

# Public consultation response – Heritage and Archaeology FORD CIRCULAR TECHNOLOGY PARK, FORD ROAD, FORD, ARUNDEL BN18 0XL - Application No. WSCC/036/20

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## INTRODUCTION

The application comprises the demolition of existing buildings and structures and construction and operation of an energy recovery facility and a waste sorting and transfer facility for treatment of municipal, commercial and industrial wastes, including ancillary buildings, structures, parking, hardstanding and landscape works. The proposed development site is at Ford Circular Technology Park, hereafter 'the site'.

Due to the scale of the proposed development, which sees the previously approved scheme for a waste treatment facility to include one building of 22m in height with an associated stack of 50m in height, (West Sussex County Council reference WSCC/096/13/F, approved January 2015), now proposed to include one building (Energy Recovery Facility) extending to a height of 51.22m and associated stack reaching 85m in height, **greater assessment of the impacts upon the historic environment, notably the many designated heritage assets within the vicinity of the site, is now required.** These include some of the most important heritage assets in the country, such as Arundel Castle.

A thorough and robust review and critique of the conclusions set out in the submitted documentation, notably the ES Chapter 10 Cultural Heritage and ES Chapter 12 Landscape and visual effects, is necessary to ensure all potentially sensitive heritage assets in the area around the site have been recognised and their significance and settings fully understood, and that any potential harm to these heritage assets resulting from the proposed development has been appropriately recognised and assessed, with reference of national planning legislation and policy applied as required.

It is important to remember that the courts have established that there is a strong presumption against causing any harm to the significance of designated heritage assets<sup>1</sup>. In this particular case, the heritage assets involved are some of the most important and significant in the country. The proportional approach to conservation, as set out in the NPPF, requires extra care and consideration to be given to them.<sup>2</sup>

## LEGISLATION AND PLANNING POLICY

The Planning (Listed Buildings and Conservation Areas) Act 1990 states that in considering whether the grant planning permission for development that affects a listed building or its setting, the LPA '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)). What is of particular importance in relation to the current application, is the consideration of how the development will impact upon the setting of the listed buildings.

The Court of Appeal decision in *Barnwell vs East Northamptonshire DC* made it clear that in enacting Section 66(1) Parliament's intention was that 'decision makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise, as contained in the NPPF<sup>3</sup>.

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<sup>1</sup> *Barnwell Manor v East Northants DC* [2014] EWCA Civ 137

<sup>2</sup> Paragraph 193 of the NPPF 2019

<sup>3</sup> Historic England: Online – 02:Decisions: Legal Requirements for LB and other consents

Whilst that judgement is some 6 years old, the stance taken by the court has been upheld in a significant number of subsequent legal challenges that relate to the application of the statutory duty<sup>4</sup>.

## **NATIONAL PLANNING POLICY FRAMEWORK**

National planning policies on the conservation and enhancement of the historic environment are set out in the National Planning Policy Framework (NPPF, February 2019). Section 16, 'Conserving and Enhancing the Historic Environment' specifically deals with historic environment policy, the points relevant in this case are summarised here.

Paragraph 189: In determining application, the 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 asset's importance.

Paragraph 190: 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 the heritage asset). Assessment should be taken into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal.

Paragraph 193: 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 (and 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.

Paragraph 194: 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.

Paragraph 196: 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, where appropriate, securing its optimum viable use.

The NPPF defines significance (for heritage policy) as 'The value of a heritage asset to this and future generations because of its heritage interest. The interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting'.

The NPPF defines setting as 'the surroundings in which a heritage asset is experienced. Its extent is not fixed, can extend beyond the asset's curtilage 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' (NPPF, Annex 2 Glossary). Further advice on understanding setting is included in Historic England's Historic Environment Good Practice Advice in Planning 3: The Setting of Heritage Assets (2<sup>nd</sup> Ed., December 2017). Historic England's Advice Note 12: Statements of Heritage Significance: Analysing Significance in Heritage Assets (October 2019) advises that an impartial analysis of significance and the contribution of setting is needed when defining significance.

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<sup>4</sup> Mordue v Sec of State [2015] EWCA Civ 1243, Blackpool BC v Sec of State [2016] EWHC 1059, Forest of Dean v Sec of State [2016] EWHC 2429, R v Richmond Upon Thames LBC [2016] Env.L.R.29

## **LOCAL PLANNING POLICY**

Relevant local planning policies, with regard to the historic environment, are detailed here.

