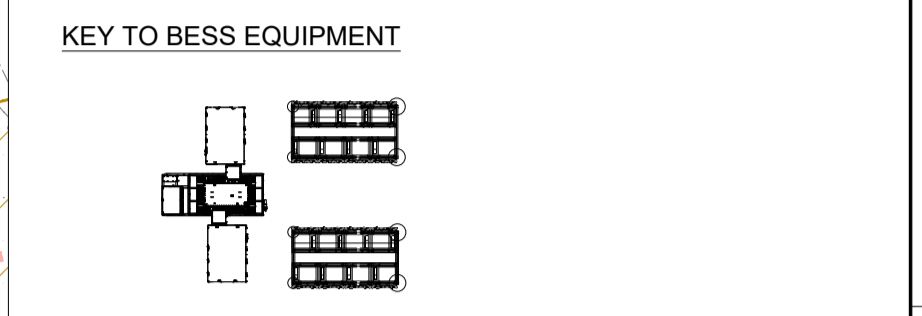


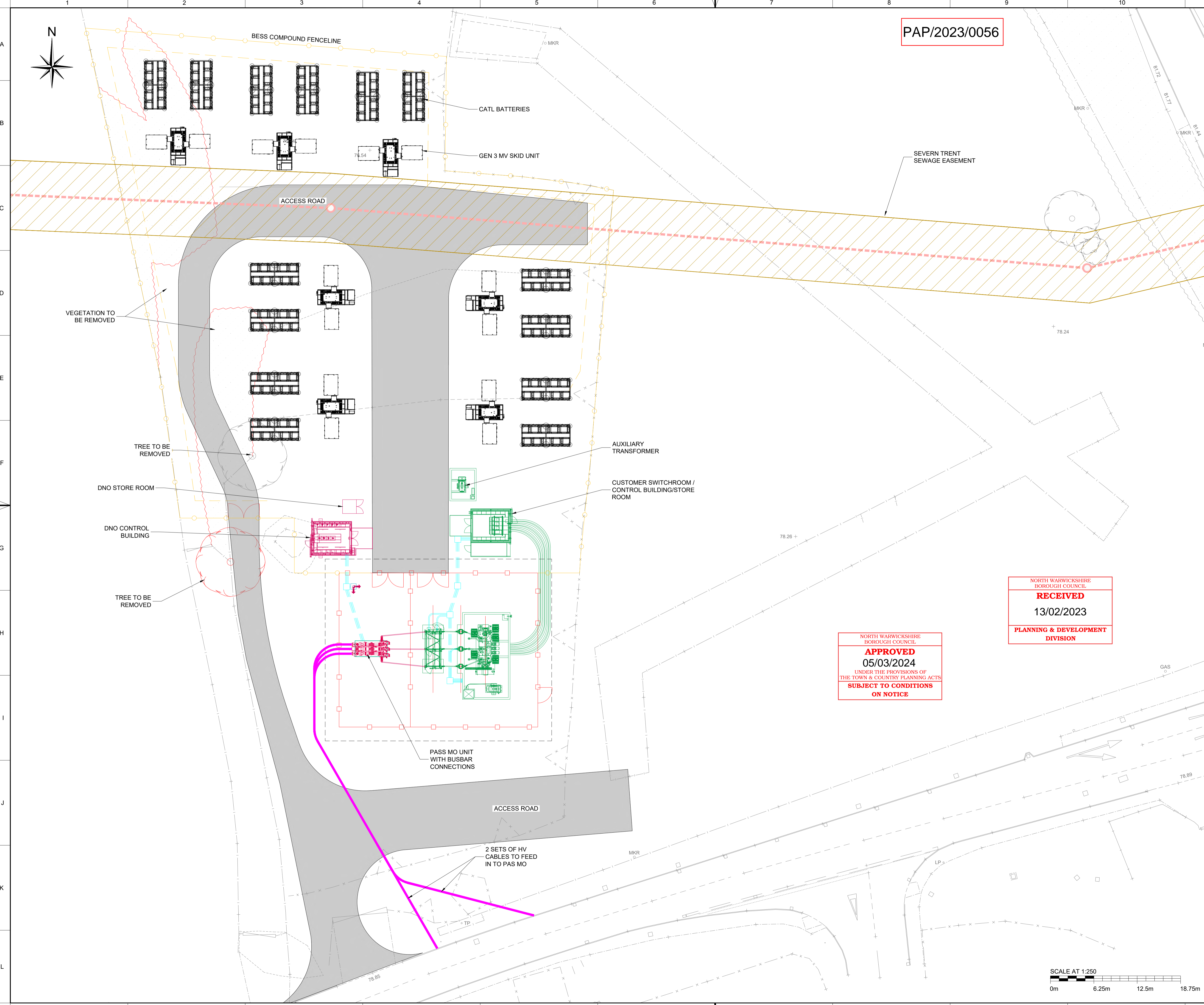
PAP/2023/0056

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POWER ELECTRONICS GEN 3 TWIN SKID 8.78MVA
 CATL ENERONE BATTERIES 2 x 10 BATTERY RACKS EACH BATTERY = 372.7kWh (TOTAL 7.45MWh)
 PHYSICAL DIMENSIONS OF EACH BATTERY (1.3m x 1.3m x 2.28m)



NORTH WARWICKSHIRE
BOROUGH COUNCIL
RECEIVED
13/02/2023
PLANNING & DEVELOPMENT
DIVISION

NORTH WARWICKSHIRE
BOROUGH COUNCIL
APPROVED
05/03/2024
UNDER THE PROVISIONS OF
THE TOWN & COUNTRY PLANNING ACTS
SUBJECT TO CONDITIONS
ON NOTICE

01	FIRST ISSUE	TG	JW	JA	06/12/22
REV	DESCRIPTION	DESIGNED	CHECKED	APPROVED	DATE

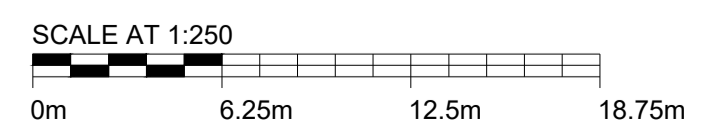
ethical power
Connections Ltd.
3110 GREAT WESTERN COURT,
STOKE GIFFORD, BRISTOL
BS34 8HP
(t) 01726 218618
www.epconnect.co.uk

Project: **WATER ORTON BESS
50MW / 50MWh**

Title: **OVERALL SITE LAYOUT**

Drawing Status: **FOR PLANNING**

Grid Ref (6 fig): SP188911
 Site address: Watton Lane,
 Water Orton,
 B46 1PB



DWG No:	SCALE (A1):	REV:
EPC-0331-PL-E-LA-OSL	1:250	01

General Development Applications

(6/b) Application No: PAP/2023/0056

Land At Junction Lichfield Road, Watton Lane, Water Orton,

Battery Energy Storage Site, substation compound, with associated infrastructure, fencing, access off Watton Road, drainage and landscaping, for

- Anglo ES Water Orton Ltd

Introduction

This application was referred to the Board's November meeting and it resolved to grant planning permission subject to completion of a Section 106 Agreement relating to an off-site financial contribution for bio-diversity offsetting. There has been a change in circumstance since then and thus the matter is referred back to the Board.

The previous report is at Appendix A

Additional Information

At the last meeting, Members also asked the applicant to see if additional landscaping could be provided on site which was preferred to an off-site contribution. The applicant has taken this "invitation" on board and has submitted a further plan which enhances landscaping on the site itself – see Appendix B. It is said that this provides sufficient on-site gain, so as to remove the need for the off-site contribution.

Consultation

The County Council Ecologist - It is agreed that there is bio-diversity gain on-site of some 17% and thus there is no requirement for an off-site contribution.

Observations

In light of this new plan and the response from the County Council it is considered that there is now no need for the Agreement. However, an additional condition will be required beyond those outlined in Appendix A, in order to secure a long-term landscape and ecological management plan for the on-site provision.

Recommendation

That planning permission be GRANTED subject to the substitution of the plan at Appendix B in the plans condition number 2 as set out in Appendix A and the substitution of Condition 14 in that Appendix with the following condition:

14. The development hereby permitted shall not be brought into use until a Landscape and Ecological Management Plan ("LEMP") has first been submitted to and approved in writing by the Local Planning Authority. The content of the LEMP shall be in general accordance with the approved Landscape Strategy

Plan approved under condition 2 and shall include reference to the community garden shown on that Plan. The LEMP shall include:

- a) a description and evaluation of the features to be managed;
- b) ecological trends and constraints on site that might influence management,
- c) the aims, objectives and targets for the management,
- d) descriptions of the management operations for achieving the aims and objectives,
- e) prescriptions for management actions,
- f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a thirty-year period),
- g) Details of the monitoring needed to measure the effectiveness of management,
- h) Details of each element of the monitoring programme,
- i) Details of the persons or organisations(s) responsible for implementation and monitoring,
- j) Mechanisms of adaptive management to account for necessary changes in the work schedule to achieve the required aims, objectives and targets,
- k) Reporting procedures for each year 1, 2, 5, 10, 20 and 30 with bio-diversity net gain reconciliation calculated at each stage,
- l) The legal and funding mechanisms by which the long-term implementation of the LEMP will be secured by the developer and the management body(ies) responsible for its delivery,
- m) How contingencies and/or remedial action will be identified, agreed and implemented in the event that monitoring under (k) above shows that the conservation aims and objectives set out in (c) above are not being met so that the development still delivers the full functioning bio-diversity objectives of the originally approved scheme.

The details in that Plan shall then be implemented on site and be adhered to at all times during the lifetime of the development.

REASON

In the interests of enhancing and protecting bio-diversity.

APPENDIX A

General Development Applications

(5/k) Application No: PAP/2023/0056

Land At Junction Lichfield Road, Watton Lane, Water Orton,

Battery Energy Storage Site, substation compound, with associated infrastructure, fencing, access off Watton Road, drainage and landscaping, for

- Anglo ES Water Orton Ltd

1.Introduction

1.1 This application is referred to the Board at the discretion of the Head of Development Control as the matter may require referral to the Secretary of State as a "Green Belt" development under the 2021 Direction. If the Board is minded to support the proposal, that could trigger a referral, but a resolution to refuse would not.

2.The Site

2.1 This is a rectangular flat parcel of land of approximately 0.7 hectares in size, bounded to the north by the Birmingham/Leicester railway line, to the west by the embankments of the M42/M6 Toll roads and to the south by Watton Lane. There is further open land to the east before the A446 Lichfield Road is reached. There is a hedgerow boundary along the Watton Lane frontage.

2.2 There is a sewer easement running east/west in the northern section of the site.

2.3 Water Orton lies on the other side of the M42/M6 Toll road embankment corridor. There is a single residential property around 140 metres away at the junction of Watton Lane with the Lichfield Road.

2.4 The site was used in part in the past for commercial purposes with a number of tin sheds and buildings along the Watton Lane frontage.

2.5 More recently it was acquired by HS2 Ltd for accommodation works and the remains can be seen on site presently.

2.6 The site is illustrated at Appendix A.

3 The Proposals

3.1 The site is to be used as a Battery Energy Storage Site ("BESS") for a period of 40 years. In short, electricity is imported into the site from the National Grid at times of low demand but high production, stored in the battery cells on site and exported back into the Grid at times of high demand. It would have direct connection to the 132kv underground cables within Watton Lane.

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3.2 The substation and transformers (up to 4 metres tall) would be located within an on-site compound set back from the road frontage which would also house switch and control rooms (up to 3.8 metres tall) surrounded by a palisade fence (2.75 metres tall).

3.3 The battery compound would be located behind this comprising 14 battery storage containers (2.7 metres tall) and other plant and equipment also surrounded by a security fence.

3.4 All access would be from Watton Lane.

3.5 Perimeter landscaping is to be provided.

3.6 The proposed layout with the planting is at Appendix B.

3.7 The application is accompanied by supporting documentation.

3.8 A Transport Statement says that the access onto Watton Lane would be 7.3 metres wide with 10- metre, wide bell-mouth radii either side. There are anticipated to be 346 two-way movements over the whole of the construction period of three to five months – around four two-way trips a day. Once operational, the site would be likely to generate four two-way movements a week involving light goods vehicles only. The Statement concludes that there would be no significant highway impact.

3.9 A Flood Risk Assessment identifies the site as being in Flood Zone One, the least likely to be the subject of fluvial flooding and that as the proposal is not a sensitive use such as a residential one, the proposed use is appropriate to the site. In responding to surface water runoff and disposal, the permeable surfacing will result in a moderate impact of surface water run-off. It is thus proposed to use filter drains to attenuate surface water flow and to discharge into the existing combined sewerage network that crosses the northern part of the site. The site is known to be susceptible to groundwater emergence. Ground levels will thus have to be agreed with at least a 150mm increase above existing ground levels including increased levels over the sewer easement to gain access into the northern section of the site.

3.10 A Noise Impact Assessment concludes that there would be negligible impacts for both day and night times essentially because of the high levels an ambient noise in the area.

3.11 A Landscape and Visual Appraisal identifies the site as being in an area dominated by urban and communication networks, predominantly flat, open and barren, with only areas of hardstanding present. The HS2 proposals would add to this infrastructure. As a consequence, the proposal would reduce the openness of the area, but the landscape impacts would be low. There are a limited number of residential buildings or viewpoints. The visual impact would be slightly adverse within the overall setting. The Appraisal concludes that whilst the proposal would cause limited landscape or visual harm here, there would be some benefit arising from new tree and hedgerow planting.

3.12 A Heritage Impact Assessment identified no heritage assets within the site or nearby and recent disturbance and activity will have removed any buried resources.

3.13 An Ecological Appraisal and Bio-Diversity Impact Assessment has been submitted. There are two designated sites nearby – the Cole End Nature Reserve (1.7km to the south-east) and the River Blythe SSSI (1.8km also to the south-east). Nine non-statutory sites are within 2km of the site. The majority of the site is modified grassland displaying signs of disruption and with species tolerant of disturbance. The remainder is mixed scrub and unvegetated unsealed surfaces. No identifiable or protected species were noted on site. The mitigation measures proposed, include over 200 metres of new perimeter hedgerow and grassland plus three new broadleaved trees. Even so the proposal would not deliver a nett biodiversity gain and thus an off-setting payment would be needed.

3.14 An Alternative Site Assessment outlines the defining locational requirements for a BESS – namely the proximity to a grid connection particularly to a higher voltage network for both the import and export of electricity; the capacity of the network to accommodate the BESS without the need for development to reinforce that and the need to avoid extensive underground cabling. Once likely connection sites are identified, the usual planning filters are applied – eg. sites free from flooding and not within areas of ecological or heritage protection and physical obstacles for the connection.

3.15 A Planning Statement brings all of these matters together and concludes that the proposal is inappropriate development in the Green Belt, but that there are considerations that amount to the very special circumstances to clearly outweigh the Green Belt and any other harms caused. The considerations advanced are the climate change benefits of the BESS, energy security, national and local planning policy support for renewable energy, the locational requirements for a BESS, investment and new construction jobs.

4. Representations

4.1 One letter of objection has been received referring to:

- Loss of Green Belt
- The site has not been used as industrial land.
- More traffic will be generated.
- Its next to a gas main.
- It will be an eyesore.

5. Consultations

Warwickshire County Council as Highway Authority – It had initial concerns concerning the adequacy of the proposed engineering works at the proposed access. A Road Safety Audit was submitted. This has now been reviewed and there is no objection subject to standard conditions.

Warwickshire Ecology – No objection subject to conditions and to an appropriate off-setting contribution through a Section 106 Agreement

Environmental Health Officer – No objections

National Highways – No objections

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HS2 Ltd – No comments to make.

Network Rail – Advisory Notes are recommended concerning working close to the line.

Cadent – Advisory Notes are recommended concerning working close to pipelines.

Health and Safety Executive - Advisory Notes are recommended concerning working close to pipelines.

6. Development Plan

The North Warwickshire Local Plan 2021 – LP1(Sustainable Development); LP3 (Green Belt), LP15 (Historic Environment), LP14 (Landscape), LP16 (Natural Environment), LP29 (Development Considerations), LP30(Built Form), LP35 (Renewable Energy) and LP33 (Water Management)
Water Orton Neighbourhood Plan 2022

7. Other Material Planning Considerations

The National Planning Policy Framework 2023

National Planning Practice Guidance

National Policy Statement for Energy (EN1)

The Town and Country Planning (Consultation) (England) Direction 2021

Renewable Energy Directive 2009

UK Security Statement

North Warwickshire Climate Change Action Plan

The North Warwickshire Landscape Character Assessment 2010

The Climate Change Act 2008

The Climate Change Act (2050 Target Amendment) Order 2019

National Infrastructure Strategy 2020

Energy White Paper 2020

The Infrastructure (Electricity Storage Facilities) Order 2020

8. Observations

a) Green Belt

8.1 The site is in the Green Belt. Inappropriate development as defined by the NPPF is considered to be harmful to the Green Belt and that harm carries substantial weight. A planning permission should not be granted, unless there are material planning considerations of such weight to clearly override that Green Belt harm and any other harm. In such a case, the very special circumstances will exist to support that proposal.

8.2 The NPPF defines what might be inappropriate development in the Green Belt. In this case the proposal could fall under two of the categories set out in the NPPF.

8.3 In the first instance, if the proposal is treated as the "construction of new buildings" – the plant, structures and equipment – then the proposal might not be inappropriate development by virtue of paragraph 149 (g) of the NPPF, if it is considered to involve the "partial or complete redevelopment of previously developed land". This however is the subject of a condition - the proposal should have "no greater impact on the openness of the Green Belt than the existing development." This will be assessed below.

8.4 The second instance is that if the proposal is treated as a "renewable energy project" then the NPPF at para 151 says that some "elements" will comprise inappropriate development. In such cases the NPPF goes on to say that developers would need to demonstrate "very special circumstances" if projects are to proceed. The NPPF continues by saying that such circumstances "may include the wider environmental benefits associated with increased production of energy from renewable sources."

8.5 It is considered that the overall proposal is not a renewable energy project as it is not a proposal that generates renewable energy. It is designed to import, store and then export existing electricity. The proposal thus needs to be dealt with under paragraph 149 (g) of the NPPF – the redevelopment of previously developed land.

8.6 There are two matters to assess here – whether the site is indeed "previously developed land" and then to undertake the comparison of the respective impacts on the openness of the Green Belt between the existing and the proposed development.

8.7 The NPPF sets out a definition of "previously developed land". This is "land which is or was occupied by a permanent structure, including the curtilage of the developed land and any associated fixed surface infrastructure". It then excludes several other "uses" including "land that was previously developed, but where the remains of the permanent structure or fixed surface structure have blended into the landscape". Here the site was occupied by permanent structures as indicated above in paragraph 2.4 above. Those have now been removed and thus the exclusion referred to above does not apply. The site is considered to be "previously developed land".

8.8 As such, the comparison referred to in the NPPF condition needs to be considered. That condition refers to the "existing development", not former or original development. The site is presently clear of buildings or structures and thus the introduction of new built development will not satisfy the condition. The proposal therefore does not accord

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with the paragraph 149(g) exception. The proposal is thus inappropriate development in the Green Belt and that is harmful to the Green Belt with that harm carrying substantial weight.

8.9 This harm is a “definitional” harm under the NPPF. It is also necessary to assess the “actual” harm to the Green Belt – i.e. do the conditions on the ground here lead to a similar weighting. There is no definition of “openness” in the NPPF, but Government guidance indicates that there are four factors to take into account. The first of these is a “spatial” consideration. Here the site is presently open and free from development. It is also part of a wider area of open space – the land to the east up to the A446. However, it is contained by other development – the A446, Watton Lane, the Motorway embankments and the railway line. It too will be materially affected by the HS2 construction. These developments have both two and three-dimensional elements. The loss of the site spatially, will thus have a very limited impact on the openness of the Green Belt hereabouts. The second factor is the visual one. Here too it is the setting of the site that is significant. That is dominated by urban and transport infrastructure and soon to be added to by the HS2 works. The proposal will visually reduce openness here, but that is considered to be of limited local harm, particularly if the proposed landscaping is fully implemented. The third factor is the activity associated with the proposed use. Apart from the construction period this would be immaterial. The final factor is whether the proposal is temporary or permanent. Here that would be for a period of 40 years and thus the development is reversible. When all of these four factors are considered together it is concluded that there would be limited actual Green Belt harm caused.

8.10 The proposal is thus considered to be inappropriate development in the Green Belt causing substantial definitional harm, but limited actual Green Belt harm.

b) Other Harms

i) Landscape Harm

8.11 The site is not within a Statutory landscape designation. It falls within the “Cole Valley” Landscape Character Area defined by the 2010 North Warwickshire Landscape Character Assessment. This is described as being a flat broad valley but dominated by busy roads and substantially influenced by industrial and utilities development, pylons and urban views. The introduction of HS2 here will add to this.

8.12 Local Plan policy LP14 refers to the 2010 Assessment and says that new development should look to conserve and enhance the characteristics of the Landscape Areas and where appropriate, restore landscape character.

8.13 It is agreed that this is a damaged landscape, heavily influenced by transport and urban development. The impact of this proposal on the landscape will be local and limited in scale. It is one that can be absorbed into it without affecting its overall character. The importance of the proposed perimeter landscaping is thus of weight in introducing a degree of mitigation and betterment. Overall, there would be limited landscape harm.

ii) Visual Impact

8.14 The site is only really visible to drivers and pedestrians on the roads rather than residents. Any impact will thus be very transitory given the scale of the site and its presence close up to the Motorway embankments within the overall landscape as described above. It is considered that the impact will thus be neutral. Again, the mitigation proposed would bring some improvement.

iii) Ecology

8.15 The County Ecologist is satisfied that sufficient information has been submitted and that its content has been properly produced. As a consequence, it is agreed with the applicant that there would be a bio-diversity loss here, even with the proposed mitigation. In line with Local Plan Policy LP16, in order to provide net gain, an off-setting Agreement will be required through a Section 106 Agreement. Additionally, conditions are recommended by the Ecologist for the preparation and implementation of a Construction Environmental Management Plan to ensure protection of species during construction, to agree the specification of any lighting on the site and a Management Plan for the implementation and ongoing maintenance of the proposed mitigation measures. Given this background, it is considered that there would be no adverse ecological impact.

iv) Heritage

8.16 It is agreed that there would be no adverse impact to any heritage asset and that there is very limited scope for underground archaeological interest.

v) Residential Amenity

8.17 Given the limited residential development in the vicinity of the site and the overall urban and heavily trafficked environment in which the site is located, it is agreed that there would negligible adverse impacts arising solely from this development which would materially worsen this existing environment. The Environmental Health Officer agrees.

vi) Highways

8.18 The initial highway concerns were not to do with the capacity of the local road network as a consequence of the traffic generated here, but with the engineering geometry of the proposed improvements to the existing access. This has now been agreed as a consequence of further discussion.

vii) Drainage

8.19 As indicated in the applicant's supporting documentation the site is in Flood Zone One with the proposal not being a sensitive user. The proposals put forward to deal with discharges are appropriate and proportionate.

c) The Harm Side of the Planning Balance

8.20 This report concludes that the cumulative harms caused by the proposal on the harm side of the final planning balance are the substantial definitional Green Belt harm, the limited actual Green Belt harm and the limited landscape harm.

d) The Applicants Considerations

8.21 It is now necessary to identify the considerations put forward by the applicant in support of the proposals on the other side of the planning balance. These have already been initially identified in paragraph 3.15 above.

8.22 His case is essentially based on climate change, the move to zero carbon and to ensure energy security.

8.23 He points to Local Plan policy LP35 which indicates that renewable energy projects will be supported where they respect the capacity and sensitivity of the landscape and communities to accommodate them. In particular, they will be assessed on their individual and cumulative impacts on landscape quality, sites and features of natural importance, sites and buildings of heritage importance, residential amenity and the local economy. This is supplemented by the NPPF where there are several references to moving towards a low carbon economy – paragraphs 8 (c), 152 and 158. This latter paragraph is significant as it states that applicants for energy development should not have to demonstrate the overall need for renewable or low carbon energy.

8.24 Additionally, the content and scope of the documents referred to in Section 7 above all support this local and national planning policy already set out.

8.25 In this case however it has been pointed out that the proposal is not for the generation of renewable energy, but rather to store and better use the energy already in the system so as to reduce reliance on new energy sources. That storage also allows extra capacity in the network and thus its ability to accommodate electricity generated from renewable sources. Additionally, it provides security for existing energy supplies. The 2020 documents referred to in Section 7 advocate the benefits of energy storage.

8.26 These considerations will carry substantial weight.

8.27 However that does not necessarily by itself override the cumulative level of harm already identified.

8.28 A key consideration of the applicant's case is that if energy storage sites are to be supported, they have to be located where operational criteria require them to be. Essentially this is where they can gain access to the Grid. The applicant's Alternative Sites Assessment explains this in more detail, but the summary in para 3.14 outlines the critical factors and para 3.1 provides detail of the link to the Grid. These criteria limit the scope in the search for sites and given the power transmission infrastructure in the Hams Hall area, it is almost inevitable that a Green Belt location would be identified. The applicant says that this is the case here. In short, the 132kv underground cables in Watton Lane have the capacity to take on additional supply at times of peak demand and they supply power directly into the national network.

8.29 This consideration will thus carry significant weight.

e) The Applicant's Side of the Balance

8.31 The report concludes that substantial weight should be given to the applicant's considerations based on need, energy objectives and site location criteria for selecting this site.

f) The Final Planning Balance

8.32 Members are therefore now asked to assess the final balance. The "test" for that assessment is that the considerations put forward by the applicant should "clearly" outweigh the cumulative level of harm caused, if the development is to be supported.

8.33 The harm side of the balance has been set out in para 8.20 above and the other side of the balance is at paragraph 8.31.

8.34 It is considered that the applicant's considerations do clearly outweigh the harm side of the balance. The reasons for this are:

- a) The weights to be apportioned to the various matters identified on both sides of the balance suggest that the final assessment weighs in favour of the proposal.
- b) The national and local planning policy "direction of travel" carries substantial weight.
- c) The locational and functional requirements for this type of development are almost "bespoke". They are not footloose.
- d) In this case, the actual level of Green Belt harm is limited because of the physical and visual setting of the site. This is likely to continue into the future throughout the lifetime of the proposal.

g) The 2021 Direction

8.35 This Direction requires referral of "Green Belt" development to the Secretary of State to see if he wishes to call-in a proposal for his own determination. Hence if the Board was minded to support this proposal that referral might have to take place. However, that referral is also conditional on the scale of the development – there is a threshold under which referral is not mandatory. In this case the threshold comprises two factors either of which triggers the referral. The first is that any floorspace created is less than 1000 square metres and the second is that the development by reason of its scale, nature or location would have a significant impact on the openness of the Green Belt. Here the floor area created is well below the 1000 square metres. The analysis above in paragraph 8.9 concludes that there would not be a significant impact on openness here. As a consequence, it is advised that the Board can grant a planning permission without referral.

Recommendation

That subject to the completion of a Section 106 Agreement relating to a financial contribution of off-site bio-diversity setting, planning permission be **GRANTED** subject to the following conditions:

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.

REASON

To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004 and to prevent the accumulation of unimplemented planning permissions.

2. The development hereby approved shall not be carried out otherwise than in accordance with the plans numbered:

EPC/0331/PL/E/LA/OSL/01; BATT/01, FG01, AUX01, PCS01, CUST/01, AR01, CCTV01, ELV1/01 and ELV2/01, P1871/01B and 02B, 23219/03B, 2114/101E and WOR/BWB/ZZ/XX/DR/CD/001/S2/P3, YE/001/PO3, S2/PO3 and P2/PO1.

REASON

To ensure that the development is carried out strictly in accordance with the approved plans.

3. The planning permission hereby granted for the battery energy storage system shall be for a temporary period only, to expire 40 years after the date of the first connection to the National Grid. Written confirmation of this date shall be provided to the Local Planning Authority within one month of this event.

REASON

In order to confirm that this permission is for a temporary period only.

4. Within six months of the date of the first connection to the National Grid, a scheme for the de-commissioning of the battery storage system and its ancillary plant and equipment shall be submitted to the Local Planning Authority. The scheme shall make provision for the whole of the above and underground works approved under this permission. The scheme shall also include the details of the management and timing of the de-commissioning works, together with a traffic management plan to address any traffic issues during the de-commissioning period, an environmental management plan to include details of the measures to be taken during de-commissioning to protect wildlife and habitats, as well as details of site restoration measures. For the avoidance of doubt, the landscape

planting and bio-diversity improvements approved under this permission shall be excluded from this condition.

REASON

In order to confirm that this permission is for a temporary period only and to ensure the re-instatement of the land following expiration of this period.

5. The scheme as agreed in writing by the Local Planning Authority under condition (4) shall be implemented in full, within six months of the de-connection of the site from the National Grid, whether that occurs under the time period set out in Condition (3) or at the end of any continuous de-connection from the Grid for a period of twelve months.

REASON

To ensure the satisfactory re-instatement of the land.

Pre-commencement Conditions

6. No construction shall be undertaken on site until a Construction Management Plan has first been submitted to and approved in writing by the Local Planning Authority. This Plan will contain details of:
 - the routing and timing of delivery and other construction traffic to and from the site.
 - suitable areas for the parking of contractors and visitors' vehicles
 - the site of the site compound.
 - the measures to be used to prevent the emission of dust and other debris arising on site.
 - the measures to be used to be used to clean the public highway of debris, waste and detritus.
 - the measures to ensure that the site is secure.
 - the measures to protect existing trees and hedgerows to be retained and
 - named contacts in order to address complaints.

The approved plan shall remain in force throughout construction.

REASON

In the interests of highway safety and to reduce adverse visual and amenity impacts.

7. No development shall commence on site until the finished floor level of the containers, transformer units, control rooms and other equipment have first been submitted to and approved in writing by the Local Planning Authority. The development shall then only be implemented in accordance with the approved levels.

REASON

In order to reduce the risk of flooding

8. No external lighting shall be installed on site until details of the specification and the location of all external light sources has first been submitted to and approved in writing by the Local Planning Authority. Only the approved specifications and locations shall then be implemented on site.

REASON

In the interests of the amenities of the area.

Pre-Commencement Conditions

9. The development hereby permitted shall not be brought into use until a scheme for the provision of adequate water supplies and fire hydrants necessary for firefighting purposes at the site, has first been submitted to and approved in writing by the Local Planning Authority. The approved scheme shall be implemented in full prior to the first connection of the site to the National Grid and to the written satisfaction of the Local Planning Authority.

REASON

In the interests of public safety.

10. There shall be no use of the site for the purposes hereby approved until all parts of the existing accesses within the public highway not included within the approved access works, including the vehicular access abutting the western side of the approved access, have all been permanently closed and the highway reinstated to the written satisfaction of the Local Planning Authority.

REASON

In the interests of highway safety.

11. There shall be no use of the site for the use hereby permitted until the whole of the access works as shown on the approved plans together with the whole of the car parking, manoeuvring and service areas have all been laid out and fully completed to the written satisfaction of the Local Planning Authority.

REASON

In the interests of highway safety.

12. There shall be no use of the site for the use hereby permitted until visibility splays as shown on the approved plans have first been provided in full to the written satisfaction of the Local Planning Authority. These splays shall remain unobstructed at all times.

REASON

In the interests of highway safety.

Other Conditions

13. No gates shall be hung within the vehicular access into the site so as to open within eight metres of the near edge of the public highway carriageway.

REASON

In the interests of highway safety

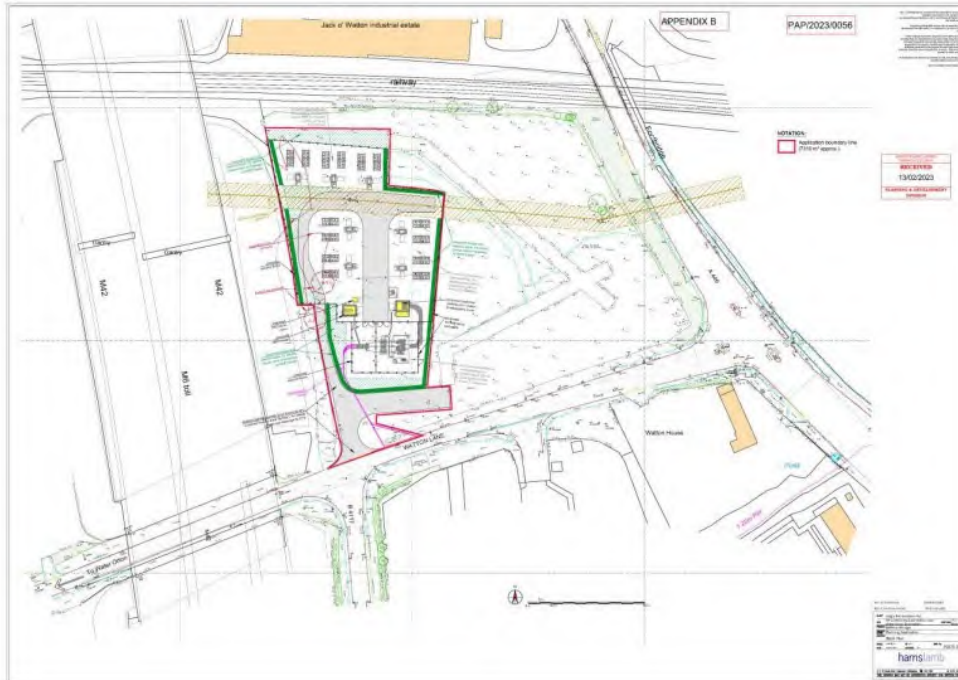
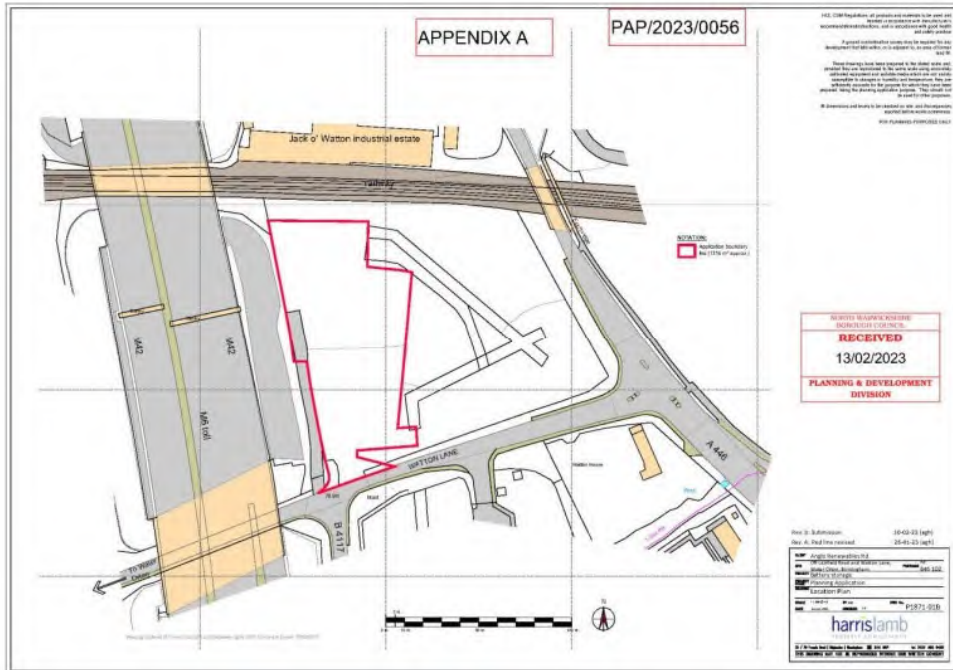
14. The hard and soft landscape works shall be carried out in accordance with the approved details. All planting, seeding, turfing and soil preparation shall be carried out in the first planting season following the first use of the development hereby approved. Any plants, trees or shrubs which, within a period of five years from completion of the development, die become seriously damaged or diseased, shall be replaced in the next planting season.

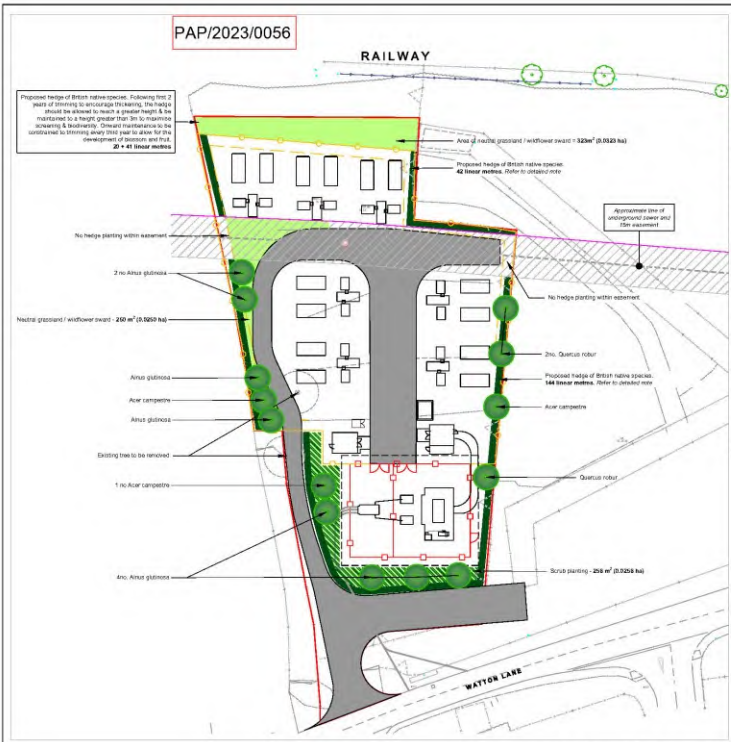
REASON

In the interests of the visual amenities of the area.

Notes

1. Attention is drawn to Sections 163 and 278 of the Highway Act 1980, the Traffic Management Act 2004, the New Roads and Street Works Act 1991 and all relevant Codes of Practice. Advice on Section 278 can be obtained from the Warwickshire County Council.
2. Warwickshire Fire and Rescue Authority require the inclusion of an advisory note, drawing attention to the need for the development to comply with Approved Document B, Volume 2, Requirement B5 – Access and Facilities for the Fire Service.
3. The Local Planning Authority has met the requirements of the NPPF in this case through the issue of a positive decision following discussion and engagement to overcome initial technical concerns.





