

Part 5: Why the AWRP mitigation fails

The analysis thus far has demonstrated that the AWRP application is contrary to a range of EU, National and Local planning policies and that it will cause adverse harm in terms of sustainability, finance, and the environment.

- 5.1 The applicant **fails** to mitigate this harm that AWRP will cause. None of the on-site or off-site mitigation measures proposed adequately reduce, mask or change this harm. They are merely a smokescreen or diversion to *distract the planning officers from* the fact that the adverse impact of the AWRP scheme **cannot be mitigated**.

Below we give evidence for this, dealing first with on-site and then off-site mitigation.

On-site mitigation

- 5.2 The applicant claims that a “Landscape Management Strategy has been prepared to deliver and secure onsite landscape mitigation, as outlined in Drawings 3223-01 (PL) L.02.1 and L.02.2” (4.8.3). However, this ‘Strategy’ is in practice only a design map, with no time-line for its completion.
- 5.3 The proposals for on-site mitigation include new planting and management of existing vegetation to improve its condition and the re-grading of Sand Hill.
- 5.4 The re-grading of Sand Hill is touted by the applicant as “a key element of this strategy.” This plans to re-establish Sand Hill as “a local landmark,” raising its height from 76 m to 82 m above Ordnance Datum (AOD). However, the impact of this work will be limited for four reasons.
- First, Sand Hill will compete with an already well-established local landmark that supports the Temple of Victory. This will detract from the landscape setting of the Temple.
 - Second, the re-grading of Sand Hill and associated planting can only start after 2018, when the approved landfill works are due to finish. If the landfill operation is extended, the re-grading will be delayed further or become impossible.
 - Third, the applicant notes that the on-site mitigation measures will be of an “insufficient order to alter the magnitude of effects described above for visual receptors in Allerton Park”, even by year 15. This is because, again as stated by the applicant: “large scale structures, which because of their height cannot be completely screened from distant viewpoints”, making it “unlikely that any further on-site provisions already made and assessed against, would successfully reduce visual impacts”.
 - Fourth, at 76 to 82 m above ordnance datum, Sand Hill will still be dwarfed by the incinerator and chimney, which reach to more than 150 m above ordnance datum. In any case, the Sand Hill scheme will do little to shield the views from bridleways, footpaths and roads.
- 5.5 The applicant continues: “Operational phase visual effects would be of a long term nature and would last until AWRP was demolished. At all but one viewpoint location, the effects in Year 15 of the operational phase were found to be the same as in Year 1. This is because although many of the views would benefit from improved screening of AWRP as the proposed on site planting matures, the additional screening benefits, relative to the scale of the stack and larger buildings, would generally be of insufficient scale to result in a reduced magnitude of adverse visual effects”.

- 5.6 The application will thus **fail** to mitigation the adverse visual impact of by AWRP and the applicant admits as such.
- 5.7 These adverse impacts could be avoided by choosing alternative technologies that use smaller buildings and chimneys, or an alternative site(s) that is/are more suitable.

Off-site mitigation

- 5.8 The planned off-site mitigation involves two main elements – heritage-related works at Allerton Park and a Community Fund, both of which the applicant proposes to cover by a Section 106 agreement. The scope of such agreements is laid out in the Government's Circular 05/2005. They must be evidence-based and:

- relevant to planning
- necessary to make the proposed development acceptable in planning terms
- directly related to the proposed development
- fairly and reasonably related in scale and kind to the proposed development
- reasonable in all other respects.

- 5.9 The applicant outlines a proposed Section 106 agreement as follows:

“Provision will be made for funding to help reduce the significance of visual impacts and improve effect on landscape character and cultural heritage within a 3.5km radius of the centre of the proposed development site (the ‘Site’).

The objectives of the Fund will be to promote, enhance, improve, protect and conserve the natural environment and features of cultural heritage

The Terms of Reference, Constitution and associated protocols for the management of the Fund will be defined and agreed by the relevant parties”.

- 5.10 Below are the details of the proposed mitigation and then an explanation of why this Section 106 agreement fails.