### West Sussex Waste Local Plan, adopted April 2014

Policy W15: Historic Environment Proposals for waste development will be permitted provided that: (a) known features of historic or archaeological importance are conserved and, where possible, enhanced unless there are no alternative solutions and there are overriding reasons which outweigh the need to safeguard the value of sites or features; (b) it would not adversely affect currently unknown heritage assets with significant archaeological interest; and (c) where appropriate, the further investigation and recording of any heritage assets to be lost (in whole or in part) is undertaken and the results made publicly available.

### The Arun Local Plan, adopted July 2018

Policy HER SP1 - The historic environment: The Local Planning Authority will grant planning permission or relevant consent for development proposals that conserve or enhance the historic environment of the District, based on the following approach: Designated heritage assets including listed buildings, structures and their settings; and Conservation Areas will be given the highest level of protection and should be conserved and enhanced in a manner appropriate to their significance. Non-designated heritage assets including locally listed heritage assets (Buildings or Structures of Character and Areas of Character) and their settings will also need to be conserved and enhanced in a manner appropriate to their significance and contribution to the historic environment; Development likely to prejudice any of the above, including their settings, will be refused.

Policy HER DM1 - Listed Buildings: Proposals affecting statutory Listed Buildings will be required to: a. Preserve or enhance the historic character, qualities and special interest of the buildings; b. Be necessary and not detrimental to the architectural and historical integrity and detailing of a Listed Building's exterior; c. Protect the architectural and historical integrity and detailing of a Listed Building's interior; d. Protect the special interest of buildings of architectural or historic interest; and e. Protect, and where possible enhance the setting of the building.

## **HERITAGE ASSETS**

The many heritage assets located within the vicinity of the site include several located within Arundel itself. These include the Grade I listed Arundel Castle (NHLE number 1027926), the Grade I Listed Roman Catholic Cathedral of St Philip Neri, (NHLE number 1248090) and Arundel Conservation Area. Grade I listed buildings are recognised as nationally important heritage assets of exceptional interest. As such, regard to preserving and enhancing their significance (which includes their setting) is an important consideration for the proposed development. As set above, the legal framework and its interpretation in the courts requires considerable importance and weight to be attached to the impact of development on listed buildings and other designated heritage assets.

Arundel Castle and the Cathedral of St Philip Neri are located to the north of Arundel on elevated ground which rises steeply above the southern part of the town and the low lying ground along the River Arun, south-east and south-west of the town. This low lying land includes the site and Ford Circular Technology Park, south-west of Ford. The site is located at an elevation of c.7m aOD, the land south of Arundel, between the town and the site varies in elevation between c.3m aOD and c.10m aOD. Arundel Castle is located at an elevation of c.36m aOD and the Cathedral of St Philip Neri at an elevation of c.32m aOD. The former bailey at Arundel Castle, upon which the 12th century shell keep is located provides an even higher elevation

As such, these assets should be considered as potentially sensitive to the proposed development, with respect to their elevations and adjacent topography and intervisibility between the site and these heritage

assets. An understanding of the extent to which views and the setting of heritage assets contributes to their significance is required.<sup>5</sup> Other heritage assets in the northern part of Arundel include The Grade I listed Church of St Nicholas, NHLE number 1027914, and the Grade I Listed Fitzalan Chapel, NHLE number 1263812

Arundel Castle is located c. 4.4km north-east of the site. The significance of Arundel Castle as a heritage asset is derived not only from its architectural or aesthetic, historic, and archaeological interest but also its setting; the views toward and from it, and the place it holds in and beyond the town today also make a great contribution to its heritage significance.

The topography of the town and the high ground upon which the Castle is located affords the Castle its imposing presence not only over the town but across the wider landscape, notably to the east and south over the low lying land and river valley. Originally designed within the context of the very early Norman occupation and to establish the presence of the new barons and landowners over the local area, the Castle retains this dominating character today, and the impression it makes upon the approach towards Arundel, is one of Sussex's most iconic images. Nikolaus Pevsner describes Arundel as possessing one of the 'great town views of England', and Arundel Castle and its relationship with the town and surrounding landscape justifies this. The understanding of, and ability to appreciate, Arundel Castle is arguably best done from afar, when the impact of the complex is first encountered and from which the Norman elite intended to make their statement of authority. The wide, low lying and open aspect of the landscape along the River Arun and wider Arun valley from the south and east towards Arundel remains today and provides the best views not only towards the town and Castle but also out from the Castle, towards the coast. The relationship the Castle has with the landscape in which it is located, always of importance when it was established in order to illustrate the power and control held by the new Norman elite, remains.