Native Planting Mix (Trees)

No.	Name	Form	Age/condition or x transplanted	Overall height (cm)	Root condition	Habit
1	Acer campestre	Transport	1+1	60-90	Ball	
2	Acer platanoides	Transport	2x 14-16 grth	330-400	Rootballed	3-4 breaks
3	Quercus robur	Transport	2x 14-16 grth	330-400	Rootballed	3 breaks

Native Hedge

Mix %	Name	Form	Age/condition or x transplanted	Overall height (cm)	Root condition	Habit
5	Acer campestre	Transport	1+1	60-90	Ball	
5	Cornus sanguinea	Transport	1+1	60-90	Ball	Branches 3 breaks
5	Cornus avellana	Transport	1+2	60-90	Ball	Branches 3 breaks
40	Spiraea prunifolia	Transport	1+1	60-90	Ball	
10	Ligustrum vulgare	Cutting	0/2	60-90	Ball	Branches 3 breaks
35	Rhus typhina	Transport	1+1	60-90	Ball	Branches 3 breaks

1.5 metres wide hedge consisting of 4 rows, 200mm between rows and 300mm centres between plants.
 0.6m x 1m linear metres. Species to be mixed evenly along length of hedge.
 Reduce height by 30% immediately upon planting to provide increased vigour and encourage branching out during the first planting season.

Scrub Planting Mix

Mix %	Name	Overall height (cm)	Root condition
20	Cornus sanguinea	60-90	Ball
10	Prunella vulgaris	60-90	Ball
10	Viburnum lantana	60-90	Ball
10	Ulex europaeus	60-90	Ball
10	Viburnum lantana	60-90	Ball

Planted at 400mm centres.
Rid line area = 0.6880 ha approx.
Neutral grassland / wildflower sward combined area = 0.6573 ha
Scrub planting = 246 m² (0.0256 ha)
Native hedge combined length = 247 Lm



- Notes**
- Do not scale directly from this drawing.
 - This drawing is to be read in conjunction with all other relevant MIP drawings and information supplied by other consultants.
 - Hatch patterns displayed on this drawing are indicative only and do not represent actual paving units or material sizes.
 - All new planting in proximity to buildings to be checked by engineers to ensure foundation detailing is appropriate.

Prepared: Water Orton, Warwickshire
 Client: Anglo Renewables
 Title: Landscape Mitigation strategy plan
 ACAD version:
 Drawing number: 21114-101
 Status: FOR DISCUSSION
 Drawn By: LJK
 Checked By: PH
 Date: 22-07-22
 Scale: 1:500



Water Orton, Warwickshire
 Landscape mitigation strategy plan

APPENDIX 15

Appeal APP/R3705/W/24/3340380 – Orchards, Bennetts Road North, Corley

Appeal Decision

Site visit made on 20 August 2024

by Nick Bowden BA(Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 September 2024

Appeal Ref: APP/R3705/W/24/3340380

Orchards, Bennetts Road North, Corley, North Warwickshire CV7 8BG

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr Dereck Beverley against the decision of North Warwickshire Borough Council.
 - The application Ref is PAP/2023/0439.
 - The development proposed is a 3 bedroom bungalow (replacement of previous house on site).
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council, in its description of the site address, identified the property as being 'land between Holmfield and Oakdene'. I have used the site address given on the application form here and in any event, am satisfied that the site location plan adequately identifies the land.
3. The description of development given in the banner heading is also that given on the application form. However, my inclusion of the reference to a previous dwelling on the site should not be taken as an inference of this as a prejudgement of the case or indication of it as a matter of fact.
4. The National Planning Policy Framework (the Framework) was revised in December 2023. I am also aware of the consultation draft from July 2024. As the changes do not materially affect the main issues in this case, the parties have not been invited to make further comments. References to paragraph numbers in this decision relate to the December 2023 version of the Framework.

Main Issues

5. The main issues are:
 - a) whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies; and

- b) whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, so as to amount to the very special circumstances required to justify the proposal.

Reasons

Whether inappropriate development

6. The appeal site is located within the Green Belt. Policy LP3 of the North Warwickshire Local Plan 2021 (NWLPL) is consistent with the Framework in stating that inappropriate development in the Green Belt will not be approved except in very special circumstances. Criteria 3. and 4. of policy LP3 set out that limited infilling in settlements washed over by the Green Belt will be allowed within the infill boundaries as defined on the Policies Map. Such development may also be acceptable where a site is clearly part of the built form of a settlement where there is substantial built development around three or more sides of a site.
7. The Framework contains a similar provision within criterion (e) of paragraph 154. This paragraph sets out the exceptions to the general principle that new buildings in the Green Belt are inappropriate with limited infilling in villages being such an exception.
8. The site, however, is not within a defined infill boundary and therefore the criterion of LP3 3. do not apply. In relation to LP3 4., the site is not surrounded by substantial built development on three or more sides as there are only the adjacent dwellings, Holmfield and Oakdene, to either side. Fields are located to the front and rear of the site and I do not regard the existence of Bennetts Road North as being substantial built development.
9. The development does constitute infilling, as it located between these two neighbouring homes and the gap is consistent with neighbouring plot sizes, the site is not located within a village. The area has none of the characteristics of a village, lacking a focal point or any services or facilities that would give it such character. It is part of a linear row of ribbon development on the outskirts of Coventry. Although the surroundings are semi-rural to rural in nature, this does not equate to the site being located within a village.
10. I have been mindful of the views of the Parish Council in this regard, and their observations of the dispersed nature of Corley. However, I am unwilling to accept this argument. The village itself clearly has a focal point with historic lanes having developed through and from around it. Conversely, it is readily apparent that Bennetts Road North is a relatively modern ribbon style extension of Coventry and is unaffiliated with the village in any geographic form.
11. Turning to the criteria under Framework paragraph 154(g); this allows for limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, subject to it not having a greater impact on the openness of the Green Belt than the existing development.

12. There is some evidence on the site of previous development in the form of bricks and footings. The evidence suggests that this may have been the remains of a house which was demolished a significant amount of time ago. Indeed, a previous Inspector¹ was willing to accept this point and I have no reason to disagree. The site could therefore be regarded as being previously developed land. Even so, there is no building presently in situ and the site is open and undeveloped above ground. The proposed development would introduce a new dwelling which would have an adverse effect upon the openness of the green belt in both a spatial and visual dimension.
13. Accordingly, I conclude that the proposed development would be inappropriate development in the Green Belt which would, by definition, be harmful to it contrary to policy LP3 of the NWLP and provisions of the Framework.

Other considerations and very special circumstances

14. The appellant has put forward that the proposed dwelling would be a self-build or custom-build dwelling. The Housing and Planning Act of 2016 provides that authorities must give suitable development permission in respect of enough serviced plots of land to meet the demand for self-build and custom-build housing in the authority's area, in each base period.
15. The appellant suggests that only two self-build or custom-build homes have been permitted since 2016 and there is a register of 41 people in the current base period. I have not been provided with any evidence to confirm this but nevertheless, even if the Council is not meeting its requirement to deliver such sites, due to the conflict with the Green Belt policies of the NWLP and the Framework, I can afford this limited weight.
16. I have considered that the land remaining undeveloped may result in it becoming overgrown and attracting rubbish. However, this could easily be resolved through adequate site security and maintenance which would not adversely affect the openness of the Green Belt. It does not require, or justify, the construction of a dwelling and as such I can assign negligible weight to this argument.
17. My attention has been drawn to various other examples of developments permitted in and around the North Warwickshire area however I have been provided with limited details of these cases. Accordingly, and given that the circumstances of each case may differ substantially, I am not able to assign weight to these examples.
18. In reaching my decision and being mindful of the appellant's claims to being ex-military personnel, seeking an affordable home in the countryside in the interests of mental health; I have had due regard to the Public Sector Equality Duty contained in section 149 of the Equality Act 2010. This sets out the need to eliminate unlawful discrimination, harassment and victimisation, and to advance equality of opportunity and foster good relations between people who share a protected characteristic and people who do not share it. The Act sets out the relevant protected characteristics which includes disability.

¹ APP/R3705/W/20/3258573

19. The appellant claims mental health concerns and the proposal would be to meet these needs. Furthermore, the proposal would enable the appellant to live in countryside surroundings. However, I have no cogent evidence that this scheme is the only way in which the appellant's needs could be met particularly given that the site location plan indicates that the appellant owns a neighbouring property. Furthermore, the new dwelling is likely to remain long after such personal circumstances cease to be material. Therefore, and in the absence of supporting evidence, I can only attribute very limited weight to such personal circumstances.

Green Belt Balance and Conclusion

20. Paragraphs 152 and 153 of the Framework set out the general presumption against inappropriate development within the Green Belt. They explain that such development should not be approved except in very special circumstances. Very special circumstances to justify inappropriate development will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

21. I have concluded that the appeal scheme would be inappropriate development that would, by definition, harm the Green Belt. Paragraph 153 of the Framework requires substantial weight to be given to any harm to the Green Belt.

22. The evidence provided by the appellant can only attract limited weight and it would not amount to very special circumstances to clearly outweigh the harm to the Green Belt I have identified. I have further considered the social and economic benefits of delivering a new home, but the benefits of a single dwelling would be very modest, and they are not sufficient to clearly outweigh the harm to the Green Belt. Therefore, the very special circumstances necessary to justify the development do not exist.

23. The proposal conflicts with the development plan read as a whole and the material considerations do not indicate a decision otherwise than in accordance with the development plan. I therefore conclude that the appeal should be dismissed.

Nick Bowden

INSPECTOR

APPENDIX 16

**Appeal APP/R3705/W/24/3338275 – The Willows, Tamworth Road, Cliff,
Kingsbury**



Appeal Decision

Hearing held on 23 July 2024

Site visit made on 23 July 2024

by Jonathan Edwards BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26th July 2024

Appeal Ref: APP/R3705/W/24/3338275

The Willows, Tamworth Road, Cliff, Kingsbury, Warwickshire B78 2DS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr J Doherty against the decision of North Warwickshire Borough Council.
 - The application Ref is PAP/2023/0191.
 - The development proposed is described as "the change of use of land for a single pitch Gypsy site, installation of septic tank and relocation of the access".
-

Decision

1. The appeal is allowed and planning permission is granted for the change of use of land for a single pitch Gypsy residential site, installation of septic tank, creation of access, driveway, parking area and patio, construction of bunds and erection of gate at The Willows, Tamworth Road, Cliff, Kingsbury, Warwickshire B78 2DS in accordance with the terms of the application, Ref PAP/2023/0191, subject to the conditions in the attached schedule.

Preliminary Matters

2. The description of development in the header is taken from the application form. At the hearing, the appellant confirmed the Gypsy site was to be used solely for residential purposes. Also, it was confirmed that the development includes the creation rather than relocation of an access as well as the creation of a driveway, a parking area and a patio, construction of bunds and the erection of a gate. All of these features are identified on the drawing submitted with the planning application leading to this appeal. As such, no prejudice would be caused to any party by treating these features as part of the proposal. The description of development in my decision was agreed to by the main parties at the hearing and it reflects the various elements to the scheme.
3. The extent of bunding as shown on the appeal drawings has already been constructed, although in places it would appear to be less than 2.5m in height as annotated. Also, a gap in the roadside hedgerow has been formed at the position of the proposed access. In these respects, the development has commenced.
4. A revised National Planning Policy Framework (the Framework) has been published since the appeal was lodged. On the same day, the government published an amendment to the national Planning Policy For Traveller Sites (PPTS) and the definition it contains for Gypsies and Travellers. I have had regard to these revised documents in my assessment. The intended occupants

of the site are the appellant and their family. The Council accepts that they meet the definition of Gypsies and Travellers as set out in the PPTS. My decision is made on this basis.

Main Issues

5. It is agreed between the Council and the appellant that the change of use to a Gypsy site represents inappropriate development in the Green Belt. In light of paragraph 16 of the PPTS, I find no reason to disagree with the parties on this matter. As such, the main issues are:-
- the effect of the development on openness and on the purposes of Green Belt policy;
 - its effect on the character and appearance of the area; and
 - whether the harm by reason of inappropriateness and any other harm would be clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it.

Reasons

Planning history.

6. The appeal site is a single field. Since 2019, there has been 3 appeal decisions relating to the same site. Appeal decision reference number APP/R3705/W/19/3220135 (hereafter referred to as the 2019 appeal) relates to a proposed change of the land to equestrian use and as a Gypsy site comprising of 5 pitches with dayrooms, stable block and ménage. This appeal was dismissed in November 2019. Appeal decision reference APP/R3705/W/19/3242521 (referred to as the 2020 appeal) relates to a scheme for change of the land to equestrian use and as a single pitch Gypsy site with day room. This was dismissed in June 2020. Most recently, appeal reference number APP/R3705/W/20/3260829 (2021 appeal) relates to the change in the use of land for stationing of caravans for residential use for a Gypsy-Traveller family with associated development. This was also dismissed in December 2021. I have had regard to these decisions in my assessment.

Effect on openness and purposes of Green Belt.

7. Prior to the construction of the bunds, I understand the appeal site was fairly flat and open. The bunding follows parts of the field boundary, stretches across the field towards the rear and follows part of the route of the proposed driveway. As such, it has a significant overall length as well as a height and a width. The bunding's mass and volume has reduced the site's spatial openness.
8. I saw the bunds largely covered by ruderal plant species and so they appeared as lines of higher vegetation rather than defined earthworks. Moreover, the bunds are set back from the road and they are seen from the pavement against the backdrop of mature trees beyond the rear of the field. The bunding has reduced visual openness by obstructing views across the site. Nonetheless, the field still maintains a degree of openness as it contains no buildings.
9. Overall, I find the bunding has resulted in a moderate loss of openness. As such, the creation of the bunds has not preserved openness and so it does not accord with the provisions of paragraph 155 of the Framework. The creation of the bunds in itself constitutes inappropriate development in the Green Belt.

10. The volume of the static caravan on the proposed residential pitch would lead to a loss of spatial openness. So too would the touring caravan, parked vehicles and the proposed gate. It is likely the development would lead to domestic paraphernalia on the garden area and patio, which would also erode spatial openness. The access, driveway, patio and drainage would be at or below ground level and so they would have no meaningful effect in these regards.
11. The pitch would be towards the rear of the site away from the road. Therefore, the caravans, parking and domestic paraphernalia would not be easily seen from off the site, particularly given the screening effect of the bunds and existing and proposed planting. Therefore, the pitch's effect on visual openness would be limited. The entrance gate would be more obvious from the road but it is likely to have only a minor effect on visual openness.
12. The introduction of a residential pitch into a field would go against the purpose of Green Belt policy to safeguard the countryside from encroachment. However, this would not be particularly obvious from public vantage points. The bunds themselves do not stand out as encroachment as their vegetated appearance is consistent with a rural area. The gate and access would indicate a non-agricultural use of the field and the development would generate activity typical of a residential property. Even so, the proposal would avoid a significant sense of encroachment as most of the front part of the field would be left open and planted. I find no conflict with any of the other purposes of Green Belt policy as set out at paragraph 143 of the Framework.
13. In summary, I consider the overall scheme would lead to a moderate loss of openness given its scale and its visual effects. The proposal would also slightly conflict with the purpose of Green Belt policy to safeguard the countryside from encroachment. I understand that other major developments in the area have already affected Green Belt openness but these have no influence on my assessment of the appeal development.

Effect on character and appearance.

14. The site lies in a predominantly rural area with roadside hedgerows, fields and belts of mature trees. Road traffic noise as well as several nearby properties all have an effect on its character and appearance but nevertheless the locality has an obvious countryside feel.
15. The North Warwickshire Landscape Character Assessment 2010 identifies the site as being in the Tamworth – Urban Fringe Farmlands area. This is described as predominantly open arable land with little tree cover, although it is also noted as being an indistinct and variable landscape with pockets of pastoral land and other uses. The Inspector for the 2019 appeal described the appeal site at that time as having an open and undeveloped rural character. As such, the evidence suggests the site prior to the construction of the bunds was consistent with a fairly open agricultural landscape.
16. The constructed earthworks follow fairly straight lines and so they do not appear as natural landforms as suggested by the appellant. Also, the bunds and the vegetation upon them have created a sense of enclosure, particularly to the rear part of the field. Therefore, to a degree they have diminished the open agricultural nature of the site.

17. At the same time, I understand from the evidence and discussions at the hearing that the adjoining field to the north of the site has also changed since the 2019 appeal decision. Whereas before it was an open field with little if any boundary hedgerow, I saw it now contains mowed grass and lines of sapling trees and hedges on the boundaries with Tamworth Road and Cliff Hall Lane. As such, the adjoining plot appears enclosed and not as open arable or pasture land. It is proposed to provide new native tree planting across most of the front part of the appeal site. Such landscaping would result in the site being similar in appearance to the neighbouring field when viewed from the highway.
18. The Council is concerned that the development would not preserve the pastoral character of the site and area. There is little evidence to indicate how the field was previously used and so I am uncertain whether the development would result in the loss of pasture land as claimed. In any event, the replacement of an open field with an area of trees and vegetated bunds would appear in keeping with the immediate surroundings to the site. Indeed, the provision of new tree planting as proposed would complement the existing area of saplings to the north. As they grow, the proposed trees would also supplement the belt of mature trees to the rear of the site.
19. The bunds and proposed planting would screen the residential pitch to the rear of the field so that it would not have any effect on views from the Tamworth Road. Also, it would not be visible from Cliff Hall Lane and the public footpaths to the north and south of the site due to the separation distances, local land form and intervening buildings and vegetation. The access and associated drive would be seen from the front of the site and from the upper floor windows of the house on adjoining land to the south. Such views and the associated coming and going of vehicles would undermine the site's sense of rurality. However, these would be fairly limited and localised visual effects that would be seen in the context of new tree planting.
20. In summary, I find the site overall would retain an obvious natural feel through new tree planting that would be consistent with features on adjacent land. The minor visual effects of the development would avoid significant harm to the qualities of the landscape and new tree planting would enhance the local landscape character. As such, I conclude the development would not have an unacceptable effect on the character and appearance of the area. In these regards, it would accord with policies LP10 and LP14 of the North Warwickshire Local Plan 2021 (the LP). Amongst other things, these look for new Gypsy sites to be assimilated into their surroundings without significant adverse effects and so as to conserve, enhance or restore landscape character.
21. My conclusion on this matter differs from that of the Inspectors for the 2019, 2020 and 2021 appeals. However, those decisions relate to different developments to the proposal before me. Compared to the previous schemes, the proposed pitch would be smaller and further from the road and so it would be less obvious. Also, the context to the appeal site has since changed. Therefore, it is not inconsistent for me to arrive at a different view on this issue.

Other raised concerns.

22. A number of other concerns have been raised by interested parties. Visibility splays at the proposed access would allow satisfactory sight of on-coming

- traffic and so the development would not prejudice highway safety, despite the speed of cars on Tamworth Road going past the site.
23. I was advised at the hearing that the bunds have been constructed of topsoil taken from the site itself with no imported materials. Without evidence to the contrary I am satisfied the earthworks have not caused ground contamination. I envisage no significant additional noise from construction activity as the bunds have mostly been completed.
24. Foul water drainage that avoids pollution could be secured through the imposition of a planning condition. Similarly, a condition could reasonably be imposed to secure surface water drainage features that avoid flood risk to the site itself or surrounding land. The site is near to but well above the River Tame and so the development would be at a low risk of fluvial flooding.
25. A summary of a protected species appraisal provided by the appellant indicates the development would cause no risk to protected species. I am advised the appeal site is not near any land designated for its ecological or nature value. No external lighting is proposed and a planning condition could be imposed to ensure any future lighting is controlled so as to avoid disturbance to wildlife. Sensitive, native planting could also be secured by planning condition. As such, I am satisfied the development would have an acceptable effect on biodiversity.
26. The site would accommodate a single additional household and there is no evidence to show that this would have any unacceptable impacts on the provision of local services and infrastructure. A single pitch would not dominate any settled community and I see no reason why the intended occupants would fail to integrate with the local community. The site is away from Kingsbury, the nearest settlement where there are schools, medical services and shops. However, the village is a short car journey from the site and there are nearby bus stops within easy walking distance that provide access to public transport services between Tamworth and Kingsbury. Therefore, the site would be in a suitable location that allows reasonable access to facilities.
27. My assessment is based on the details of the development before me. There is no substantive evidence to indicate similar schemes in the area would be proposed in the event of me allowing the appeal. In any case, any such proposals would need to be considered having regard to their effects and the relevant circumstances at that time. Granting planning permission for this development would not set an irresistible precedent to be followed in the consideration of any future proposals.
28. I have noted the representations made to the effect that the rights of local residents under Article 8 of the Human Rights Act 1998 would be violated if the appeal is allowed and the development carried out. However, the pitch would be set away from the nearest properties and so it would not harm the living conditions at existing residences by reason of noise, loss of light, loss of privacy or overbearing effects. I fail to see how the development would directly affect the health or well-being of any nearby residents. Therefore, I am satisfied that granting planning permission would not unacceptably interfere with any person's right to a private family life and home. As such, it would be proportionate in the circumstances to allow the appeal.
29. None of the above concerns provide reason to refuse planning permission. As such, they do not affect my overall assessment.

Considerations in favour of the development.

Need for and supply of pitches.

30. The PPTS promotes the provision of more private Gypsy and Traveller sites. The appeal development would help meet the government's aim in these regards.
31. LP policy LP5 says the Council will make provision for a minimum of 19 permanent Gypsy and Traveller pitches between 2019 and 2033. A list provided with the statement of common ground indicates that planning permission has been granted for 24 pitches since 2019. Even if I accept the appellant's contention that 3 of these pitches should not be counted, the evidence suggests that planning permission has been granted for more than the minimum number of new pitches required under the LP.
32. However, it is clear from LP policy LP5 that 19 pitches is a minimum target. Paragraph 8.21 of the LP explains the Council's intention to bring forward a Gypsy and Traveller Plan (GTP) that will include pitch allocations. The Council's representative at the hearing accepted that this is required to meet an on-going need for more Gypsy and Traveller sites. While work has started on the GTP no document has yet been published for consultation. The Council's Local Development Scheme indicates that this would have happened in August 2023 and so progress towards the adoption of the GTP is significantly delayed. These factors point to the Council accepting a need for more Gypsy and Traveller pitches that currently is not recognised or identified in the LP.
33. Moreover, the Gypsy and Traveller Accommodation Assessment (GTAA) that informed LP policy LP5 is now of some age having been issued in 2019 with an update in 2020. Furthermore, in an appeal decision from December 2021 relating to a proposal for a Gypsy site at Wishing Well Farm, Fillongley¹, an Inspector states that there has been a significant in-migration which was not anticipated at the time the GTAA was published. The Inspector notes at that time the Council's acceptance of a general need for Gypsy and Traveller sites. The Council's representative at this appeal hearing raised no issue with the previous Inspector's criticism of the GTAA and also accepted there is still a need for more pitches.
34. At paragraph 10, the PPTS states local planning authorities should identify and update annually a supply of specific deliverable sites sufficient to provide 5 years' worth of sites against their locally set targets. Footnote 4 to the PPTS states that sites should be available now to be classed as deliverable. I am advised the sites granted planning permission as identified in the statement of common ground have all been provided and are occupied. As such, they are not now available. Accordingly, there is no supply at all of deliverable sites to address any current need, yet alone a 5 years' worth of supply. The Council accepts there is no alternative and suitable site available for the intended occupants of the appeal development. The apparent unmet need for Gypsy and Traveller sites weighs significantly in favour of allowing the development.

Personal circumstances of the intended occupants

35. The appellant, their spouse and their children intend to live on the proposed site. Two of the children are over 18 years old but the others are of school age.

¹ Appeal reference number APP/R3705/W/20/3255527

After the 2021 appeal decision, the family left the appeal site as it did not benefit from planning permission for residential use. Since then, they have been unable to find another permanent settled residential base to accommodate caravans. Instead, they have had a highly transient lifestyle, either living on the side of roads, on driveways and occasionally on holiday caravan parks. The appellant explained at the hearing that they have had to move nearly every week. This lifestyle has caused significant interruptions to the education of the children of school age as well as difficulties for all family members in accessing health care facilities.

36. The current uncertainty over the appellant's accommodation is clearly unsatisfactory, particularly as their family includes children. The benefits of the development to the intended occupiers in terms of facilitating access to schools and medical services are in themselves significant. In addition, the settled base would be in the best interests of the children involved.

Green Belt Balance

37. The Framework and the PPTS state that inappropriate development is by definition harmful to the Green Belt and should not be approved except in very special circumstances. These will not exist unless the potential harm to the Green Belt by reason of inappropriateness and any other harm as a result of the proposal is clearly outweighed by other considerations. LP policy LP3 is generally consistent with the Framework and PPTS in these regards. LP policy LP10 is referred to but this contains no provisions on how proposals for inappropriate development in the Green Belt should be determined.
38. The Framework dictates that substantial weight should be given to any harm to the Green Belt. In this instance, harm would be caused by reason of inappropriateness, loss of openness and failing to safeguard the countryside from encroachment. I have found no unacceptable harm to the character and appearance of the area.
39. The PPTS states that, subject to the best interests of children, personal circumstances and unmet need are unlikely to clearly outweigh harm to the Green Belt and other harm so as to establish very special circumstances. Even so, it does not follow that this will always be the case.
40. The development would help address an unmet need for more private Gypsy and Traveller sites as recognised at a national level under the PPTS and more locally as acknowledged by the Council. The benefit of a single additional pitch in addressing this general need attracts significant weight but this in itself is insufficient to outweigh the identified harm of the development.
41. However, I attach substantial weight to the benefits of a settled base to the intended occupants in terms of facilitating regular access to medical facilities, schools and other services. In arriving at this view, I am mindful that Article 3 of the United Nations Convention on the Rights of the Child requires a child's best interests to be a primary consideration. Also, I am conscious that dismissing the appeal is highly likely to lead to a continuation of the appellant's existing transient lifestyle and its undesirable effects on the children's education and the health of all of the intended occupants.
42. Planning permission runs with the land. However, I find the circumstances of this case represent an exceptional occasion where development that would not

normally be permitted may be justified on grounds of who would benefit from the permission. As such, a condition limiting occupancy to the appellant and named persons and their resident dependents would be reasonable and justified. In effect, such a condition would allow a temporary permission, although the length of occupancy is unknown. Even so, a requirement for the restoration of the site at the end of the occupancy would ensure no permanent harm to the Green Belt and character and appearance of the area.

43. Therefore, I conclude the total harm as a result of the development would be clearly outweighed by other factors. As such, very special circumstances exist to justify allowing the appeal. The development would accord with the Framework's and the PPTS's provisions on Green Belt as well as LP policy LP3.
44. I note that my overall conclusion differs from that made by Inspectors for the 2019, 2020 and 2021 appeals. However, my views have been formed having regard to the evidence before me and the current circumstances faced by the appellant and their family. The case for allowing the development is now notably different, particularly in terms of the position on need and on the undersupply of sites as well as the appellant's particular accommodation difficulties. Also, the other appeals related to different developments with different effects on openness and the character and appearance of the area. Therefore, I am not bound to arrive at the same conclusions to those arrived at under the previous appeal decisions.

Human rights and Public Sector Equality Duty.

45. By allowing the appeal subject to a personal condition, my decision would not interfere with the appellant's and their family's rights to respect for private and family life and their home. As such, there would be no interference with the occupiers' human rights under Article 8 of the European Convention of Human Rights as enshrined in the Human Rights Act 1998 (Article 8).
46. I have considered whether it would be appropriate to impose a condition that allows the development for a temporary time period and thereafter requires cessation of the use, regardless as to whether the intended occupants still reside on the site. However, granting temporary planning permission could lead to an interference under Article 8. To my mind, the uncertainty that would hang over the occupants' living arrangements would be a disproportionate response to the level of harm caused by the development. In arriving at this view, I have had regard to the particular merits of the case, the specific effects of the development and the occupiers' circumstances.
47. I have had due regard to the Public Sector Equality Duty (PSED) contained in section 149 of the Equality Act 2010. This sets out the need to advance equality of opportunity and foster good relations between people who share a protected characteristic and those who do not share it. This includes those of a particular race and so the occupants of the development. Granting planning permission would allow the opportunity for the intended occupants to foster good relationships with the local community. Therefore, my decision advances opportunity in line with the PSED.

Conditions

48. The list of suggested conditions included as part of the statement of common ground as well as other conditions were discussed at the hearing. Where

appropriate I have amended the wording in light of the comments made and for reasons of precision.

49. For clarity purposes, I attach a condition that requires the development to be carried out in accordance with the approved drawings. There is no need for this condition to refer to the existing site layout plan, the soakaway assessment or storm sewer design. Conditions 2 and 3 require site restoration once the intended occupants cease to reside at the site so as to avoid permanent harm to Green Belt openness. The development is only acceptable due to the personal circumstances of the occupiers and so condition 3 limits occupancy accordingly. The suggested condition that would require a permanent cessation of the use after a short period of non-occupancy would be unreasonable and so it has not been imposed. Also, a condition that would limit the proposed use for a defined temporary period of time would be an unacceptable interference with the intended occupants' human rights. Therefore, this condition is not included.
50. Condition 4 is required to ensure a satisfactory effect on landscape character and appearance. Conditions 5 and 6 are imposed to ensure foul and surface water is disposed of without causing pollution or flood risk. Conditions 7, 8, 9 and 10 are imposed in the interests of highway safety.
51. My assessment is based on the development being occupied by Gypsy and Travellers and there is no evidence to indicate the development would be acceptable for any other group. Accordingly, I attach condition 11 that restricts occupancy. Conditions 12 and 13 are attached to minimise the effect of the development on the openness of the Green Belt and the character and appearance of the area. Condition 14 is attached to ensure the development causes no unacceptable light pollution to the detriment of wildlife and the character and appearance of the locality. Condition 15 is imposed to minimise the visual impact of the proposed driveway.
52. As the proposed use is residential there is no requirement for a condition that places limits on the size of vehicles to be parked on the site. At the hearing, the Council's representative accepted the suggested condition on ground contamination was not needed. Therefore, this condition is not included.

Conclusion

53. For the reasons given above, I conclude the appeal should be allowed.

Jonathan Edwards

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alex Bruce	Planning agent
John Doherty	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Andrew Collinson

INTERESTED PERSONS

Carol Davis	Objector
Robert Williams	Agent acting on behalf of Mr and Mrs Goodall, Objector

LIST OF DOCUMENTS SUBMITTED AT THE HEARING:

1. Extract of Map entitled Rights of Way - Warwickshire.

SCHEDULE OF CONDITIONS

- 1) The development hereby permitted shall be carried out in accordance with drawing nos SA47316-BRY-ST-PL-A-0001 and SA47316-BRY-ST-PL-A-0005 revision A.
- 2) Within 3 months of the date of this decision, a site restoration scheme in the event of the Gypsy residential site use hereby permitted not commencing or commencing but then ceasing shall be submitted to the local planning authority for approval in writing. If no scheme in accordance with this condition is approved within 12 months of the date of this decision, the Gypsy residential site use shall cease until such a time as a restoration scheme is approved in writing.
- 3) The Gypsy residential site use hereby permitted shall be carried out only by the following persons and their resident dependents – Mr John Doherty and Mrs Theresa Doherty and their children John Doherty and Roseanne Doherty. If the site is not occupied by these persons within 2 years of the date of this decision, or when the site ceases to be occupied by these persons, the use hereby permitted shall cease and the land shall be restored in accordance with the site restoration scheme approved under condition 2 above.
- 4) The Gypsy residential site use hereby permitted shall not commence until a landscaping scheme for the site has been submitted to and approved in writing by the local planning authority. The scheme shall include an implementation timetable and the approved landscaping scheme shall be carried out in accordance with the approved timetable. Thereafter, the

landscaping scheme shall be maintained and any tree, hedge or shrub that is removed, uprooted or destroyed or dies within five years of planting or becomes seriously damaged or defective, shall be replaced with another of the same species and size as that originally planted.

- 5) Notwithstanding the details as shown on the approved plans, the Gypsy residential site use hereby permitted shall not commence until details of a foul water drainage scheme to serve the development has been submitted to and approved in writing by the local planning authority. The scheme shall include an implementation timetable and details on how the drainage system is to be maintained. A foul water drainage system shall be provided in accordance with the approved details and timetable and thereafter it shall be retained and maintained in accordance with the approved details.
- 6) The Gypsy residential site use hereby permitted shall not commence until a surface water drainage scheme to serve the whole of the development, including the tarmac part of the access drive, has been submitted to and approved in writing by the local planning authority. The scheme shall include an implementation timetable and details on how the drainage system is to be maintained. A surface water drainage system shall be provided in accordance with the approved details and timetable and thereafter it shall be retained and maintained in accordance with the approved details.
- 7) The Gypsy residential site use hereby permitted shall not commence until the access to the site for vehicles from the public highway as indicated on the approved plans and associated visibility splays also shown on the plans have been completed and created. Thereafter the access shall be retained and the visibility splays shall be kept clear of obstruction that prevents sight of vehicles on the road.
- 8) The Gypsy residential site use hereby permitted shall not commence until details of a bin collection point have been submitted to and approved in writing by the local planning authority. A bin collection point shall be provided in accordance with the approved details prior to the first use of the site for residential purposes and shall thereafter be retained.
- 9) The Gypsy residential site use hereby permitted shall not commence until the existing access within the highway and not included in the permitted means of access as defined on the approved plans has been closed and the footway/verge has been re-instated.
- 10) No gates or barriers or means of enclosure shall be erected across the approved vehicular access within 12 metres of the highway boundary and all such features should open inward away from the highway.
- 11) The site shall not be occupied by any persons other than Gypsies and Travellers, defined as persons of nomadic habit of life whatever their race or origin, including such persons who on grounds only of their own or their family's or dependants' educational or health needs or old age have ceased to travel temporarily or permanently, but excluding members of an organised group of travelling showpeople or circus people travelling together as such.

- 12) There shall be no more than one pitch on the site and no more than two caravans (as defined by the Caravan Sites and Control of Development Act 1990 as amended by the Caravan Sites Act 1968 as amended), shall be stationed at any one time, of which only one caravan shall be a static caravan.
- 13) The extent of the Gypsy residential site use hereby permitted shall be restricted to the areas defined on the approved plans as static pitch, touring pitch, patio area, garden area and parking area. No residential use including the stationing of caravans, parking or erection or provision of domestic paraphernalia shall take place on any other part of the site as defined by the dash red line on the approved plans.
- 14) No external lighting shall be installed or provided within the site unless full details of its design, location and the specification of the illuminance have first been submitted to and approved in writing by the local planning authority.
- 15) The grass parking grids as shown on the approved plans to be used to the driveway shall not at any time be replaced with any other type of surfacing.

APPENDIX 17

**Appeal APP/R3705/W/23/3335824 – Old Beretun, Barnes Wood Lane,
Whitacre Heath**



Appeal Decision

Site visit made on 16 April 2024

by N Bromley BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 31 May 2024

Appeal Ref: APP/R3705/W/23/3335824

Old Beretun, Barnes Wood Lane, Whitacre Heath, Warwickshire B46 2EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Mr David Trueman against the decision of North Warwickshire Borough Council.
 - The application Ref is PAP/2023/0206.
 - The development proposed is detached two bedroom dwelling.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appellant has submitted a Flood Risk Assessment (FRA), dated November 2023. The FRA was prepared after the Council's decision, but it was submitted with the appellant's Statement of Case. While the Council has reservations about accepting the FRA as part of the appeal, it has had an opportunity to comment on the FRA, as has the Environment Agency. Having regard to the principles established in *Holborn Studios Ltd*¹, I am satisfied that no party has been prejudiced in this regard and I have taken the FRA into account in determining this appeal.
3. Since the date of the decision, the Nether Whitacre Neighbourhood Plan (NP) was adopted in January 2024. The NP forms part of the development plan and a copy has been provided with the Council's Statement of Case (SoC). The Council refer to the NP and relevant policies in its SoC, which the appellant has had an opportunity to comment on.

Main Issues

4. The main issues are:
 - whether the proposal would be inappropriate development in the Green Belt having regard to the Framework and any relevant development plan policies, including assessing the effect of the proposal on the openness of the Green Belt;
 - whether or not the location would be suitable for housing having regard to accessibility to services and facilities;
 - whether or not the location would be suitable for housing having regard to flood risk; and

¹ *Holborn Studios Ltd v The Council of the London Borough of Hackney* [2017] EWHC 2823

- if the proposal is found to be inappropriate development, whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the 'very special circumstances' required to justify the proposal.

Reasons

Whether inappropriate development

5. The appeal site is located within the open countryside, set amongst a complex of residential properties. The land is currently used as garden land to the host property and includes a summer house and other domestic paraphernalia. The site is accessed from the main road by a long, uneven driveway.
6. The Framework establishes that new buildings in the Green Belt are inappropriate other than for specified exceptions that are set out in paragraph 154. One such exception, 154(e), is limited infilling in villages. A further exception is set out at paragraph 154(g), which allows for the limited infilling or the partial or complete redevelopment of previously developed land, whether redundant or in continuing use, which would not have a greater impact on the openness of the Green Belt than the existing development.
7. Policy LP3 of the North Warwickshire Local Plan, 2021 (LP) is broadly consistent with the Framework in resisting development in the Green Belt except in certain circumstances. Point 3 states that "Limited infilling, in settlements washed over by the Green Belt, will be allowed within infill boundaries as defined on the Policies Map". It also identifies, at point 4, that "Limited infilling may also be acceptable where a site is clearly part of the built form of a settlement, i.e. where there is substantial built development around three or more sides of a site". However, I am also mindful that it is a matter of planning judgement for the decision maker, taking into account numerous factors, including the size and location of the development and its relationship to the existing built form of the surroundings.
8. The cluster of buildings off Barnes Wood Lane is detached from the nearest settlement of Whitacre Heath. As a consequence, the buildings within the small complex, as well as neighbouring properties are physically separated from the settlement. Thus, they are not viewed within the context of the settlement and its built form. Therefore, the site is not part of the settlement.
9. In addition, the group of buildings are surrounded by open fields, and the surrounding area has a wholly rural character. The pattern of development close to the appeal site is also largely fragmented, with the sizeable gardens of neighbouring dwellings resulting in spacious gaps between buildings. As such, the site is not surrounded around three or more sides and the proposal would not infill a small gap within a substantial built development.
10. Furthermore, whilst the proposed dwelling would replace the existing small summer house building, its bulk and mass would be significantly larger. This would increase its prominence making it more visually intrusive. This would be a significant negative change in terms of the existing spatial and visual openness of the Green Belt and it would have a greater impact on the openness of the Green Belt. Therefore, even if I were to accept that the proposal is deemed to be the partial redevelopment of previously developed

land, for the reasons given, the proposal would not benefit from the exemption listed in paragraph 154(g) and any of the other listed exceptions.

