



BEACON FEN ENERGY PARK

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Appendix 8.12 Legislation and Policy
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Quality information

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1. APPENDIX 8.12 LEGISLATION AND POLICY

- 1.1.1 A heritage asset is defined in the National Planning Policy Framework (NPPF) as 'A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions because of its heritage interest' (Ministry of Housing, Communities and Local Government 2024, Annex 2 page:67).

Legislation

- 1.1.2 Designated heritage assets protected by statutory legislation comprise Scheduled Monuments, Protected Wrecks, Listed Buildings and Conservation Areas.
- 1.1.3 Nationally significant archaeological sites, monuments and structures are protected under the Ancient Monuments and Archaeological Areas Act (1979), which provides for a schedule of nationally important monuments. It should be noted that this Act makes no provision for the setting of scheduled monument, which is a matter of planning policy only.
- 1.1.4 Listed Buildings and Conservation Areas are protected under the Planning (Listed Building and Conservation Areas) Act (1990). In relation to development proposals, the legislation 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'* (section 66).
- 1.1.5 With regards to Conservation Areas it states that:
- 'special attention shall be paid to the desirability of preserving or enhancing the character of that area'* (section 72).
- 1.1.6 Hedgerows are afforded protection under the Hedgerow Regulations 1997 (amended 2002). Hedgerows are deemed important under Schedule 1, Part 2 of the regulations if they:
- Are associated with a Scheduled Monument or a site recorded on an Historic Environment Record; or
 - form an integral part of a field system shown on a map pre-dating 1845;
 - mark a parish or township boundary predating 1850; or
 - mark the boundary of a pre-1600 estate.
- 1.1.7 In determining which if hedgerows are important on archaeological or historic grounds The Hedgerow Regulations (1997) state the following criteria.

- 1. The Hedgerow Regulations 1997 Schedule 1 Part II - Archaeology & History**
2. 1. The hedgerow marks the boundary, or part of the boundary, of at least one historic parish or township; and for this purpose “historic” means existing before 1850.
3. 2. The hedgerow incorporates an archaeological feature which is—
4. (a) included in the schedule of monuments compiled by the Secretary of State under section 1 (schedule of monuments) of the Ancient Monuments and Archaeological Areas Act 1979; or
5. (b) recorded at the relevant date in a Sites and Monuments Record.
6. 3. The hedgerow—
7. (a) is situated wholly or partly within an archaeological site included or recorded as mentioned in paragraph 2 or on land adjacent to and associated with such a site; and
8. (b) is associated with any monument or feature on that site.
9. 4. The hedgerow—
10. (a) marks the boundary of a pre-1600 AD estate or manor recorded at the relevant date in a Sites and Monuments Record or in a document held at that date at a Record Office; or
11. (b) is visibly related to any building or other feature of such an estate or manor.
12. 5. The hedgerow—
13. (a) is recorded in a document held at the relevant date at a Record Office as an integral part of a field system pre-dating the Inclosure Acts; or
14. (b) is part of, or visibly related to, any building or other feature associated with such a system, and that system—
15. (i) is substantially complete; or
16. (ii) is of a pattern which is recorded in a document prepared before the relevant date by a local planning authority, within the meaning of the 1990 Act, for the purposes of development control within the authority’s area, as a key landscape characteristic.

1.1.8 Criteria 1

- No hedgerows are indicated by the historic mapping as denoting a parish boundary. As such, no hedgerows would be classified as important under Paragraph 1 criteria.

1.1.9 Criteria 2

- There are no scheduled monuments recorded within the footprint of the Site. Therefore, no hedgerows within the Site would be classified as important under Paragraph 2 criteria.

1.1.10 Criteria 3

- There are no archaeological sites recorded within the footprint of the Site associated with hedgerows. Therefore, no hedgerows within the Site would be classified as important under Paragraph 3 criteria.

1.1.11 Criteria 4

- The land within the footprint of the Site is not known to have been associated with a pre-1600 AD estate. Therefore, no hedgerows within the Extension Site would be classified as important under Paragraph 4 criteria.

1.1.12 Criteria 5

- In assigning a hedgerow as historic the phrase ‘pre-dating the Inclosure Acts’ should be taken to mean before 1845 (Defra 2002). Maps pre-dating 1845 show there are hedgerows which existed prior to this date and therefore hedgerows are considered to be historic.