The Cathedral of St Philip Neri was equally designed to take advantage of the elevated ground along London Road, and long distance views northwards towards from the low lying land south of the town provide an important ability to appreciate the stature and impact of the building, in a similar way to that for Arundel Castle.

## **ASSESSMENT OF THE IMPACT OF THE PROPOSED DEVELOPMENT ON ARUNDEL CASTLE**

The scope of heritage assets assessed within the submitted documentation extends to those located within a 5km and a 10km study area, which includes the town of Arundel. The submitted ES Chapter 10 Cultural Heritage identifies the zone of theoretical visibility from the site and the viewpoint locations of several of the heritage assets identified in the study area (Figure 10.8) as does the submitted ES Chapter 12 Landscape and visual effects (ZTV Figures 12.11 and 12.13-12.15). It is acknowledged that the methodology for ZTV assessments has limitations and it is not clear from the submitted ZTV assessment whether views from Arundel Castle have been sufficiently identified. Views towards the site from ground level at London Road/High Street, directly south of the grounds of Arundel Castle will be different to those from within the Castle and the Keep, which is located on higher ground within the Castle precinct and is a key element contributing to the high significance of this nationally important heritage asset.

Photographs from the selected viewpoints are included in the ES Chapter 12 Landscape and visual effects, however, viewpoint 31 does not appear to be included and it is not clear if this would have been assessed from ground level or from the Keep or elsewhere within the Castle. A clear existing view and proposed visualisation from within the Castle and from the Keep, would be beneficial to more accurately understand the impact of the proposed development, specifically the 85m high stack, would have upon the setting of Arundel Castle and hence its significance. Given the particular historical importance of views from the Castle and the Keep, in providing early warning of invaders and opposing forces, it is essential that these views are taken into consideration in the assessment.

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<sup>5</sup> Historic Environment Good Practice in Planning Note 3: Setting of Heritage Assets (2019)

The submitted ES Chapter 10 Cultural Heritage primarily assessed heritage assets in a 1km study area. It does acknowledge several heritage assets which are sensitive to the proposed development and beyond the 1km study area, including Arundel Castle. Paragraph 10.110 of the ES Chapter 10, effectively concludes that the effect of the proposed development on the setting of Arundel Castle would be a permanent slight adverse effect. In accordance with Paragraph 189 of the NPPF and in the application of case law, there remains a strong presumption of harm, even if it is slight.

It is necessary to have great consideration of the potential impact of the proposed scheme, notably the proposed 85m tall stack, upon Arundel Castle, as well as all other heritage assets within the study area. Grade I listed buildings are nationally important assets of the highest order. Assessment should include an understanding of the views south from Arundel Castle, including from the Keep (which is one of the highest points within the Castle) and from the south elevation of the Castle southwards over the town across to the low lying land towards the south coast.

## Summary

The local planning authority must ensure that it has identified and understood the significance of all the heritage assets sensitive to the proposed development, and undertaken a robust assessment of the impacts of the proposals upon that significance. This must include the Grade I listed Arundel Castle, a nationally important heritage asset of the highest order, and the setting of which, extending southwards across the low lying land towards the coast, makes a considerable contribution to the Castle's significance. In assessing the impacts of the proposals, the more important the asset, the greater the weight should be given to its conservation. This should be irrespective of the level of harm. It has been assessed that the proposals would result in a slight adverse effect upon the significance of Arundel Castle, which is derived primarily from the proposed 85m high stack.

The local planning authority must be satisfied that the proposed development would conserve and enhance the Arundel Castle in a manner appropriate to its significance (in accordance with the Arun Local Plan Policy HER SP1 and West Sussex Waste Local Plan Policy W15), protect, and where possible, enhance the setting of the Castle (in accordance with the Arun Local Plan Policy HER DM1).

Legislation relating to listed buildings and conservation areas is contained within the Planning (Listed Buildings and Conservation Areas) Act 1990. The Planning (*Listed Buildings and Conservation Areas*) Act 1990 provides that with regard to applications for planning permission affecting listed buildings or their setting:

*"s.66(1) 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."*

**The courts have determined that in order to meet this statutory duty, the impact of proposals upon the significance of designated heritage assets must be given considerable importance and weight. The ES does not demonstrate that this has been fully taken into account, particularly in respect to how the site impacts upon the setting and significance of Arundel Castle.**

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31 July 2020