The Allerton Park Heritage Fund (APHF)

- 5.11 The applicant proposes to prepare a *“specific Management Plan”* to address the conservation repair and maintenance works to a number of listed heritage structures. But the applicant provides **no** details about the “management plan.” Instead the application is full of vague potentials that amount to little more than wishful thinking.

- 5.12 An Allerton Park Heritage Fund (APHF) is also proposed, in response to pressure from English Heritage. In a letter sent from Redfern (English Heritage) to Jarvis (AmeyCespa) (28 March 2011), Redfern stated that English Heritage had:

“serious concerns about the impact upon the setting of the Grade II Temple of Victory and views from it (Photomontage View 28)... We believe this impact will be substantially adverse and should be considered under PPS 5 Para.9.4 as a harmful impact on the significance of a designated heritage asset which is less than substantial harm.”*

- 5.13 English Heritage go on to suggest the applicant undertake works to the repair and maintenance of the following listed structures:

- Tunnel
- Bridge between Middle & Lower Fish Ponds

- Boathouse (stabilise and consolidate only)
- Ice House
- Lady's Cave
- The park boundary walls

5.14 The applicant responded by proposing to repair the structures listed above. Redfern replied (25 May 2011):

“On the basis of the proposals currently presented to English Heritage we consider that as a new and large visual feature within the landscape, the proposed facility will have an adverse impact on the setting of the historic assets. We consider this impact will be less than substantial harm as set out PPS 5 Para.9.4.

5.15 The details of the proposed works to heritage assets in Allerton Park are in a draft Section 106 agreement made jointly between AmeyCespa (the “Developer”) and The Right Honourable Edward Mowbray (the “Landowner”), and NYCC. These works aim to:

“mitigate the effects on Cultural Heritage as identified within the relevant chapter of the Environmental Statement and also respond to the pre-application advice provided by English Heritage in their letter dated 25th May 2011. The scope of works will be in accordance with the ‘Outline Schedule and Budget Costs; Allerton Park, Allerton Mauleverer, Yorkshire’ report undertaken by the Morton Partnership Ltd (dated April 2011).”

5.16 The Morton Partnership report summarises the condition of the five heritage assets (and the boundary wall) identified for conservation and repair by English Heritage. Below are photographs of these assets and a breakdown of the costs of the proposed work.



Feature	Costs of proposed repair and conservation work	Condition as assessed by Morton Partnership
The Ice House	£7,000	Good
Bridge between Middle and Lower Fish Pond	£61,000	Poor
Lady's Cave or Picnic Bower	£110,000	Poor
Stone arch to north side and on the island on the Lower Fish Pond	£18,000	Reasonable
Stone arch to the south side of the Lower Fishing Lake	£11,000	Reasonable
Tunnel entrances between formal House Gardens and Pleasure Grounds	£58,000	Poor
Sub-Total	£265,000	
Fee provision	£50,000	
Project Costs (noting exclusions)	£315,000	
VAT @ 20%	£63,000	
Total	£378,000	
Western boundary wall	£480,000 and £680,000	
VAT @ 20%	£96,000 to £136,000	
Total	£576,000 to £816,000	
Grand total	£954,000 to £1,194,000	Depending on wall length. Excludes professional fees for walls.

- 5.17** For several reasons, the Allerton Park heritage-related proposals under the Section 106 agreement **fail** to mitigate the impacts of AWRP.
- 5.18** First, a Section 106 agreement must be “*fairly and reasonably related in scale and kind to the proposed development*”. This is **not the case** here. The agreement covers only a few of the heritage assets, e.g. listed buildings at Allerton Park, and no clear reason is given by English Heritage or the applicant for this partiality.
- 5.19** The scale of repair and maintenance of these six assets is also **inadequate** to offset the **substantial adverse harm** of AWRP’s large-scale industrial development. English Heritage have previously expressed “*serious concerns about the impact upon the setting of the*

Grade II Temple of Victory and views from it*” (Redfern to AmeyCespa, March 28th 2011). The planned works will **not** reduce the impact of AWRP on this setting and views. English Heritage fail to explain why these works are sufficient to reduce the harm as indicated.