11. The proposed development would also conflict with the fundamental aim of Green Belt policy which is to prevent urban sprawl by keeping land permanently open and safeguarding the countryside from encroachment.
12. For the reasons given above, I conclude that the proposal would be inappropriate development in the Green Belt and would harm the openness of the Green Belt and the purposes it serves.

Location

13. Policy LP2 of the LP directs development, including new housing, to specified main towns and settlements, categorised from 1 to 4, and category 5 being "All other locations". The site falls within the latter and the policy sets out that development within these locations will not generally be acceptable, albeit it does set out that there may be some instances where development may be appropriately located and would enhance or maintain the vitality of rural communities. This is consistent with paragraph 83 of the Framework, which seeks housing to be located where it will support local services.
14. Policy HP1 of the NP states that new dwellings should represent limited infilling within the Nether Whitacre parish development boundary.
15. Whitacre Heath is the nearest settlement, which has a category 4 status. However, as I have already identified, the appeal site is within the open countryside, physically detached and a reasonable distance from the settlement.
16. While I accept that the main road, which leads to the settlement, has a footpath on one side, the pavement is narrow and there appears to be limited street lighting along the busy road. Furthermore, the future occupiers of the proposal would also need to travel down the long, narrow, winding, uneven driveway that serves the properties to access the main road. For these reasons, future occupiers would be discouraged from walking and cycling to access services and public transport opportunities, particularly during hours of darkness.
17. There is also limited evidence before me regarding the nearest bus stop, the frequency of a bus service, if any, and the level of services and amenities within the settlement. Therefore, it is not clear to what extent the proposal could support the day to day needs of the future occupiers and how it would enhance or maintain the vitality of the nearby community.
18. Accordingly, for the reasons outlined above, I conclude on this main issue that the site is not suitable for housing having regard to accessibility to services and facilities. It would thereby fail to comply with Policy LP2 of the LP, Policy HP1 of the NP and the Framework.

Flood risk

19. The appeal site is located within Flood Zone 3 and the Framework and Planning Policy Guidance (PPG) aim to steer development to areas with the lowest probability of flooding through the application of the sequential approach.

Policy LP33 of the LP is broadly consistent with the Framework and reinforces this requirement.

20. The Framework requires a 2-stage process to ensure that areas at little or no risk of flooding from any source are developed in preference to areas at higher risk. The process consists of the sequential test and exceptions test which seek to minimise the risk of flooding both to the development proposed and the surrounding area.
21. A new dwelling does not fall within any of the exceptions listed in footnote 60 of the Framework and accordingly a sequential test is required, as set out at paragraph 174 of the Framework.
22. The submitted FRA identifies that the site is approximately 420 metres from the River Tame and that the site is protected by flood defences that have been constructed in recent years. Therefore, the FRA advises that the development is considered to be suitable within Flood Zone 3, further to the application of the Sequential and Exception Tests, as well as other identified mitigation measures.
23. However, it has not been demonstrated that the Sequential and Exception Tests have been undertaken. In addition, and notwithstanding that the FRA has addressed some of the concerns raised by the Environment Agency, the PPG is clear that even where an FRA shows that the development can be made safe throughout its lifetime without increasing risk elsewhere, the sequential test still needs to be satisfied. The FRA does not seek to identify any sequentially preferable and reasonably available sites.
24. In the absence of any information to enable the sequential test to be undertaken, I cannot be satisfied that there are no reasonably available sites appropriate for the proposed development in areas with a lower probability of flooding. The proposal therefore fails the sequential test and would therefore not be an acceptable form of development with regards to flood risk.
25. Furthermore, while other previous applications for neighbouring development may not have been required to produce a flood risk assessment, the full details of these cases have not been provided. In any event, flood risk is fact sensitive and site specific, turning on the individual circumstances of each case. Therefore, this has not eased my concerns about flood risk in this case.
26. For these reasons, I conclude that the proposed development is not in a suitable location having regard to flood risk. Therefore, the proposal is contrary to LP Policy LP33 and Paragraph 168 of the Framework as they seek to minimise the risk of flooding by avoiding development in high-risk areas.

Other considerations

27. The construction of an additional dwelling would contribute to boosting the supply of new housing, particularly in a rural area. The construction of a newer building on the land would also be more energy efficient. However, these benefits would be limited by virtue of the proposal only adding one additional dwelling to the housing supply in the area.
28. My attention has been drawn to other residential developments in the locality, some of which I viewed on my site visit. Many of these appear to relate to the conversion of existing buildings rather than the construction of new buildings.

However, I acknowledge that the Island Project (Ref PAP/2020/0097) and Heathland Farm (PAP/2021/0568) appear to be for new buildings close to the appeal site, within the Green Belt and outside of any identified settlement boundary. The full details of the schemes have not been provided, and I cannot be certain that the circumstances which led to their approval are the same as the proposal before me. Accordingly, I have determined this appeal on its merits, based on the site-specific circumstances of the case and the evidence before me.

29. No objections have been raised with regards to the design of the scheme, access and parking arrangements or the effect on neighbouring amenity levels. Nevertheless, these factors taken together, carry limited neutral weight.

Green Belt Balance and Conclusion

30. Paragraph 152 of the Framework states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in 'very special circumstances'. It goes on to state in paragraph 153 that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
31. The proposed development would be inappropriate development in the Green Belt and therefore harmful by definition. Paragraph 142 of the Framework states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. It identifies openness as an essential characteristic of the Green Belt. The Framework states at paragraph 153 that substantial weight is given to any harm to the Green Belt. I therefore place substantial weight on the harm by inappropriateness and harm to the openness that I have identified. The proposal would also not be an acceptable location for new housing, having regard to its location in relation to services and facilities and in relation to flood risk.
32. I have given some weight to the other considerations in favour of the proposal, as set out above. However, they do not clearly outweigh the harm arising from the proposal. Consequently, the 'very special circumstances' necessary to justify inappropriate development in the Green Belt do not exist. The development would thus conflict with the Green Belt protection aims of the Framework, Policies LP1, LP2 and LP3 of the LP and Policy HP1 of the NP.
33. Paragraph 12 of the Framework confirms that the presumption in favour of sustainable development does not change the statutory position that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. Where there is conflict with an up-to-date development plan, permission should not normally be granted.
34. The proposed development would conflict with the development plan taken as a whole and material considerations do not indicate that the decision should be made other than in accordance with the development plan.
35. For the reasons given above, I conclude that the appeal is dismissed.

N Bromley

INSPECTOR

APPENDIX 18

**Appeal APP/R3705/W/23/3331258 – Tameview, Cliff Hall, Lane, Cliff,
Kingsbury**



Appeal Decision

Site visit made on 14 May 2024

by M Clowes BA (Hons) MCD PG CERT (Arch Con) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28th May 2024

Appeal Ref: APP/R3705/W/23/3331258

Tameview, Cliff Hall Lane, Cliff, Kingsbury B78 2DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant outline planning permission.
 - The appeal is made by Mr Darren Gammage against the decision of North Warwickshire Borough Council.
 - The application Ref is PAP/2021/0593.
 - The development proposed is described as 'two detached dwellings.'
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The planning application was submitted in outline with all matters reserved for future consideration except access. I have determined the appeal on this basis treating the submitted site plan provided as illustrative.
3. In December 2023 the Government published a revised National Planning Policy Framework (the Framework). Although some paragraph numbers have changed, the revisions do not relate to anything that is fundamental to the main issues in this appeal. I have referred to the updated paragraph numbers where relevant.

Main Issues

4. The main issues in this appeal are;
 - i) Whether the proposal would be inappropriate development in the Green Belt, having regard to the Framework and any relevant development plan policies;
 - ii) Whether the appeal site is a suitable location for the proposed development having regard to local and national planning policy for the delivery of housing and accessibility to services and facilities; and
 - iii) Whether the harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Inappropriate Development

5. The appeal site is located within the Green Belt to which the Government attaches great importance. Paragraph 154 of the Framework indicates other than in connection with a small number of exceptions, the construction of new

buildings should be regarded as inappropriate within the Green Belt. Of those exceptions, the appellant directs me to paragraph 154g).

Limited Infilling

6. Policy LP3 of the North Warwickshire Local Plan (LP) 2021 reflects the Framework's restriction to development in the Green Belt, providing details of how Green Belt policy is to be applied locally. With regard to infilling, Policy LP3 states that limited infilling in settlements washed over by the Green Belt will be allowed within the infill boundaries as defined on the policies map. The Council confirms that there is no defined infill boundary for Cliff.
7. Importantly, Policy LP3 does not define a settlement as being where there is built development around 3 or more sides. Rather it states that infill development may be acceptable where a site is *clearly part of the built form of a settlement* (my emphasis), suggested as location where there is substantial built development around 3 or more sides of a site.
8. I have not been directed to a definition of what constitutes a settlement or infilling within the Framework or the development plan. Caselaw suggests that it is for the decision-maker to reach a judgement about whether a site is within a settlement and that it is a matter of the facts on the ground, as well as taking account of any relevant policies¹. It is also a matter of judgement as to what constitutes infilling, taking into account the nature and size of the proposed development, the location of the site and its relationship to existing development adjoining and adjacent to it.
9. I observed that Cliff is no more than a collection of buildings including some houses in a generally rural setting. No evidence is before me that Cliff is identified as a settlement within the LP. From the evidence before me Cliff does not contain facilities including as a shop, village hall, church or school such that the future occupants would enhance the vitality of a rural community. There are no road signs marking the entry or exit to Cliff.
10. The appeal site comprises a parcel of land at the western end of Cliff Hall Lane. Although it may look on plan like it is surrounded by dwellings on 3 sides, on the ground the appeal site is perceived from the road as a backland site behind other built development. Due to its undeveloped nature, views of the rolling countryside beyond are afforded above the boundary fence. The appeal site therefore, marks the transition between the built form of Cliff and the open countryside beyond the River Tame which provides an undeveloped border to the west.
11. As viewed from Cliff Hall Lane, the appeal site does not appear as a gap within an otherwise built frontage, given that the dwelling of Tame View is at an angle and tucked out of sight behind the Coach House. The end of Cliff Hall Lane and the access to the appeal site would also be to the front of the northern-most plot such that would not amount to substantial built development. The site is not therefore within an established row of linear development, but a point of transition where development becomes more dispersed.
12. Even if I could accept that the proposed development would be sited between buildings as perceived from the public realm and acknowledging that the proposed site plan is indicative, considerable space would be retained between

¹ Court of Appeal judgement Julian Wood v SSCLG and Gravesham Borough Council, 2015.

the proposed and existing dwellings to the north and south. It seems to me that infilling requires a gap between buildings to be filled, such as when an otherwise built-up frontage is completed and that would not be the case here.

13. On the evidence presented including my observations, the appeal site is not clearly part of a settlement and the proposal would not constitute infilling sufficient to satisfy Policy LP3 of the LP or paragraph 154g) of the Framework.

Previously Developed Land

14. The parties do not dispute that the appeal site constitutes previously developed land (PDL) as defined within Annex 2 of the Framework. No evidence has been presented that would lead me to form a different view. However, the exception under paragraph 154g) of the Framework, only applies where the proposal would contribute to meeting an identified affordable housing need within the Council's area, which is not the case here, or there would be no loss of openness.
15. Paragraph 142 of the Framework indicates that openness is an essential characteristic of the Green Belt, with a key objective being to keep land permanently open. Openness has both a visual and spatial dimension.
16. The appeal site predominantly comprises an area of hardstanding on which approximately 6 touring caravans are stationed. Transient in nature they do not amount to operational development. Their replacement with 2 dwellings of permanent construction, along with associated car parking areas and domestic gardens, would therefore increase the amount of built development on the appeal site, resulting in a significant erosion of 3-dimensional space.
17. Even if the reserved matters stage provided single storey dwellings, the proposed development would be visible above the boundary treatment to the end of Cliff Hall Drive and from the southern end of public footpath T71. Wide open views would also be available from the River Tame and associated wetlands and meadows to the west.
18. The scale of the proposed development would clearly have a greater impact on the openness of the Green Belt in both spatial and visual terms and the purpose of including land within it, than the existing situation. In this regard my findings are not contrary to the Lee Valley Judgement². The exception for PDL under paragraph 154g) would not be met.

Conclusion – Inappropriate Development

19. The proposal would fail to meet any of the exceptions set out by paragraph 154g) of the Framework and would therefore be inappropriate development, which is by definition, harmful to the Green Belt and should not be approved except in very special circumstances. It would also fail to comply with Policy LP3 of the LP as set out above.

Suitable Location

20. Policy LP2 of the LP defines the borough's settlement hierarchy, directing the majority of development towards its market towns and other defined settlements, where services and facilities are more readily available. To protect

² Lee Valley Regional Park Authority, R (on the application of) v Epping Forest District Council and Anon (Rev 1) [2016] EWCA Civ 404.

its landscape character little development is supported within the countryside, other than a limited amount that would maintain the vitality of the rural settlements.

21. Located within the countryside the appeal site falls under category 5, 'all other locations' of LP Policy LP2. Special circumstances should exist to justify new isolated homes in the countryside, noting examples of those that meet rural workers' needs, the optimal use of a heritage asset, the re-use of redundant buildings, the subdivision of an existing residential dwelling, or development of exceptional quality or innovative design, or for rural exception sites in line with national policy. There is nothing in the evidence before me to suggest that the proposal would meet any of the exceptions of Policy LP2.
22. As discussed above, Cliff is no more than a collection of buildings in an evidently rural setting. There are little to no facilities which would support the everyday needs of the future occupiers of the proposed development. Cliff Hall Road is a relatively narrow rural lane with no pavement or street lighting. It connects to Tamworth Road (A51) which links the settlements of Dosthill and Kingsbury.
23. There is no defined footway along the A51 that leads all the way to Dosthill so as to encourage walking to local facilities. There is a footpath along the length of the route towards Kingsbury. However, it is narrow, largely unlit and immediately adjacent the carriageway edge of the road where vehicles travel up to 50mph. It would not therefore be a particularly safe or pleasant experience to walk to Kingsbury from the appeal site, particularly with children, after dark or for those with mobility issues. The facilities and services available in Kingsbury are some distance to the south, such that it would be more convenient for future occupiers to access them via a private car, rather than on foot.
24. The appeal site may provide opportunities for travel by bike, but it is likely to be limited to experienced cyclists rather than families, given the speed of vehicles using Tamworth Road. Bus stops are available on Tamworth Road but they are some distance from the end of Cliff Hall Lane, and there is no substantive evidence before me as to their frequency, such that they attract limited weight.
25. The general conditions of the appeal site as discussed above, are such that future occupiers would be more likely to rely on the private car as a safer and more convenient mode of transport to access supermarkets, schools as well as employment.
26. It is suggested that a recent approval for a residential annexe at the adjacent Coach House³ confers acceptance of the appeal site as meeting the sustainability objectives of the development plan and the Framework. That proposal was considered in 2014, prior to the adoption of the current LP and the publication of the present Framework iteration⁴. The planning policy position was therefore materially different. Moreover, an annexe is a different type of use that relies on a close functional relationship with a main dwelling. Thus, I do not find the circumstances comparable.

³ Planning application reference PAP/2018/0010.

⁴ As set out in the officer report provided within appendix 2 of the appellant's statement of case.

27. The proposed development would not be in a suitable location with regard to the delivery of housing and access to local services and facilities. The proposal would be in conflict with Policy LP2 of the LP as set out above, and the Framework with regard to rural housing.

Other Considerations

28. Paragraph 152 of the Framework states that very special circumstances for new development will not exist until the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal is clearly outweighed by other considerations. The appellant has not advanced any other considerations which I can weigh against the harm identified.

Other Matters

29. The footprint of the proposed dwellings would extend over the former footings of Cliff Hall. Be that as it may, the evidence indicates that the Hall was demolished in 1968⁵ and there are no obvious remnants of the former structure visible on site, other than perhaps some paving. My findings are not affected.
30. The lack of listed buildings nearby and the siting of the appeal site outside of a conservation area are neutral matters, weighing neither for, nor against the proposal.

Green Belt Balance and Conclusion

31. The proposal would amount to inappropriate development in the Green Belt, resulting in a loss of openness. Referring to footnote 7 of paragraph 11, this is one such policy that, when applied, provides a clear reason for refusing the development proposed. The appeal scheme would not therefore benefit from the presumption in favour of sustainable development.
32. The Framework establishes that substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the harm to the Green Belt and any other harm are outweighed by other considerations.
33. Given the substantial weight to be given to Green Belt harm, combined with the other identified harm arising from the appeal site not being within a suitable location for housing development, and the lack of other considerations, the harm is not clearly outweighed. The very special circumstances necessary to justify the proposal do not exist. The appeal is dismissed.

M Clowes

INSPECTOR

⁵ As set out in the Council's officer report.

APPENDIX 19

Appeal APP/R3705/W/23/3327296 – Land west of Hams Hall roundabout and south of Marsh Lane, Curdworth



Appeal Decision

Hearing held on 17 January 2024

Site visit made on 18 January 2024

by Sarah Housden BA (Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22 February 2024

Appeal Ref: APP/R3705/W/23/3327296

Land west of Hams Hall roundabout and south of Marsh Lane, Curdworth, B76 0AA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant outline planning permission.
 - The appeal is made by Caesarea Development Holdings Limited against the decision of North Warwickshire Borough Council.
 - The application Ref PAP/2020/0295, dated 12 June 2020, was refused by notice dated 7 February 2023.
 - The development proposed is 'outline application for an overnight truck stop comprising 200 HGV spaces and associated facilities including fuel refuelling station, amenities building, electric vehicle charging points, staff and other car parking, and landscaping. Including details of vehicular access from Marsh Lane, all other matters reserved'.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. A revised National Planning Policy Framework (the Framework) was published on 19 December 2023 and updated on 20 December 2023. In advance of the hearing, I invited the Council and the appellant to comment on whether the updated Framework has any implications for the appeal. Both parties submitted statements indicating that, other than in relation to minor typographical changes, the revised Framework does not have any implications for the case. I see no reason to disagree with that assessment. The appeal has been determined against the provisions of the updated Framework.
3. The appeal seeks outline planning permission with all matters reserved for later approval, apart from the means of access. A Landscape Masterplan (Drawing No 8843-L-02 Revision A) accompanied the application. This shows the location of the new roundabout access into the site, the re-alignment of Marsh Lane, the general layout of the internal access road and parking areas and the broad location of proposed landscaping. I have treated that plan as an indicative guide to how the site might be developed, were the appeal to succeed.
4. The description of development in the banner heading above is taken from the planning application form. In their appeal statement, and as explained at the hearing, the appellant proposed that the description be amended to insert 'up to' before '200 HGV spaces'. The appellant considers that as the proposal is in outline only, the final number of parking spaces is unlikely to be precisely 200

and that the amendment proposed would enable any variation in numbers to be reflected at the reserved matters stage.

5. At the hearing, I gave the Council and the appellant an opportunity to comment on the proposed change to the description of development. After due consideration of the points made, I made a ruling on this request at the hearing, and the explanation that I gave is confirmed below.
6. My conclusion is that although the scale of Heavy Goods Vehicle (HGV) parking could be potentially less under the revised description, determining the appeal in accordance with that description would lead to procedural unfairness. Firstly, based on the revised description, the Council may have arrived at a different set of considerations in the overall planning balance. Secondly, third parties would be prejudiced by not having had an opportunity to comment on the revised scale of parking provision. The appeal has therefore been determined based on the description of the proposed development set out in the banner heading above.
7. At the hearing, the effect of the proposal on the form and character of the area was dealt with as an 'other consideration'. For clarity, and in response to discussion at the hearing and from what I saw at my site visit, I have identified the effect on form and character having particular regard to the effect on landscape character, as a main issue in this decision.
8. An Environmental Impact Assessment (EIA) Screening Direction dated 11 December 2023 confirms that EIA is not required for the appeal proposal.

Main Issues

9. The main issues in this case are:
 - Whether or not the proposed development would be inappropriate development in the Green Belt and if inappropriate, the effect on openness and on Green Belt purposes;
 - The effect on the form and character of the area, having particular regard to the effect on landscape character;
 - The effect on the living conditions of nearby residents; and
 - Whether or not any harm arising from inappropriateness, and any other harm, would be clearly outweighed by other considerations, including any public benefits, so as to amount to the very special circumstances necessary to justify it.

Reasons

10. The appeal site is in the Green Belt and comprises two fields which are currently in agricultural use, located to the north and south of Marsh Lane and covering approximately 6 hectares and 3 hectares respectively. The proposed truck stop would be located on the northern field, with the southern field proposed as a biodiversity enhancement area.
11. The northern field lies within a larger parcel of land demarcated by the A446 Lichfield Road dual carriageway to the east, the M42 and M6 motorways (the 'M42/M6 corridor') to the west, and Marsh Lane to the south. The M42 Junction 9 (J9) roundabout is located approximately 0.8 kilometres to the north, and the

A446/Marsh Lane/Faraday Avenue roundabout ('the Hams Hall roundabout') adjoining the eastern boundary serves the Hams Hall Distribution Park approximately 0.6 km to the east. The HS2 route lies to the east of the A446, and works are ongoing. The edge of the built-up area of Curdworth village to the west is separated from the northern field by the M42/M6 corridor and small grazing paddocks.

12. Due to the low boundary hedges and small number of hedgerow trees, the northern field is open to view from both Marsh Lane and when approaching in a northerly direction from the A446 to the south of the Hams Hall roundabout. Ground levels rise towards the northern boundary which is demarcated by compound style fencing along part of its length, with the remainder open apart from a few trees.

Whether or not inappropriate development and the effect on openness and purposes

13. Policy LP3 of the North Warwickshire Local Plan 2021 (LP) seeks to protect the Green Belt. In stating that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances, Policy LP3 is consistent with Green Belt policy in the Framework.
14. The truck stop site to the north of Marsh Lane would be developed with a new roundabout access, an amenity building, a fuel station kiosk and canopy, gatehouse, hard surfacing, lighting columns, signage and perimeter fencing, together with parked HGVs and cars.
15. The construction of new buildings is inappropriate development in the Green Belt and the proposal would not fall within any of the exceptions listed at paragraph 154 of the Framework. Paragraph 155 lists six further forms of development that would not be inappropriate, provided that they would preserve openness and would not conflict with Green Belt purposes.
16. Within that list is 'local transport infrastructure which can demonstrate a requirement for a Green Belt location'. The Council does not dispute that the proposal would constitute 'transport infrastructure', and I see no reason to disagree with that assessment. I therefore turn next to the matter of whether or not the proposal would be 'local'.
17. The appeal site is in close proximity to the M6 and M42 motorways on the Strategic Road Network, and the A446. The scale of HGV parking proposed is based on traffic growth on those roads over a 10 year period. The National Survey of Lorry Parking¹ identifies seven national 'hotspots' where parking shortages are most pronounced, including Hams Hall to Dordon within which the appeal site is located. The proposal would seek to address this national need for HGV parking whilst also addressing some of the issues caused by roadside HGV parking in the vicinity of Hams Hall Distribution Park.
18. My conclusion, based on the evidence in this case, is that the proposed truck stop would help to meet strategic transport needs. For this reason, it would not be 'local' transport infrastructure and it would be inappropriate development in the Green Belt.

¹ AECOM and Department for Transport National Survey of Lorry Parking 2017 (updated September 2022).

19. Due to the significant and permanent boundaries formed by the highway infrastructure surrounding the appeal site as a whole, the appellant contends that it makes a limited contribution to Green Belt openness. It is argued that the site's context and the nature of existing views would limit the degree of contrast and change that will be experienced, and the appellant's Landscape Statement concludes that the proposal would have no more than a limited and localised effect on Green Belt openness, confined to limited stretches of roads around the site.
20. The biodiversity proposals for the southern field include tree and grassland planting, the parameters for which are shown on the Landscape Masterplan. These natural features would be seen in the context of the surrounding landscape. Since there would be no built development, engineering features or hard surfacing on this part of the appeal site, the proposal would not lead to any reduction in the openness of the Green Belt overall. The biodiversity proposals would also not conflict with any of the five purposes of including land within the Green Belt.
21. The proposed buildings on the northern field would have a small footprint and would be single storey in height and approximately 64% of the truck stop site would comprise open parking areas, landscaping and planting. There would be a robust framework of new native woodland, tree and hedge planting on the site boundaries. Nevertheless, the proposed development would result in buildings, structures, hard surfacing, fencing, lighting and parked HGVs and cars on a site where none existed previously which would result in a significant loss of Green Belt openness.
22. The level of activity, such as traffic generation, can also be a factor in assessing the impact of development on Green Belt openness. The appeal site is set within the context of surrounding road corridors which generate significant traffic movements along the M6, M42, A446 and at the M42/J9 and Hams Hall roundabouts.
23. However, the volume of traffic movements diminishes along Marsh Lane and in particular, the weight restriction in place through Curdworth village prohibits the movement of larger HGVs. This, together with the narrower road width contributes to a quieter and more rural character along Marsh Lane, with the movement and noise from the M42/M6 corridor only becoming apparent at closer distances to the Marsh Lane overbridge.
24. The new roundabout access would open the site up from Marsh Lane, with a noticeable increase in the level of HGV movements between the Hams Hall roundabout and the site access and this increased activity would also reduce the openness of the Green Belt.
25. Turning to Green Belt purposes, since no historic towns would be affected, purpose (d) is not relevant in this case. Whilst the use of brownfield and other urban land would comply with purpose (e), there is nothing in the evidence to indicate that there are alternative brownfield sites in the vicinity of the appeal site that would be available for a truck stop.
26. The truck stop would not physically merge with, nor would it be viewed directly in conjunction with, the built up areas of Curdworth nor Water Orton to the south due to the separation distances between them and the intervening topography. Due to the separation distance and the location of the intervening

Hams Hall roundabout, a degree of visual separation between the proposed development and the Distribution Park would be retained. Overall, I conclude that the proposal would not undermine Green Belt purposes (a) and (b) to check the unrestricted sprawl of large built-up areas and to prevent the merging of neighbouring towns.

27. Notwithstanding the presence of urbanising features in the vicinity of both parts of the appeal site, it is viewed in conjunction with the wider open countryside which extends from the M42/J9 roundabout to the built up edge of Coleshill to the south. From public vantage points to the east of Curdworth, including the Public Right of Way, the Hams Hall Distribution Park buildings, pylons and the HS2 works appear as the background context to the site, but they do not intrude into, nor undermine, the undeveloped and open aspect of the northern field.
28. The truck stop would be a significant incursion into part of the wider area of open countryside between the M42/J9 roundabout to the built-up edge of Coleshill, contrary to the purpose of the Green Belt to safeguard the countryside from encroachment. The site falls within the wider parcel CH9 in the Council's most recent Green Belt Study². The Framework does not make any distinction between Green Belt 'performance' in decision making, and I therefore give very limited weight to the appellant's conclusion that the site would be considered as 'low performing' when assessed against the purposes of the Green Belt.
29. My conclusion is that the proposal would be inappropriate development in the Green Belt which would result in significant harm to openness and would conflict with the purpose to safeguard the countryside from encroachment. There would be conflict with LP Policy LP3 and with the Framework. I give substantial weight to the harm arising from inappropriateness.

Form and character - Landscape

30. The appeal site is not within any national or local landscape designations and it is not a 'valued' landscape within the context of paragraph 180 of the Framework. The biodiversity and planting proposals for the southern field would make a positive contribution to the defining characteristics of the Cole Valley Landscape Character Area (LCA) within which it is located.
31. The northern field lies within the Middleton to Curdworth-Tame Valley Farmlands LCA, which is characterised by large arable fields enclosed by low gappy hedgerows with a few hedgerow trees. Although the landscape is predominantly agricultural, the Landscape Character Assessment³ acknowledges that at the southern end there are busy transport corridors, connecting to nearby industrial areas to the south around Hams Hall.
32. Due to its topography and lack of vegetation cover, when approaching along the A446 from the south, the northern field forms an open and undeveloped backdrop and it is not viewed directly in conjunction with the urbanising features of roads and the large scale buildings at Hams Hall. For this reason, it is characteristic of the landscape features of the Middleton to Curdworth-Tame Valley Farmlands LCA.

² Coventry and Warwickshire Joint Green Belt Study (April 2016)

³ North Warwickshire Landscape Character Assessment

33. Assessed against the factors in the Landscape Institute's Technical Guidance Note 02-21, the appellant's Landscape Statement concludes that the site and its immediate context are of low landscape value. The appellant's LVA concludes that the overall landscape effect would be minor adverse which would reduce to negligible with the maturing and management of existing and new planting, including on the southern field.
34. From more distant viewpoints, the intervening topography and vegetation would limit direct views of the development. However, at closer distances there would be substantial changes arising from the re-alignment of Marsh Lane, changes to landform, the new roundabout, new buildings, lighting, signage, fences and parked HGVs which would be harmful to the defining characteristics of the LCA.
35. The harm to the landscape character of the Middleton to Curdworth-Tame Valley Farmlands would be localised in effect and the proposed landscaping would soften the appearance of the development in the longer term. Overall, I conclude that there would be moderate harm to the landscape character of the LCA, in conflict with LP Policies LP1 and LP14 which together seek to improve the environmental quality of the area, and to conserve, enhance or restore landscape character.

Living conditions

36. At my informal site visit during the hours of darkness, I was able to see that there is a degree of existing illumination in the vicinity of the appeal site from the M42/M6 corridor, along the A446 and around the Hams Hall roundabout.
37. The appellant's Lighting Report strategy would follow best practice to limit light spread, to prevent glare and to avoid upward emission. There would be a minor adverse effect on the occupiers of Spring Farm to the south of Marsh Lane, which is the closest residential receptor.
38. The Council and the appellant have agreed a condition that would secure details of external lighting at the reserved matters stage, following the lighting strategy proposed. This would be necessary and reasonable to ensure that the submitted details would not cause material harm to the living conditions of the occupiers of Spring Farm, nor to the occupiers of the nearest residential properties on the east side of Curdworth.
39. Based on the appellant's Noise Impact Assessment, there would be negligible increases in noise levels from additional HGV movements above existing background noise levels. The Council and appellant have agreed conditions that would secure details of noise mitigation measures during construction and site operation, including for all mechanical plant and ventilation equipment such as fuel pumps and reversing alarms. These would be necessary and reasonable to ensure that there would be no material harm to the living conditions of nearby occupiers arising from noise and disturbance.
40. A Site Management Plan condition is also agreed. This would require details of litter and refuse collection, site security and measures to ensure that the truck stop would be restricted to HGV use and that it would not be used as a general facility for other highway users.
41. Overall, subject to the imposition of the above necessary conditions, I conclude that the proposed development would not lead to unacceptable impacts on the

living conditions of nearby occupiers. As such, there would be no conflict with LP Policy LP29 in so far as it requires new development to avoid and address unacceptable impacts on neighbouring amenities, including through noise and light pollution, nor with LP Policy LP30 in so far as it seeks to reduce sky glow, glare and light trespass from external illumination.

Other Considerations

42. Paragraph 113 of the Framework states that the importance of providing adequate overnight lorry parking facilities should be recognised in planning decisions, to reduce the risk of parking in locations that lack proper facilities, or where it could cause a nuisance. In supporting the safe and efficient operation of the distribution sector, the proposal would contribute to the economic objective of sustainable development.
43. LP Policy LP34 states that in recognition of the Borough's strategic location and demand for lorry parking, the Council will give weight to lorry parking provision and facilities, and opportunities for alternative provision and improved management in decision taking. There are, however, no site allocations for HGV parking or other driver facilities in the adopted LP.
44. The National Survey of Lorry Parking 2022 survey update confirms continuing high levels of demand and utilisation rates within the West Midlands. The provision of new facilities to address the national need for more lorry parking, and better services, has also received Ministerial support⁴.
45. The truck stop would help to address a national shortage of HGV parking. It would be well located for drivers using the Hams Hall Distribution Park, which is a nationally significant distribution facility, whilst also addressing issues caused by roadside HGV parking in the vicinity of Hams Hall.
46. The proposed truck stop would be conveniently located for HGV drivers to take their prescribed break periods within legal driving times. The provision of modern and accessible facilities would also support driver welfare and would make a positive contribution to recruitment and retention in the sector.
47. The proposed development has received representations in support, including from the managing agent for the Hams Hall Distribution Park who states that it would help to address the negative impacts of roadside parking on nearby roads. Warwickshire Police indicate their support as the proposed facility would give HGV drivers a secure place to park as they travel through North Warwickshire.
48. Taking into account traffic growth on the M42/M6 and A446, the Circular 2/2013 methodology indicates a need for 159 HGV spaces, and the appellant's Transport Assessment beat survey found that there were 89 HGVs parked inappropriately on roads in the vicinity of Hams Hall. The scale of the HGV parking provision is sufficiently flexible to accommodate future traffic growth and is justified by the evidence.
49. An assessment of 23 alternative sites, both within and outside the Green Belt, accompanied the planning application. The appeal site was found to be the

⁴ Secretaries of State for Transport, Work and Pensions and Environment, Food and Rural Affairs letter to the UK Logistics Sector July 2021 and Written Statement 'Planning reforms for lorry parking' by the Secretary of State for Transport 8 November 2021

most suitable in relation to the criteria used, which appear to be reasonable and robust. Although the site to the north-east of Junction 10 was not included in the alternative site assessment, at the hearing the appellant confirmed that this was due to the uncertainty about the future of the existing Motorway Service Area at Junction 10 in relation to HS2 works when the alternative site assessment was done.

50. Although other HGV parking and facilities have been developed in the area, and there is an outstanding application for HGV parking to the north east of M42 Junction 10, there is nothing to suggest that there is insufficient demand to support an additional facility in the location of the appeal site. Based on the above considerations, I give significant weight to the benefits of the proposed scheme.
51. The biodiversity measures on the southern field would be secured through a condition requiring details of a Landscape and Ecology Management Plan at the reserved matters stage. This would be based on the submitted Ecology Report which sets out the biodiversity net gain calculation. Overall, the proposal would comply with LP Policy LP16 which requires that development should help ensure a measurable net gain in biodiversity. I afford the biodiversity gains moderate weight in favour in the overall planning balance.

Other matters

52. Subject to conditions which have been agreed, National Highways has no objection to the proposed development and no measures are necessary to mitigate the impact of the proposal on the Strategic Road Network. The appellant's Transport Assessment has modelled the effect of the development on the local highway network and subject to conditions, the Highway Authority has no objection. A 3 metre footway/cycle path would be provided to the north of Marsh Lane, between the new roundabout and the Hams Hall roundabout.

Green Belt Balance and Conclusion

53. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that planning applications are determined in accordance with the development plan unless material considerations, which include the Framework, indicate otherwise.
54. Whilst I have found that there would be no material harm to the living conditions of nearby residents, this is a neutral factor in the overall planning balance.
55. The other considerations in this case include the compelling evidence of need for additional HGV parking and driver facilities, the provision of which would help to address a national shortage of HGV parking, improve driver welfare, would support the distribution sector generally and would have wider public benefits in reducing the levels of roadside parking in the vicinity of Hams Hall Distribution Park. I give significant weight in favour of the appeal to these benefits, and moderate weight to the biodiversity proposals for the southern field.
56. Set against this, the proposal would be inappropriate development in the Green Belt and substantial weight attaches to the harm to the Green Belt. This combined with the moderate harm to the landscape character of the Tame

Valley Farmlands LCA carries very substantial weight against the proposal in the Green Belt balance.

57. I find that the other considerations, taken together, do not clearly outweigh the very substantial weight against the proposal arising from the combination of inappropriateness and the harm to landscape character. The very special circumstances necessary to justify the development in the Green Belt do not exist. Therefore, the proposal would be contrary to the development plan, read as a whole, along with the provisions of the Framework.
58. For the reasons outlined above and having had regard to all other matters raised, the appeal should be dismissed.

Sarah Housden

INSPECTOR

APPEARANCES

FOR THE APPELLANT:	
Mr S Harley BSocSc (Joint Hons) MPhil MRTPI	Director, Oxalis Planning
Ms M Thomson LLB LARTPI	Planning Solicitor
Mr T Jackson BA Hons Dip LA CMLI	Director, FPCR Environment and Design Ltd
FOR THE LOCAL PLANNING AUTHORITY	
Mr J Brown BA DipTP MRTPI	Head of Development Management
Cllr M Watson North Warwickshire Borough and Warwickshire County Council	
INTERESTED PERSONS	
Mr R Habgood	Curdworth Parish Council
Mr Hodgetts	Hodgetts Estates
Mr Bunn	Director, Tetra Tech
Mr D Hann	Director, WSP
Ms S McKenna	
Mr T Tillson	
Mr T Wilcox	
Ms J Tillson	
Ms J Wiseman	
Mr P Smith	
Mr T Wilcox	

DOCUMENTS SUBMITTED AT HEARING

1. Notification letter from the LPA dated 13 December 2023 to third parties notifying that the hearing is scheduled to last for 2 days.