National Planning Policy

- 1.1.13 The National Planning Policy Framework (NPPF) supported by the National Planning Policy Guidance (PPG; Department for Communities and Local Government 2019), which endorses the conservation and enhancement of the historic environment, defines the role of the planning system as to promote and achieve sustainable development and involves protecting and enhancing ‘our natural, built and historic environment’ (MHCLG 2024, page 5).
- 1.1.14 The NPPF requires that in determining applications ‘*great weight*’ should be given to the asset’s conservation and that ‘*substantial harm to or loss of...assets of the highest significance, notably Scheduled Monuments ... should be wholly exceptional*’ (MHCLG 2024, para:212 & 213).
- 1.1.15 In ensuring the statutory duty of the Planning (Listed Building and Conservation Areas) Act, the NPPF requires that in determining applications ‘*great weight*’ should be given to the asset’s conservation and that ‘*substantial harm to or loss of... grade II listed buildings, or grade II registered parks or gardens, should be exceptional*’ whilst ‘*substantial harm to or loss of...assets of the highest significance, notably 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*’ (MHCLG 2024, para:212 & 213)
- 1.1.16 Non-statutory designated heritage assets, comprising Registered Parks and Gardens and Registered Battlefields, are protected under national and local planning policy only. This is also the case for the remainder of the archaeological resource; entries onto a historic environment record or sites and monument record as well as previously unknown features which may be recorded during the course of data collection in respect to a given development proposal.
- 1.1.17 The significance of a heritage asset (designated or non-designated) is defined within the National Planning Policy Framework (NPPF) as ‘*the value of a heritage asset to this and future generations because of its heritage interest. This interest may be archaeological, architectural, artistic or historic*’ (MHCLG 2024, Annex 2 page:71).
- 1.1.18 The setting of a heritage asset (designated or non-designated) 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 make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.*’ (MHCLG 2024, Annex 2 page:71).
- 1.1.19 Where heritage assets (designated or non-designated) are to be affected by development, ‘*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' (MHCLG 2024, para:202).

- 1.1.20 Developments where substantial harm to or total loss of significance of a designated heritage asset should be assessed against specific tests and should deliver substantial public benefits which outweigh any loss or harm (MHCLG 2024, para:214). Less than substantial harm to a designated asset would require public benefits including the securement of an optimum viable use (MHCLG 2024, para:215).
- 1.1.21 Impacts to the significance of non-designated assets will require a balanced judgement based on the level of significance and the scale of harm (MHCLG 2024, para:216), although non-designated assets which are of equivalent significance to designated assets will be considered as such (MHCLG 2024, page:57). Where heritage assets of an archaeological nature may be impacted upon by development '*local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation*' (MHCLG 2024, para:202).

Local Policy

- 1.1.22 The Central Lincolnshire Local Plan was adopted in April 2023; the relevant policy is shown below.

Policy S57: The Historic Environment

Development proposals should protect, conserve and seek opportunities to enhance the historic environment of Central Lincolnshire.

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:

- a) describe and assess the significance of the asset, including its setting, to determine its architectural, historical or archaeological interest; and
- b) identify the impact of the proposed works on the significance and special character of the asset; and
- c) provide clear justification for the works, especially if these would harm the significance of the asset or its setting, so that the harm can be weighed against public benefits.

Development proposals will be supported where they:

- d) Protect the significance of designated heritage assets (including their setting) by protecting and enhancing architectural and historic character, historical associations, landscape and townscape features and through consideration of scale, design, materials, siting, layout, mass, use, and views and vistas both from and towards the asset;
- e) Promote opportunities to better reveal significance of heritage assets, where possible;
- f) Take into account the desirability of sustaining and enhancing non-designated heritage assets and their setting.

Proposals to alter or to change of use of a heritage asset, will be supported provided:

- g) the proposed use is considered to be the optimum viable use, and is compatible with the fabric, interior, character, appearance and setting of the heritage asset;
- h) such a change of use will demonstrably assist in the maintenance or enhancement of the heritage asset; and
- i) features essential to the special interest of the individual heritage asset are not lost or altered to facilitate the change of use.

Development proposals that will result in substantial harm to, or the total loss of, a designated heritage asset will only be granted permission where it is necessary to achieve substantial public benefits that outweigh the harm or loss, and the following criteria can be satisfied:

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

Where a development proposal would result in less than substantial harm to a designated heritage asset, permission will only be granted where the public benefits, including, where appropriate, securing its optimum viable use, outweigh the harm.

Where a non-designated heritage asset is affected by development proposals, there will be a presumption in favour of its retention, though regard will be had to the scale of any harm or loss and the significance of the heritage asset. Any special features which contribute to an asset's significance should be retained and reinstated where possible.

Listed Buildings

Permission to change the use of a Listed Building or to alter or extend such a building will be granted where the local planning authority is satisfied that the proposal is in the interest of the building's preservation and does not involve activities or alterations prejudicial to the special architectural or historic interest of the Listed Building or its setting.

Permission that results in substantial harm to or loss of a Listed Building will only be granted in exceptional or, for grade I and II* Listed Buildings, wholly exceptional circumstances.

Development proposals that affect the setting of a Listed Building will be supported where they preserve or better reveal the significance of the Listed Building.

Conservation Areas

Development within, affecting the setting of, or affecting views into or out of, a Conservation Area should preserve (and enhance or reinforce it, as appropriate) features that contribute positively to the area's character, appearance and setting. Proposals should:

- n) Retain buildings/groups of buildings, existing street patterns, historic building lines and ground surfaces and architectural details that contribute to the character and appearance of the area;
- o) Where relevant and practical, remove features which are incompatible with the Conservation Area;
- p) Retain and reinforce local distinctiveness with reference to height, massing, scale, form, materials and lot widths of the existing built environment;
- q) Assess, and mitigate against, any negative impact the proposal might have on the townscape, roofscape, skyline and landscape;
- r) Aim to protect trees, or where losses are proposed, demonstrate how such losses are appropriately mitigated against.