- 5.20** Second, the Section 106 agreement was made between AmeyCespa (the “Developer”) and The Right Honourable Edward Mowbray (the “Landowner”), and North Yorkshire County Council. As shown above, the works may cost up to £1,194,000¹. This means that a private land owner who will benefit significantly from the application being successful, is also part of a proposal to use public money to offset the impact of that proposal. Moreover, as the applicant notes, most of the Park (and by implication the buildings that are to be conserved under this proposal), “*is not freely open to the general public*” (4.6.53). This is undemocratic and **unacceptable**.
- 5.21** Third, if the six heritage assets require repair and restoration, it is not clear why this should be done by a Section 106 agreement. The legal responsibility for maintaining Listed Buildings lies in the hands of the owner, so repair and restoration should be carried out by them.
- 5.22** The above photographs of the six buildings in the Section 106 agreement show that two of them (the Ice House and the Lady’s Cave) have signs on them saying “Unsafe Building Keep Out”. Allerton Park and Gardens is listed on the English Heritage Registered Gardens and Parks At Risk Register (2011) where it is described as “*Generally unsatisfactory with major localised problems*” and with a “*declining*” trend.
- 5.23** So, if the works in the Section 106 agreement are required because the owner has not maintained the buildings properly, it is **wrong** for public money to be used to pay for them – they are the responsibility of the owner. If heritage assets are not being maintained satisfactorily, the private owner should not be rewarded with a massive pay-out from the public purse. This is even more **wrong** when that owner is a party to and will also benefit from the **cause** of the harm requiring mitigation.
- 5.24** Fourth, the terms of the Section 106 agreement and the text in Chapter 4 of the Environmental Statement are inconsistent. In Chapter 4 the applicant refers to a management plan that will:
- “also identify potential management measures for existing areas of planting within the Park and Gardens. Where appropriate the management plan may suggest the introduction of new screen planting. Any soft landscape measures would take account of existing economic activities within the park and would be carried out in sympathy with the historic design of the park.”*
- 5.25** There is no reference to this management plan in the Section 106 agreement, nor to any soft landscaping measures.
- 5.26** For the four reasons outlined above, the off-site measures proposed regarding the Allerton Park Heritage Fund and covered by the Section 106 agreement **fail** to mitigate the serious adverse impact that AWRP will have on the heritage assets of the Allerton Park and Castle.
- 5.27** Moreover, Paragraph HE9.1 of PPS5 makes clear that:

¹ These are minimum figures since, according to the ‘*Outline Schedule and Budget Costs; Allerton Park, Allerton Mauleverer, Yorkshire*’ report undertaken by the Morton Partnership Ltd (dated April 2011). They do not include management fees for the work to the wall or any ecological and archaeological work required.

“There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be. Once lost, heritage assets cannot be replaced and their loss has a cultural, environmental, economic and social impact. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. Loss affecting any designated heritage asset should require clear and convincing justification”.

- 5.28** There is no clear and convincing justification for the harm that the proposal will cause to the heritage assets of Allerton Park, including the Castle itself, a Grade 1 Listed Building, meaning that planning permission should be **refused**.

Landscape and Cultural Heritage Fund (LCHF)

- 5.29** The second element of off-site mitigation is what the applicant terms a “Landscape and Cultural Heritage Fund” (LCHF). Recognising the scale of the proposed development and the potential for significant local impact, the applicant proposes to “provide a fund which would allow for improvements to the local landscape within LCAs 16, 31 and 37, and help reduce visual impacts, particularly for receptors within 3.5km of the Site, that have been predicted to experience Moderate to Large Adverse or Large Adverse effects”.

- 5.30** The applicant proposes that the Landscape and Cultural Heritage Fund (LCHF) “would be managed by a Board of Trustees and allow local residents and / or interest groups to apply and receive grants to undertake mitigation or improvements to the local landscape.” The proposed Section 106 agreement states that one of the aims of the fund is: “to actively pursue other funds to support and enhance the local environment, with the specific aim of reinforcing the initial funds”.

This proposal lacks any credibility. After all, why should local residents be lumbered with the work of mitigation?