APPENDIX 20

**Appeal APP/N1920/W/22/3295268 – Land to the north of Butterfly Lane,
Land surrounding Hillfield Farm and Land west of Hillfield Lane, Aldenham,
Hertfordshire**



Department for Levelling Up,
Housing & Communities

Rachel Gaffney
33 SHEEP STREET
CIRENCESTER
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Rachel.Gaffney@pegasusgroup.co.uk

Our ref: APP/N1920/W/22/3295268
Your ref: 21/0050/FULEI

8 April 2024

Sent by email only

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ELSTREE GREEN LTD
LAND NORTH OF BUTTERFLY LANE, LAND SURROUNDING HILFIELD FARM AND
LAND WEST OF HILFIELD LANE, ALDENHAM, HERTFORDSHIRE
APPLICATION REF: 21/0050/FULEI**

This decision was made by the Minister of State for Housing, Planning and Building Safety, Lee Rowley MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Helen Heward BSc (Hons) MRTPI, who held a public local inquiry which sat from 19 October to 4 November 2022 into your client's appeal against the decision of Hertsmere Borough Council to refuse your client's application for planning permission for the *Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping, and biodiversity enhancements*, in accordance with application Ref. 21/0050/FULEI, dated 6 January 2021.
2. On 6 October 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed, and planning permission refused.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with her recommendation. He has decided to refuse planning permission. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Department for Levelling Up, Housing & Communities
Laura Webster, Decision Officer
Planning Casework Unit
3rd Floor Fry Building
2 Marsham Street
London SW1P 4DF

Email: PCC@levellingup.gov.uk

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement (ES) which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. Having taken account of the Inspector's comments at IR5, the Secretary of State is satisfied that the ES provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and amended on 20 December 2023. On 17 January 2024, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the revised Framework and revised National Policy Statements (NPS) EN-1 and EN-3. Representations were received from Hertsmere Borough Council, Pegasus Group (on behalf of the appellant), Debenhams Ottaway Solicitors (on behalf of Aldenham Parish Council) and We are Upp (on behalf of the Combined Objectors' Group). These representations, and responses to them, were circulated to the main parties and are listed in Annex A to this decision letter. The Secretary of State has considered the comments raised in these representations relating to the Framework and NPSs. Copies of the letters listed in Annex A may be obtained on request to the email address at the foot of the first page of this letter.
7. The IR contains paragraph references to the previous version of the Framework; this decision letter refers to both the old and the new paragraph numbers, where these are different.
8. The requirement for mandatory biodiversity net gain (BNG) has been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permissions granted for applications made before this date, such as the appeal subject to this decision, are not subject to mandatory BNG.

Policy and statutory considerations

9. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
10. In this case the development plan consists of the Hertsmere Local Plan Core Strategy adopted January 2013, the Hertsmere Local Plan Site Allocations and Development Management Policies Plan adopted November 2016 and the Local Plan 2012-2027 Policies Map adopted November 2016. The Secretary of State considers that relevant development plan policies include those set out at IR27-28.
11. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning practice guidance (the Guidance), as well as those other documents listed at IR29-30.
12. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

13. The emerging plan is at an early stage. A period of engagement on a Regulation 18 document; Hertsmere Local Plan 2024, commenced on 3 April 2024 and runs until 29 May 2024. The latest Local Development Scheme (LDS) states a Regulation 19 local plan consultation will take place at the end of 2024. Adoption of the final version of the local plan is expected by the end of 2026.
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Due to the very early stages of local plan preparation the Secretary of State considers that little weight can be attached to the emerging plan.

Main issues

The effect of the proposed development on the openness and purposes of the Green Belt

15. The Secretary of State notes that it is common ground between parties that the proposed development is by definition inappropriate development in the Green Belt and agrees substantial weight should be attached to that definitional harm (IR395).
16. The Secretary of State agrees that there would be a change to the character of the land which would impinge upon the openness of the Green Belt (IR400). For the reasons given at IR401-407 the Secretary of State agrees that the development would have a significant adverse effect upon both the spatial and visual qualities of the openness of the Green Belt and that substantial weight should be attached to these harms (IR408).
17. Like the Inspector at IR412, the Secretary of State has considered the appeal proposal against the purposes of the Green Belt having regard to the specific nature of the proposals.
18. The Secretary of State has considered whether the proposal would harm the purposes of the Green Belt as set out in paragraph 143 of the Framework (formerly 138). For the reasons given at IR417-418 the Secretary of State agrees that the introduction of development onto the site, and the extent to which the proposed development would be visible in the wider landscape would be harmful to purpose (c) encroachment into the countryside, as defined by the Framework (IR418).
19. The Secretary of State has given careful consideration to IR422 and the specific impacts on the Green Belt in this case. The Secretary of State considers substantial weight should be applied to collective Green Belt harm, including inappropriate development, harm to both spatial and visual openness and harm to Green Belt purposes, in accordance with paragraph 153 of the Framework (formerly 148).
20. Paragraphs 152-153 of the Framework (formerly 147-148) state that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances (VSCs). VSCs will not exist unless the potential harm to the Green Belt and any other harm resulting from the proposal, is clearly outweighed by other considerations. The Secretary of State has gone on to consider these matters. His conclusion on whether VSCs exist is set out at paragraph 68 below.
21. The Secretary of State will consider the compliance of the proposal with Core Strategy Policy CS13 at paragraph 68 of this decision when considering whether there are VSCs.

Finally, he agrees with the Inspector at IR423 that the proposal is in conflict with Policy SADM26. He finds that even if VSC were demonstrated, the proposal does not comply with criteria (i), (iv) or (v), there would be conflict with Policy SADM26.

The effects of the proposed development upon the significance of designated heritage assets and their settings

22. For the reasons given at IR430 the Secretary of State agrees that Policy CS14 of the Core Strategy predates the Framework and does not reflect the advice at paragraph 208 (formerly 202) and for this reason the weight attached to Policy CS14 is limited. For the reasons given at IR431 he considers that moderate weight should be attached to Policy SADM29.

23. The Secretary of State agrees with the position of the main parties that in respect of the five designated heritage assets, where harm would arise it would be harm to the setting of the asset, and such harm would amount to less than substantial harm to the significance of the heritage assets (IR432).

*Hilfield Castle, Grade II**

24. For the reasons given at IR434-454 the Secretary of State agrees that the solar arrays in Field 1 would be a noticeable discordant and jarring feature, detrimental to the setting of Hilfield Castle and an appreciation of an important picturesque view which assists in an understanding and appreciation of the significance of the asset, and therefore harmful to the significance of Hilfield Castle (IR455). He further agrees at IR455 that proposed solar arrays in an area north of the Castle would further diminish an appreciation of the wider rural setting of Hilfield Castle and the extent of former parklands and cause an additional, but minor, level of harm to the setting.

25. At IR456 the Secretary of State agrees that planting trees, reflective of former parkland in Field 1 would reintroduce features that have been lost, enhance the legibility of the former parkland and have a beneficial effect upon the setting of Hilfield Castle, but the enhancements would not mitigate the harmful effects of solar arrays in Field 1. The Secretary of State agrees that the level of harm to the significance of Hilfield Castle would be low/medium in the less than substantial harm range (IR456).

Hilfield Lodge, Grade II

26. For the reasons given at IR457-461, the Secretary of State agrees that the proposal would be detrimental to the rural setting and picturesque views of Hilfield Lodge which assist in an understanding and appreciation of the asset and would therefore be harmful to the significance of Hilfield Lodge (IR462). He further agrees at IR462 that the level of harm to the significance of Hilfield Lodge would be low/medium in the less than substantial harm range.

Slades Farmhouse, Grade II

27. For the reasons given at IR463-468 the Secretary of State agrees that solar arrays, fencing and associated development in former agricultural land around Slades Farmhouse would be discordant and detracting and would diminish the legible connection between farmhouse and farmland, and would be harmful to the significance of Slades Farmhouse (IR469). He further agrees at IR469 that the effects would not be fully mitigated by the proposed landscape strategy. He further agrees at IR469 that the level of harm to the significance of Slades Farmhouse would be low/medium in the less than substantial harm range.

Penne's Place Scheduled Monument

28. For the reasons given at IR470-475 the Secretary of State agrees that the level of harm to the significance of Penne's Place Scheduled Monument would be low on the less than substantial harm range.

Aldenham Park Registered Park and Garden Grade II

29. For the reasons given at IR476-479 the Secretary of State agrees that the level of harm to the significance of Aldenham Park Registered Park and Garden would be very low on the less than substantial harm range.

Effects upon the settings of other Heritage Assets

30. For the reasons given at IR480-488 the Secretary of State agrees that there would be no harm to the significance of Hilfield Gatehouse, Aldenham Senior School, Kendall House, Medburn House, as a result of the proposal.

Conclusions on Heritage Matters

31. The Secretary of State has considered the Inspector's comments at IR491 and has taken into account that there is less than substantial harm to a number of heritage assets. He has further taken into account the Inspector's assessment of the level of less than substantial harm to each designated heritage asset, as summarised at IR494-498.

32. In line with the provisions of section 66(1) of the LBCA Act the Secretary of State has had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.

33. The Secretary of State considers that in the circumstances of this case, great weight should be attached to the harm to designated heritage assets.

34. The Secretary of State has undertaken the balancing exercise under paragraph 208 of the Framework (formerly 202) at paragraph 67 below.

35. The Secretary of State agrees with the Inspector at IR500 that given the findings of less than substantial harm to a number of heritage assets there would be conflict with development plan policies CS14 and SADM29. As per paragraph 22 of this decision the Secretary of State has concluded both of these policies should be afforded reduced weight because of inconsistency with the Framework.

The effect of the proposed development upon landscape character

36. The Secretary of State notes that the site is not within a designated landscape (IR502).

37. The Secretary of State agrees with the Inspector's approach at IR504 to address landscape character only, to avoid potential 'double counting' of visual impacts which have already been taken into consideration under the visual dimension of Green Belt openness.

38. For the reasons given at IR505-508 the Secretary of State agrees that it is inevitable that an array of solar panels covering almost 85ha of the appeal site would have a significant impact on existing character (IR508).

39. For the reasons given at IR509-517 the Secretary of State acknowledges that the Landscape and Visual Impact Assessment for the appellant concludes that development

would have a major-moderate and adverse effect initially upon the Borehamwood Plateau Landscape Character Area. Even once the landscape strategy has been implemented, and planting matured, the report finds that there would be a “long-term/semi-permanent” moderate adverse landscape effect within the site (IR516). He agrees with the Inspector that residual landscape benefits post-decommissioning must be weighed in the planning balance, but they would not mitigate the harms during the operational period (IR517).

40. Overall, he agrees that during the operational period, development would have a significant adverse effect on landscape character (IR518) and agrees this should be apportioned significant weight (IR519).

41. He further agrees that the proposal would also conflict with requirements of development plan policies CS12 and SADM11 which, amongst other things, include that all development proposals must conserve and enhance the natural environment of the Borough, including landscape character (IR509).

Best and Most Versatile Land (BMV)

42. The Secretary of State acknowledges at IR520 that the land on which the development is proposed is Grade 3b. For the reasons given at IR520-524 the Secretary of State agrees that there would be no conflict with paragraph 180(b) (formerly 174) of the Framework regarding aims to protect BMV agricultural land.

43. Footnote 62 of the Framework, concerning the importance of the availability of agricultural land used for food production has been given further consideration in relation to this application. The Secretary of State considers that the proposed development would be consistent with paragraph 180(b) (formerly 174) of the Framework and finds the updated Footnote 62 to have limited bearing on the determination of this appeal.

Glint and Glare

44. For the reasons given at IR525-537, the Secretary of State concludes that through appropriate conditions the proposal would not result in any materially harmful glint and glare effects. He further agrees that the proposal would satisfy the requirements of development plan Policy SADM30 (ii) (IR537), and this matter carries neutral weight.

Flood Risk and Drainage

45. For the reasons given at IR538-542, the Secretary of State agrees that through appropriate conditions the proposal would not increase flood risk elsewhere and a requirement for a further Flood Risk Assessment is not necessary (IR542). He agrees this matter carries neutral weight (IR542). He further agrees that the proposal would comply with advice in the Framework at paragraph 165 (formerly paragraph 159) and satisfy the requirements of development plan Policy SADM14 (IR542).

Noise

46. For the reasons given at IR543-545, the Secretary of State concludes that through appropriate conditions there are no adverse impacts to the proposal in respect of noise and this matter carries neutral weight. He further agrees that the proposal would comply with advice in the Framework at paragraph 191 a) (formerly 185 a)) and satisfy the requirements of development plan Policy SADM20 (ii) (IR545).

Personal Safety

47. The Secretary of State agrees for the reasons given at IR546-547 that this matter carries neutral weight.

Health, Safety and Hazards

48. For the reasons given at IR548-550, the Secretary of State concludes that through appropriate conditions there are no adverse impacts to the proposal in respect of health safety and hazards and this matter carries neutral weight. He further agrees that the proposal would satisfy requirements of development plan Policy SADM21 (IR550).

Benefits

Contribution to the Government's Climate Change Programme and Energy Policies

49. The Secretary of State accepts that the planning application submitted is for a scheme which would generate up to 49.9MW (IR552, IR577).

50. The Secretary of State acknowledges IR551-553 and agrees with parties that the delivery of the solar farm and battery storage would be a benefit. He further acknowledges IR554-563 and agrees with the Inspector at IR564 that whilst some of the documents referenced are drafts, some do not represent planning policy, and some of the Government's policies and objectives are aimed at Nationally Significant Infrastructure Projects above 50MW in size, collectively they create a body of evidence giving an indication of broader Government policy that energy generation from solar, including onshore solar farms, is a key component of the overall Government's business, energy, and climate change strategies to achieve the outcome of net zero greenhouse gas emissions by 2050. He has also had regard to the Framework paragraph 157 (formerly 152) that the planning system should support the transition to a low carbon future in a changing climate, and paragraph 163 (formerly 158) concerning the ability of small-scale projects to provide a valuable contribution to significant cutting greenhouse gas emissions. He has also considered the Guidance (Reference ID: 5-003-20140306) which advises that all communities have a responsibility to help increase the use and supply of green energy. He further acknowledges IR566-567 and IR576.

51. The Secretary of State acknowledges IR570-573 and agrees with the Inspector that these arguments lend weight to a need for more sustainable sources of electricity, not less, and the use of solar energy as one form of renewable energy is endorsed by the Government (IR574).

52. The Secretary of State considers that the renewable energy benefits of the scheme carry substantial weight (IR578). He agrees with the Inspector at IR568 that there is nothing in Policy CS17 to preclude renewable energy projects in the Green Belt.

53. The Secretary of State further notes that paragraph 163 (formerly 158) of the Framework states that an application for renewable or low carbon development should be approved if its impacts are (or can be made) acceptable (IR575). The Secretary of State considers whether paragraph 163b of the Framework is met at paragraph 69 below.

Biodiversity Net Gain

54. The Secretary of State notes the BNG position of the scheme set out at IR579. For the reasons given at IR580-583 he agrees that the proposal would comply with paragraph 180 d) (formerly 174 d) of the Framework, and Policies CS12 and SADM11 concerning opportunities for habitat creation and enhancement. He considers the BNG of 89.99% in area units and 24.98% in linear units should carry substantial weight.

Improvements to Soil and Agricultural Land

55. For the reasons given at IR586 the Secretary of State agrees that improvements to soil and agricultural land attract limited weight.

Landscape Legacy

56. The Secretary of State notes IR587. For the reasons given at IR588-590 agrees with the Inspector that with the harmful effects of the development removed, the appeal site would be left with an enhanced landscape framework which would benefit the character and condition of the Borehamwood Plateau Landscape Character Area, and the Aldenham Plateau Landscape Character Area to a small degree though intervisibility. He further agrees the proposal would comply with SADM11 (IR591) and agrees landscape legacy should attract moderate weight (IR594).

Heritage Legacy

57. The Secretary of State agrees at IR596 that provision and subsequent retention of hedgerows to the front of Slades Farmhouse would be of limited benefit to the significance of the building. He further agrees at IR597 that the provision of, and subsequent retention of, roughly one dozen specimen Oak trees to enhance the legibility of the former parkland surrounding Hilfield Castle would have a long term minor beneficial effect. The Secretary of State further agrees at IR598 that collectively, these heritage legacy benefits comply with Policy CS14 to where possible, improve local environmental quality, and agrees they should attract moderate weight.

Creation of Two Permissive Footpaths

58. For the reasons given at IR599-602 the Secretary of State agrees that the creation of permissive footpaths attracts only limited weight.

Education Strategy

59. For the reasons given at IR603, the Secretary of State agrees that an Educational Strategy including information boards attract only very limited weight.

Economic Benefits

60. For the reasons given at IR604, the Secretary of State agrees that the economic benefits attract only limited weight.

Other Matters

61. The Secretary of State has had regard to IR605-611 and agrees with the Inspector that the evidence regarding alternative sites before the Inquiry is not sufficient to demonstrate that the proposed development has to be sited in the Green Belt. He further agrees that this issue should not attract weight in the planning balance.

62. Whilst the Inspector acknowledges IR612-617, he finds that every case should be judged on its own merits.

Planning conditions

63. The Secretary of State has considered the Inspector's analysis at IR527-529, IR550 and IR618-630, the recommended conditions set out at Annex A of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the Guidance. He

agrees that provisions for requiring landscaping and heritage legacies beyond the operational period would not be necessary nor reasonable (IR626). The Secretary of State is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework. However, the Secretary of State does not consider that the imposition of these conditions would overcome his reasons for dismissing the appeal and refusing planning permission.

Planning balance and overall conclusion

64. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with development plan Policies CS14, which carries limited weight, SADM29 which carries moderate weight, parts of CS12 and SADM11, SADM26 and CS13 if it is concluded below that the VSCs test is not passed. He concludes that the appeal scheme is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.
65. Weighing in favour of the proposal is the renewable energy benefits which carry substantial weight; the BNG contribution which carries substantial weight and the heritage and landscape legacy benefits which each carry moderate weight. The benefits of leaving the land fallow, the two permissive paths and the economic benefits all individually carry limited weight and the education strategy which carries very limited weight.
66. Weighing against the proposal is harm to the Green Belt from inappropriate development, harm to openness and harm to one of the Green Belt purposes which collectively carries substantial weight, less than substantial harm to a number of designated heritage assets which carries great weight and harm to landscape character which carries significant weight.
67. In line with the heritage balance set out at paragraph 208 (formerly 202) of the Framework, the Secretary of State has considered whether the identified 'less than substantial' harm to the significance of Hilfield Castle, Hilfield Lodge, Slades Farmhouse, Penne's Place Scheduled Monument and Aldenham Park RPG is outweighed by the public benefits of the proposal. Taking into the account the public benefits of the proposal as identified in this decision letter, overall, the Secretary of State agrees with the Inspector at IR644 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified 'less than substantial' harm, including cumulative harm, to the significance of the designated heritage assets. He considers that the balancing exercise under paragraph 208 of the Framework is therefore favourable to the proposal.
68. In line with paragraph 153 (formerly 148) of the Framework, the Secretary of State has considered whether the harm to the Green Belt by reason of inappropriateness, and any other harms resulting from the development is clearly outweighed by other considerations. Overall, he considers that the other considerations in this case do not clearly outweigh the harm to the Green Belt and the other identified harms relating to impact on landscape character and harm to designated heritage assets. He therefore considers that VSCs do not exist to justify this development in the Green Belt. Furthermore, the Secretary of State considers that the appeal scheme is not in accordance with development plan Policy CS13 as VSCs do not exist.
69. In line with paragraph 163b of the Framework (formerly 158b) he finds that the impacts of the proposal are not acceptable.

70. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that the overall conflict with the development plan and the material considerations in this case indicate that permission should be refused.

71. The Secretary of State therefore concludes that the appeal is dismissed and planning permission refused.

Formal decision

72. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping, and biodiversity enhancements, in accordance with application Ref. 21/0050/FULEI, dated 6 January 2021.

Right to challenge the decision

73. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

74. A copy of this letter has been sent to Hertsmere Borough Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Laura Webster

Decision officer

This decision was made by the Minister for Housing, Planning and Building Safety, Lee Rowley MP, on behalf of the Secretary of State, and signed on his behalf

Annex A Schedule of representations

Representations received in response to the Secretary of State's reference back letter of 17 January 2024

Party	Date
Combined Objector's Group c/o We Are Upp	24 January 2024
LPA forwarded on by PINS	26 January 2024
Aldenham Parish Council c/o Debenhams Ottoway	29 January 2024
Appellant c/o Pegasus Group	30 January 2024

Representations received in response to the Secretary of State's recirculation letter of 2 February 2024

Party	Date
Combined Objector's Group c/o We Are Upp	7 February 2024
Appellant c/o Pegasus Group	9 February 2024

General representations

Party	Date
Appellant c/o Pegasus Group	5 January 2024



Report to the Secretary of State

by **Helen Heward BSc (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Date **10 July 2023**

Town and Country Planning Act 1990

Hertsmere Borough Council

Appeal by Elstree Green Ltd

Inquiry Held on 18 October - 4 November 2022

Accompanied site visits made Tuesday 18 October and Thursday 3 November 2022

Land north of Butterfly Lane, land surrounding Hilfield Farm and land west of Hilfield Lane, Aldenham, Hertfordshire

File Ref: APP/N1920/W/22/3295268

File Ref: APP/N1920/W/22/3295268**Land north of Butterfly Lane, land surrounding Hilfield Farm and land west of Hilfield Lane, Aldenham, Hertfordshire**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Elstree Green Ltd against the decision of Hertsmere Borough Council.
- The application Ref: 21/0050/FULEI, dated 6 January 2021, was refused by notice dated 19 November 2021.
- The development proposed is described as: "*Installation of renewable led energy generating station comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping, and biodiversity enhancements.*"

Summary of Recommendation: The appeal be dismissed.**Contents**

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Preliminary and Procedural Matters

1. The Inquiry sat on eight days between 19 October and 4 November 2022. The final day of sitting was held virtually. The parties prepared an itinerary for site visits. I undertook a number of unaccompanied visits to the site and surrounding area on 18 October

and in between sitting times. Accompanied site visits were held on 20 October and 3 November.

2. Access to Hilfield Castle and grounds had been restricted. An accompanied site visit on the penultimate day of the Inquiry was the first opportunity that the Heritage Witness for the Appellant and I had to view the building and its setting at close quarters.

Recovery of the appeal by the Secretary of State

3. Under the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997 the appeal was to have been decided by an Inspector. Subsequently, the Secretary of State considered that he should determine it himself because the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies and proposals for significant development in the Green Belt. In exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 6 October 2022 the Secretary of State directed that he shall determine this appeal instead of an Inspector.

Environmental Impact Assessment

4. The proposed development falls within the description in column 1, Schedule 2, 3(a) (energy industry) of the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017 (EIA Regulations 2017) and exceeds the applicable site area threshold of 0.5 hectares (Ha) for an industrial installation project. Hertsmere Borough Council issued an EIA Screening Opinion Letter, 29 September 2020, informing the Appellant that the proposed development constitutes an EIA development, and the planning application was accompanied by an Environmental Statement.
5. The Planning Inspectorate reviewed the Environmental Statement and concluded that the Environmental Statement is satisfactory in terms of Schedule 4 of the EIA Regulations 2017. Further information was not required. All of the environmental information has been taken into account.
6. The Campaign to Protect Rural England Hertfordshire, (CPRE) called for the cumulative impacts of this scheme together with "at least eight further large-scale ground mounted solar installations within the County."¹ Hertsmere Borough Council had not required that the Environmental Statement address cumulative impacts nor was this identified as a need by the Planning Inspectorate review.

Pre-Inquiry Matters

7. On 3 September 2022, the Appellant sought to amend the scheme at appeal by omitting one of the fields where solar arrays would be located; known as 'Field 1'. The main reasons given were to further

¹ CD-ID 14 paragraph 51

lessen the less than substantial harm identified to heritage assets, and that it would respond to concerns raised regarding landscape and visual impacts, and remove areas falling within Flood Zone 2 and 3. The amendments were declined on account of the fact that the size, shape, and area of development would be substantially different from that determined by the Council. Further, it was not clear how the changes would impact the energy capacity of the scheme applied for, and so could deprive consultees and interested parties of a fair and reasonable opportunity to make representations on the effects of the changes sought.

8. On 22 September 2022, a draft Unilateral Undertaking was put forward by the Appellant, updated 18 October, in respect of a Construction Traffic Management Plan and permissive footpaths. I considered that all relevant matters could be secured by planning conditions and the undertaking was not necessary. The main parties agreed.
9. On 10 October 2022, a proportionate heritage rebuttal statement from the Appellant responding to additional heritage assets raised by the Combined Objectors' Group (COG) was accepted. However, a planning rebuttal from the Appellant with a large number of appendices potentially containing new evidence was declined.
10. On 18 October 2022, a Statement of Common Ground, (SoCG) summarising the positions of the Council and Appellant in respect of weight to be attributed to harms and benefits was submitted.

Documents and Drawings Submitted During the Inquiry

11. The Core Document Library is hosted by Hertsmere Borough Council and can be found at <https://www.hertsmere.gov.uk/Planning--Building-Control/Planning-Enforcement/Solar-Farm-Appeal.aspx>.
12. All parties worked collaboratively and discussions continued between the Appellant, Council and Rule 6 parties in the period leading up to the Inquiry and during the event. A number of documents were submitted. They are catalogued in a section of the Core Document Library titled 'Documents Submitted During the Inquiry'. They include: -
 - A Noise SoCG, 17 October 2022, between the Appellant and COG.² In brief it put forward wording for a planning condition to ensure that noise impacts upon the amenity of residential properties and Public Rights of Way (PRoW) would be adequately controlled. With this, COG had no remaining substantive disagreement in respect of noise effects. At my request, and arising from a written representation, an update was issued 26 October 2022.³ It added an assessment of the impact of noise from the proposed development upon the

² DSDI 19

³ DSDI 11

occupants of a dwelling at O'Malley's Haulage Yard that had hitherto been omitted.

- A signed overarching SoCG between the Appellant and Council, and a planning statement of matters agreed/not agreed between the Council and Appellant. It includes a table summarising harms and benefits and the weight the parties attach to each.⁴
- A table summarising expert opinion about the likely level of harm to heritage assets.⁵ The document was signed by the heritage experts for the Council, Appellant, COG and Aldenham Parish Council Rule 6 parties.
- A revised Construction Traffic Management Plan and note from the Appellant clarifying transport movements.⁶
- Following the 20 October accompanied site visit, an interested party submitted a number of photographs of trees and flooding.⁷
- From the Appellant, a clarification note, photographic images and text of the recorded PRoWs crossing the appeal site, to clarify points raised by an objector about their extent and position.⁸
- From the Council, two extracts of Google aerial photography showing the position of some paths across the appeal site that do not appear in the Definitive Rights of Way Map and Statement.⁹
- From the Appellant, a revised Landscape Strategy Plan drawing together with proposals from the Landscape and Ecology Management Plan for planting and management of habitats with additional notes.¹⁰
- A note from the Appellant clarifying drawings used to produce photomontages for Figure 9.3 Viewpoint 3 – sheet 3 of 4.¹¹
- A version of a drawing attached as Appendix A to the Landscape Proof of Evidence (PoE) for COG with lengths of selected PRoWs marked up by the Appellant.¹²
- A note by the Appellant on glint and glare including a revised condition relating to mitigation in fields neighbouring Butterfly Lane.¹³
- A clarification note by the Appellant on flood risk.¹⁴

⁴ DSDI 11 i

⁵ DSDI 2

⁶ DSDI 20 and CD-DSD1 3

⁷ DSDI 10

⁸ DSDI 15, CD-DSD1 16 and CD-DSD1 17

⁹ DSD1 13

¹⁰ DSDI 22 LDA Design Dwg 8398_013; then superseded by CD-DSDI 34MDwg 8398_013 Rev A 01

¹¹ DSDI 35

¹² DSDI 49

¹³ DSDI 23

¹⁴ DSDI 33

- From the Appellant, a site location plan, clarifying that land affected by the access proposals is within the control of the Appellant.¹⁵
- A note by the Appellant relating to solar farms referred to by the Council's Planning Witness in Evidence in Chief.¹⁶
- From the Appellant, revised elevations for the substation, storage containers, control room, battery containers and inverter/transformer stations.¹⁷

13. None of these documents introduced substantive new evidence or issues. None of the main parties raised any objection to their submission, and all had an opportunity to consider and address the information during the Inquiry. The submission of the documents resulted in a narrowing of the matters in dispute and accepting them as matters before the Inquiry would not be prejudicial to interested parties.

14. Another note submitted by the Appellant during the Inquiry, TN06, providing details of the results of a new traffic speed survey, amounted to new evidence but did not raise substantive new issues.¹⁸ Its purpose was to inform a proposed planning condition. The Council did not raise an objection to its submission but was unable to secure a response from the Highway Authority during the Inquiry. Both the note and Hertsmeare Borough Council's position have been taken into account in this Report.

15. An interested party, who gave evidence on the last day of the Inquiry, sought to introduce documents after the close of the Inquiry. The documents were declined and returned, and have not formed any part of my considerations.

Late Evidence

16. On 18 and 19 April 2023, and before this report was submitted to the Secretary of State, the Appellant brought attention to the recent publication of Revised draft National Policy Statement EN-1 (March 2023), Revised draft National Policy Statement EN-3 (March 2023), and Powering up Britain: Energy Security Plan (March 2023). Three recent appeal decisions concerning solar farm proposals were also referred to, namely APP/W1525/W/22/3300222 (Chelmsford, Essex), APP/V1505/W/22/3301454 (Herongate, Basildon) and APP/C3240/W/22/3293667 (Telford, Shropshire). It was determined that the evidence offered should be accepted and the main parties offered an opportunity to submit a written response. The Appellant's submissions and responses from the main parties are attached at Annex E and are dealt with in the report.

¹⁵ DSDI 41

¹⁶ DSDI 25

¹⁷ DSDI 26, DSDI 27, DSDI 29, DSDI 30 and DSDI 31

¹⁸ DSDI 32

Site and Surroundings

17. The description of the appeal site and surroundings are a matter of common ground between the Council and the Appellant.¹⁹ The site is within the London Metropolitan Green Belt. It sits within an area of Green Belt between Bushey, Radlett, and Borehamwood; three of the four main settlements within Hertsmere Borough Council's area.
18. The site is predominantly undeveloped agricultural land covering approximately 130Ha and comprises two parcels linked by a grid connection cable route.
19. The 'western parcel' is formed of five fields. Field 1 is accessed from an existing field gate on the west side of Hilfield Lane. Fields 2 to 5 are accessed from an existing field access on the eastern side. It rises to approximately 100m Above Ordnance Datum in Field 5 near Elstree Aerodrome and drops to roughly 80m Above Ordnance Datum towards Hilfield Lane and Hilfield Brook, then rising again towards the A41 and M1 motorway. The western parcel is in close proximity to the National Grid Elstree Substation.
20. The 'eastern parcel' comprises land north of Butterfly Lane and Fields 7 to 20. Access is gained via an existing access on the north side of Butterfly Lane.
21. There are a number of PRoWs within and adjoining the site. There are no statutory landscape or heritage designations on the site. There are forty-one listed buildings within 1Km. Drawings illustrating these and other features can be found in the Appendices to the Appellant's Landscape and Green Belt Harm proof of evidence, together with other images including the site location and topography.²⁰

Proposed Development

22. Development would broadly comprise:
 - Bifacial solar photovoltaic (PV) panels, ground mounted onto a fixed tilt south facing system at a tilt of 15-30 degrees;
 - Sixteen inverter/transformer stations housed in containers;
 - String combiner boxes to combine multiple strings of PV panels;
 - Approximately twenty battery storage containers;
 - On-site substation compound and on-site control room;
 - Compacted crushed stone internal tracks to allow vehicular access to the substation and between fields;
 - 2.2m high security deer fencing and gates;

¹⁹ DSDI 11 section 2

²⁰ CD-ID 19 Figures 1 to 12

- A 5m minimum stand-off for fencing either side of PRoWs
- Security and monitoring CCTV/infra-red cameras mounted on fence posts along the perimeter of the site;
- Pole mounted weather stations and monitoring containerised building;
- Underground and cable tray cabling to connect the panels, inverters, and battery storage to the proposed on-site substation;
- Underground cable connecting the on-site sub-station to Elstree Substation to the west of the site;
- Site accesses;
- Landscaping planting, biodiversity enhancements and surface water attenuation measures.

23.Paragraph 3.5 of the SoCG states that gaps between rows of solar arrays would be approximately 3 to 4.5m depending upon topography.

The Temporary Nature of the Proposed Development

24.The development is expected to export renewable energy to the National Grid for a period of thirty-five years. The application proposes a thirty-five-year period for the operational phases of the development. A method statement for decommissioning would be prepared and submitted to the Council for approval and would be secured by planning conditions. The scheme is reversible, including the penetrative ground fixings, and all structures would be removed from the site and the land reinstated for agricultural use following decommissioning.

Planning Policy

25.The Development Plan comprises Hertsmere Local Plan Core Strategy (adopted January 2013) (Core Strategy); Hertsmere Local Plan Site Allocations and Development Management Policies Plan (adopted November 2016) (SADMPP); and Local Plan 2012-2027 Policies Map (November 2016). The area of the Radlett Neighbourhood Plan (2021) is 400m from the appeal site at its closest and is not engaged.

26.The two policies referenced in the Council's decision notice were SADMPP Policy SADM26 (Development Standards in the Green Belt) and Core Strategy Policy CS14 (Protection or Enhancement of Heritage Assets).

27.The Council and Appellant agree that the following policies are relevant to the appeal scheme: -

Core Strategy policies:

- SP1 Creating Sustainable Development
- SP2 Presumption in Favour of Sustainable Development

- CS12 The Enhancement of the Natural Environment
- CS13 The Green Belt
- CS14 protection or Enhancement of Historic heritage Assets
- CS15 Promoting Recreational Access to Open Spaces and the Countryside
- CS16 Environmental Impact of New Development
- CS17 Energy and CO2 Reductions
- CS22 Securing a High Quality and Accessible Environment

28.SADMPP policies:

- SADM10 Biodiversity and Habitats
- SADM11 Landscape Character
- SADM12 Trees Landscaping and Development
- SADM13 The Water Environment
- SADM14 Flood Risk
- SADM15 Sustainable Drainage Systems
- SADM16 Watercourses
- SADM20 Environmental Pollution and Development
- SADM21 Hazardous Substances
- SADM22 Green Belt Boundary
- SADM24 Key Green Belt Sites
- SADM26 Development Standards in the Green Belt
- SADM27 Diversification and Development Supporting the Rural Economy
- SADM29 Heritage Assets
- SADM30 Design Principles
- SADM34 Open Space, Sports, and Leisure Facilities
- SADM40 Highway Access Criteria for New Developments
- SADM41 Aviation Safeguarding

29.The Council and Appellant agree the following are also relevant to the appeal:

- The Hertfordshire Landscape Character Assessment.²¹
- Hertsmere Borough Council Biodiversity Trees and Landscape Supplementary Planning Document.²²

²¹ CD-HCCP4

²² CD-HSPD1

- Hertsmere Borough Council Interim Policy Statement on Climate Change (adopted 2020).²³

30. In terms of national planning policy and guidance, the National Planning Policy Framework, 2021, (the Framework) and National Planning Practice Guidance, March 2014 as amended and updated (PPG), including the Chapter on Renewable and Low Carbon Energy, are material considerations. Other legislation, national guidance and policy documents were referred to by the parties and agreed to be material considerations. In particular:

- Overarching National Policy Statement for Energy (EN-1)²⁴ (2011), and Draft EN-1 published in September 2021.²⁵
- National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011) and Draft EN-3 published September 2021.^{26 27}
- The Climate Change Act 2008.²⁸
- UK Government Solar Strategy (2014).²⁹
- Written Ministerial Statement on Solar Energy: Protecting the Local and Global Environment (March 2015).³⁰
- Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021).
- The Planning (Listed Buildings and Conservation Areas) Act 1990.³¹
- Managing Significance in Decision-Taking in the Historic Environment. Historic England Good Practice Advice 15 (March 2015).³²
- The Setting of Heritage Assets, Historic England Good Practice Advice in Planning: Note 3 (December 2017).³³

Matters Agreed Between Hertsmere Borough Council and the Appellant

31. Various background matters and the policy position are set out in the SoCG. The following main matters are agreed:

Renewable Energy

- There is no requirement to demonstrate a need for renewable energy, as confirmed by Paragraph 158 of the Framework.

²³ CD-HSPD2

²⁴ CD-NPP25

²⁵ CD-NPP17

²⁶ CD-NPP25

²⁷ CD-NPP18

²⁸ CD-NPP2

²⁹ CD-NPP22

³⁰ CD-NPP16

³¹ CD-NPP20

³² CD-NPP10

³³ CD-NPP11

- Development would constitute a low carbon, renewable energy source that would contribute towards meeting national renewable energy targets.
- Development would provide a maximum of 49.9MW of electricity, equivalent to approximately the annual needs of 15,600 homes and displace an estimated 25,400 tonnes of CO² per annum.
- The proposed development would be the largest zero carbon renewable energy infrastructure in Hertsmere Borough Council's administrative area and make a substantial and significant contribution towards meeting local, national, and international objectives and policies.

Site Selection

- The site is in close proximity to existing energy infrastructure, at the National Grid Elstree Substation adjacent to Hilfield Farm which has capacity for additional power to be fed into it.
- No land is specifically allocated for the generation of renewable energy in the adopted Hertsmere Local Plan.

Green Belt

- The site is located in open countryside outside of any defined settlement boundary.
- The proposals comprise inappropriate development in the Green Belt and paragraph 148 of the Framework is engaged.
- There would be harm to openness and to Green Belt purposes.
- Substantial weight should be afforded to any harm to the Green Belt.

Landscape Character and Appearance

- The site is within National Character Area 111 Northern Thames Basin and the Borehamwood Plateau Landscape Character Area. The impact on the Borehamwood Plateau Landscape Character Area would be Major-Moderate and Adverse reducing to Moderate Adverse in the long term.
- Long-term visual effects of development would be either Moderate or Slight Adverse when viewed within 150m of the site. Within the site the long-term visual effects would be Major-Moderate and Adverse.
- Viewpoints in the Landscape and Visual Impact Assessment (LVIA) are representative and appropriate.
- Only the landscape character within the site would change as a result of development. Beyond the site, the landscape would remain physically unchanged.
- With the scheme removed after thirty-five years, the proposal would leave an enhanced environment in landscape character terms.