Archaeology

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.

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.

Any work undertaken as part of the planning process must be appropriately archived in a way agreed with the local planning authority.

1.1.23 The South East Lincolnshire Local Plan (2011-2036) was adopted in March 2019 with Policy 29 covering the Historic Environment.

Policy 29: The Historic Environment

Distinctive elements of the South East Lincolnshire historic environment will be conserved and, where appropriate, enhanced. Opportunities to identify a heritage asset's contribution to the economy, tourism, education and the local community will be utilised including:

- The historic archaeological and drainage landscape of the Fens;
- The distinctive character of South East Lincolnshire market towns and villages;
- The dominance within the landscape of church towers, spires and historic windmills;

To respect the historical legacy, varied character and appearance of South East Lincolnshire's historic environment, development proposals will conserve and enhance the character and appearance of

designated and non-designated heritage assets, such as important known archaeology or that found during development, historic buildings, conservation areas, scheduled monuments, street patterns, streetscapes, landscapes, parks (including Registered Parks and Gardens), river frontages, structures and their settings through high-quality sensitive design.

A. Listed Buildings

1. Proposals to change the use of a Listed Building or to alter or extend such a building will be granted where the Local Planning Authority is satisfied that the proposal is in the interest of the building's preservation and does not involve activities or alterations prejudicial to the special architectural or historic interest of the Listed Building or its setting.
2. Proposals involving the demolition of Listed Buildings will not be permitted, unless in an exceptional case, or wholly exceptional case (depending on their grade) where a clear and convincing justification is made in line with national policy.
3. Proposals that affect the setting of a Listed Building will be supported where they preserve or better reveal the significance of the Listed Building.

B. Conservation Areas

17. Proposals within, affecting the setting of, or affecting views into or out of, a Conservation Area should preserve (and enhance or reinforce, as appropriate) features that contribute positively to the area's character, appearance and setting. Proposals should:

1. Retain buildings/groups of buildings, existing street patterns, historic building lines and ground surfaces;
2. Retain architectural details that contribute to the character and appearance of the area;
3. Where relevant and practical, remove features which are incompatible with the Conservation Area;
4. Retain and reinforce local distinctiveness with reference to height, massing, scale, form, materials and plot widths of the existing built environment;
5. Assess, and mitigate against, any negative impact the proposal might have on the townscape, roofscape, skyline and landscape;
6. Aim to protect trees, or where losses are proposed, demonstrate how such losses are appropriately mitigated against

C. Archaeology and Scheduled Monuments

7. Proposals that affect archaeological remains, whether known or potential, designated or non-designated, should take every reasonable step to protect and, where possible, enhance their significance.
8. 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.
9. 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.
10. 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, undertaken by a suitably qualified person, and approved by the Local Planning Authority.

11. Any work undertaken as part of the planning process must be appropriately archived in a way agreed with the Local Planning Authority.

D. Registered Parks and Gardens

18. Proposals that cause substantial harm to a Registered Park or Garden, or its setting will not be permitted, unless in an exceptional case, where a clear and convincing justification is made in line with national policy.

19. E. Enabling Development

20. Proposals for enabling development adjacent to, or within the setting of, a heritage asset and used to secure the future of a heritage asset through repair, conservation, restoration or enhancement will only be permitted where:-

12. it will not materially harm the heritage values of a heritage asset or its setting;
13. it avoids detrimental fragmentation of management of the heritage asset;
14. it will secure the long-term future of the place and, where applicable, its continued use for a sympathetic purpose;
15. it is necessary to resolve problems arising from the inherent needs of the heritage asset rather than the circumstances of the present owner or the purchase price paid
16. sufficient subsidy is not available from any other source;
17. it is demonstrated that the amount of enabling development is the minimum necessary to secure the future of the heritage asset and that its form minimises harm to other public interests; and
18. the public benefit of securing the future of the heritage asset through such enabling development decisively outweighs the dis-benefits of breaching other policies within the Local Plan and national policy.

21. F. Development Proposals

22. Where a development proposal would affect the significance of a heritage asset (whether designated or non-designated), including any contribution made to its setting, it should be informed by proportionate historic environment assessments⁷ and evaluations (such as heritage impact assessments, desk-based appraisals, field evaluation and historic building reports) that:

1. identify all heritage assets likely to be affected by the proposal;
2. explain the nature and degree of any effect on elements that contribute to their significance and demonstrating how, in order of preference, any harm will be avoided, minimised or mitigated;
3. provide a clear explanation and justification for the proposal in order for the harm to be weighed against public benefits; and
4. demonstrate that all reasonable efforts have been made to sustain the existing use, find new uses, or mitigate the extent of the harm to the significance of the asset; and whether the works proposed are the minimum required to secure the long term use of the asset.