

Representations Concerning Heritage and the role of Historic England as Statutory Consultee

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APPLICATION S62A/2025/0077

LAND WEST OF HIGH STEET, STEBBING (the “Application”)

The purpose of these representations is to draw to the attention of the Inspector a line of legal authorities which it is considered will be helpful in properly weighing the advice given in respect of this Application by Historic England (“HE”).

Historic England

The Charter ¹ of HE, with which the Inspector will be very familiar, states that they are:

“..... the Government’s expert advisor on England’s heritage and and have a statutory role in the planning system”, and “[central] to [their] role is the advice [they] give to local planning authorities, government departments, developers and owners on development.

Our advice is shaped by legislation and based upon government policy and guidance. Our advice is also underpinned by our published Conservation Principles.

‘Constructive Conservation’ expresses the role we play in promoting a positive and collaborative approach to conservation that focuses on actively managing change. The aim is to accommodate the changes necessary to ensure the continued use and enjoyment of heritage assets while recognising and reinforcing their historic significance. Our advice seeks to minimise the loss of significance to these assets. We also look for opportunities to enhance the historic environment.”

HE is established by National Heritage Act 1983 and s.33 sets out its specific duties (in England) being to:

- (a) secure the preservation of ancient monuments and historic buildings situated
- (b) promote the preservation and enhancement of the character and appearance of conservation areas situated in England, and
- (c) promote the public's enjoyment of, and advance their knowledge of, ancient monuments and historic buildings and their preservation.

¹ A Charter for Historic England Advisory Services (2017):

HE has a number of Regional Offices and is manned by suitably qualified Heritage Experts.

It is not party retained and its advice is given independently both of party interest, of Local Planning Authorities and any other statutory body or agency. Its advice is given entirely objectively and does not come from a “hired gun”, a circumstance which might unfortunately be said of some retained experts in the planning and other technical fields, notwithstanding judicial strictures to expert witnesses as to their duties of independence and impartiality.

The professional judgment provided by the Inspector of Historic Buildings and Areas at HE’s Regional Office based in Cambridge in this matter, as set out in their letters dated 15 November 2023 (to UDC) and 5 March 2025 (to PINS), must therefore be seen and weighed in this light and against the background of their statutory obligations and duties.

It is to be emphasised that HE is both an Expert and National Agency and thus its status is of especial standing and its advice must be accorded especial regard and significance.

This Application affects all four (two being highly graded themselves) of the following Heritage Assets and thus the interest of HE is fully engaged:

- The Mount - Scheduled Ancient Monument
- Stebbing Park House – Grade 2*
- The Barn, Stebbing Park – Grade 2
- Stebbing Conservation Area

The relevant Legislation and Regulations thereunder make it mandatory that the HE be consulted and their advice be sought in respect of the assets affected by this Application.

HE were first consulted in relation to a Planning Application submitted to Uttlesford District Council reference UDC/23/2496/FUL, which was refused by Committee Decision dated 19 September 2024. Their views are now updated by reference to this Application.

The Legal Authorities

There is a considerable body of Legal Authority, given both in the Planning Court and the Court of Appeal, beginning with that in R (on the application of Hart DC) v Secretary of State for Communities and Local Government² (leading to the so called/named “Hart Principle”).

The application of the Hart Principle, as further enunciated by the Courts subsequently, require the Decision Maker in a planning application, on Appeal therefrom and it equally applies of course to an Inspector appointed under s 62A Regulations, to give **great or considerable weight** to the views and advice of a Statutory Consultee and any departure therefrom requires “**cogent and compelling reasons**” (emphasis supplied).

The Hart Principle was re-stated and applied in Shadwell Estates v Breckland DC³ [2013] EWHC 12 (Admin), per Beatson J at §72:

² [REDACTED]

³ Shadwell Estates Ltd v Breckland District Council & Anor [2013] EWHC 12 (Admin) (11 January 2013)

“Secondly, a decision-maker should give the views of statutory consultees, in this context the “appropriate nature conservation bodies”, “great” or “considerable” weight. A departure from those views requires “cogent and compelling reasons”.

and also in the Planning Court and Court of Appeal respectively in:

R (Akester) v Department for the Environment, Food and Rural Affairs [2010] EWHC 232 (Admin) at [112] per Owen J; and

R (Jones) v Mansfield DC [2003] EWCA Civ. 1408 per Dyson LJ at [54]

The legal authorities relate to cases involving advice and opinions given by several different Statutory Consultees, including the local Highway Authority, the LFFA, Sport England, the Environment Agency and Natural England as well as HE.

So, concerning the decision maker’s consideration of the advice provided by HE in this Application, I submit that it is beyond doubt that he/she must:

- give it great or considerable weight
and ONLY
- depart from it with both cogent and compelling reasons

The clear opinion of HE in their letter of 15 November 2023 states that the development would:

- have a harmful impact on the setting of:
 - the scheduled motte castle by impacting on important views of the monument
 - i. within the landscape
 - ii. its visual relationship with the historic settlement along High Street
- also impact on grade II* listed Stebbing Park by encroaching on open fields that contribute to its prominence
- harm the conservation area by:
 - diminishing the prominence of one of its key landmarks
 - eroding the rural feel that contributes strongly to its special character

HE, for the reasons given in their letter of 15 November 2023, state that the harm to the significance of a number of heritage assets is considerable and consider that the application does not meet the requirements of the NPPF.

They go so far as to state:

“..... the proposals cannot be supported and recommend the application is withdrawn or else refused”

HE remind the Decision Maker (UDC at the time) to consider (inter alia):

“.... whether any public benefits can only be delivered in this particular location and against the determination on the adopted Neighbourhood Plan”

Clearly, the Application as originally submitted was not withdrawn; on the contrary, it was persisted in before the UDC Planning Committee, refused and now again under s 62A Procedure. The Applicants have also pursued an Appeal against the UDC refusal.

The Inspector must, it is respectfully submitted, accept the advice given by HE as to heritage impact, which has been expressed in the clearest possible terms and thus accord it great weight and give it full effect.

The Inspector is invited, on the authorities cited above, to reject any opinion as to heritage impact to the contrary given on behalf of the Applicants.

There are no cogent nor compelling reasons for the Inspector to depart from the advice and opinion of HE given as Statutory Consultee in heritage matters.

In this regard, I object to this Application and ask that it be refused.