Biodiversity

- Development would bring about a net gain in biodiversity on the site (39% in terms of habitat improvement and 23% in terms of hedgerow improvements) and would constitute a major public benefit and contribute to the very special circumstances (VSC) case in favour of the development. Ecological benefits should carry significant weight in the planning balance.
- A Biodiversity Metric 3.0 Calculation confirms an 89.99% habitat biodiversity net gain (BNG) and a 24.98% hedgerow BNG through the implementation of development.

Arboriculture

- Existing trees would be retained. Proposals include tree planting and a condition to ensure their replacement should they die, be removed, or become severely damaged.

Public Rights of Way

- All PRowS which pass through the site would remain and no solar panels or other associated equipment would be installed within five metres of any PRow.
- Two new permissive footpaths are proposed for the lifetime of the development. A condition could ensure they are retained for that period.

Glint and Glare

- Heathrow Airport, Elstree Aerodrome and National Air Traffic Services have no safeguarding objections.
- Four houses might be moderately impacted under the current baseline conditions. No impact is expected if proposed screening measures were implemented.
- Butterfly Lane might be moderately affected by glint and with screening as it is. Proposed hedging improvements could mitigate that impact.

Agricultural Land

- The site constitutes Grade 3b land which is not 'best and most versatile' agricultural land. Development would not result in the loss of Best and Most Versatile Agricultural Land.
- Solar panels would be mounted on metal legs allowing grassland to grow beneath them. The metal legs would be driven into the ground without the use of any concrete and removed at the end of their life.
- Part of the site would remain in agricultural use for grazing and other areas set aside for wildlife and biodiversity. Development would provide the soil, which has been intensively farmed, a fallow period to recover from intensive agricultural practices.

- Upon expiry of the permission the land would revert to agricultural use. There would be no permanent loss of agricultural land or its quality.

Heritage Matters

- The Council and Appellant agree a list of five heritage assets which would be affected. The Council and Appellant agree that all heritage harms that would arise would be of 'less than substantial harm' and that the test at paragraph 202 of the Framework is to be applied.³⁴
- All alleged harms to significance would arise from harm to settings.
- The Council and Appellant agree that the level of harm that would occur to Hilfield Castle (Grade II*, list entry no: 1103569) and Hilfield Castle Lodge (Grade II, list entry no: 1103570) would be low.
- A table summarising the position of the main parties in respect of heritage assets was submitted.³⁵ Aldenham Parish Council and COG were also signatory to the table.
- Aldenham Parish Council argue harm would occur to the setting of Hilfield Gatehouse, (Grade II list entry 1346907). COG argue there would be some impact meriting consideration to a number of other listed, local listed and non-listed buildings. Hertsmere Borough Council does not assert harm to any of these.

Temporary Consent

- A thirty-five-year temporary consent is sought from the date on which construction of development commences.
- A condition could ensure that a Decommissioning Statement be approved to demonstrate how the equipment would be removed from the site and the land restored to its former condition.

The Officer Report to the Planning Committee

- The Officer Report to committee considered that the public benefits would clearly outweigh the limited harm that would be caused to the openness of the Green Belt (whilst affording substantial weight to any harm to the Green Belt in accordance with paragraph 148 of the Framework), and that VSC were demonstrated by the proposals. Members of the Planning Committee disagreed.
- This Officer Report also advised that no environmental harm would be caused; on the contrary the development would bring

³⁴ CD-ID 8A Paragraph 2.1

³⁵ DSDI 2

about improvements to the natural environment within the site. The Planning Committee disagreed.

Matters in Dispute Between Hertsmere Borough Council and the Appellant

32. The main matters in dispute are:

Harm to the Significance of Designated Heritage Assets

- The extent and level of harm that would occur upon the significance of Slades Farmhouse (Grade II, list entry no: 1103614).
- Whether any harm would occur to the heritage significance of Penne's Place Scheduled Monument (list entry no: 1013001) and Aldenham House Registered Park and Garden (Grade II, list entry no: 1000902).
- Whether the public benefits of the scheme outweigh the alleged harm.

Green Belt

- The degree of impact and extent of harm to the openness of the Green Belt.

Benefits of Development

- The amount of weight to be apportioned to the benefits of development.

Very Special Circumstances

- Whether the identified benefits of the development are sufficient to amount to VSC which would clearly outweigh the harm to the Green Belt and any other harm caused.

33. The table on the following page, taken from the SoCG, summarises the position of the Council and Appellant in respect of weight to be attached in the planning balance.

Weight attributed to harms and benefits in the planning balance		
	LPA	Appellant
Harms (negative weight)		
Green belt openness and purposes	Substantial	Substantial
Landscape impact	Significant	Moderate
Heritage impact	Substantial	Moderate
Benefits (positive weight)		
Generation of 49.9MW of renewable energy	Significant	Substantial
Biodiversity/ecological enhancements	Significant	Substantial
Landscape enhancements (operational period)	Neutral	Moderate
Landscape enhancements (post-development)	Limited	
Improving soil and agricultural land quality	No weight	Moderate
Aiding farm diversification	No weight	
Permissive footpaths	Neutral	Limited/moderate
Education strategy	No weight	Limited
Economic benefits	Limited	Significant

The Case for Elstree Green Ltd

34. The scheme was recommended for approval after a consultation process which led to significant changes to the scheme. The Appellant says that the detailed and comprehensive Officer Report recognised the numerous and weighty benefits of the proposal which included:³⁶

- The substantial amount of renewable energy that would be generated from the scheme that: *"would be a significant contribution towards addressing the Climate Emergency that the Council has declared, and towards meeting local and national policy on reducing carbon emissions, addressing climate change, and meeting the UK's obligations under the Paris Agreement of 2016"*;
- There would be environmental and BNG benefits to the site and nearby nature reserves;
- Belstone Football Club and local walkers would benefit from the new permissive paths; and
- *"local people, including school pupils, would benefit from the Educational Strategy."*

35. COG suggest in closing there were errors in the approach taken by the Officers in their assessment. The Appellant says that what COG identify are simple challenges to the proper exercise of matters of planning judgment.

36. Members disagreed, but in doing so expressly recognised, in the reason for refusal, the importance of renewable energy acknowledging: *"the wider environmental benefits associated with the increased production of energy from renewable sources."* As the Council's Planning Witness accepted in cross examination, it was clearly an "on balance" decision.

37. Given the clear concessions made by the Council throughout the Inquiry, it is difficult, the Appellant considers, to understand how it can now be argued that the planning balance is anything other than heavily in favour of granting permission. VSC exist and the appeal should, they say, be allowed.

The Council's Energy Plan

38. The Appellant notes that the Council's policy documents all say the right things, but the Council are yet to take the "ambitious actions" which they claim they are committed to. The Appellant says it became apparent through the Inquiry that the Council does not have a plan to achieve its stated energy and climate objectives.

39. The Framework sets out ambitious targets for meeting the challenge of climate change and these are targets that councils are required to

³⁶ CD PA-27 paragraph 12.10

reflect in their own development plans. Framework paragraph 152 states that *"The planning system should support the transition to a low carbon future in a changing climate... It should help to... support renewable and low carbon energy and associated infrastructure."*

40. Framework paragraph 155(b) indicates that plans should *"consider identifying suitable areas for renewable and low carbon energy"*. At paragraph 158 the Framework dictates that there is no requirement for applications to demonstrate the need for renewable energy and that *"even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions"*. The Framework is clear that renewable energy is key to the country's transition to a low carbon future, and it requires local planning authorities to plan for it.
41. Further national guidance on planning for renewable energy is provided in the PPG. Statements of particular relevance including:
- *"The National Planning Policy Framework explains that all communities have a responsibility to help increase the use and supply of green energy"* (Paragraph: 003 Reference ID: 5-003-20140306);
 - *"When drawing up a Local Plan local planning authorities should first consider what the local potential is for renewable and low carbon energy generation."* (Paragraph: 003 Reference ID: 5-003-20140306);
 - *"When identifying suitable areas, it is also important to set out the factors that will be taken into account when considering individual proposals in these areas."* (Paragraph: 005 Reference ID: 5-005-20150618), and
 - *"Policies based on clear criteria can be useful when they are expressed positively (i.e., that proposals will be accepted where the impact is or can be made acceptable)."* (Paragraph: 007 Reference ID: 5-007-20140306).
42. In short, the PPG expects all communities to do their bit to increase the supply of renewable energy, when considering how they can do that their local plans should be informed by an up-to-date, realistic, capacity study and an up-to-date Local Plan can then provide for the delivery of renewables either by allocating land or setting out criteria-based policies against which applications can be judged.
43. The Appellant says the Hertsmere Development Plan does none of this. They wish to record that numerous witnesses before the Inquiry agreed that it is out of date in this regard and none have suggested that it provides any allocations, criteria-based policies or is informed by a capacity study.
44. Nationally the target for the reduction of carbon emissions is to be net zero by 2050; a target which is enshrined in S.1 of the Climate Change Act 2008. In December 2020 the National Audit Office acknowledged that meeting net zero is a colossal challenge, being a significantly tougher objective to achieve than the previous 80%

target.³⁷ In October 2021 the net zero strategy further tightened in the UK with a commitment that the country will be powered entirely by clean energy by 2035, fifteen years earlier than previously required.³⁸ Contrary to the cross examination of the Appellant's Planning Witness the latter cannot be read as favouring off-shore wind and disfavours solar power – it states that unequivocally.

45. The Development Plan is not informed by these up-to-date targets and is out of date in this regard. The Core Strategy was informed by the 1997 Kyoto Agreement targets of reducing emissions to 60% by 2050. The capacity study that existed was the East of England Sustainable Development Round Table 2001 which identified 17% of the region's electricity could be produced by renewable sources by 2020. Hertsmere does not generate 17% of its electricity by renewables, it produces around 6% of its electricity; significantly below the national figure of 33%.
46. The Appellant sets out that evidence that informs the Development Plan is grossly out of date, and there is no up-to-date evidence in the form of a capacity study or anything else – all that exists are the above statements of intent.
47. Judging the Development Plan against Hertsmere's own targets, it is, the Appellant says, out of date. The Council has declared a Climate Emergency and is committed to achieving carbon neutrality as soon as possible and no later than 2050.³⁹ But that is not reflected in the Development Plan.
48. The Council has adopted strategies that commit it to producing more renewable energy in Hertsmere. The Council's Climate Change and Sustainability Strategy v.1.4, 26th June 2020, states in terms: *"In order to meet the energy needs and our net zero emissions commitment before 2050, a significant amount of renewable energy capacity will need to be deployed within Hertsmere"*. Goal number 2 is that it should *"reduce reliance on fossil fuels and reduce emissions by increasing renewable energy capacity"*. These objectives are not reflected in the Development Plan, nor its actions in refusing this application.
49. The Appellant's position is that on a practical level there is simply no plan within Hertsmere to meet the national objectives of net zero by 2050, nor the locally set objectives of deploying *"a significant amount of renewable energy capacity"* within the Borough. The Council's Planning Witness accepted the view of the Council's Climate Change Officer that roof top mounted solar panels and similar small scale renewable schemes would not be enough to meet the "step change" that was required in renewable energy production. The only suggestion offered by the Council or Rule 6 parties as to how renewable energy targets could be met was by importing it from "somewhere else". Such a suggestion is at odds with the

³⁷ CD-NPP30 page 6

³⁸ CD-NPP8, first bullet point, page 19

³⁹ CD-HSPD2 paragraph 1

requirement that “all communities” do their part and Hertsmere’s own commitment to significantly increase its renewable capacity. The Appellant says, this is a council without a plan and is dependent on developer led schemes, such as the appeal proposal, coming forward if it is to stand any chance of making the changes required to meet renewable energy objectives.

50. Whether the Council’s Development Plan is judged against national planning policy and guidance, against the national energy strategy and evidence or against Hertsmere’s own energy and climate strategies, it is out of date.
51. The Council’s Planning Witness accepts the conclusions of the Climate Change Officer; that if this district is to achieve its stated objective, then the only way it could do it would be large scale solar generation in the Green Belt.
52. The other parties to the Inquiry, “acknowledge” the importance of renewable energy but then seek to downplay that benefit. The Appellant considers that this is disappointing and indicative of the failures that have occurred in planning for renewable energy delivery in this locality.

Landscape and Visual Impacts

53. Whilst the Inquiry heard evidence from landscape witnesses it is not a reason for refusal. The Appellant accepts that in the short to medium term there would be landscape and visual harm but very firmly contends that in the longer term there would be improvements as a result of the legacy plan and that medium/long term effects during operation are not greater than moderate outside the immediate site boundary and beyond. With regards to the harms that would occur, the differences between the landscape witnesses for the Appellant and COG, in regard to visual impacts are small or as COG's Landscape Witness accepted in cross examination the experts' assessment is either the same or of marginal difference.⁴⁰ There would be visual impacts and they need to be weighed in the overall planning balance.
54. The Appellant’s Landscape and Visual Impact Assessment demonstrates that due to the comparatively small scale, mass, and height of the solar panels in combination with the existing landscape and topography and proposed mitigation, views of the site would be “localised” and limited to impacts within 150m of the appeal site. That view was endorsed by the Council officers and the previous advisers to Aldenham Parish Council. COG's Landscape Witness accepted in cross examination that views of the appeal site would be limited in distance beyond the site itself. The potential for harm is largely limited to the site itself or those stood next to it.

⁴⁰ CD-ID12a Appendix E

55. The extent of visual harm would be informed by how solar panels are perceived and the Appellant contends it is wrong to treat them as in some way innately offensive to look at. As was acknowledged by Council officers, the perception of solar panels was something that divided opinion and representations were received to the application which set out that the solar farm *"would make for an interesting, unusual and educational walk, and some have pointed out that there are other areas of countryside to walk in nearby for those who don't want to walk past solar panels"*.⁴¹
56. COG's Landscape Witness's opinion on the impacts of the solar farm were all shaped by his opinion that the solar panels would appear as a solid mass. Whilst this was expressed as an opinion the Appellant submits that it is not supported by the factual evidence. Solar panels are not a solid object akin to a building, they are constructed by resting a panel on a frame and so are by definition not opaque solid forms. This is true of both individual solar panels but rows of solar panels as well, with the result that there would be visual permeability through the solar farm from many angles. Visualisations illustrate what a solar panel looks like and the visual permeability of them from relevant viewpoints.⁴² This flaw led COG's Landscape Witness to overstate the impacts.
57. The evidence of the Appellant's Landscape Witness was clear that solar development is capable of proper integration within the landscape as a low-lying form of development and that the receiving landscape character provides a strong existing landscape framework along with proposed mitigation, to properly integrate the proposals. The Appellant considers that layout has been specifically designed to address landscape sensitivities and is well designed and pays proper regard to strategic landscape guidance for the Local Character Area including provision of green infrastructure outcomes.
58. The main difference in outcome between the Landscape Witnesses for COG and the Appellant is the assessment of the impact on the Aldenham Plateau Landscape Character Area. COG's Landscape Witness assessed the impact would be the same as that for the Borehamwood Plateau despite the development of the solar farm exclusively occurring on the Borehamwood Plateau Landscape Character Area. COG's Landscape Witness's position is not, the Appellant says, credible. When considering landscape impacts it is the landscape itself that is the receptor. The Borehamwood Plateau would receive 85Ha of development whereas the Aldenham Plateau would receive none, it is therefore nonsensical to suggest that the two landscapes are altered in the same way. COG's Landscape Witness's assessment in this regard lacks any rationality and is unsupported by any guidance. To the extent that intervisibility is a relevant consideration, it does not elevate impacts to the extent argued by COG. The Appellant says that the evidence of their

⁴¹ CD PA27 – 10.99

⁴² CD ID 19 Appendices: Figure 9.1: Viewpoint 1 - A41 Photomontage (Left) Sheet 4 of 6; Figure 9.5: Viewpoint 9 - Sheet 2 of 2; Figure 9.6: Viewpoint 11 (Left) Sheet 4 of 6

Landscape Witness regarding Guidelines for Landscape and Visual Impact Assessment (GLVIA) is correct.⁴³

59. It was accepted for the Council that landscaping mitigation and the reinstatement programme after decommissioning, and the education strategy were all matters that could be dealt with by condition. COG's Landscape Witness accepted that the Landscape and Visual Impact Assessment was fit for purpose and that reinstatement could be dealt with by condition.
60. COG's Landscape Witness and various other witnesses raised concerns about "channelisation" of PRoWs. It is not accepted that this would occur. What is proposed is a 10m wide corridor – at the edge of which would be a fence (sometimes only one side) and beyond that by 3 to 5m would be the start of the array. Even to the extent that it might be unwelcome to a future walker who would prefer to walk through the countryside it is not accepted that this would be a material planning harm sufficient to weigh decisively against the proposals. These routes would be generous (double the width of Butterfly Lane by example) and characterised by wildflower meadow, in places existing or new hedgerow or tree planting and forward views to the surrounding landscape. Conditions secure that the minimum distance from the centre line of any PRoW that runs through the solar farm to the nearest boundary be it fence, hedge or other would be 5m. That is a meaningful distance, and it is secured as a minimum. This was the view reached by the Council's officers who concluded the buffer would "prevent walkers from feeling unduly hemmed in."⁴⁴
61. Aldenham Parish Council refer to the Radlett Neighbourhood Plan (2021) but acknowledge it is not engaged. Even if it was, the Appellant considers that the concern about the usability of footpaths is not justified.
62. The Appellant accepts that there would be short- and medium-term landscape and visual harms but they would diminish as the mitigation planting matures and once the operational period ends then there would be a long-term benefit, a proposition that was not meaningfully challenged before the Inquiry.

Heritage

63. There are five assets to be considered and it is the Appellant's contention that there is only harm to three of them; and even then, it is firmly submitted that for the reasons given by their Heritage Witness the harm is no greater than the low end of less than substantial harm.
64. The Appellant points out that intervisibility and co-visibility between a heritage asset and new development does not automatically create harm. This is a trite proposition that is all too often forgotten or

⁴³ CD-NPP14

⁴⁴ CD PA27 – 10.100

misunderstood as it has been, the Appellant says, by the Council in this case. Change only matters if it affects significance. In order to understand what the impact on the significance of a heritage asset actually is, you have to understand what the actual significance of the asset is and from where and what it draws that significance.

65. The Appellant considers that methodological issues appear to have become muddled before the Inquiry by the Council and COG's repeated references to cumulative assessments. That is to say cumulative effects of a single development. However, when the guidance and the evidence of their own witnesses, as well as that of the Appellant's, is properly understood there is actually agreement in how assessment of heritage impacts should be approached.
66. The Framework and relevant legislation require that when considering heritage assets what is to be considered is the impact on their heritage significance. The first step in doing this is to understand the significance of the asset in question. Once that is understood an assessment can be made as to whether the significance of the asset would be harmed by the proposed development. That assessment is carried out by comparing the significance of the asset as it stands now i.e., the baseline and what the situation would be once the development is carried out.
67. That the relevant assessment is against the existing baseline versus the post development position was agreed by all the heritage witnesses who gave evidence to the Inquiry. Past degradation of the asset leads to the existing baseline it does not add to the harm that arises. This approach is not altered by Historic England's *The Setting of Historic Assets, Good Practice Advice in Planning, Note 3 (GPA3)*.⁴⁵ The Appellant's Heritage Witness's opinion is that the purpose of the paragraph on Cumulative Change, found at page 4 of GPA3, is to serve as a reminder when carrying out the baseline versus proposed assessment, to have particular regard to the sensitivity of an asset that may have been so extensively harmed by previous development, that it is particularly vulnerable to any further changes, severing the last link between an asset and its original setting. There is nothing, the Appellant says, in this paragraph that suggests it is anything other than the existing baseline that needs to be assessed.
68. The Appellant says there are two ways to test the validity of the suggestions made by the Council and COG in their cross examination of the Appellant's Heritage Witness that there has been a failure to consider cumulative change:
- The Council's own witnesses carried out their assessments against the existing baseline and agreed in cross examination that it is against that position that the impact

⁴⁵ CD NPP11

of significance of the proposed development should be judged; and

- Nobody pointed to any policy or guidance that indicates what should be used as the baseline if it is not the existing baseline.
- The suggestion that there has been a failure by the Appellant to consider cumulative change is incorrect. The suggestion made by the Council that the Appellant's Heritage Witness's methodology is flawed due to their consideration of cumulative change is simply incorrect and is not supported by the evidence of the Council's own Heritage Witness or that of other heritage witnesses.

69. The criticisms made of the methodology of the Appellant's Heritage Witness ignore their reference in cross examination to advice in GPA3, concerning little-changed settings. The Appellant draws attention to GPA3 page 4 paragraph 9 where it is stated that:

"Settings of heritage assets which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance, for instance where townscape character has been shaped by cycles of change over the long term."

70. The Appellant's Heritage Witness is correct to consider the current contribution the setting of heritage assets makes to their significance.

71. The original scoping of what heritage assets needed to be considered was done by a Desk Based Assessment. The name of that assessment is a misnomer and as it confirms at 3.2 the relevant information sources were *"supplemented by a site visit in July 2020 which confirmed the current ground conditions and land use within the site and the locations of previously recorded heritage assets, and also considered the baseline setting of designated heritage assets in the study area"*. When the Heritage Witness for the Appellant was asked to act in the appeal, they considered all the relevant background documents and carried out a site visit before deciding if they could support the appeal. They approached things from first principles and considered each of the assets that were potentially affected before determining which ones needed further consideration.

72. It was suggested in closing by Aldenham Parish Council that the Appellant's Heritage Witness accepted in cross examination that they had advised against the inclusion of Field 1. The reason the parallel scheme was submitted was explained by the Appellant's Planning Witness and the Appellant has never wavered in its position that the appeal proposals are acceptable, and the Council were wrong to refuse planning permission. The Appellant's Heritage Witness gave advice on what improvements could be made. The Appellant says

that recognising an opportunity for improvement is not the same as an acceptance of an existing problem.

73. It is the Appellant's view that five assets require assessment: Slades Farmhouse, Penne's Place, Aldenham House, Hilfield Castle and Hilfield Lodge. Moreover, the difference between the Appellant's and Council's heritage witnesses relates to whether there is harm to Aldenham House and Penne's Place, and the level of harm to Slades Farmhouse. In each instance the Heritage Witness for the Council considered that their assessment of impact was "one step up" from that of the Appellant's. Aldenham Parish Council's Heritage Expert (in writing) agrees that there is no harm to Penne's Place but places the other impacts as higher, however, they did not appear before the Inquiry. The Heritage Witness for COG considers that there is a medium level of harm to Slades Farmhouse, Hilfield Castle and Hilfield Lodge.

74. The Appellant notes that the Inspector will form an opinion on the credibility of the various heritage witnesses who have appeared before the Inquiry. When doing so it is worth bearing in mind that the High Court has confirmed that "*substantial harm or total loss*" means harm that would "*have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*".⁴⁶ A medium level of less than substantial harm is therefore something that is on its way to very much reducing the significance of an asset. Given that the only impacts that arise in this case arise through indirect impacts on peripheral aspects of part of their setting, rather than direct impacts on a heritage asset, it is submitted for the Appellant that assessments of a medium level of less than substantial harm should be treated with a high degree of caution.

Slades Farmhouse

75. The Appellant's view is that the heritage significance of Slades Farmhouse is primarily derived from its physical form, in particular the early parts of its fabric, and its southwestern elevation. It is from the garden that these features are best understood, and it is the garden which is the element of its setting that makes the most significant contribution to its significance. The small cluster of surviving farm buildings give some legibility to its origins as a farmhouse. Slades Farmhouse was re-orientated to face Sawyers Lane, as seen from comparing the building on the 1786 map to the later maps.

76. Slades Farmhouse's relationship with its wider setting has fluctuated over time and it no longer has a functional agricultural relationship with the wider agricultural land. The Council's Heritage Witness sought to downplay the significance of this distinction, but it is fact that Slades Farmhouse is not the centre of management of the surrounding fields, and that reduces the historical connection. This is

⁴⁶ CDADAP3 - R DCLG and Nuon UK Ltd v. Bedford Borough Council EWHC 2847, paragraph 25

clearly legible through the introduction of other land uses, including the coach depot, to its immediate surrounds. The Appellant says that is not a new phenomenon. Historic mapping shows the changing nature of the tenancy of surrounding fields.

77. The Appellant acknowledges that the fields which form part of the appeal site make some contribution to the significance of the asset. However, they consider that the contribution is limited for the reasons set out above and articulated at length by their Heritage witness. Fields 19 and 20 are free from solar panels and those are the fields closest to the southwestern elevation of Slades Farmhouse which is the principal elevation of the asset. That is to minimise the impact on Slades Farmhouse. Mitigation proposed in the area around Slades Farmhouse for new hedgerows to re-establish the legibility of the former route of Sawyer's Lane. There would be some views from Slades Farm of solar panels, but they would all appear with a setback and absent from the field to the southwest. There would be some views of Slades Farmhouse where solar panels would be apparent, but the views from where the asset's significance is best understood would be unaffected. This leads to the conclusion that there is an impact, at the low end of less than substantial harm.

Penne's Place

78. The Appellant argues that it is not possible to know what the original setting of Penne's Place was seven hundred years ago but that there is extensive mapping evidence that its remnants have been deliberately secluded and cut off from the wider landscape for the last 150 years at least. This has been accentuated by boundary treatments implemented by the school, including vegetation and fencing. Given the seclusion, despite the proximity of the appeal site to Penne's Place, the Appellant says that the appeal site makes no contribution to the significance of Penne's Place and the appeal proposal would not harm its significance. Even if the Appellant's evidence is not accepted and there is some contribution to significance from the appeal site then there has been no proper articulation as to why there would be harm. There may be some limited glimpsed intervisibility of the scheme beyond an appropriate set back but that does not equate to harm to significance.

79. The only body who has suggested anything other than the lowest level of harm to Penne's Place was Historic England. They did not take part in the Inquiry. There is nothing in their representation that suggests they visited the site or that they considered the early map evidence and the simplistic idea that comes across in their representation is that open landscape beyond Penne's Place forms part of its setting. None of the experts before the Inquiry agree with the approach of Historic England and it is submitted that the evidence the Inquiry has had the benefit of hearing live should be preferred.

Aldenham House and Gardens

80. When considering the impact from a development in the setting of a heritage asset it is key to understand the totality of the setting not

merely the location in which the development is proposed to take place. This is necessary to understand the particular contribution that is made from any given element of the setting and how a change in that location would affect significance. This is a principle which is key in order to properly understand whether there is an impact on Aldenham House Registered Park and Garden. There are planned views from this asset, but not of the appeal site. The designed views are the southwest view down the wide elm avenue that was demonstrably designed as an outwards view from the original core of the parkland. This is best demonstrated by the physical sinking of the lane out of the view on the south-western side of the parkland, as well as evidence from the map regression evidence that culminates in the 1895-99 Ordnance Survey Map which shows the relationship between the parkland, the elm avenue, and the designed southwest view. The south-western focus of Aldenham House Registered Park and Garden is clear as is the contrast between its south-western and north-western elements. The north-western edge does not demonstrate the elements of such a designed view, with secluding vegetation and no sunken lane.

81. The heritage significance of Aldenham House and Gardens is, the Appellant says, overwhelmingly within the asset itself. That is where the very extensive, clearly designed elements are contained; the water gardens, lake, bridge, and the more open parkland elements are in the southern area of the RPG, whereas the northern area is made up of more secluding vegetation and the arboretum which has expanded to fill the northern area. This growth means that any potential views out to the north, including of the appeal site, are greatly inhibited. This has only been further exacerbated by the school acting to secure its boundaries with fencing.
82. The witnesses who have identified harm to this asset did not meaningfully dispute the historic development described by the Appellant's Heritage Witness's or the analysis that they provided of the current experience of the asset and its surroundings. Their evidence is in essence that there would be glimpsed views of the solar farm and there is therefore harm. However, the Appellant argues, the appeal site makes up a very small proportion of the setting of the Registered Park and Garden, and it does not contribute to the heritage significance of the asset, the core of which is that contained within the asset itself. The result is that the appeal proposal would not, the Appellant considers, harm its significance.
83. The Council's Heritage Witness told the Inquiry that it was on their advice that panels were moved back from the north side of Butterfly Lane – once that was done, mindful of the effect of mitigation - the glimpsed views from the northern gateway would be maintained and no harm would be caused.

Hilfield Castle

84. Hilfield Castle was sited to give it a dramatic context, in line with the picturesque aesthetic traditions of the time. The views that are most

important to it are the views to the South, which is where the earliest part of parkland was located, and it is the southern façade of the building that is the most important. The Heritage Witness for COG tried to suggest that all façades were equally important, but this ignores the geometry of the building, the level of architectural detailing to each façade and the location of the important views to the south over the ponds or lake and the rising ground beyond. An 1804 plan shows that there was briefly parkland to the west and further north of the Castle but that this was established later than that to the south and came about not from contemporary specimen planting but hedgerow removal.

85. The parkland to the west of the Castle was not long-lived and by the 1839 tithe map it was largely lost. The surroundings of the Castle have now changed dramatically; to its immediate north-east is the aerodrome and southeast the reservoir. Its northern border has limited intervisibility with the surroundings due to the continued growth of vegetation which acts to seclude that edge of the Castle's grounds and inhibit views of the electrical transforming station. The vegetation on the western boundary also limits views.

86. The significance of Hilfield Castle derives primarily from its architectural style. The main contribution that its setting makes to significance is through the remaining grounds of the asset. Parts of the appeal site do make some contribution to significance as they were once parkland but that is no longer apparent and intervisibility is limited. However, the introduction of specimen trees to the north-west and west would enhance the legibility of those areas as former parkland for the first time in over a century. These enhancements are a heritage benefit for the setting of Hilfield Castle and would outlive the thirty-five operational years of the solar farm. Therefore, the Appellant submits, the harm to the significance of Hilfield Castle can only be at the low end of less than substantial harm.

Hilfield Lodge

87. The Appellant says that the impact on the Lodge is also at the low end of less than substantial harm and the explanation for this largely mirrors that for the Castle, in that its current grounds contribute most to its significance through setting. The primary elevation of Hilfield Lodge is its southern façade which faces south towards the lake which survives to this day. The Appellant again accepts that because parts of the appeal site were once parkland and have some intervisibility with the asset then there is limited harm to the significance of Hilfield Lodge.

88. The Appellant's Heritage Witness's and the Heritage Witness for the Council both agree that there is harm to Hilfield Castle and Lodge and that harm is at the low end of less than substantial harm. The level of harm ascribed by the heritage witnesses for Aldenham Parish Council and COG is difficult to understand. In any event the Appellant submits that the assessment given by the Appellant's Heritage Witness and crucially their explanation for that assessment

is correct. However, the Appellant says that the introduction of specimen trees to the north-west and west of the Castle would also enhance the setting of Hilfield Lodge for more than the thirty-five operational years of the solar farm.

Non-designated assets

89. If an asset is not on a local list in an area where one has been established with clear criteria and periodically reviewed, then that gives a strong indication that it is not a non-designated heritage asset. Whilst in theory such an asset could be a non-designated heritage asset, for a professional to reach such a conclusion there would have to be an assessment against a clearly compiled set of robust criteria. This is lacking here.

Landscape and heritage mitigation strategy

90. The landscape mitigation strategy that is now before the Inquiry is also a heritage mitigation and improvement strategy that has been informed by both the Appellant's Landscape and Heritage Witnesses. The result of this would be in the long term a heritage gain, which is in particular brought about by the re-instatement of trees to areas of former parkland. The Landscape Witness for COG sought to take issue with this claiming that trees were out of character with the local area, which is obviously wrong as a matter of fact, but in any event, there can be no dispute that they represent a heritage gain as they re-introduce features that are lost. In closing the Council accept there are heritage benefits but take issue with the extent of them.

91. The heritage benefits do not change the position that during the life of the solar farm there would be some heritage harm and the Appellant entirely accepts that the policy consequence of this is that the Framework paragraph 202 balance is engaged.

Green Belt Impacts

92. The appeal site is located in the Green Belt and the Appellant acknowledges that the development proposed is by definition inappropriate development. Substantial weight should be attached to that definitional harm as it should to any other Green Belt harm.

93. Assessing Green Belt harm requires an assessment of whether the five purposes are harmed. The Council and the Appellant agree that there is harm to purpose (c) by encroachment into the countryside. This occurs because of the simple fact that there is development within the Green Belt. All the landscape witnesses are in broad agreement that the extent of visibility of the solar farm in the wider landscape is limited and as the Appellant's Planning Witness explained this acts to temper the extent to which the development is perceived as encroaching into the countryside as does the existence of other development in the surrounding area; for example, the aerodrome. This is the only Green Belt purpose that would be harmed, albeit that the Appellant has not sought to dispute the fact that for over 85Ha there would be a change to the character of the

land which would impinge upon the openness of the Green Belt, causing harm which should be afforded substantial weight.

94. COG's Planning Witness argues that there is harm by way of failing to check the unrestricted sprawl of large urban areas. The Appellant says there is no such harm. The appeal site does not adjoin any urban area and so by definition cannot extend one, or be said to be causing an unrestricted sprawl. Nearby settlements would remain physically and visually separate from the solar farm.
95. The essential characteristic of the Green Belt is its openness; this has a spatial element and may also have a visual element. Visually, for reasons already touched upon, the impact is surprisingly limited given the overall scale of the development. The appeal site, due to the topography of the surroundings and the presence of existing and proposed vegetation, is well contained with views limited to the appeal site itself and a range of about 150m around it. The limited nature of its visibility is largely agreed.
96. The level of visual impact on openness is, the Appellant claims, further moderated by the nature of the proposed structures. As already explained solar panels are not dense structures, they are, as their name indicates, panels that are mounted on frames. This means their top surface is solid but below them they are largely open. Their height is limited being approximately 3m tall and these features combine to create a development which would not be widely apparent beyond its immediate local and within its immediate locale the impact on visual openness is reduced by the extent to which the fields where panels are located remain visually permeable.
97. Spatially there would be an impact on openness as the appeal introduces development to a site which is currently undeveloped. But again, the spatial impact on openness is tempered by the physical make-up of the development proposed. Each field where solar panels are located would not become a solid block of development. If a solar panel is considered as a three-dimensional shape it is only the top face that is solid, the remaining faces do not feature any physical form other than the frame at their edges. The Appellant says this is at contrast to typical form of built development.
98. The Appellant accepts that there would be a loss of openness arising from the extensive areas proposed to be developed but asserts that it is too simplistic to suggest that the spatial impact on openness mirrors the size of the solar farm. That said, the Appellant acknowledges that substantial harm should be afforded to the definitional harm, the spatial harm, and the visual harm.

Other Matters

99. A number of other matters have been raised during the currency of the Inquiry which have little to no material bearing on the overall planning balance that must be undertaken. COG initially raised noise concerns but in a SoCG it is agreed that noise concerns can be addressed by condition.

100. The Rule 6(6) parties referred to flood risk but brought no evidence on this point, and do not dispute the findings of the technical work on this topic. It is a matter that goes to conditions not the principle of development.
101. A condition could be imposed on any planning permission granted by this appeal that would limit the operational life span of the solar farm. Concern that it could continue beyond that date is not a relevant consideration. Any future application to extend the lifespan of the solar farm would have to be considered with regards to the development plan, material considerations and planning law as it stood at that point in time. What the result of any such application could be cannot be predicted at this time and in any event that is not the application that is before this Inquiry. The Secretary of State must determine the appeal scheme before them.
102. Concerns raised about the effectiveness of conditions regarding decommissioning and long-term landscape management are legally unfounded for the reasons set out in the note already submitted to the Inquiry which we append for ease of reference. COG in closing refer to harm to agricultural land due to "wetness." There is no evidence before the Inquiry that justifies such a concern, and the Inquiry has sufficient information to form a view on this issue.

The Planning Balance

The Appeal Proposal

103. Permission is sought for a solar farm with a generating capacity of up to 49.9MW or providing power for the equivalent of 15,600 homes per annum. There are two inter-related elements to the proposal the solar panels and the battery stores. The solar panels generate electricity which can either go straight into the National Grid or can be stored in the batteries and then later discharged into the national grid when there is a need for the electricity. The benefit of having both is that it allows the productivity of the solar farm to be maximised as surplus energy produced at times when production might be high but demand low can be retained and used when required.
104. The location of schemes such as the appeal proposal is primarily driven by the need to be close to an available grid connection and a substation with capacity. The Appellant identified Elstree Substation as a suitable location. The site was selected following a search using a 5km isochrone from the substation. The detail is contained in the 'Alternative Site Assessment Note.'
105. The 5km search radius is consistent with those in the sites that the Council's Planning Witness has experience of dealing with. Further, the draft National Energy Policy EN-3⁴⁷ recognises that that

⁴⁷ CD NPP-18 paragraph 2.48.11

commercial feasibility and minimising overall costs are key considerations, this again justifies the 5km radius.

106. COG suggest that the size of sites that were sought inevitably meant that a site in the Green Belt would be identified. This is very much a "so what?" point. In order for the solar farm to be viable and to affect the step change sought within the District by its own Strategy, it must be over a certain size and the search criteria must reflect that. Hertsmere is committed to increasing renewable energy provision in the Borough and as numerous witnesses confirmed this inevitably means renewable schemes will have to be delivered in the Green Belt. There is no suggestion that there is no other more suitable Green Belt site that should have been considered. COG point to no planning policy or guidance which supports the complaints raised and the Council accept that there is no requirement for a Green Belt sequential assessment.
107. The suggestion by Aldenham Parish Council that there was a concession that a connection can be made to an overhead line, was hypothetical and there was no evidence given on whether a solar farm of the nature and scale proposed here could do so. Neither the Council or Rule 6(6) parties produced evidence on other sites that could or should have been considered.

Decision Making Framework

108. There has been discussion and cross examination at the Inquiry at the extent to which policies feature in the reason for refusal and the extent to which the heritage policies and Green Belt policies in the Development Plan are consistent with the Framework. However, the Appellant considers that this debate does not really matter for the simple reason that the VSC test is determinative.
109. Framework paragraph 148 is all encompassing and requires the harms to the Green Belt and any other harm, which means any other harm not simply harm to the Green Belt, to be weighed against the benefits of the scheme to see whether all those harms are clearly outweighed. If VSC exist then the Green Belt policies contained within the Local Plan are also complied with and the Development Plan as a whole would be complied with. No one is contesting before the Inquiry that if VSC exist then permission should be refused.
110. The Appellant takes the view that the heritage balance at Framework paragraph 202 must also be passed but is passed if the heritage harms are outweighed by the public benefits of the scheme, and so given that the heritage harms must also be taken into account in the Framework 148 test then inevitably if VSC exist then the heritage balance will also be passed.
111. The Appellant considers that the meaningful 'contentious' policy debates are those relating to Core Strategy Policy CS17 of the Core Strategy and Framework paragraph 151.

