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EN020002: Bramford to Twinstead Reinforcement Examining Authority's further written questions (ExQ2) Issued on 22 December 2023

Response from Suffolk Preservation Society (SPS) Interested party number: 20041317

Question reference HE2.8.9

In relation to the potential impacts of the Proposed Development on Hintlesham Hall (including the associated listed buildings, and the overall setting) could you outline your understanding of the applicable legal and policy framework in respect of 'avoidable harm'?

If it was to be assumed for the purposes of this question that there was agreement that the pylons and the overhead line could be located anywhere within the proposed Limits of Deviation without causing substantial harm to the listed buildings at Hintlesham Hall, to what extent would it be important in legal and policy terms that the degree of harm was nevertheless kept to the minimum possible level, so as not to cause 'avoidable harm'?

SPS Response:

SPS agrees that any heritage harm resulting from of the proposed infrastructure within the setting of grade I listed Hintlesham Hall will fall short of substantial harm. However, as previously stated in our response to ExQ1, the degree of impact will vary according to the proximity of the new infrastructure and alignment of existing and new pylons. We continue to urge that, to minimise these impacts in order to not cause 'avoidable harm', the Limit of Deviation should be kept to a minimum and the applicant must work closely with Historic England with regards to the micro-siting of the pylon towers within the setting of Hintlesham Hall and Park.

We consider that the introduction of additional pylons and overhead wires into the setting of the highly graded Hintlesham Hall, and adjacent designated assets and parkland, will create a degree of less than substantial harm. All heritage harm must be given weight in the decision-making process (see policy framework below). Greater weight should be given to the highest grade of designated heritage assets.

The need for critical national priority infrastructure is accepted but this must be weighed against the residual impacts – unavoidable harm which is not capable of being addressed by the application of the mitigation hierarchy. Application of the mitigation hierarchy requires that harm should be avoided and, where harm is unavoidable, mitigation measures must be taken to reduce or compensate for this harm.

Policy framework:

The 2008 Planning Act set out the consent regime for major infrastructure projects including energy. The 2010 Infrastructure Planning (decisions) Regulations were brought into force by section 241 of the 2008 Act and prescribe a list of matters to which the relevant decision-maker must have regard when taking decisions on NSIP applications. These include: *When deciding an application which affects a listed building or its setting, the decision-maker(1) must have regard to the desirability of preserving the listed building or its setting or any features of special architectural or historic interest which it possesses.*

For the purposes of applications made under the Planning Act 2008, the National Policy Statements are the primary policy for Secretary of State decision making. It is our understanding that the policy framework around 'avoidable harm' is set out in the Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Electricity Networks Infrastructure (EN-5).

EN-1 sets out a policy presumption that, subject to any legal requirements (including under section 104 of the Planning Act 2008), the urgent need for critical national priority infrastructure will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. The mitigation hierarchy requires that harmful impacts are where possible avoided, and otherwise reduced, mitigated and compensated.

EN-1 is clear that the mitigation hierarchy must be applied to applications. Para 4.1.5 requires the potential adverse effect of the development to be taken into account including measures to avoid harm in line with the mitigation hierarchy:

4.1.5 In considering any proposed development, in particular when weighing its adverse impacts against its benefits, the Secretary of State should take into account: • its potential benefits including its contribution to meeting the need for energy infrastructure, job creation, reduction of geographical disparities, environmental enhancements, and any long-term or wider benefits • its potential adverse impacts, including on the environment, and including any long-term and cumulative adverse impacts, as well as any measures to avoid, reduce, mitigate or compensate for any adverse impacts, following the mitigation hierarchy (my emphasis)

EN-1 para 4.2.11 sets out that residual harmful impacts should be those which cannot be avoided, reduced or mitigated:

4.2.11 Applicants must apply the mitigation hierarchy and demonstrate that it has been applied. They should also seek the advice of the appropriate SNCB or other relevant statutory body when undertaking this process. Applicants should demonstrate that all residual impacts are those that cannot be avoided, reduced or mitigated.

Similarly, EN-5 para 2.14.2:

2.14.2 In the assessments of their designs, applicants should demonstrate: • how environmental, community and other impacts have been considered and how adverse impacts have followed the mitigation hierarchy i.e. avoidance, reduction and mitigation of adverse impacts through good design;

With specific regard to heritage harm, we would also highlight EN-1 paragraph 5.9.24 which states that heritage harm should be avoided or minimised:

5.9.24 In considering the impact of a proposed development on any heritage assets, the Secretary of State should consider the particular nature of the significance of the heritage assets and the value that they hold for this and future generations. This understanding should be used to avoid or minimise conflict between their conservation and any aspect of the proposal

And EN-1 paragraphs 5.9.27 and 5.9.36 which require all heritage harm to be given weight in the decision-making process, and that greater weight should be given for the highest designation of heritage assets:

5.9.27 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.

5.9.36 When considering applications for development affecting the setting of a designated heritage asset, the Secretary of State should give appropriate weight to the desirability of preserving the setting such assets and 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 Secretary of State should give great weight to any negative effects, when weighing them 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.