- 5.31** Moreover, **no details** are provided regarding the size of this fund, nor its funding mechanism. Mr Malcolm Barnett (NYCC Landscape Officer) wrote to the applicant specifically requesting that there “be a clearer delivery mechanism and resource allocated to support the Fund implementation and delivery, including a project officer resource” (25th May, 2011 to Mr Ian Clarke). The applicant has **failed** to provide this clarity.

- 5.32** The applicant intends establishing an initial fund but then transfer the responsibility for mitigation and long-term funding to the local community. The applicant largely avoids any direct involvement in developing a mitigation scheme beyond (largely ineffective) local planting of trees, minor landscaping and the repair of six very small buildings under private ownership. This demonstrates an irresponsible attitude and is unacceptable. It is symptomatic of the applicant’s general disregard for public concerns and public welfare.

- 5.33** Nevertheless the applicant is minded to advise how the most impacted local communities should manage the fund in the long term:

“Mitigation provided by the LCHF should include measures such as planting of new discrete areas of woodland, reinforcement of existing hedgerows, reinstatement of lost hedgerows and the planting of hedgerow trees within a 3.5 km radius of the Site. It is recommended that planting schemes in those areas identified as having the greatest potential for mitigating the landscape and visual effects of AWRP should be given preference and that planting measures should be introduced within 5 years of the commencement of construction to maximise the mitigation benefits. The LCHF should be sufficient to provide approximately 5000 linear metres of hedge planting/improvement and approximately 10000

m2 of woodland planting. It is also recommended that the Fund should include an allowance for the maintenance of new planting during an initial establishment period". (4.8.9)

- 5.34** The applicant **fails** to put any guarantees in place that these measures will happen. There are **no** contracts with local land-owners nor with the public, indicating support for the proposed planting schemes around the AWRP site.
- 5.35** The applicant even recommends that the Fund should look for good practice elsewhere:
"It is envisaged that the LCHF would complement the principles of the Leeds City Region Green Infrastructure Strategy (LDA Design, July 2010)." (4.8.10).
- 5.36** But the Leeds City Region partnership scheme offers **no comparison**. Comprising the districts of Barnsley, Bradford, Calderdale, Craven, Harrogate, Kirklees, Leeds, Selby, Wakefield, York and North Yorkshire County Council, the Leeds City Region has a £51 billion economy, over 100,000 businesses and over 3 million inhabitants. It is the largest economic and population centre in the country outside London. The scale of Leeds City Region Green Infrastructure Strategy is far in excess of what is proposed for AWRP so **cannot** provide a meaningful basis for rectifying the adverse visual and landscape impacts of land within 3.5 km of AWRP.
- 5.37** For the reasons given, the Landscape and Cultural Heritage Fund **fails** to mitigate the serious adverse visual and landscape impacts that AWRP will have on a wide geographical area.
- 5.38** The proposed Fund is **incomplete**, provides **no details** regarding the specific nature of the financial input nor the **duration** of that commitment. The applicant is proposing this Fund to "buy-off" the adverse impacts of AWRP as a cynical means of avoiding but without taking responsibility for the long-term.

Summary

- 5.39** As detailed above, the planned S106 agreement is **flawed** when judged against the Government's criteria in Circular 05/2005 (see page 2) because:
- it fails to make the proposed development acceptable in planning terms
 - is not directly relevant to the main adverse impacts that the scheme will have,
 - is not related in scale to the proposed development, and
 - is not reasonable in all other aspects – particularly with regard to the significant gain for the private landowner.
 - It is deplorable to try to off-load responsibilities for mitigation on the local community
- 5.40** The applicant **fails** to even attempt to design an effective off-site mitigation plan. Instead, the applicant takes the easy route – proposing that the work of delivering a mitigation scheme should be undertaken by the very communities that the scheme will most impact upon. This dereliction of responsibility belies a wider lack of concern that the applicant has for those communities most likely to be adversely impacted by the scheme. The application should be refused on these grounds alone regardless of the other reasons expressed in this objection document.
- 5.41** Crucially the applicant himself admits that mitigation of the adverse impacts of the AWRP is **not possible** and hence the planning application should be **refused**.