112. Core Strategy Policy CS17 is the only policy in the Development Plan which deals with renewable energy schemes of this nature. The only criteria of this policy which it is alleged could be breached is the requirement to consider "environmental assets." As the Appellant's Planning Witness pointed out in cross examination the policy does not say Green Belt. It is the Appellant's position that Green Belt is not something that is typically considered to be an environmental asset. It is instead a pure policy designation. There is nothing in the language of Policy CS17 or its supporting text that suggests the reference to environmental assets includes the Green Belt or that the policies act to bar renewable energy projects from the Green Belt.
113. It would be surprising if Policy CS17 were to be construed as amounting to a prohibition on renewable energy development in the Green Belt and it would certainly be inconsistent with national policy. Framework paragraph 151 states "*very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.*" That paragraph has to have some meaning. Moreover, the benefits of renewable energy are the only thing in the Green Belt section of the Framework that receive any such recognition. The clear steer of this paragraph is that the benefits of renewable energy are capable of amounting to VSC. Policy CS17 is not breached, but rather, the Appellant contends, supports these proposals.
114. That such benefits can amount to VSC is shown by the additional appeal decisions submitted to the Inquiry. The purpose of providing those decisions is to demonstrate that solar energy projects have been found to show VSC and be approved in the Green Belt and to counter the skewed consideration of renewable projects presented in the Council's evidence. That is not to say that all energy projects in the Green Belt will demonstrate that VSC exist but that they may. The Council's Planning Witness only sought to present appeal decisions where renewable schemes had been refused permission, which is not an accurate reflection of the spread of available appeal decisions.
115. If VSC are demonstrated, then Policy CS17 is passed and there is compliance with the development plan.

The Balance

116. When carrying out the balancing exercise great weight should be attached to harm to heritage assets. The Appellant's Planning Witness explained that the weight to be attached to harm depends on the extent of that harm. It is a matter of plain logic that if a given asset were to experience substantial harm then that would weigh more heavily in the planning balance than if the same asset were to experience harm at the low end of less than substantial harm. The Appellant's Planning Witness attaches moderate weight to the harm to the heritage assets. The Appellant says, that does not mean they have not treated that as a material consideration of great importance

but instead it reflects the significance of the assets and the extent to which those assets are harmed.

117. The Appellant's Planning Witness ascribes moderate weight in the overall planning balance to the effect on landscape character and visual amenity. For the reasons already explained these negative impacts are limited to the duration of the lifetime of the solar farm and in the long term there would be beneficial landscape impacts which are secured by condition.
118. Substantial weight should be attached to the harm to the Green Belt and those harms have already been identified.
119. The renewable policies of the Development Plan are, the Appellant says, out of date by any metric. The consequence of this is not to engage the tilted balance in Framework paragraph 11 as we are concerned with a site in the Green Belt and that remains the relevant policy test. But when carrying out the planning balance the plethora of clear failings of the Development Plan with regards to renewable energy must be considered. As must the Council's failure to meet its own stated energy commitments. This is a Council that needs a step change in renewable energy delivery, and it has no plan of any description be it planning or otherwise to achieve that.
120. The Appeal proposals would have a capacity of 49.9MW which equates to an electricity generating power for over [15,600]⁴⁸ households in Hertsmere and would result in savings of carbon dioxide emissions during its operational period of approximately [25,400] tonnes of CO² per annum. The significance of such benefits is stark. As the Appellant's Planning Witness explained the linked benefit of renewable energy is that it contributes to the country's energy security. The importance of these benefits is articulated at great length in the Officer Report and whilst the judgments exercised there are disputed, the facts that lead to them are not and it is commended to the Inspector.
121. The attribution of weight to the benefits from renewable energy by the other parties is disappointing and exemplifies why there has been such a failure to meet climate change and renewable energy objectives. For example, COG suggest in closing it should attract "some weight" and "moderate weight;" this is not proper recognition of the benefits they claim and is an understatement of the importance of renewable energy. There is not one mention in the closing of COG or Aldenham Parish Council of the need for energy security an obvious material benefit of the proposal.
122. That a solar farm would generate such benefits is inevitable, but what perhaps marks the appeal scheme out are that these are not the only benefits that would be delivered. The appeal scheme is part of the Aldenham Estate's wider vision and aspirations for

⁴⁸ The Appellant's Closing Submissions include a different figure. I have taken this figure from the SOCG (see summary at paragraph 33).

environmentally responsible long-term management. The legacy benefits would live on long beyond the life of the solar farm.

123. Implementation of an ecological management plan would achieve an overall BNG of 90% in area derived units and 25% in linear derived units. That is a level of benefit way beyond any anticipated in national policy, local policy, or legislation. Further environmental benefits would arise from the increase in soil quality under the solar photovoltaic panels. The conversion of arable land to grassland under solar photovoltaic panels can improve soil health by processes such as increasing soil organic matter, soil organic carbon, increasing soil biodiversity and improving soil structure.⁴⁹
124. Provision of two permissive paths would allow Belstone Football Club to make use of a corner at the rear end of their playing fields that is currently disused, and link into the existing PRowS network, improving connectivity and enhancing opportunities for outdoor recreation. These are not benefits of the highest order, but they are benefits and should be treated appropriately in the planning balance.
125. The Appellant considers that advantages of this solar farm are not simply made up of its obvious renewable energy benefits but the more local environmental and social enhancements as well.
126. When weighing the benefits of the scheme against the harms of the scheme it is not, the Appellant says, a purely mathematical exercise but instead what is needed is a single exercise of judgement to assess whether there are VSC which justify the grant of permission notwithstanding the particular importance of the Green Belt. When that is done it is submitted that VSC do exist and that all harm is outweighed.

Submissions on Restoration Conditions

127. Following the case of *I'm Your Man*⁵⁰ the Appellant's Counsel submits that in this case, what is applied for is full planning permission for as set out in the description of development.
128. They add that, if planning permission is granted and no conditions are imposed once the permission is implemented the development could be completed and operated without restriction. The only way to prevent that from happening, would be by the imposition of conditions on the planning permission to limit the period of the operation of the development and to require the removal of operational development from the land. Once the permission is implemented, such conditions would remain enforceable and the presence of a time limiting condition would not terminate the existence of the planning permission, as far as enforceability of conditions is concerned.

⁴⁹ CD-PA14, paragraph 5.1.6, page 12

⁵⁰ *I'm Your Man Ltd v Secretary of State for the Environment* [1998] 9 WLUK 37

129. Counsel for the Appellant submits that were the matter otherwise than the sort of condition envisaged by Robin Purchas QC in *I'm Your Man* would have been unenforceable, and his judgment would then have made no sense. The corollary of this is that any other conditions attached to the planning permission, for example reinstatement, restoration, and landscape conditions, would also remain enforceable.

Submissions on Capacity

130. S.31 of the Planning Act 2008 dictates that "*Consent under this Act ("development consent") is required for development to the extent that the development is or forms part of a nationally significant infrastructure project.*"

131. S.14(1)(a) defines nationally significant infrastructure projects as including "*the construction or extension of a generating station*". Further detail on this is provided in S.15:

"(1)The construction or extension of a generating station is within section 14(1)(a) only if the generating station is or (when constructed or extended) is expected to be within subsection (2), (3), (3A) or (3B).

(2) A generating station is within this subsection if—

(a) it is in England,

(aa) it does not generate electricity from wind,

(b) it is not an offshore generating station, and

(c) its capacity is more than 50 megawatts..."

132. As such, Counsel for the Appellant submits, any solar farm with a generating capacity of more than 50MW would be a nationally significant infrastructure projects and would require consent to be granted for its development under the Planning Act 2008. The appeal proposals have not sought consent under the 2008 Act. This means that if the scheme were built out with a capacity of more than 49.9MW it would be liable to enforcement as it would not benefit from the requisite planning consent under the Planning Act 2008.

133. Consequently, the Appellant says, there is no need to impose a condition limiting the generating capacity of the appeal scheme as this is already limited by legislation. Imposing a condition would duplicate a control that already exists.

134. If, the Inspector was of the opinion that there was a need to impose a restriction on the operating capacity of the appeal proposal then this could only be done by way of condition.

Conclusion for the Appellant

135. Hertsmere Borough Council that sets out that it is committed to delivering more renewable energy within its administrative boundaries but has no plan to do so. This is a position that the Rule

6 Parties and Council ignore which only serves to demonstrate the obvious failings in the defence of this appeal.

136. The Council is dependent on developers such as the Appellant bringing forward schemes such as this to meet its climate and energy objectives. The Council should have followed the recommendation of its Officers and approved this scheme without delay. The Appellant respectfully invites the Inspector to recommend to the Secretary of State to allow this appeal.

The Case for Hertsmere Borough Council

137. Hertsmere Borough Council considers that the fundamental determinative question in this appeal is: does the benefit of renewable energy generation, together with other less significant benefits, provide the VSC necessary to justify inappropriate development in the Green Belt?

138. At the time that closing submissions were made, Hertsmere Borough Council submitted that the Secretary of State is yet to answer the above question in the affirmative and that on the evidence presented and tested, there is no reason to depart from that consistent approach in determining this appeal.

139. The case attracted an enormous amount of public opposition. The protection of the Green Belt is identified as a key local priority and is at the heart of the Local Plan. Yet the proposed solar development would transform a huge swathe of the Green Belt, which lies between and is easily accessible from three of the main settlements in Hertsmere. The effect is described as temporary but would not be perceived as such by the community.

140. The Council acknowledges that there is a pressing need to increase renewable energy generating capacity, and that solar farms bring important benefits in terms of reducing carbon emissions and assisting with security of supply. The Council has an adopted strategy which recognises the need to deploy a significant amount of renewable energy capacity in its area. It does not follow that this proposal must be accepted, or indeed any other proposal which would cause such a large encroachment into the Green Belt. Local constraints must be taken into account and local authorities must do what they can working within those constraints. It is no surprise that the Appellant cannot point to any policy or guidance which actually supports the deployment of large-scale solar farms in the Green Belt.

141. The scheme would connect to the National Grid. It would produce a national benefit, and not one which would be directly felt in or confined to Hertsmere. It does not need to be located in the Green Belt. It does not need to be in Hertsmere, just because the Appellant has signed a connection agreement with Elstree substation.

142. This is a case where officers recommended that permission should be granted. The Appellant repeatedly took witnesses to various passages within the Officer Report. But it is one analysis,

which was not subject to the rigours of cross examination. Importantly, elected members rejected that analysis. Not one member of the Planning Committee voted in favour of the planning application. Members' views, expressed on behalf of the community they serve, have been represented in this appeal through independent experts. It is submitted that members were right to reach the conclusion that they did, for the reasons given by those witnesses.

Green Belt

Approach

143. The Framework confirms that:

- Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC;
- VSC will not exist unless harm by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations;
- Any harm to the Green Belt should be given "substantial weight" in the planning balance.

144. It is settled law that all development in the Green Belt is inappropriate unless it falls within the categories set out in Framework paragraphs 149-150, in other words these are closed lists.⁵¹

145. It is also settled law that the reference in Framework paragraph 148 to "*any other harm resulting from the proposal*" means any other harm and not just harm to the Green Belt.⁵² The effect is that, where development is inappropriate, VSC must be shown to clearly outweigh all harms associated with the proposal. In this case, that includes heritage and landscape harms, as well as harm to openness and Green Belt purposes.

Harm

146. It is common ground that the development would be inappropriate development in the Green Belt and therefore harmful by definition. It is also common ground that the appeal scheme would result in a loss of openness to the Green Belt, considering both spatial and visual aspects.

Openness: Spatial

147. The scheme would cover 85Ha of the Green Belt. This a very large area of land which is easily bigger than the nearest villages of Letchmore Heath, Patchett's Green, and Aldenham.

⁵¹ Fordent Holdings v SSCLG [2013] EWHC 2844 (Admin), paragraph 19

⁵² Redhill Aerodrome Ltd v SSCLG [2014] EWCA Civ 1386

148. The solar arrays would be arranged in repeating rows and would stand 3m high. The Appellant's Planning Witness could not say how many panels were proposed, and they are far too numerous the drawings to count on the submitted drawings. It is likely that there would be in the order of 100,000 individual panels, which belies the Appellant's characterisation of the spatial impact as "limited".
149. In addition to the arrays, there would be thirty-six shipping containers each 12m in length and approximately 3.5m high (including the 0.609m high concrete bases). These would have a strong presence in the landscape. Twenty of them would be sited in a group in the western parcel next to a new substation nearly 12m long and approximately 4.5m high including the concrete base, within a fenced compound. The rest would be dotted throughout the site and accessed via crushed stone access tracks through the development. Access tracks and inverters/transformers would be located close to or alongside PRowS in a variety of locations. The development would be enclosed within 2.2m high perimeter fencing, with recurring posts for CCTV cameras. All these elements would have a spatial impact on the openness of the Green Belt.
150. The fact that the solar panels have space underneath them and are not 3D 'blocks' does not significantly reduce the spatial impact. The panels would not be seen or appreciated as individual elements but would generally be experienced as a mass, negating the effect of space beneath. Whilst the arrangement would allow some sense of space between rows, in reality this would only be appreciated one row at a time, in places where the arrays are perpendicular to a PRow. Even in those situations, perimeter fencing would still have an impact and the solar development in the wider field of view would still appear as a mass. The Appellant's visualisation demonstrates this.⁵³

Openness: Visual

151. The Appellant's Landscape and Visual Impact Assessment concludes that there would be major-moderate adverse effects on visual receptors within the site throughout the thirty-five-year operational period; i.e., allowing for the full effect of mitigation. Again, the Appellant seeks to downplay this effect by describing it as "localised" and "limited" but the choice of words lacks credibility in the context of a site of this vast size.
152. Several well-used PRowS pass alongside and through the site. The experience of walking these paths will be fundamentally changed. It would cease to be an experience of walking through an open agrarian landscape and would be transformed into an experience of walking alongside or between either mesh fencing or structural planting which would by turns reveal and conceal the industrialising effects of the solar development. There are people who would find this to be an interesting and not unwelcome

⁵³ Appellant's Landscape Witness PoE Appendices: Figure 9.

experience. But huge public opposition to the scheme suggests that this is probably not the majority view.

153. The mitigating structural planting proposed may be beneficial from a landscape point of view and would help to reduce visibility of the solar arrays. On the other hand, the proposed structure planting would add to the sense of enclosure produced by the other elements of the scheme and would reduce the incidence of open views between fields. This effect was recognised by the Inspector in the Cranham Golf Course appeal: concluded that the proposed planting of hedgerows and trees would ‘compound’ the loss of openness caused by the built elements of the solar development.⁵⁴ There is a tension between effects on character and appearance and effects on openness – what is a benefit for one is not necessarily a benefit for the other. The same tension exists in places between landscape/visual and heritage considerations.

154. Finally, for the Council is the issue of “channelling” or “tunnelling” of views, which the Appellant refuses to accept would occur, but which was considered likely by all relevant witnesses for the opposing parties. There are a number of locations where PRowS would pass between or alongside solar development and will be contained either between security fencing on both sides, or by a fence on one side and a hedge on the other. Although 5m offsets are proposed, views would inevitably be ‘channelled’ along the right of way corridor. The effect of this aspect of the design on perceptions of safety and comfort is a factor bearing on the overall sense of openness which should be taken into account.

Purposes

155. It is common ground that the proposal would conflict with the third identified purpose of the Green Belt in Framework paragraph 138, namely, to safeguard the countryside from encroachment. The appeal scheme would encroach into the countryside between Bushey, Radlett, and Borehamwood in a very significant way. Evidence was also heard that the second Green Belt purpose (preventing neighbouring towns from merging into one another) would be compromised.

156. In accordance with national policy, the Appellant’s Planning Witness rightly accepts that substantial harm should be given to each separate aspect of Green Belt harm (inappropriateness, openness, and purposes).⁵⁵ No other conclusion can properly be reached.

Reversibility

157. The Appellant places emphasis on the reversible nature of the solar development, which would be secured by a planning condition. The appeal should be determined on the basis of what is being applied for, which is a thirty-five-year operational period followed by

⁵⁴ CD-ADAP15, the Secretary of State’s Decision letter (DL) paragraph 8

⁵⁵ The Appellant’s Planning Witness in response to Inspector’s questions

decommissioning. Any application to extend the operational period, or to apply for a new planning permission, would fall to be decided on its merits at the relevant time. Nevertheless, as the Appellant's Planning Witness agreed, any decision made in that future time would be considered against a baseline of development on the site, and if a solar farm use continued to be profitable there is no reason why an application would not be made to renew it.⁵⁶

158. In any case, as the Appellant's Planning Witness agreed, a thirty-five-year operational period (plus a one-year decommissioning period) is an extensive period of time.⁵⁷ The point has been made many times that this scheme would last for a generation. Harm to the Green Belt would persist throughout that time. There are several appeal decisions before the Inquiry where the Secretary of State has given limited weight to the temporary nature of solar development for these reasons,⁵⁸ including cases where the operational period was shorter than proposed here. There is no reason to adopt a different approach.

Justification for Green Belt location

159. There is no sequential test under national or local policy for development in the Green Belt. Nevertheless, solar farms feed into the National Grid and can in theory be located anywhere in the UK where there is suitable land. It is for the Appellant to show that VSC exist to outweigh the harm, and the need for a Green Belt location is clearly relevant to the balance to be struck – if Green Belt can be avoided, then it should be. This is a factor which is routinely taken into account in assessing solar developments, as the appeal decisions before the Inquiry demonstrate.

160. The Appellant has produced an Alternative Site Assessment showing that a site search applying eight exclusionary criteria was carried out within a 5Km radius of Elstree substation. Although the Inquiry has heard evidence as to the choice of a 5Km radius, the problem with the Alternative Site Assessment is not the radius of the search area, but the fact that only the Elstree substation was considered. This is despite the fact that the Appellant says, in the Design and Access Statement, that this is "*one of several solar farm battery storage proposals being brought forward by the Applicant across England and Wales*".⁵⁹

161. The Appellant suggests in the Alternative Site Assessment that its "*primary starting point was to first and foremost avoid any site located in the Green Belt*"⁶⁰ – in which case, why limit the search area to a 5k radius of Elstree substation, in a Borough which is washed over by the Green Belt outside the main settlements? Such an approach was bound to produce only Green Belt sites. The

⁵⁶ The Appellant's Planning Witness XX by Aldenham Parish Council

⁵⁷ The Appellant's Planning Witness responding to Inspector's questions

⁵⁸ e.g. CD-ADHBC10 paragraph 19; CD-ADHBC11 paragraph 11 DL; CD-ADBC12 paragraph 10 DL

⁵⁹ CD-PA5 p.18 (pdf 22) paragraph 6.1

⁶⁰ CD-PA44 p.2 paragraph 1.2

approach appears to have been to secure the connection first and then look for possible sites in the vicinity, rather than starting by identifying possible points of connection with available capacity (which could be either substations or indeed overhead power lines).⁶¹

162. As a result, a Green Belt location was a certainty from the outset and no other option has been, or indeed could have been, considered. The deficiency in the Appellant's Alternative Site Assessment is similar to that seen in some of the appeal decisions which have been submitted to the Inquiry:

- In Land to the West of College Farm the Inspector found that the search evidence was "*not conclusive*", noting that although the search area covered the entire Borough it was an area "*heavily constrained by Green Belt and other designations*", such that a wider search "*might reveal other less constrained options, including potential availability of other grid connections*".⁶² The Secretary of State agreed with the Inspector on this point.⁶³
- In the Hilfield Farm battery storage decision the Inspector voiced "*concerns regarding the adequacy of the justification*" for the way the catchment area for comparative sites had been established. It had not been explained "*why it was necessary to limit the area to only part of the DNO network, which as one of 14 in the country is therefore, likely to relate to a larger area of the country, and potentially cover land that is not in the Green Belt*".⁶⁴ It is notable that the Appellant did not heed this warning from 2020, bearing in mind the decision concerns a nearby site.
- In Land at Redeham Hall the Local Authority accepted that, if a solar farm were to be located in its area, then it would have to be in the Green Belt.⁶⁵ This did not convince the Inspector that the appeal proposal needed to be in the Green Belt; they observed that "*other sites will exist in the south-east of the Country which do not lie within the Green Belt, even if such sites are outside the Council area*".⁶⁶ They reached this conclusion notwithstanding the Appellant's reliance on the guidance in the PPG that it is responsibility of all communities to contribute to renewable energy generation.
- In Barrow Green Farm the Secretary of State noted that there "*would seem to be scope for alternative sites and options outside the Green Belt to provide similar benefits*

⁶¹ The Appellant's Planning Witness XX by the Council

⁶² CD-ADHBC12, paragraph 119 Inspector Report (IR)

⁶³ Paragraph 19 DL.

⁶⁴ CD-AD-COG1, paragraph 24 DL

⁶⁵ CD-AD-HBC11 paragraph 18 IR

⁶⁶ CD-AD-HBC11, paragraph 60 IR, confirmed in paragraph 16 DL

*while avoiding the harmful effect.”*⁶⁷ In so finding he was agreeing with the Inspector’s conclusion that there appeared to be “*other areas in the south-east outside of the Green Belt where there is grid capacity.*”⁶⁸

163. It is highly unlikely that Elstree substation is the only substation in the UK with available capacity to accept electricity from a 49.9MW solar development. The Appellant is operating across the UK, and this is a development which is just on the threshold of being nationally significant, and which would feed into the National Grid. There is simply no justification for limiting site search to 5km around Elstree, and thereby considering only sites in the Green Belt. The Appellant has not come close to demonstrating that this development requires a Green Belt location. This is a factor which must count against the scheme when considering whether VSC exist.

164. The above decisions also serve to expose the flaw in the Appellant’s assertions that Hertsmere is not ‘pulling its weight’ and ought to be ‘doing its bit’ to deliver renewable energy generation schemes. These arguments are based on the statement in the PPG that “*all communities have a responsibility to help increase the use and supply of green energy*” (reference ID: 5-003-2014030) and the fact that the Borough is significantly behind the national average in terms of generation of energy from renewable sources. None of this means that a site must be found within this Borough for a solar farm of just below the size of a Nationally Significant Infrastructure Project. It does not justify the Appellant’s failure to consider alternative grid connections which are outside the Green Belt.

165. There is no quota or target for local authorities to meet in respect of renewable energy generation. As always in planning, local circumstances need to be taken into account. This is a highly constrained Borough which is wholly within the Green Belt outside the built-up areas. The Government continues to attach great importance to protecting the Green Belt, and despite all of the energy policies and strategies which have been produced, Government has not seen fit to relax Green Belt policy by exempting renewable energy development (or even limited types or scales of such development) from the need to demonstrate VSC.

Any Other Harm – Landscape/Visual

166. Elected members did not identify landscape and visual impact as being a reason for refusing planning permission, and accordingly the Council has not sought to challenge the Appellant’s assessment of the likely landscape and visual effects. The Rule 6(6) parties have done so. As far as impact on visual amenity is concerned, this is strongly allied to the visual dimension of openness of the Green Belt which has been referred to already.

⁶⁷ CD-AD-COG3 paragraph 17 DL

⁶⁸ CD-AD-COG 03 Paragraph 47 IR

167. It is common ground that the appeal scheme would result in a major-moderate adverse effect on the Borehamwood Plateau Landscape Character Area for 10 years, reducing to a moderate and adverse effect for the remaining twenty-five years the solar farm would be in place. The development would cover a significant portion (11%) of the Landscape Character Area.⁶⁹ Given the scale of the site, the harmful landscape and visual effects should carry significant weight.

Any Other Harm – Heritage

168. The impact on designated heritage assets is the subject of the second Reason for Refusal. Harm to the significance of heritage assets must be properly weighed and balanced against public benefits in Framework paragraph 202 balance and may form a basis for refusing planning permission in its own right, as well as being an “other harm” to be clearly outweighed in the Green Belt balance.

Agreed Matters of Law and Policy

169. The approach to the assessment of heritage impact is largely common ground. The following principles were agreed between the Council and Appellant:

- Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that harm to a listed building or its setting must be given considerable importance and weight and gives rise to a strong presumption against granting planning permission.⁷⁰
- The Framework reflects S.66, providing that great weight must be given to the conservation of designated heritage assets, and Framework paragraph 199 makes it clear that this is irrespective of whether the identified harm is substantial or less than substantial.
- The degree of harm which is identified is a matter of judgement, but if there is harm the decision maker cannot give it whatever weight they think fit – statute and policy dictate great or considerable weight must be given.⁷¹
- The weight to be given to the harm is not uniform. This is consistent with paragraph 199 Framework which confirms that “*the more important the asset, the greater the weight should be*”. Thus, harm to assets identified in the Framework as being “*of the highest significance*” (including Grade II* listed buildings and scheduled monuments)

⁶⁹ XX by COG

⁷⁰ CD-ADHBC2 Barnwell Manor Wind Energy Ltd v East Northamptonshire DC [2014] EWCA Civ 137, paragraphs 22-24,

⁷¹ CD-ADAP4 Palmer v Herefordshire Council [2016] EWCA Civ 1061, paragraph 5

should carry more weight than an equivalent level of harm to a Grade II listed building.

- Whilst greater weight should apply to harm to the most important assets, in any case the starting point remains that where there is harm, great weight applies, and the statutory presumption is engaged.
- Under S.66 harm to the fabric of a listed building and harm to its setting are treated equally. The "setting" is defined in the Framework Glossary as the area in which the asset is experienced, and it is important to consider how the experience and appreciation of a heritage asset is affected by development in its setting. This is confirmed in Historic England's GPA3 paragraphs 9 and 30.
- Consideration of 'experience' and 'appreciation' of an asset from within its setting will include consideration of what are termed 'dynamic' or 'kinetic' views; how the view and experience changes as you move through the setting.

Cumulative Change

170. The concept of 'cumulative change' was the subject of much debate during the heritage evidence. The concept is referred to in both the PPG and GPA3, where it is described as follows:

"Where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies consideration still needs to be given to whether additional change will further detract from, or can enhance, the significance of the asset."

171. It was agreed that this guidance applies to situations where past development in the setting of a heritage asset has caused harm to its significance. That is relevant here: all of the designated heritage assets have been subject to unsympathetic development in their settings. It applies with particular force to Slades Farmhouse (now adjacent to a modern commercial/industrial complex) and Hilfield Castle (which has seen dramatic change through the intrusion of modern development including roads, the reservoir, the aerodrome, and energy infrastructure).

172. The Council considers that the thrust of the guidance is that past negative changes in the setting of a heritage asset must be identified and should not be treated as a justification for further harm ("consideration still needs to be given..."). It does not mean that past harm should be 'added' to the harm that would arise from the development under consideration, thereby increasing the overall degree of harm which is found to occur.

173. The guidance on cumulative change, the Council says, is consistent with the Framework which seeks to avoid harm, promote enhancement to significance, and confirms that heritage assets are

irreplaceable and should be conserved so that they can be enjoyed by existing and future generations (paragraph 189).

174. The suggestion by the Appellant that Historic England's guidance on cumulative change is only relevant "*in a minority of cases where development would sever the last link*" between an asset and its setting should be rejected. This is given as one example of a situation where development will further detract from significance.

175. It is clear from the Appellant's assessment that past unsympathetic development in the setting has been treated as reducing the level of harm which would be produced by the development. The effect of such an approach is to make it easier to justify harmful development, since the lower the level of harm, the easier it will be to outweigh in the Framework paragraph 202 balance (even giving the necessary great weight). That is contrary to policy and guidance. The logical consequence of this approach is that each harmful change in the setting makes the next harmful change easier to justify by progressively reducing the contribution of the setting to significance. Such an approach runs entirely contrary to the legal and policy imperative to preserve both the asset and its setting.

176. The correct approach is to identify where past harm has occurred, and to ensure that in assessing the effect of the proposed development (i) past harm is not being treated as a factor which could justify future harm and (ii) consideration is given to how the proposed development would sit alongside the existing negative elements of setting. As the Appellant accepted, the effect of past unsympathetic development in the setting may be to make the parts which remain intact more important or precious.

Measures to Mitigate or Reduce Harm

177. Step 4 of the stepped process in GPA3, is to explore ways to maximise enhancement and avoid or minimise harm. It seeks early identification of effects and wants applicants to consider options for reducing harm, which may include "*the repositioning of a development or its elements*" or "*changes to its design*" as well as screening and management measures.

178. There is a live application for the solar farm, submitted as a 'free go,' which covers the same red line site but leaves Field 1 free of development. It was the Council's assumption that the Appellant would seek to introduce that amended scheme into this appeal. When this did eventually happen, it was so late in the process that the amendment was not permitted.

179. The evidence shows that:

- The purpose of removing Field 1 from the resubmission was to address the Council's second Reason for Refusal by further reducing the harm to heritage assets;⁷²

⁷² DSDI-21 Planning Statement for application 22/0948/FULEI, paragraph 7.48

- The Appellant's assessment in support of the resubmission application was that by removing Field 1, harm would be avoided in respect of both Hilfield Castle and Hilfield Lodge;
- On the Appellant's and Council's assessments harm would still occur to Hilfield Castle if Field 1 were removed (as both find that development of the land to the north of the Castle identified by the Appellant's Heritage Witness as "area 1" would cause harm). However, both find that harm to Hilfield Lodge is caused solely by the use of Field 1 for the solar farm. Removal of Field 1 from the scheme would (i) completely avoid harm to Hilfield Lodge and (ii) reduce harm in respect of Hilfield Castle;
- The Appellant's Heritage Witness would have preferred Field 1 to be removed from the appeal scheme to reduce the level of harm to heritage;
- The planning statement for the resubmission application indicates that the amount of electricity generated by the resubmission application would still be "up to 49.9MW" and the scheme would still be capable of providing the equivalent annual electrical needs of "up to 15,600 homes". In other words, an identical renewable energy benefit is claimed from both schemes.
- At the Inquiry, the Appellant's Planning Witness suggested could not say with certainty that the resubmission scheme would be unable to generate as much electricity as the appeal scheme. They could not say how many panels would be installed in either scheme. There is no clear evidence before the Inquiry as to precisely how much electricity either scheme would be capable of exporting to the grid. All that is submitted indicates no difference. If there is a difference, there is no evidence as to how significant it is.

180. In these circumstances it cannot be concluded that the harm to Hilfield Lodge and Hilfield Castle caused by Field 1 is clearly and convincingly justified, or that the harm caused by Field 1 is outweighed by public benefits, since the specific benefit associated with that part of the scheme is unknown. The evidence indicates that this is harm which could, and should have been avoided.

181. This also has implications for the assessment of Green Belt harm and the justification for siting this development in the Green Belt. If the amount of Green Belt land being used by the scheme could have been reduced without making any demonstrable difference to electricity output, then this will have a bearing on whether the extent of the harm is clearly outweighed by VSC.

Submissions on Harm to Heritage Assets

182. All the heritage experts who have provided evidence agree that there would be harm to the significance of Hilfield Castle, Hilfield

Lodge and Slades Farmhouse. All, except the Appellant's Heritage Witness, agree that there would be harm to Aldenham House RPG. The expert witnesses for the Council and COG also conclude there would be some harm to the Scheduled Monument of Penne's Place moated site.

183. At the beginning of the Inquiry all the heritage experts agreed a table summarising their assessments of the level of less than substantial harm identified for each of the heritage assets they had assessed. No witness departed from their stated position during oral evidence, and therefore this document remains an accurate summary of the respective positions.

184. The Council considers that the Appellant's Heritage Witness has consistently underestimated the extent of harm that would arise. From the evidence presented at the Inquiry, the reasons for this appear to be (i) an erroneous approach to the issue of cumulative change, discussed above, and (ii) a focus on intervisibility and the availability of views, which leads to insufficient regard to wider aspects of the experience and appreciation of heritage assets from within their settings.

185. The key points arising in respect of individual assets are as follows: -

Hilfield Castle (Grade II)*

186. The Council records that the agreed harm would arise through the siting of solar development in areas of the Castle's setting to the north and west which were formerly part of its extensive parkland, and which therefore have historical illustrative value. These are parts of the existing setting which remain relatively uncompromised by modern development, in contrast to parts of the setting to the south and east. The Council says that the assessment of harm should not be tempered as a result of the existing negative changes – in fact, these serve to make the more intact areas even more precious and in need of preservation.

187. Photographic material enables consideration of the extent to which the experience and appreciation of this prominent building would be affected by the transformation of parts of its setting from open undeveloped land to solar farm.

188. It is common ground between the Council and Appellant that the harm would be "low" in the spectrum of less than substantial harm, although the Appellant's Heritage Witness's conclusion is arrived at after netting off the heritage benefits of new specimen trees. The Council says its case is bolstered by the evidence of other experts that have identified a higher level of harm.

Hilfield Lodge (Grade II)

189. The Council notes that all parties agree that there would be harm to Hilfield Lodge. This arises solely from the use of Field 1 as part of the solar farm. Although there is an irregularly shaped set

back in the layout of panels immediately opposite the Lodge this has not gone far enough and harm remains, for the reasons relating to the loss of the agrarian surroundings and erosion of the historic illustrative value of the land as part of a country estate.

Slades Farmhouse (Grade II)

190. The Council say that the Appellant has underestimated the degree of harm arising to this asset by (1) wrongly reducing the level of assessed harm by reference to previous unsympathetic changes to the setting of the asset; (2) attaching particular weight to fluctuations in the landholding associated with the tenancy of Slades Farmhouse, and ignoring the relevance of continuous ownership by the Aldenham Estate and the consequent control exerted over the land, which is an important factor in its long and undisturbed agricultural use; and (3) focussing on the intervisibility between Slades Farmhouse and Field 20 immediately opposite and not paying sufficient attention to effects on experience and appreciation of the building in the wider rural landscape.

191. The Council also say that the Appellant's assessment of harm factors in heritage benefits arising from the double hedge feature. The Council further argue that, if that benefit is stripped out, it would lead to a conclusion of an increased level of harm.

Aldenham House Registered Park and Garden

192. The Council say that the Appellant's approach to this heritage asset is hard to understand. They consider that the agricultural land in Field 20 immediately opposite the main gates into the Registered Park and Garden makes a contribution to significance through "historic illustrative value as a country estate",⁷³ but deny any such contribution from any other part of the agricultural land to the north which falls within the appeal site. In contrast the Council considers that is irrational given that land is also part of the Aldenham Estate and therefore has the same historical associations and continuity of agricultural use.⁷⁴

193. Contrary to the guidance in GPA3, the Appellant's Heritage Witness focussed narrowly on the area of land that is visible from the gates of the Registered Park and Garden and in so doing underestimated the effect of the appeal scheme.

194. The Council considers that unscreened views of solar panels would be immediately apparent when following footpaths Aldenham 051 and Aldenham 044, out of the Registered Park and Garden, across Butterfly Lane, and into Field 16 of the appeal site. That path then leads up alongside solar development in Field 15 and between solar development in Field 14. The Council argues that users of those paths are moving between the Registered Park and Garden and its setting, bringing the concept of dynamic or kinetic views into play.

⁷³ CD-ID18 paragraph 5.42

⁷⁴ As agreed by the Appellant's Heritage Witness in XX by the Council

On arriving at, or leaving, the Registered Park and Garden boundary they would experience the change between the agrarian character of the setting (which is illustrative of the country estate) and the distinctly designed landscape of the Registered Park and Garden. The Appellant's Heritage Witness was unable to give a credible explanation of how, in these circumstances, no harm at all could be said to arise from the proposed solar farm.

Penne's Place Moated Site (Scheduled Monument)

195. The Council says that the Appellant's in respect of Penne's Place was too narrow a focus and denies any contribution from the agricultural land to the north which is illustrative of an earlier period.

196. The Council is of the opinion that there is no justification for this and points out that the Appellant's Heritage Witness agreed that it is important to understand different layers of development and change over time.⁷⁵ Historic mapping shows that prior to the integration of the moated site into the parkland, it was surrounded by agricultural land, and indeed at one stage it was held in the same tenancy as Slades Farmhouse.⁷⁶ The Council considers that the idea that the agricultural land to the north of the asset holds no historic illustrative value⁷⁷ cannot be sustained.

197. The Council conclude development would cause some harm through change in the character of the agricultural land to the north and by reducing the existing limited intervisibility through structure planting along the north of Butterfly Lane which, even if managed to a lower height, would still interfere with the current view through the agricultural gateway.⁷⁸

Heritage Benefits

198. At the instigation of the Appellant's Heritage Witness that the proposed landscaping drawings included proposed specimen trees within Fields 1 and 5 to "*give clearer legibility to these areas as having formerly been parkland*"⁷⁹ associated with Hilfield Castle, and a proposed 'double hedge' feature immediately to the west of Slades Farmhouse to re-establish the "*legibility of the former line of Sawyer's Lane*"⁸⁰ - a feature shown on historic mapping which is no longer present.

199. Although described as mitigation measures by the Appellant, their Heritage Witness confirmed that these proposed features were intended as enhancements which had been offset against harms in an internal balance rather than mitigation measures which would reduce the harm caused by the solar development.⁸¹

⁷⁵ Appellant's Heritage Witness XX by the Council

⁷⁶ CD-ID18 paragraph 3.6 and plate 3

⁷⁷ Appellant's Heritage Witness XX by the Council

⁷⁸ CD-ID9B Appendix B p. 39-40 views 10 and 11 and Landscape Strategy Plan Rev A

⁷⁹ CD-ID18 paragraph 6.46

⁸⁰ CD-ID18 paragraph 3.29

⁸¹ Appellant's Heritage Witness XX by the Council

200. The Appellant's Heritage Witness confirmed that the weight of that enhancement would only start to be felt during the thirty-five-year operational period and would be clearer afterwards.

