

# APPENDIX I1 – LEGISLATIVE AND PLANNING

## POLICY CONTEXT

### **International Declaration**

The Xi'an Declaration<sup>1</sup> deals specifically with conservation of settings of heritage assets and was adopted by the participants of the 15th General Assembly. It includes acknowledgement of the contribution made by setting to the significance of heritage structures, sites and areas.

The European Directive on the assessment of environmental effects<sup>2</sup> states that assessment shall identify, describe and assess the direct and indirect effects of a project on various factors including material assets, cultural heritage and the landscape, and the interaction between these factors.

### **Legislative Context**

Certain heritage assets that are deemed to be of particular importance are given legal protection through various statutes, and those of most relevance to the current proposal are described in the following sub-sections.

### **Listed Buildings**

Under the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State is required to compile a list of buildings of 'special architectural or historic interest'. Listed buildings are protected by law, and any alteration of a listed building requires Listed Building Consent administered by the Local Planning Authority (LPA). The Act (66(1)) requires the LPA or the Secretary of State (as appropriate) to "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". A 2014 judgement<sup>3</sup> concluded that "a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give "considerable importance and weight" ".

### **Scheduled Monuments**

Under the Ancient Monuments and Archaeological Areas Act 1979, the Secretary of State for Culture, Media and Sport is required to compile and maintain a Schedule of Monuments considered to be of national importance. The consent of the Secretary of State 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 monument.

### **Conservation Areas**

Under the Planning (Listed Buildings and Conservation Areas) Act 1990, local planning authorities are required from time to time to designate as conservation areas those parts of their area which are 'of special architectural or historic interest the character or appearance of which it is desirable to preserve or enhance' (Act, 69(1)).

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<sup>1</sup> ICOMOS (International Council on Monuments and Sites) (2005) Xi'an Declaration on the Conservation of the Setting of Heritage Structures, Sites and Areas

<sup>2</sup> European Union (2014) DIRECTIVE 2014/52/EU OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 16 April 2014 amending Directive 2011/92/EU: Article 3.1

<sup>3</sup> Sullivan (2014) **Judgment** (of an appeal against the order dated 11th March 2013 of Lang J quashing the decision dated 12th March 2012 of a Planning Inspector appointed by the Secretary of State granting planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire) Neutral Citation Number [2014] EWCA Civ 137

The Act (72) requires that 'special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that [conservation] area'.

## **National Planning Policy Framework**

National planning policy is set out in the National Planning Policy Framework<sup>4</sup>. The overarching objective is to help achieve sustainable development.

NPPF (194) states that:

*"Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:*

*a) grade II listed buildings, or grade II registered parks or gardens, should be exceptional;*

*b) 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.*

*"Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. 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."*

*[fn 63]: Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.*

However, substantial harm to designated heritage assets can be permitted in some cases if outweighed by substantial public benefits (195), and less than substantial harm will also be weighed as part of a balanced judgment in determining an application (196).

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<sup>4</sup> Ministry of Housing, Communities and Local Government (February 2019) **National Planning Policy Framework**, London