bucolic setting for his friendship with the great swan which features in iconographic representations of the saint, this was a place of contemplation as well as display.

ExA's Second Questions 2.7.10

Applicant and Historic England

Stow Park Medieval Bishops Place and Deer Park

Historic England concludes that the Proposed Development would cause substantial harm to the significance of the Scheduled Ancient Monument (SAM) through the loss of its character as a bounded architectural space. Should the Secretary of State agree with that conclusion, the parties are asked to set out the implications for the determination of the Proposed Development, with reference to relevant policy provisions, including reference in NPS EN-1 2011 and NSP EN-1 2023 setting out that 'substantial harm to or loss of designated assets of the highest significance, including Scheduled Monuments.....should be wholly exceptional'. ...

The implications for the determination of the Proposed Development.

Should the Secretary of State agree with the conclusion of Historic England that the development as proposed would cause substantial harm to the significance of the Stow Park Medieval Bishops Place and Deer Park we urge that the scheme is only consented if amended to delete those panels lying within the areas indicated comprising array areas P2, P3, P6, P5 (part of), Q24, Q25, Q26 and Q27 on the plan of the medieval deer park agreed between Historic England and The Applicant (dated 05/04/2024). We request that the applicant is asked to prepare alternative detailing of this part of the scheme sufficient to allow for a plan excluding the area identified on the agreed plan of Stow Park Medieval Bishops Place and Deer Park to identified in an updated DCO rather than as presently submitted. The deletion of the solar panel arrays set out above would mitigate the substantial harm otherwise caused to the significance of the monument.

The site-specific substantial harm to the significance Stow Park Medieval Bishops Place and Deer Park is not necessary to the general public benefit of renewable energy nor is it would appear essential to the operation of the majority of the remaining parts of this scheme (given its modular design).

As set out on EN 01 2023 5.9.28 *Substantial harm to or loss of significance of assets of the highest significance, including Scheduled Monuments; Protected Wreck Sites; Registered Battlefields; grade I and II* Listed Buildings; grade I and II* Registered Parks and Gardens; and World Heritage Sites, should be wholly exceptional.*

The tests for allowing substantial harm under EN 01 2023 - 5.9.29 are not met viz. *Where the proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm to, or loss of, significance is necessary to achieve substantial public benefits that outweigh that harm or loss, or all the following apply:*

- *the nature of the heritage asset prevents all reasonable uses of the site*
- *no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation*

- *conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible*
- *the harm or loss is outweighed by the benefit of bringing the site back into use*

EN 1 2023 5.9.21 *The Secretary of State must also comply with the requirements on listed buildings, conservation areas and scheduled monuments, set out in Regulation 3 of the Infrastructure Planning (Decisions) Regulations 2010235.*

The Infrastructure Planning (Decisions) Regulations 2010

3 (3) When deciding an application for development consent which affects or is likely to affect a scheduled monument or its setting, the decision-maker must have regard to the desirability of preserving the scheduled monument or its setting.

The position was also set out NPS EN-1 2011

5.9.25 When considering the impact of a proposed development on the significance of a designated heritage asset, the Secretary of State should give great weight to the asset's conservation. The more important the asset, the greater the weight should be. This is irrespective of whether any potential harm amounts to substantial harm, total loss, or less than substantial harm to its significance.

5.9.26 The Secretary of State should give considerable importance and weight to the desirability of preserving all heritage assets. Any harm or loss of significance of a designated heritage asset (from its alteration or destruction, or from development within its setting) should require clear and convincing justification.

5.9.28 Substantial harm to or loss of significance of assets of the highest significance, including Scheduled Monuments; Protected Wreck Sites; Registered Battlefields; grade I and II* Listed Buildings; grade I and II* Registered Parks and Gardens; and World Heritage Sites, should be wholly exceptional.

5.9.29 Where the proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset the Secretary of State should refuse consent unless it can be demonstrated that the substantial harm to, or loss of, significance is necessary to achieve substantial public benefits that outweigh that harm or loss, or all the following apply:

- the nature of the heritage asset prevents all reasonable uses of the site
- no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation
- conservation by grant-funding or some form of not for profit, charitable or public ownership is demonstrably not possible
- the harm or loss is outweighed by the benefit of bringing the site back into use

5.9.30 Where the proposed development will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal, including, where appropriate securing its optimum viable use.