201. The double hedgerow feature at Slades Farmhouse was poorly thought out from a landscaping perspective, and the Appellant's Heritage Witness's evidence was that if the effect of the double hedge was to reduce or remove views between Slades Farmhouse and Field 20 that would have a small adverse effect on significance.⁸² The re-established route would terminate with a fence, and no permissive route is proposed to give it the character of a track, despite the fact that permissive paths are proposed elsewhere. An interpretation board would be necessary to understand the purpose of the feature. Even so, the weight to be given to this feature as a heritage benefit is negligible.

202. In totality, the Council considers that the heritage benefits proposed are very limited.

Weight to be Accorded to Heritage Harm

203. As set out above, any harm to the significance of a designated heritage asset must be given 'great' or 'considerable' weight as a matter of law and/or national policy. Whilst the weight need not be uniform, this is the bottom line. The Council says that the mathematical approach to the task of applying weight to heritage harm taken by the Appellant's Planning Witness was not heralded in written evidence, and finds no support in any policy or guidance. The conclusion of moderate weight is clearly unsound.

204. The Council submits that their Planning Witness is right to give substantial weight to the assessed impacts on heritage bearing in mind:

- The statutory duty for listed buildings and national policy makes clear that heritage is a 'higher order' consideration;
- Two of the assets affected are "assets of the highest significance" under Framework paragraph 200;
- The size of the development means that multiple heritage assets are engaged, and whilst individually the levels of harm are not very high, there is a cumulative impact on the historic environment in the area. Logically harm to multiple assets should carry more weight than harm to a single asset.

Benefits of the Scheme

Renewable Energy

205. The Council's position is that the generation of up to 49.9MW of renewable energy, contributing towards the achievement of net zero targets and security of supply, is clearly the primary benefit of

⁸² Appellant's Heritage Witness XX by the Council

the appeal scheme. If VSC are to be found, it would be on this basis and not because of any of the other benefits, either alone or in combination. The Council considers that this benefit attracts significant weight in the planning balance, but not the substantial weight argued for by the Appellant.

206. The Council points out that in contrast to Green Belt harm and heritage harm, which are clearly treated as higher order considerations where a high level of weight is prescribed, the Framework does not prescribe any particular weight to the generation of renewable energy. The Government has not seen fit to amend the Framework to prescribe weight, notwithstanding the wider context of climate crisis and issues with energy security.

207. In the solar farm appeal decisions before the Inquiry a high level of weight is given to renewable energy, but there is no consistent pattern of 'substantial' weight. Taking the Secretary of State decisions, 'substantial' weight has only been given to this factor on one occasion.⁸³ In the remainder of cases the Secretary of State has given 'significant' weight⁸⁴ and, in one case, 'great' weight.⁸⁵

208. The weight to be given to the generation of renewable energy generation should not be increased by reference to Hertsmere's performance against the national average, as suggested by the Appellant in cross examination. The Council considers that the adopted Climate Change and Sustainability Strategy indicates that a strategic approach is considered appropriate, rather than encouraging speculative development on the Green Belt. The Local Plan is identified as the mechanism for identifying areas suitable for the deployment of renewable energy projects, including within strategic housing allocations. The Council points out that the introduction to the strategy identifies "*protecting and enhancing greenbelts*" as a principle to be "*embedded in all aspects of the functioning and development of Hertsmere*" in order to achieve carbon neutrality.

209. The Inquiry has been provided with a significant number of energy policy and strategy documents which provide general support for the delivery of renewable energy projects. The Council says that these are high level documents which cover a number of sectors and technologies, and none are instruments of planning policy.⁸⁶

210. The Council say that the recent Net Zero strategy suggests a preference for offshore wind over solar, and that the most recent document of all, the British Energy Security Strategy (April 2022), contains a proposal to strength planning policy for solar "*in favour of development on non-protected land*" and to encourage large scale projects to locate on previously developed or lower value land where

⁸³ CD-ADHBC 9, paragraph 19 DL;

⁸⁴ CD-ADHBC, paragraph 202 DL; CD-ADHBC 11 paragraph 13 DL; CD-ADHBC12 paragraph 26 DL; CD-ADHBC 13 paragraph 8 DL; CD-ADHBC 14, paragraph 14 DL

⁸⁵ CD-ADHBC 8 paragraph 13 DL

⁸⁶ The Appellant's Planning Witness XX by the Council

possible.⁸⁷ This does not add material weight in favour of the generation of renewable energy in the circumstances of this case, where the site is wholly in the Green Belt.

Biodiversity/Ecology

211. The Appellant has calculated a BNG of 90% in area units and 25% in linear units.⁸⁸ This arises primarily from the provision of 'modified grassland' within the solar array enclosures and the other types of neutral grassland around field margins and delivered through management of the Aldenham Brook Green Corridor, Skylark Area, and Hilfield Brook Green Wedge.⁸⁹

212. Area habitat creation in this area will comprise 75.07Ha of modified grassland, 22.42Ha of neutral grassland, 3.13Ha of mixed scrub, 2.90Ha of parkland, 1.90Ha of sealed surface and 0.71Ha of orchard. Created habitats generate a total of 460.63 units. Post-works habitats total 583.99 biodiversity units, an increase by +276.60 biodiversity units, or +89.99%.

213. The degree of net gain that would be achieved is not particularly surprising given that the land is currently in arable use.

214. It is agreed that this is a beneficial effect of the scheme, and it should carry significant weight in view of the 'overprovision' against the 10% requirement which will soon come into force. Substantial weight is not justified, partly because of the lack of policy imperative for this compared with, for example, Green Belt harm, and partly because the open areas which are delivering that BNG are provided in part to mitigate the harm that the appeal scheme would cause:

- The Skylark Area was originally proposed to be covered in solar arrays, but these were removed for other reasons including residential amenity;⁹⁰
- The Hilfield Brook Green Wedge was also originally proposed to be covered in solar arrays,⁹¹ but was "*designed to allow views to be retained through to Hilfield Castle ... and wider countryside to the east;*"⁹²
- Parkland was proposed in order to "*maintain an immediate rural outlook for residential dwellings in these areas.*"⁹³

Landscape Enhancement and Post-decommissioning Submissions

215. The Council's assessment is that the landscaping proposals (now shown on the Landscape Strategy Plan Rev A and as described in the LEMP) are to be regarded as neutral during the thirty-five-year

⁸⁷ CD-NPP31 p. 19

⁸⁸ CD-PA29 p. 8

⁸⁹ CD-PA29 p. 4-6

⁹⁰ CD PA5 Design and Access Statement p. 27

⁹¹ CD PA5 p. 24 and 26

⁹² DSDI 14 LEMP April 2021 p.26 paragraph 4.4.2

⁹³ DSDI 14 LEMP April 2021 p.26 paragraph 4.4.3

operational period. The landscaping package is intended as mitigation for the adverse landscape and visual effects of the proposed solar farm, and it would be necessary to make the development acceptable if VSC were demonstrated. Therefore, it does not fall to be regarded as a benefit of the scheme. There is no enhancement during the operational period: the Appellant's assessment is that even with mitigation there would be adverse effects on both landscape character and visual amenity.

216. The Council raised concerns as to how, post decommissioning, it would be possible to secure legacy landscaping as shown on DWG No 8398 012C Green Belt Strategy Legacy.⁹⁴ The Council's view was that, following the expiry of planning permission, any condition relating to landscaping would cease to have effect.⁹⁵ The Council does not accept the Appellant's submissions on restoration conditions circulated on 2 November 2022. In particular, whilst it is agreed that a time limiting condition imposed under s.72(1)(b) of the 1990 Act could be enforced after the expiry of permission, it is not accepted that the same would apply to landscaping conditions or other types of condition which seek to regulate the use of the land.

217. The Appellant and the Council have now agreed that a condition should provide a thirty-five-year time limit for the operational period, rather than imposing a time limit on the life of the permission itself. The permission would not be a 'temporary' permission in this sense. This amendment to the draft conditions addresses the Council's concerns about the conditions purporting to have continued existence following the expiry of permission. Nevertheless, the Council considers that some issues remain.

218. The Council understood from the evidence of the Appellant's Landscape Witness⁹⁶ that the elements proposed for retention post-decommissioning are:

- New planting as shown on Figure 12C and as annotated on the Landscape Strategy Plan of the structure planting and new tree planting, save for the elements to be removed from Fields 1 and 5;
- The Skylark Area indicated on Figure 12C; and
- The Aldenham Brook Green Corridor shown on Figure 12C.

219. The Appellant's Landscape Witness anticipated that the management measures associated with the Skylark Area and the Aldenham Brook Green Corridor, and described in the LEMP, would continue post-decommissioning.⁹⁷

220. The Appellant's proposed Condition 11 is intended to impose a requirement to retain and manage the landscaping elements referred

⁹⁴ CD-ID19

⁹⁵ Based on the authority of *Avon Estates Ltd v Welsh Ministers and another* [2011] EWCA Civ 553

⁹⁶ Appellant's Landscape Witness XX by the Council

⁹⁷ The Appellant's Landscape Witness XX by the Council

to above for a period of twenty-five years after the solar farm has been completely removed from the land.

221. The Council considers that the Appellant's proposed condition 11 would fall foul of the tests set out in Framework paragraph 56 and should not be imposed because:

- The purpose of the landscaping elements in question is either to screen the development for landscape and visual reasons, or to preserve residential outlook, or to provide biodiversity benefits as part of the VSC to justify the Green Belt harm and thus make the proposed solar farm development acceptable.⁹⁸ It follows that, once the development has been removed from the land, it cannot be necessary for the landscaping elements to be retained and replaced/managed.
- For similar reasons, once the development has been removed from the land the landscaping elements would no longer be relevant to the development being permitted. The ongoing retention of the planting and management regimes would cease to relate to the solar farm, and instead will be delivering unrelated benefits to landscape character and biodiversity.
- It is very hard to see how it could be reasonable to impose an obligation on the landowner to comply with a management regime which would restrict the way the land is used for a period of twenty-five years after the solar development has been removed. The suggested approach would commit the landowner to mowing and grazing regimes and other management measures which would have to be complied with at specific times of the year, and which would interfere with an otherwise unrestricted lawful agricultural use.

222. For these reasons, the Council's alternative version is to be preferred. No weight can be attributed to landscape enhancements post decommissioning. If that is not accepted, the Council invites the Inspector and Secretary of State to accept their assessment that such benefits should (if secured) carry only limited weight.

Economic Benefits

223. The Appellant attaches significant weight to these, but the Council considers that is unrealistic. Construction and supply chain jobs would be short term and the Appellant's Planning Witness accepted that there would be one maintenance visit per month during the operational phase and that there is no evidence of the extent of any jobs created in the supply chain.⁹⁹ The Council says that the investment of private finance into a profit-making development

⁹⁸ The Appellant's Landscape Witness XX by the Council

⁹⁹ The Appellant's Planning Witness XX by the Council

cannot rationally be regarded as a material benefit in the planning balance. Payment of a tax required by law is not a benefit, it is a legal requirement much the same as the payment of corporation tax by the energy company and the payment of income tax by anyone employed in connection with the solar farm, neither of which are, rightly, being advanced as benefits. In the Council's view it is quite correct to ascribe only limited weight to these matters.

Soil Quality

224. The Council say that this can be achieved through good stewardship, and that a solar farm is not needed to improve soil health. If the Aldenham Estate is serious about the environmental aspirations which are recorded in section 3 of the Appellant's Planning Witness's proof, then taking measures to improve soil quality are exactly the sort of action that one can expect it to undertake.
225. It is noted that the report on soil health which is appended to the Agricultural Land Classification Report states that (i) environmental stewardship is an important contributor to reducing greenhouse gas emissions, through options such as buffer strips which take land out of cultivation; (ii) the best opportunities to increase carbon storage come from planting perennial crops, returning crop residues to the soil and application of organic manures; (iii) zero tillage does not increase soil carbon in the short to medium term, although global data "suggests" that it does if applied for 12 years or more (implying a degree of scientific uncertainty); (iv) biological function can be enhanced by "*simple approaches that can be integrated into real farm systems*" and (v) soil structure can be improved by increasing soil organic matter (which relates to soil carbon).¹⁰⁰ The Council's Planning Witness is correct to give no weight to this benefit.

Permissive Paths

226. The Council seeks to make clear that a permissive path around the football club site would do no more than provide an alternative route to an existing PRoW which will remain. The Council is of the opinion that it is highly unlikely that the permissive path would be used in preference because the PRoW follows the desire line. The evidence does not support the claim that the PRoW is preventing the football club from using their land in the way they wish, even if it did, the PRoW will remain so the scheme would not change that state of affairs. There is no benefit here.
227. The northern permissive path would replace an existing tolerated path with a longer permissive route. Like the existing path, the new route would not be dedicated to the public, albeit there would be time limited permissive rights. The proposed path would take a longer route past utilitarian solar development rather than the

¹⁰⁰ CD-PA 14 Appendix 5 Soil Health p. 2-3

current direct route through an open agricultural field. The Council considers that overall, this is not a benefit.

Education Strategy

228. A scheme would be required by condition, but no details are provided at this stage, and even the Appellant does not suggest anything more than limited weight should be applied.

Very Special Circumstances

229. VSC must be shown to clearly outweigh all of the harms identified. This is a very high hurdle for the Appellant to cross, and they have not crossed it. The benefits do not *clearly* outweigh the combined weight of the Green Belt harm, heritage harm and landscape harm. There are, the Council says, no VSC to justify the harm.
230. Whilst each case must be decided on its own merits, it is notable that the Secretary of State has not granted permission for a solar farm in the Green Belt in any of the appeal decisions before the Inquiry. This is a clear indication of the relative weight placed by him on protection of the Green Belt versus generation of renewable energy. Those schemes were all significantly smaller in scale than the current appeal scheme ¹⁰¹ and thus the renewable energy benefits were smaller - but the corollary is that the level of harm to the Green Belt was much lower.
231. It is the Council's view that a finding that VSC exist in this case, which would be primarily on the basis of the benefits associated with renewable energy generation, would set a precedent for other solar schemes in the Green Belt. The Council submits that it would undoubtedly be viewed by indicating a significant shift in policy and approach.

Heritage Balance

232. The public benefits do not outweigh the less than substantial Harm caused to five designated heritage assets, including a Grade II* listed building and a scheduled monument which are of the highest significance. There is a cumulative impact to the historic environment. The removal of Field 1 in the resubmission scheme demonstrates that the level of harm that would be caused by the appeal scheme has not been clearly and convincingly justified, that Field 1 does not produce measurable public benefits. The Framework paragraph 202 balance is not in favour of the appeal scheme.

Policy and Material Considerations

The Development Plan

233. Whatever criticism may be made of the evidence base for the Local Plan, or areas where it takes a different approach from national

¹⁰¹ From 3.6MW (CD-ADHBC 12 Land to W of College Farm) to 7.76MW (CD-ADHBC 8 Green Farm)

policy, it remains the statutory Development Plan and the solar farm appeal must be determined in accordance with the plan unless material considerations indicate otherwise.

234. The Appellant's Planning Witness confirmed that no case was being made under Framework paragraph 11(d).¹⁰² The "most important policies" are not out of date. Both the Core Strategy and the SADMPP were examined and found sound by reference to the 2012 Framework;¹⁰³ the substance of which has not changed significantly on the issues which are relevant to this appeal.

Green Belt Policy

235. Core Strategy Policy CS13 follows and applies national policy on the Green Belt. The policy is breached because VSC have not been demonstrated. Policy SADM26 is also breached. It contains criteria which are relevant whenever development in the Green Belt is being advanced. There is a clear planning purpose to be served in ensuring that any impacts on the Green Belt are minimised as far as possible in any development, whether or not it is inappropriate and whether or not there are VSC. Even where there are VSC to clearly outweigh Green Belt harm, criteria (i), (iv) and (v) require that development should still be as unobtrusive as possible and should be sympathetic in scale, height, and bulk.

236. The Appellant's Planning Witness was right to agree that the protection of the Green Belt is at the very heart of the Local Plan and the strategy it sets out.¹⁰⁴ They were right to agree that any proposal which conflicts with Green Belt policy in the Local Plan cannot be regarded as being in accordance with the plan as a whole.¹⁰⁵ That, the Council says, is the position here.

Heritage Policy

237. Core Strategy Policy CS14 does not include any reference to the possibility of harm being weighed against public benefits, however the policy seeks to avoid harm to designated heritage assets, which is the fundamental aim of statute and policy. It was found sound when examined against the 2012 Framework, which contained the same test as in paragraph 202 of the current version. So, the absence of that test was clearly not considered to raise any significant issue. Even if the policy did contain the relevant words, it would make no difference in this case because the benefits of the solar development do not outweigh the harm.

238. Policy SADM29 does incorporate the Framework, and the proposed solar farm would conflict with the policy. In addition, it

¹⁰² The Appellant's Planning Witness XX by the Council

¹⁰³ CD-HBCLP 1 p. 11 paragraph 1.9, CD-HBCLP 2 p. 11 paragraph 1.29

¹⁰⁴ The Appellant's Planning Witness XX by the Council

¹⁰⁵ The Appellant's Planning Witness XX by the Council

would conflict with Core Strategy Policy CS22 (*"conserve the Borough's historic environment"*).¹⁰⁶

Policy Concerning Landscape Matters

239. The agreed landscape and visual harm produces a conflict with policies Core Strategy Policy CS12 (*"proposals must conserve and enhance the natural environment of the Borough, including ... landscape character"*), Core Strategy Policy CS22 (proposals should *"take opportunities to improve the character and quality of an area"*), Policy SADM11 (*"proposals will be assessed ... to ensure that they conserve or improve the prevailing landscape quality, character and condition"*) and Policy SADM30 (*"development which complies with the policies in this plan will be permitted provided it makes a positive contribution to the built and natural environment ... complements the particular local character of the area ... respect enhance or improve the visual amenity of the area by virtue of its scale, mass, bulk, height, urban form"*).

240. For the reasons set out above, the Council says landscape enhancements following decommissioning cannot be secured without falling foul of the tests for conditions and so should be given no weight when assessing compliance with the above policies. Even if that is wrong, the harm which would be caused for thirty-five years would still result in the breaches just identified.

Core Strategy Policy CS17

241. This policy (read together with the interim policy statement on climate change¹⁰⁷) encourages new development of renewable energy generation subject to three caveats, of which the first – *"local designated environmental assets and constraints"* – is relevant.

242. The Appellant's Planning Witness agreed that the Green Belt is a constraint, and it is locally designated (its extent and boundaries being subject to designation in the local plan).¹⁰⁸ There is scope for argument as to whether the word 'environmental' qualifies only assets, or both assets and constraints. In any event it is noted that the Green Belt is identified as a *"natural and historic asset"* in paragraph 5.4 of the Core Strategy.¹⁰⁹

243. The effect of this interpretation is that compliance with Policy CS17 is subject to VSC being shown in Green Belt areas. In other areas outside the Green Belt (i.e., in built up areas) the policy may be supportive subject to the other caveats. This result is not inconsistent with the emphasis placed on the Green Belt in the Local Plan; indeed, it would be surprising if a Local Plan in a Borough which is 80% Green Belt provided broad support for developments which would be inappropriate in that Green Belt.

¹⁰⁶ CD-ID9 paragraph 9.13

¹⁰⁷ CD-HSPD 2

¹⁰⁸ The Appellant's Planning Witness XX by the Council

¹⁰⁹ CD -HBCLP 1 p. 56

244. Even if the Council is wrong about the interpretation of Policy CS17 and the policy does in fact provide support for the proposed solar farm, it makes no difference to the overall planning balance. Applying the Appellant's interpretation this would be one policy pulling in favour of the scheme, set against a wide range of policies pulling the other way, including Green Belt policy which is fundamental to the plan. The Council says development would remain contrary to the plan as a whole.

Core Strategy Policy SP1

245. The Council say that this key spatial strategy would be breached.¹¹⁰ The Appellant's Planning Witness agreed that criteria (v), (viii) and (xiii) would be breached, although attached weight to the reversibility of the scheme. For reasons already given, the Council say that can carry little weight.

Material Considerations

246. The Council considers that there are none which indicate an outcome otherwise than in accordance with the Development Plan. The following reflects the Council's view of national policy statements and their drafts:

EN-1 does not provide support for this scheme. It is effectively a policy framework for decision making. It does confirm that that the IPC will take an approach to the Green Belt which is in accordance with the approach in the Framework (albeit it was published in 2011 and thus pre-dates the Framework).¹¹¹

EN-1 also helpfully points out that: *"not all aspects of Government energy and climate change policy will be relevant to IPC decisions or planning decisions by local authorities, and the planning system is only one of a number of vehicles that helps to deliver Government energy and climate change policy. The role of the planning system is to provide a framework which permits the construction of whatever Government – and players in the market ... – have identified as the types of infrastructure we need in the places where it is acceptable in planning terms. It is important that, in doing this, the planning system ensures that development consent decisions take account of the views of affected communities and respect the principles of sustainable development."*

EN-3 does not deal with solar technologies at all.

Draft EN-1 and EN-3 cannot be given any weight as material considerations in favour of the appeal scheme. Neither document provides support for the delivery of large-scale solar farms in the Green Belt; Draft EN-3 in fact fails to mention the Green Belt in its section on solar technology, despite discussing it in the context of other technologies including offshore wind.

¹¹⁰ PoE of the Council's Planning Witness, paragraph 9.17

¹¹¹ CD-NPP 25 paragraph 5.10.17

Hertsmere Borough Council submits that this is an omission that would be picked up through consultation.

Overall Conclusion for Hertsmere Borough Council

247. It is the Council's conclusion that the proposed solar development is very clearly in conflict with the Development Plan taken as a whole. There are no material considerations which indicate that permission should be granted notwithstanding this conflict. The Council asks the Inspector to recommend that the Secretary of State refuses permission and dismisses the appeal.

The Case for Aldenham Parish Council

248. The Site is located within the Parish of Aldenham and the Parish Council opposes the proposal in the strongest terms.

249. This proposed solar farm conflicts with the Development Plan; it proposes an enormous 85Ha set over 130Ha. The development would be the size of two villages in the middle of the Green Belt and next to a Grade II* listed heritage asset (amongst others).

250. Planning permission must be refused unless, pursuant to S.38(6) Planning and Compulsory Purchase Act 2004, material considerations indicate otherwise. Aldenham Parish Council is of the view that they do not. The Appellant relies on renewable energy to make its case. The Parish Council agree that renewable energy is important, but not such as to mean it can be put in any location.

251. There are three independent reasons to refuse the appeal:

- The Green Belt: VSC do not exist
- Heritage: The benefits are insufficient to outweigh the harm to the significance of heritage assets.
- Landscape: The proposal is contrary to Core Strategy CS12, CS16, CS17, SADM11 and Policy SADM30.

Green Belt: Very Special Circumstances do not exist.

252. The starting point is that the proposed solar farm constitutes 'inappropriate development' in the Green Belt. It is, by definition, harmful to the Green Belt, Framework paragraph 147, even before anything else is considered.

253. The Appellant rightly accepts substantial weight must be afforded to the following harms:

- Definitional harm.
- Harm to both visual and spatial aspects of the openness. Including a high magnitude of major-moderate adverse visual effects within the site.
- Harm to the openness and purpose (c) to assist in safeguarding the countryside from encroachment, Framework paragraph 138.

254. However, harm to Green Belt is under-played by the Appellant.

Openness

255. The Site is open countryside. Although the Appellant accepts harm, their terminology and photomontages are 'muted.'

Spatial Harm:

- The Appellant's Planning Witness concedes there would be 'a spatial impact' because, as there would be a development in an area where there was not previously, 'in this sense' there would be a spatial impact. Their evidence has sought to emphasise the 'gaps' below and between the panels, or the purportedly 'low' height of 3m.
- Such terminology does not bring to mind the reality of over 100,000 solar panels and storage facilities covering 85Ha over a site spanning 130Ha, with panels 3m high surrounded by 2.2m high fencing (both well above head height). The spatial harm is undoubtedly highly significant.

Visual Harm:

- For visual receptors within the site, the LVIA, rightly, concludes there would be a high magnitude of major-moderate adverse effects.¹¹² The Appellant seeks to stress that this is a 'localised' effect.¹¹³ However, the 'localised' harm is to a site of 130 hectares criss-crossed by numerous PRowS. The visual harm accepted by the Appellant is actually highly significant.
- For a proposal just under the threshold for a Nationally Significant Infrastructure Project, there are insufficient photomontages showing the likely effect with established mitigation and across the seasons. When considering the photomontages that have been provided, they actually suggest a greater visual openness than would be the case with mitigation. 'Before' views allow sight at least as far as the solar panels and, in some cases, through and under them¹¹⁴, whereas 'after' views would block these with the hedge several metres in front of the solar panels, considerably foreshortening views.¹¹⁵
- The 'channelling' effect would be significant particularly where the panels are on both sides of PRowS. The Appellant does not provide any photomontages of this. However, one may look at Figure 9.5 VP9 p.2 of 2 and imagine the obstruction on both sides of the path. There would be a huge change from a walker having sweeping

¹¹² CD-PA15 p.44

¹¹³ CD-ID17 [7.3.7]

¹¹⁴ CD-ID19 Appendices Figure 9.6 p.4 of 6 (a view through the solar panels to the far end of the field)

¹¹⁵ Accepted by the Appellant's Landscape Witness in XX

views across the arable landscape on both sides to having fencing, security cameras and solar panels surrounding them on both sides and as far as the eye can see (noting the bends in the footpaths would often not permit the end to be in view).

- Regardless of mitigation, one would either have a view of 3m high solar panels, through a 2.2m high fence, and numerous large shipping containers - or a sizeable and dense hedge. Either way, one would not have the existing, open view over an undulating and attractive¹¹⁶ arable landscape characteristic of the Borehamwood Plateau.
- Such harm to openness would be permanent in places, as indicated in the Green Belt Legacy Plan at Figure 12C and the Appellant's updated landscape plan. For example, 7.5m high and 10m hedging proposed in Field 15.

Green Belt Purpose

256. The Appellant accepts harm to purpose (c) of the Green Belt, to assist in safeguarding the countryside from encroachment. The harm would be commensurate with the 130Ha of the encroachment.

257. The purposes of the Green Belt also include (a) checking the unrestricted sprawl of large built-up areas, Framework paragraph 138. Standing back to look at an aerial map, which would clearly be the implication of such an expansive development in this location, on the edge of London and extending to nearly the whole distance between Bushey, Boreham Wood and Radlett. It is nowhere stated that it is necessary for a development to actually touch the surrounding settlements.

Other Harms

Landscape Character and Visual Amenity:

258. The Appellant's Landscape and Visual Impact Assessment identifies large-scale and major-moderate adverse changes. The undulating landscape means mitigation would often not screen views.¹¹⁷ Planting mitigation would be less effective due to the undulating nature of the countryside and the sense of openness would be considerably reduced. This is addressed below.

Effect on the Setting of Heritage Assets:

259. As set out below, a medium level of less than substantial harm would be caused to the setting of listed buildings; a consideration to which considerable importance and weight must be given.¹¹⁸

¹¹⁶ Accepted by the Appellant's Landscape Witness in XX

¹¹⁷ CD-ID19 E.g. Viewpoints 1 (Centre) view to another field on higher ground; Viewpoint (Right) a view across two fields; Viewpoint 3 (left and right) views down over large expanses of solar panels

¹¹⁸ CD-ADHBC2 Barnwell Manor Wind Energy Limited v East Northamptonshire District Council [2014] EWCA Civ 137 [24]; S.66 Listed Buildings Act 1990

Public Rights of Way:

260. The appeal site is attractive¹¹⁹ and criss-crossed by a large number of PRowS. These are a valuable recreational asset and benefit the local tourism economy. This is all the more important in an area so close to London and within the M25, where such green land is already in very short supply. They also benefit the local tourism economy. The landscape change from undeveloped countryside to industrial built development would have a significant adverse impact. Fencing would give the feeling of being contained, a particular concern for lone female walkers.¹²⁰ It is simply much less likely that someone would want to walk on them should the development go ahead. Although the ambit of the Radlett Neighbourhood Plan (2021) is 400m away from the site, it seeks to protect the same PRow that would be harmed by this proposal and advises that development that reduces the quantity, functionality and/or quality of walking and cycle networks would not be supported.

Agricultural Land:

261. Aldenham Parish Council's Planning Witness observed on site visits that the site is largely agrarian in nature and currently producing crops. It is Grade 3b, moderate quality. Aldenham Parish Council says that this is a valuable resource for producing cereals and grass, particularly in Hertsmere where most land is not of a high grade, and where the Government have stressed the need for the UK to self-support its food production.

Long-term Impact on the Character of the Area:

262. Although thirty-five years is not permanent, it is a significant amount of time; it has been recognised in the recent appeals refusing permission for solar farms that even twenty-five years is a significant period of time such that *"for a generation of local people it might as well be permanent so that in terms of the weight to be applied to the harm to openness there is little distinction to be made"*¹²¹ and that it *"comprises a substantial part of the average person's lifetime"*.¹²² Aldenham Parish Council considers that after thirty-five years, the solar equipment could be replaced¹²³ and there would be a strong case for other types of built development. This is a matter to be given moderate weight.

Wildlife:

263. Aldenham Parish Council considers that wire fencing is likely to significantly impact the ability of larger mammals to roam, as would noise. The Appellant's response that there are still large tracts of land to move through¹²⁴ misses the point that their habitat would be

¹¹⁹XX Appellant's Landscape Witness

¹²⁰ XX Planning Witness for Aldenham Parish Council

¹²¹ CD-ADHBC6 [55]

¹²² CD-ADHBC 4 [134]

¹²³ CD-PA5 Design and Access Statement [5.3]

¹²⁴ CD-ID16 at [11.35]

subject to huge, long-term (and potentially permanent) change. It is not whether they can get from A to B; it is their natural habitat.

Glint and Glare:

264. Four dwellings would be impacted until screening takes effect over a period of years. Screening will interfere with their open views. It is of the utmost important to ensure road traffic is adequately screened before solar panels are installed in those locations.

Noise:

265. Aldenham Parish Council say that noise would still be audible along the PRoWs despite the proposed planning condition and, as such, impact on the enjoyment of being in the open countryside.

Flooding:

266. It remains of concern to Aldenham Parish Council that the Appellant did not deal with the points made by the Sustainable Drainage Officer on behalf of the Lead Local Flood Authority about the adequacy of the assessment.

Benefits

267. In considering whether the 'other considerations' put forward by the Appellant 'clearly outweigh' the harms so as to amount to 'VSC,' Framework paragraph 148, it is important to recognise that the Government does not consider special rules apply for solar farms in the Green Belt:

- Solar farms have not been listed as one of the various developments that may be appropriate in the Green Belt, Framework paragraph 149. This is despite (i) the Framework being updated in 2021, after both the Climate Change Act 2008 and its 2019 amendment targeting 'net zero', and (ii) the Framework making specific provision for e.g., mineral extraction and affordable housing for local community needs.
- PPG: *Renewable and low carbon energy* specifically provides that local planning authorities should be 'focussing large scale solar farms on previously developed and non-agricultural land.' (Reference ID: 5-013-20150327)
- It is only that VSC 'may include the wider environmental benefits associated with increased production of energy from renewable sources,' Framework paragraph 151. It does not even go as far as to suggest such benefits must always be considered.

268. Aldenham Parish Council say that the alleged benefits are overstated by the Appellant.

269. Renewable energy generation is of course very important. This is not disputed by anyone. However, this is not a 'trump card'

necessitating development in the Green Belt. One must look specifically at this proposal.

270. The policies and objectives relied on by the Appellant cannot mean that every local planning authority must ensure the installation of vast solar farms in their area. It would be impossible in (for example) Central London. It must be subject to local constraints, such as the Green Belt. That is exactly why the PPG specifically provides that local planning authorities should be '*focussing large scale solar farms on previously developed and non-agricultural land.*' Energy is a largely national infrastructure for good reason.
271. Artificial constraints are relied on in the Appellant's Alternative Site Assessment to justify this site. The assessment is predicated on a need to install a solar farm within 5km of Elstree substation. There is no justification for this. It is evident that other substations have capacity because the assessment states Elstree was '*one of those identified*'¹²⁵ and, as the Appellant's Planning Witness accepted in cross-examination, it is actually not necessary to connect to any substation; a connection can be made to an overhead line. The Appellant has only shown that a solar farm could be connected to Elstree because it has capacity, it is not the case that it must be.
272. As highlighted by the Council's cross-examination of the Appellant's Planning Witness, Government policy generally favours wind over solar. Wind energy is more efficient. It is not the case that solar farms are the primary means for achieving net zero.
273. Much has been made of the Council's intention to generate more renewable energy. This is far from unique. It must be seen in the context of an authority who was also well aware that it also has a very strong desire to protect its Green Belt land. It did not suggest it would forsake the latter in favour of the former.
274. The other benefits relied upon are extremely modest:
- *Biodiversity/ecological*: There would be some benefit, however it is a normal requirement for Development Plan policies and Aldenham Parish Council is already providing significant improvements in the area by planting large numbers of trees without taking up arable land. Improvements may be delivered without a solar farm. It must also be seen in the context of the inevitable harm that would be caused to other wildlife.
 - *Landscaping*: This is a normal requirement of Development Plan policies and is really mitigation. As far as any such landscaping is said to be a benefit heritage, this cannot be double counted because it is already taken into account by the Appellant in reaching their assessment of heritage harm.¹²⁶

¹²⁵ CD-PA44 [2.1]

¹²⁶ The Council XX of the Appellant's Heritage Witness

- *Farm diversification and soil improvements:* These do not compensate for the loss of agricultural land and could be obtained without the need for a solar farm. The latter is only relevant if the site actually does revert to agricultural use. This is far from certain.
- *Permissive footpaths:* These do not represent an improvement from the current position given the significant harm proposed to the existing PRowS. Accordingly, this is not considered to be a benefit and should be considered neutral. As highlighted by the Council's cross-examination of the Appellant's Planning Witness, the route to avoid walking across part of the Belstone Football Ground is less direct than the existing route which will remain. The second replicates an existing path already used. Their value is dubious. These proposed permissive paths will no longer be available once the solar farm is decommissioned.
- *Educational strategy:* There are other platforms or this and scant detail has been provided. The information boards are numerous and would be unwelcome 'clutter' in the Green Belt. The proposed location of the board in Field 19 (rather than at the end of Sawyer's Lane) explaining that a double hedgerow is to indicate the former Sawyer's Lane seems highly unlikely to be effective.
- *Economic benefits:* The construction period is under a year and may not involve local workers. In any event, thereafter only very minor ongoing maintenance work would be required. This is underwhelming when compared to the existing agricultural work being undertaken each year. It is likely that fewer people would wish to visit the area, resulting in less support for local businesses. This is not a benefit.
- *Reversibility:* This bears very little weight. There is no guarantee the land would revert to agricultural use in the future. The Design and Access Statement raises the possibility of a further application in thirty-five years. The Appellant asserted the future was 'unknowable'. What is certain is that the baseline against which any future application (e.g., a s73 application to vary the planning condition dictating a thirty-five-year operational period, or indeed a fresh application for planning permission for any built development) would be very different. A regrettable precedent would have been set for future development on the site and a generation will be unable to recall a time when the land was intact. The development should be considered permanent in landscape terms.¹²⁷

275. There is nothing 'very special' about the circumstances of the proposed solar farm. The other considerations cumulatively fall far

¹²⁷ XX of AK; GLVIA3 [5.51-5.52] refers to long-term as twenty-five years

short of 'clearly outweighing' the harms. Therefore, there is a conflict with Policy CS13, which reflects the Framework's VSC test.

276. If such an immense solar farm can go ahead on a site such as this, subject to the important protections for the Green Belt and heritage assets, one may expect huge swathes of valuable Green Belt to be similarly lost up and down the country.

Heritage: Benefits do not Outweigh the Harm

277. The harm to the significance of relevant designated heritage assets is less than substantial and should be weighed against the public benefits of the proposal; Framework paragraph 202. Harm is agreed. This alone provides a 'strong presumption' against granting planning permission.¹²⁸

278. When assessing the four experts' opinions on the level of harm, it is notable that Aldenham Parish Council's Heritage Expert was measured, unafraid to agree with the Appellant that there was no harm to Penne's Place, and yet still found medium harm to the Hilfield Castle Group and Slades Farmhouse. The Parish Council say the written evidence of their Heritage Expert is reliable.

Hilfield Castle Group

279. This includes the Hilfield Castle, Gatehouse and Lodge. It is agreed that they contribute to one another's significance. They are of considerable significance, with reference to both their architectural and artistic interest, and historic interest:

- Listed as Grade II* (particularly important building of more than special interest), Grade II and Grade II, respectively.
- Designed by Sir Jeffrey Wyatt, 'architect to the king' who also designed alterations to Windsor Castle and Chatsworth House.
- The south front differs only in minor details from the extant elevation drawings representing one of Wyatt's earliest known designs.¹²⁹

280. Aldenham Parish Council says that the setting must include the Western portion of the Site because:

- The Castle was deliberately set in a commanding position to oversee a country estate, which covered the whole of the Western portion of the Site.¹³⁰
- Regardless of views on whether the Castle has a 'main' façade, it is clear the views are 360 degrees and views to the North and West were important, representing the Castle's North Park and Western Lawn.¹³¹ The

¹²⁸ CD-ADHBC2 *East Northamptonshire DC v SoSCLG* [2014] EWCA Civ 137 at [23]

¹²⁹ CD-ID18 Official List entry, Appellant's Heritage Witness PoE p.119

¹³⁰ CD-ID18 Appellant's Heritage Witness PoE p.66-67.

¹³¹ CD-ID18 p.66, p.70

undeveloped, rural setting owned by the estate undoubtedly contributed to its significance.

- Despite the presence of trees and changes in land ownership, notable winter, and summer views to the North and West remain.¹³²

281. The solar farm would cause a medium level of less than less than substantial harm:

- Intervisibility, although reduced, remains.¹³³
- Abstract harm is striking, the Western portion of the proposed solar farm covering a large portion of the former Hilfield Castle estate.¹³⁴
- Previous change has not been of the same scale. The harm would clearly be 'noticeable,' 'significant'¹³⁵ and a much greater change from the previous changes to the land relied on by the Appellant; e.g., from parkland to agricultural.¹³⁶
- It is relevant to consider cumulative harm in light of previous encroachments such as the Elstree Aerodrome, Elstree Reservoir, electricity pylons and other 20th Century changes because:

The significance of the heritage assets has been compromised in the past by unsympathetic development.

Additional change would clearly further detract from the significance of the assets.

- This was also the conclusion independently reach by both COG's heritage witness and Historic England, who wrote the guidance in GPA3 which was relied on by all parties. Historic England only assessed the Castle, being the only asset in the Group listed as Grade II* or above.

282. Harm was acknowledged by the Appellant's Heritage Witness who had advised against the inclusion of Field 1 and the Appellant has sought to address this both in a parallel planning application and when attempting to amend this scheme on appeal.

Slades Farmhouse

283. Similar to the Hilfield Castle Group, this has been put under pressure by previous developments and the proposed development would remove yet more of the rural field system that surrounded it,

¹³² CD-ID18 p.76; CD-ID13d COG's Heritage Witness PoE plate 12

¹³³ CD-ID18 p.76; CD-ID13d and COG Heritage Witness PoE plate 12

¹³⁴XX Appellant's Heritage Witness; CD-ID18 Appellant's Heritage Witness PoE p.66-67

¹³⁵ CD-ID10b Aldenham Parish Council Heritage Report p.20

¹³⁶ Appellant's Heritage Witness XX; accepted the proposed change would be much larger

and to a 'significant' and 'noticeable' extent. The harm would be of a 'medium' level.

Aldenham House Registered Park and Garden

284. The visual effects would result in a 'low' level of harm;¹³⁷ a view shared by every witness other than the Appellant's Heritage Witness. Considerable importance and weight must be given to this.¹³⁸

285. The benefits relied on by the Appellant (covered above) fall considerably short of outweighing the above harm to heritage assets. There is strong scepticism as to the heritage landscape benefits relied on by the Appellant. In particular, the proposed 1.5m double hedgerow down part of the former Sawyer's Lane beside Slades Farmhouse. Aldenham Parish Council say it is underwhelming.

Landscape

286. As above, the Appellant's own Landscape and Visual Impact Assessment rightly concludes there would be a high magnitude of major-moderate adverse effects for receptors within the site. This 'localised' effect in the context of a site covering 130Ha and criss-crossed by numerous PRoWs is actually an enormous effect. Regardless of the precise percentage of the Borehamwood Plateau Landscape Character Area that the site covers, it is clearly a significant and large proportion of it. This Landscape Character Area would be changed.

287. The Appellant's suggestion that the mitigation would, once established, which would take many years, reduce the harm to moderate does not withstand detailed scrutiny:

- There are no photomontages giving any indication of what the site might look like with mitigation in place. It is for the Appellant to show the impact of their proposal.
- No mitigation at all is proposed in many areas, including long stretches of multiple footpaths that would be surrounded by 3m solar panels and 2.2m high fences on both sides. Imagery showing this is a notable omission from the Appellant's evidence.
- The proposed mitigation has limitations in an undulating landscape and where items such as trees provide only intermittent coverage.¹³⁹
- The mitigation is in itself harmful, serving to foreshorten views¹⁴⁰ by way of tall hedges. Where the Borehamwood Plateau Landscape Character Area is based on views into

¹³⁷ CD-ID10b The Heritage Report for Aldenham Parish Council p.16

¹³⁸ CD-ADHBC2 *Barnwell Manor Wind Energy Limited v East Northamptonshire District Council* [2014] EWCA Civ 137 at [24]; s.66 Listed Buildings Act 1990

¹³⁹ CD-ID19 Section A-A, Figure 10; XX of the Appellant's Landscape Witness by Aldenham Parish Council

¹⁴⁰ Accepted by the Appellant's Landscape Witness in XX by Aldenham Parish Council

and across the landscape, and arable land, this is significant.

- The mitigation would result in permanent harm to the landscape. Notably, the 7.5m high and 10m hedging proposed in Field 15 would significantly reduce openness. The updated landscape plan and legacy plan¹⁴¹ show various locations where mitigation hedges would remain, meaning surrounding views will be removed forever.

Conflict with the Development Plan

288. Aldenham Parish Council says that there are numerous clear conflicts with the development plan, and draw particular attention to:

- Policy CS12: Enhancement of the Natural Environment. The natural environment and landscape character are not conserved and enhanced by the proposal.
- Policy CS13: The Green Belt provides a general presumption against inappropriate development within the Green Belt, unless the VSC test is met. It is not.
- Policy CS14: Protection or enhancement of heritage assets. All parties agree that the development proposal does not conserve or enhance the historic environment of the Borough and conflicts with the requirement to not cause harm to listed buildings. The Framework has not materially changed since the Core Strategy was found sound; and is not out of date.
- Policy CS15: Promoting recreational access to open spaces and the countryside. This requires the safeguarding of access to the local countryside. The admitted harm to the Green Belt, and landscape within the site, is in clear conflict with this policy as regards the many PRowS crossing the Site.
- Policy CS16: Environmental impact of development. This requires development proposals to demonstrate that they accord with Policy CS12 and that any adverse effects can be overcome by appropriate alleviation and mitigation, which are capable of being secured through planning conditions or an obligation. Harm to the landscape clearly contradicts this.
- Policy CS17: Energy and CO2 Reductions. Permission for new development of sources of renewable energy generation is subject to important landscape features, minimising any detriment to the amenity of neighbouring residents, and meeting high standards of sustainable design and construction. The admitted harm to the

¹⁴¹ CD-ID19 Figure 12C

landscape (together with noise and glint/glare implications) by an enormous solar farm is in obvious conflict with this policy.

- Policy CS22: Securing a high quality and accessible environment. The admitted harm to the Green Belt, landscape and heritage assets plainly conflicts with the requirement to take advantage of opportunities to improve the character and quality of an area and conserve the Borough's historic environment. Notably, the policy requires account to be taken of the cumulative impact of new development. This is an important consideration when it comes to the heritage assets in particular.
- Policy SP1: Creating sustainable development. This required new development to prioritise the efficient use of brownfield land. The Appellant's Alternative Site Assessment, whose (artificial) constraints were admitted to necessitate development in the Green Belt is in clear conflict with this. The solar farm also conflicts with the statement that all developments should:
 - i) ensure a safe, accessible, and healthy living environment for residents and other users of a development;
 - iv) be of high-quality design and appropriate in scale, appearance and function to the local context and settlement hierarchy, taking advantage of opportunity to improve the character and quality of an area;
 - v) avoid prejudicing, either individually or cumulatively, characteristics and features of the natural and built environment;
 - vii) avoid inappropriate development in the Green Belt; and
 - xiii) conserve or enhance the historic environment.
- Policy SADM11: Landscape character. This provides development will be managed to help conserve, enhance and/or restore the character of the wider landscape across the Borough. The admitted landscape harm clearly conflicts with this.
- Policy SADM26: Development Standards in the Green Belt. This requires development to comply with the following principles, clearly violated by this proposal:
 - (i) developments should be located as unobtrusively as possible and advantage should be taken of site contours and landscape features in order to minimise the visual impact;
 - (iv) the scale, height and bulk of the development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt.
- Policy SADM29: Heritage Assets. Provides that the Council will not permit development proposals which fail to protect, conserve or where possible enhance the significance, character and

appearance of the heritage asset and its setting. The scale, design, use and character of the proposal are to be taken into account. As regards listed buildings, it provides that development proposals will not be permitted which would materially harm the setting or endanger the fabric of a listed building.

- Policy SADM30: Design Principles. Development which complies with the policies in this Plan will be permitted provided it makes a positive contribution to the built and natural environment; recognises and complements the particular local character of the area in which it is located, and results in a high-quality design. To achieve a high-quality design, a development must respect, enhance, or improve the visual amenity of the area by virtue of its scale, mass, bulk, height, urban form. The scale of the proposed solar farm and harm to the landscape conflicts with this.

Conclusion for Aldenham Parish Council

289. Aldenham Parish Council concludes that the proposal does not accord with the Development Plan and no material considerations justify a departure. The Parish Council invites the Inspector to recommend that permission is refused, and the appeal dismissed.

The Case for the Combined Objectors' Group (COG)

290. The appeal seeks full planning permission for a vast development in relation to land lying within the Metropolitan Green Belt, which is in, and historically has been put to, active agricultural use. That has been the situation for a great many years.

291. The development is at least, the size of two local villages, being 130Ha in total land take, and 85Ha in built development. Notably, it represents development of the majority of the undeveloped land the Appellant has control over. It is, deliberately set at 49.9MW, just below the threshold of a Nationally Significant Infrastructure Project.

292. It would cover a significant amount of the agrarian, intact, open, and rural countryside between Bushey, Borehamwood, and Radlett. Each of those settlements is less than 1Km from an edge of the proposed development.

293. It would impact on a whole range of heritage assets, including the Grade II* Listed Building Hilfield Castle, and the Scheduled Monument at Penne's Place. The balance of the evidence before the Inquiry is entirely clear in that respect. The only real doubt remains about the level of harms claimed. The other key designated heritage assets are: Slades Farmhouse, Aldenham House Registered Park and Garden, and the Lodge to Hilfield Castle.

294. It is based, given its regional importance, on an Alternative Site Assessment that is deficient, and which by setting the rules of

the game, ensured that only Green Belt sites in Hertsmere would be in play.

295. It uses more land than it requires to do, by including Field 1 within the proposals. This approach remains, albeit apparently contrary to the Appellant's own most recent heritage advice, and in taking that approach harm is being caused to a range of designated heritage assets that is entirely unnecessary harm.
296. It would seriously compromise a locally extensive series of PRoWs¹⁴² that link settlements and provide a valuable resource for recreational opportunities in this attractive¹⁴³ swathe of Green Belt.
297. Those effects will last for at least thirty-five years (being the operational life of the development). That is a generation. It would be understood and perceived as permanent change.¹⁴⁴ Seen in that light, the 'enhancements' proposed are small, and should not in totality command any real weight in the overall planning balance.
298. It has attracted a massive local response, almost universally against the proposed development. It is resisted by the Local Planning Authority, none of whose members voted for it. It is resisted by Aldenham Parish Council, and by COG. The consistency of the main bases for resisting the appeal across those bodies is notable in itself.
299. It would be anathema to the plan led process, a process designed to facilitate sustainable development with appropriate community consultation and input, to permit development of this scale by planning appeal in relation to an unallocated site.
300. COG represents Stop the Solar Plan Save our Green Belt (local objectors group), CPRE Hertfordshire – the Countryside Charity, Letchmore Heath Village Trust, Radlett Society and Green Belt Association, Elstree and Borehamwood Green Belt Society, Save Radlett (local group of objectors), Bhaktivedanta Manor (the UK's largest centre for the International Society of Krishna Consciousness) and Elstree and Borehamwood Town Council.
301. COG resists this appeal in the strongest terms and asserts that the importance of the scheme, and its implications for the proper protection of Green Belt land, are implicitly recognised in the Secretary of State's decision to recover this appeal.
302. COG says that there are errors and/or matters of mistaken approach within the Officer Report, such as an assessment of a limited loss to openness of the Green Belt suggesting a lack of consideration of the spatial implications of introducing 85Ha of built

¹⁴² CD-ID19 Fig 7; CD-ID12a/App A/p.3 and CD-DSDI-11/3/2.7

¹⁴³ XX by COG: Appellant's Landscape Witness accepted that the land was attractive

¹⁴⁴ XX by COG: The Appellant's Landscape Witness accepted that, on the Landscape and Visual Impact Assessment and GLVIA definitions "permanent" should have been used as the appropriate duration. That is because the operational period of thirty-five years is above the period of twenty-five years used in each case as the upper limit of long term: CD-PA15/9/Duration table; GLVIA 91/5.51

development into the Green Belt. COG considers that the Appellant's reliance on the positive officer recommendation in the Officer Report is misplaced and also point out that the Officer Report recognised that matters of planning judgment were for members to decide.

303. The benefits of renewable energy are properly recognised by all the participants to the Inquiry. But a proper and appropriate approach to national energy policy does not require large swathes of the Green Belt to be given over to solar farming. Allowing this appeal would signal such an approach. Doubtless, that is why historically such appeals have very rarely been successful. Emerging energy policy supports an approach aligned with those previous refusals, a qualitatively better approach than that embodied in the present proposal. An approach of using previously developed land and emerging improving technologies for placement on existing and proposed buildings; and, where demonstrated to be necessary, using greenfield land outside of the Green Belt. COG submits that this is underscored by the Framework not giving the provision of renewable energy a specific weighting, for example at paragraph 151, compared to the heavy weightings deliberately imposed in relation the protection of the Green Belt, and designated heritage assets; both of which are explicitly recognised by the need to give substantial weight to all harm to the Green Belt at paragraph 148 and great weight to the conservation of designated heritage assets at paragraph 199.

304. By contrast, the height of the case advanced by the Appellant is to say that the 'generation of 49.9MW of electricity' should be given 'substantial' weight. COG says, in the circumstances of this case, it should be given a moderate weighting.

Minimum Levels of Harm Created by the Proposal

305. The minimum levels of harm the Appellant accepts would be caused both to the Green Belt, to designated heritage assets, and to landscape and through visual impacts affecting amongst other things the PRoW network, as recorded in the respective Statements of Common Ground, are sufficient to condemn this appeal to failure.

306. If development is to be permitted in the Green Belt on land subject to the level of constraint and harm arising here, then the future for the integrity of the Green Belt, in terms of it housing regionally significant future solar farm projects, is bleak.

307. In relation to the assessment of heritage assets, the claimed 'enhancements' provided in relation heritage are factored into the Appellant's assessment of harm¹⁴⁵ so care must be taken not to double count them as any further benefit of the proposed scheme.

308. In terms of Green Belt harm, the Appellant accepts:

- Definitional harm;

¹⁴⁵ XX Appellant's Heritage Witness by the Council

- Harm to openness of the Green Belt over the 85Ha of built development;
- Harm to Purpose 3 of the Green Belt.

309. The Appellant correctly accepted that each of those forms of harm must be given substantial weight.¹⁴⁶

310. In terms of less than substantial Heritage harm, the Appellant accepts:

- Slades Farmhouse (Grade II LB) is harmed: low level;
- Hilfield Castle (Grade II* LB) is harmed: low level; and
- Hilfield Lodge (Grade II LB) is harmed: low level.

311. Experts for the other main parties independently assessed a greater number of assets; and found greater levels of harm.

312. Finally, in terms of landscape harm, the Appellant accepts:

- Harm to the landscape (in particular the Borehamwood Plateau Landscape Character Area, of which it is agreed the land is reflective). The Appellant says this harm should be accorded moderate weight.
- Harm to visual amenity in the area. The Appellant says this harm, in addition, should be accorded moderate weight.

The Development

313. The Design and Access Statement describes the development. COG draws particular attention to the following features:-

- The solar panels would be up to 3m from ground level, with a face of 4.60m; lengths vary by the number of units in the row.
- Twenty battery storage units, houses in shipping containers.
- A substation (next to the battery storage area).
- Sixteen inverters located throughout the site in containers.
- A control room.
- Site security measures including 2.2m deer fencing and CCTV poles located about every 50-70m at a height of 2.4m.

The Development Plan

314. COG pointed out that the Development Plan is the statutory starting point applying S.38(6) Planning and Compulsory Purchase Act 2004. Both parts of the Development Plan were found sound in accordance with the National Planning Policy Framework 2012, and therefore consistent with national policy. Further, paragraph 202 of the 2021 Framework is replicated by paragraph 134 of the Framework 2012, which was therefore in force at the material times.

¹⁴⁶ Inspector Question of the Appellant's Planning Witness

Neither the Core Strategy nor the SADMPP are out of date in that respect. Similarly, they are substantially up to date in relation to Green Belt provisions.

315. The SADMPP heritage and Green Belt policies are plainly meant to build upon the Core Strategy policies, and to be applied in the context of development management. Therefore, compliance with both Policies SADM26 and SADM29 is required. They both represent key elements of the plan as a whole, so a substantial failure to comply would amount to a failure to accord with the plan as a whole.
316. The Core Strategy Objectives are set out in terms.¹⁴⁷ Objective 2 is *"To protect the Green Belt and its role in preventing urban sprawl and the coalescence of towns"*. It is no accident that the Objective specifically references Purposes 1 and 2 of the Green Belt. Bearing in mind there are only four recognised Main Settlements, the identified priority is to protect land, development of which would (individually or cumulatively) erode the important gaps between settlements; and that is precisely what the Arup Green Belt study identified in relation to the relevant parcels. The need to prevent urban sprawl is doubtless expressly recognised both in relation to those four settlements, but also bearing in mind the relative proximity of Outer London to the Main Settlements, increasing the overall importance and fragility of those gaps.
317. Core Strategy Policy SP1, a key strategic policy, building on those objectives, requires all development across the Borough to ". . . (vii) avoid inappropriate development in the Green Belt; and . . . (xiii) conserve or enhance the historic environment of the Borough in order to maintain and where possible improve local environmental quality". The Appellant agrees that the Proposed Development is in conflict with those limbs of the policy. It is in conflict with a key spatial policy and so in conflict with the Development Plan as a whole.
318. Policy SADM 26 requires development in the Green Belt to comply with the following principles *"(i) developments should be located as unobtrusively as possible and advantage should be taken of site contours and landscape features in order to minimise the visual impact; . . . (iv) the scale height and bulk of the development should be sympathetic to, and compatible with, its landscape setting and not be harmful to the openness of the Green Belt."* The wholesale failure of a scheme of this scale to comply with (iv) and, as a consequence to fail to comply with (i), shows further conflict with the Development Plan as a whole.
319. In similar vein, Policy SADM 29 states that the Council will not permit development proposals *"which fail to conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. The scale, design, use and character of the proposal will be taken into account . . ."* In relation to Listed

¹⁴⁷ CD-HBCLP1/21/Table 4

Buildings it states, "*The Council will not permit development which would materially harm the setting or endanger the fabric of a listed building . . .*" COG considers that the proposed development is clearly in conflict with those requirements. The conflict arises in relation to (i) scale (85Ha built, 130Ha overall); (ii) design – industrial¹⁴⁸ and utilitarian¹⁴⁹ – jarring with the settings of the nearby range of heritage assets; (iii) use: industrial; and (iv) character of the proposal – a solar farm of regionally significant size.

The Green Belt

320. The Government attaches great importance to Green Belts. Framework paragraph 137 states that the fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. The five purposes of the Green Belt are set out at Framework paragraph 138.

321. Hertsmere is 80% Green Belt. This is a high figure which indicates, by itself, the level of local constraint. But without further analysis it masks the true picture. Outside of the urban areas Hertsmere is Green Belt. It has no countryside land beyond the Green Belt, as many other Metropolitan Green Belt authorities do.

322. The proposed development is inappropriate development. Framework paragraph 147 states that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in VSC.

323. Framework paragraph 148 advises that substantial weight is to be given to any harm to the Green Belt, and VSC will not exist unless the potential harm to the Green Belt, by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

324. COG draws attention to the following advice on the PPG (Reference ID:5-013-20150327) regarding solar farms:

- The need to encourage effective use of land by focussing large scale solar farms on previously developed land and non-agricultural land;
- The proposal's visual impact, including by way of glint and glare, and impact on neighbouring uses;
- The need for, and impact of, security measures such as lights and fencing;
- The need to take great care in ensuring heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their settings.

¹⁴⁸ CD-ID13/40/167 and CD-ID9a/39/5.13

¹⁴⁹ CD-ID9a/39/5.13

325. Notably, in Framework paragraphs 150 – 151, the Government chose not to include renewable energy projects within those types of development which might not be inappropriate development even though, for example, mineral extraction is included. Rather, the height of the policy endorsement within Green Belts is to say that “*very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.*” Accordingly, there is no Framework requirement to weigh this positively.
326. It is well established that, in applying Framework paragraph 148, any other harm is not limited to any other Green Belt harm.
327. COG accepts for the purposes of this appeal the energy generating potential, at 49.9MW should attract some positive weight in the balance.

Inappropriate Development

328. It is common ground the proposed development is inappropriate development, and therefore definitional harm arises.

Harm to Openness

329. The harm to openness is serious and on a massive scale at 85Ha. COG firmly believe that the land will be ‘industrialised.’ The panels will appear incongruous, alien, and discordant in this undulating, open, agrarian environment. In reality, a much greater part of the 130Ha overall is likely to read as developed built form. In the Statement of Case COG noted that the actual number of panels proposed is not defined, approximated, or illustrated within the Application. COG believe that the number of panels is likely to exceed 120,000. No evidence has been called to rebut that estimate.
330. The panels themselves are substantial, standing up to 3m high and spaced closely together in rows. They would appear by parallax and be generally viewed as a solid mass.
331. There would also be access and internal roads and a large number of other features which would add to the built upon, and industrialised appearance of the site (as summarised above from the Design and Access Statement).
332. The battery units and substation lack screening from footpaths and would stand out, as incongruous and discordant features. Security fencing would be particularly intrusive at close quarters, where footpaths cross fields, and especially where security fencing is proposed on both sides. Even within the landscaped areas, when the landscaping proposals mature, to the extent the fencing itself may be softened, an inappropriate channelling effect would remain.
333. The channelling effect would be exacerbated by the regimented placement of the solar panels themselves which would be in close proximity to, and exceed the height of, the fences. The proposed set back of the fencing from the footpaths would not substantially

remove those impacts, which would continue over long periods, often exceeding 100's of metres at a single stretch.¹⁵⁰ Fencing would be higher than an average adult; and the height of the solar panels another 0.6m on top of that.¹⁵¹ COG states that the substantial extent to which the channelling effect would arise is shown in COG's Landscape Witness's evidence.¹⁵² It would impact upon PRowS including Aldenham 30, 32, 40, 42, 43, 44 and Bushey 38.

334. To the extent that the presence of the built solar farm leads to a situation where the mitigation required is hedgerows growing to 5m or 7.5m high along pathways, which would have its own impacts in relation to the general spatial openness of this area of Green Belt – it would be mitigation arising as a consequence of built development. It will have visual implications in relation to (a) the open views presently available, (b) those which are only filtered in part through grown out hedgerows, and (c) in relation to use of the PRow.

335. The harm to landscape, but most importantly to visual amenity, is set out in COG's Landscape evidence. Even on the conservative basis that the value of the land for those using it is community rather than district, the Summary of Effects Table¹⁵³ indicates Major Adverse impacts from eight representative viewpoints. Moderate harm from three more, and Slight harm for the remaining three. It amounts to additional harm to the Green Belt.

336. The Appellant's evidence fails to demonstrate what any of the views of the development would look like after five, ten or fifteen years. This is a serious shortcoming in a project of this scale when Green Belt, substantial landscape and major visual amenity harms are acknowledged by the Appellant and the Landscape and Visual Impact Assessment. GLVIA, suggests a fifteen-year comparison.¹⁵⁴ Equally, ten years might have been chosen in this case, as the Landscape and Visual Impact Assessment chooses the period of ten years as being the stage at which mitigation is said to have significant beneficial impacts; but that was not done either.

337. Nor are the photomontages sufficient in terms of coverage – for example VP/4 and VP/6, where large visual impacts can fairly be anticipated, are without any photomontages.

338. Third, photomontages do not embrace the full impact of some of the most harmful areas of the development, such as the interface between PRow Aldenham 44 and Aldenham 40 in Field 14.¹⁵⁵

¹⁵⁰ XX the Appellant's Landscape Witness by COG: Examples exist of 250m (between Field 3/Field 4 and Field 5, past the large substation and battery storage), 275m (Field 7 heading SW to Field 19, 250m (Aldenham Road NE to the top of Field 19), and 700m (from Butterfly Lane adjacent to Slades Farmhouse, heading N along Field 16, alongside Field 15 and through Field 14 to Watling Street).

¹⁵¹ See cross section at CD-ID12a/9/App D

¹⁵² ID-12a/3-4/ App A

¹⁵³ ID-12a/10/App E

¹⁵⁴ CD- NPP14 pp 141 and as the Appellant's Landscape Witness accepted in XX by COG.

¹⁵⁵ Illustrated by COG's Landscape Witness at ID-12a/App C/p.8 – Viewpoint 9

339. Lastly, the photomontages and other visual representations fail to address seasonal change. Again, this is contrary to best practice as illustrated in GLVIA.¹⁵⁶ No good explanation has been given for this. It is an especially puzzling omission given the gestation period of the application and appeal, and that a number of the Appellant's heritage views are winter views.¹⁵⁷ Nevertheless, there can be no doubt that the effects in landscape and visual impact terms are likely to be significantly more pronounced in winter.¹⁵⁸
340. As well as the clear open views throughout and around the site, the undulating characteristics of the surrounding land mean that views from farther afield are also likely. COG's Landscape Witness gave an example from Footpath Aldenham 017 at Batlers Green, which had not been picked up by the Landscape and Visual Impact Assessment analysis. From this Viewpoint, (VP A1), a number of fields containing panels would still be seen once the landscaping matures. Views across the site to Slades Farm are also available. Similarly, from VP A2¹⁵⁹ taken from PRow Bushey 038 views which are currently wide and open would be cluttered with solar panels which would continue to be seen into the long term.
341. The extent of the Large Adverse views that the Appellant accepts will arise for up to 10 years (and from a number of viewpoints after that), appear from the Viewpoint table.¹⁶⁰
342. The mitigation would be of little effect, certainly in the short term. Leaving the details of final mitigation o condition leaves a substantial degree of uncertainty in the situation where different harms may influence mitigation in different ways. If the response favours landscaping and visual impact treatments, then the residual harm for heritage and use of PRow's may be higher. These three features are, as the Appellant's Landscape Witness accepted, in tension.¹⁶¹ This tension, and perhaps the inability to successfully square the circle provided by the key constraints which relate to development at this site, is well demonstrated by the continued revisions of the landscaping material into the third week of the Inquiry. In any event, mitigation of a scheme will normally be considered neutral in the overall Green Belt balance.¹⁶²

Harm to Purposes

Purpose 3 - Encroachment

343. The harm that would be caused to the purposes of the Green Belt is additional to the harm set out above. It is common ground that Purpose 3 would be infringed: the development would encroach

¹⁵⁶ CD-NPP14 GLVIA p.143.

¹⁵⁷ See, e.g. CD-ID18/76-78/Plates 68-70

¹⁵⁸ CD-ID12/12/4.16, 14/4.20, COG's Landscape Witness oral evidence

¹⁵⁹ CD-ID12a/7/App B

¹⁶⁰ CD-PA15/37/Table 2

¹⁶¹ XX the Appellant's Landscape Witness by COG

¹⁶² e.g. CD-ADCOG1/7 DL30

into the countryside. Given the vast scale of the development, the level of encroachment would be commensurately large and harmful.

Purpose 2 - Merging

344. The large scale of the development is again in play in considering Purpose 2. Figure 2B: Green Belt at 1:60,000 scale shows the picture well¹⁶³ as does the 1:25,000 site location plan.¹⁶⁴
345. The proposed development, at its boundaries, is only:
- 250m east from the town of Bushey (which itself is almost contiguous with Watford);
 - 750m west of the town of Borehamwood; and
 - 790m south of Radlett.
346. Each of those gaps is well under 1Km. Those settlements are identified in the Core Strategy as three of the four Main Settlements in Hertsmere Borough. PRowS link all three of those settlements, which lie in close proximity within the Green Belt. In each case, there are three fields or fewer separating the site from the relevant settlement. And on each occasion, there are footpaths in the vicinity. In addition, Letchmore Heath lies approximately 530m to the north, and Patchetts Green 1Km to the northwest.
347. The Proposed Development would substantially reduce both the actual extent to which the Green Belt is permanently open and free from built development between those settlements, as well as the existing perception of space between those three settlements, by introducing industrial form at a large-scale set between those three settlements, and across well used and extensive PRow currently existing between them. It is not necessary to destroy entirely the gap between Main Settlements for Purpose 2 to be engaged.
348. The value of this land for Purposes 2 and 3 is spelt out in the Arup Green Belt Stage 1 assessment, which is the most up to date analysis carrying out a comparative survey, across the entire district, of the relevant parcels of Green Belt land. Parcel 9 was identified as having "moderate" Green Belt value, the second highest available; and Parcel 19 was identified as having "strong" Green Belt value.
349. Parcel 9 scored 3/5 for Purpose 2 and 3/5 for Purpose 3. On Purpose 2, the assessment includes the following *"The parcel forms a small part of the essential gap between Borehamwood and Bushey Heath/Bushey Village and part of the wider gap between Bushey Heath/Bushey Village and North Bushey, and Borehamwood and Radlett. The parcel plays an important role in maintaining the general scale and openness of these gaps, with the gently undulating character of the parcel affording some distant views northwards towards Watford and south-westwards towards Bushey Heath/Bushey*

¹⁶³ CD-ID19/Fig 2B

¹⁶⁴ CD-ID19/Fig 1

Village.” The Purpose 3 narrative refers to “a largely open character . . . which consist of open arable fields bounded by hedgerows of varying density and consistency. This landscape, together with the gently undulating topography, allows for some long views across open countryside to the edges of settlements.”

350. Parcel 19 scored 3/5 for Purpose 2 and 5/5 for Purpose 3. On Purpose 2, the assessment includes *“This parcel forms part of a wider gap between Radlett, Borehamwood, Elstree, Bushey Heath/Bushey Village and North Bushey, where the scale of the gap is such that there is little risk of settlements coalescing, but where the overall openness is important to preserving the perceived gap between settlements”*. On Purpose 3, the narrative includes *“Approximately 3% of the parcel is covered by built form and it is characterised by a strong rural character throughout . . . The only significant development . . . The remainder of the parcel consists of very open agricultural fields with long views and very little development.”*

Purpose 1 - Sprawl

351. The proposal would contribute to urban sprawl, due to both scale and location, towards the periphery of London and between the three main settlements set out above. It is true that the development does not physically adjoin any of the settlements, but that is not necessary to a conclusion that urban sprawl is occurring for development on this scale. It is not necessary for the final dot, or field, to have been joined for these purposes.

Very Special Circumstances

352. The various benefits claimed in respect of the proposals are dealt with below, but at this stage attention is drawn to the importance the Secretary of State and inspectors have routinely placed on the importance of an appropriately thorough search for alternative sites, so that it is demonstrated that the harm required to the Green Belt cannot be avoided. This issue is addressed further below. Overall, the case for substantial Green Belt harm is clear. The benefits analysed below do not come close to clearly outweighing the totality of the various harms that have been identified.

Landscape and Visual Harm

Visual Amenity

353. COG considers that issue of visual harm has been addressed above in the context of the Green Belt. But even in the absence of the Green Belt designation it would stand for itself as an important material planning consideration militating against the development.

Landscape Harm

354. The level of landscape harm is indicated by GLVIA paragraph 5.50, which requires consideration of landscape harm at four different levels of remove. The Appellant’s evidence relates to the scale of the proposed development and simply reinforces the need for sites which

would house 130Ha worth of development, with 85Ha of built development, if they are otherwise justified, to be located in areas where landscape harm would truly be minimised. The characteristics of the landscape locally do not provide such an opportunity, having the qualities of being undeveloped, gently undulating, agrarian, open, and intact.

355. The proposed development causes harm at all four identified levels in GLVIA paragraph 5.50. It causes harm, at the site level; at the level of the immediate surroundings; at the level of the Landscape Character Area – Borehamwood Plateau; and in the adjacent Aldenham Plateau Landscape Character Area. It is common ground that harm arises at three of those levels. The Appellant acknowledges Moderate harm to the Borehamwood Plateau Landscape Character Area even in the “*long-term/semi-permanent*” duration. For the first ten years the effect is assessed as Major-Moderate adverse. The proposed development makes up a significant portion of that Landscape Character Area. The apparent failure of the Landscape and Visual Impact Assessment to adequately analyse impacts from the adjacent Aldenham Plateau Landscape Character Area means that substantial effects cannot be discounted.

356. However, even those conclusions by the Appellant were based on a misapplication and conservative approach to its own Landscape and Visual Impact Assessment criteria. In particular: the approach to Duration was wrong – permanent should have been used; and the approach to Extent was wrong – Intermediate should have been used, based on a site size of over 2.5Km, even on the conservative assumption that effects stopped at the site edge.

Heritage

357. There are four initial features to note, beyond the extent of the Appellant’s accepted levels of harm to designated heritage assets, which of course go substantially beyond the basis upon which the Planning Application was predicated.

- First, there is a large measure of common ground amongst the experts, excluding the Appellant’s Heritage Witness, as to which assets are harmed and why.
- Second, Hilfield Castle, and the Scheduled Ancient Monument at Penne’s Place, are entitled to be regarded as having the highest levels of significance in accordance with Framework paragraph 200(b). The Core Strategy identifies Penne’s Place as one of “*The Borough’s four Scheduled Ancient Monuments*” describing them as “*critical local assets.*”
- Third, in relation to each designated heritage asset, the opinion of the Appellant’s Heritage Witness as to the scale of harm is in conflict with at least two of the other experts.
- Fourth, as identified above, where the Appellant’s Heritage Witness indicated levels of harm, those harms had been netted off against the benefits that they considered would arise as a

consequence of the claimed 'enhancements' within the development.

358. Harm to designated heritage assets being clear, COG consider that the starting point is that there is a strong presumption that planning permission should be refused for this reason alone.¹⁶⁵

359. COG submit that the evidence of COG's Heritage Witness was thorough; moderate and measured; and applied the central guidance in GPA3 in a transparent, coherent, and persuasive way, considering each of the applicable elements.

360. In contrast, COG say, the Appellant's Heritage Witness's evidence lacked recognition of the proposed nature and scale of the industrialisation of the setting of this range of assets, and the utilitarian nature of the design and materials. COG further argues that the Appellant's Heritage Witness was unduly focussed on matters of current intervisibility, rather than overall experience; and unduly concentrated on matters of tenancy rather than more enduring ownership and control.

361. In relation to each of the designated heritage assets COG's Heritage Witness concluded: -

- For Slades Farmhouse – moderate harm.¹⁶⁶
- For Aldenham House RP&G – minor (low) harm.¹⁶⁷
- For Penne's Place (SM) – minor (low) harm.¹⁶⁸
- For Hilfield Castle (Grade II*) – moderate harm.¹⁶⁹
- For the Lodge at Hilfield Castle – moderate harm.¹⁷⁰

362. The evidence of the Heritage Witness for COG recognises the transforming effect that industrial development at such scale would have on the setting of the relevant designated heritage assets and its prevailing open agrarian nature. It is an overarching feature tying the setting of these assets together in light of, amongst other things, their close geographic proximity to each other and the site; the Hilfield group of assets; and common historic land ownership, leading to important changes in the way the assets will be experienced.

363. There is further broad consensus about the importance of Hilfield Castle, its choice of siting so as to present commanding views over extensive areas of countryside, and the fact that, as parts of the setting of such an important asset may be comprised, so what remains becomes more precious.

364. It is in that context that the development, transformative of the setting of Hilfield Castle, is proposed.¹⁷¹ The Appellant is now pursuing a subsequent "application for planning permission, having

¹⁶⁵ East Northamptonshire DC v. SoSCLG [2014] EWCA Civ 137; [2015] 1 WLR 45 at [23] per Sullivan LJ.

¹⁶⁶ CD-ID13/18/66-68

¹⁶⁷ CD-ID13/25/99

¹⁶⁸ CD-ID13/29/115

¹⁶⁹ CD-ID13/36/149-151

¹⁷⁰ CD-ID13/36/173-176

¹⁷¹ CD-ID13d Plates 11-14 and CD-ID13c Figures 26-27

purposefully removed Field 1 from that application on the advice of their heritage consultant.

365. COG concludes on heritage that there is harm to a range of designated heritage assets including those requiring the highest levels of protection. This factor weighs heavily against the development. It falls to be added to the Green Belt balancing exercise as part of the other harm. It is the totality of all of these harms that the Appellant must ultimately demonstrate have been clearly outweighed by the claimed benefits of the scheme.

Public Rights of Way

366. For COG this issue has been addressed in the preceding paragraphs of its case summary, but it considers that the way the development would seriously erode the recreational and other use of the extensive PRow's in the locality is a material planning consideration. There is increasing recognition in Government guidance, including Framework paragraph 145, of the value that such resources can provide to the general public; and that recreational use of the Green Belt should be fostered and encouraged. It is a factor of substance to weigh in the balance.

Loss of Agricultural Land

367. COG consider that loss of agricultural land is a further material planning issue weighing against the proposal. The information submitted in support of the Appeal is not comprehensive, comprising only a semi-detailed survey, apparently undertaken during wet conditions, and leading to the conclusion that the only reason the land was grade 3b was due to its wetness. There is, accordingly, a measure of further uncertainty surrounding this issue which can also weigh against the proposed development. In any event, the loss of moderately productive grade 3b land, which has been in active use, for a period of thirty-five years (and possibly more), counts against the proposed development.

The Benefits Renewable Energy

368. The provision of a deliverable regionally significant solar farm for energy production and battery storage is a significant positive in the balance. In reality, seen against the policy context of Green Belt, heritage, and landscape considerations, it is the only substantive benefit that arises from the proposed development. It is entitled to moderate weight. Beyond that, it is important not to double count claimed benefits which really fold into this acknowledged benefit.

369. COG considers that the Appellant has laid (undue) stress on the comments of the Council's Climate Change and Sustainability Officer in the Officer Report.¹⁷² COG emphasises that they are comments of an individual officer that no other individual sought to

¹⁷² CD-PA17 54/10.11 – 10.13.

give this benefit “great weight” and that the members of the Planning Committee clearly did not see it that way.

370. COG considers that reliance on national figures for renewable energy production in this case is likely to be substantially misleading. In contrast COG argues that all of the land outside of built-up areas in Hertsmere is designated as Green Belt and that no analysis has been put forward, in the Alternative Sites Assessment or elsewhere, to compare Hertsmere to other Metropolitan Green Belt authorities. COG argues that when this is taken into consideration it is unsurprising that the authority is below the national average for renewable energy production. COG considers that it would suggest something had gone seriously amiss if it were higher.

371. Substantial reliance on Draft EN-3 is also mistaken. As a draft it commands little weight. But even taking it into account, it weighs against this proposed development. It provides no express support for Green Belt development for solar farms, in contrast to various other landforms.¹⁷³ It seeks to avoid the use of agricultural land.¹⁷⁴ It adopts a cautionary approach towards the assessment of unknowns or uncertainty in terms of mitigation.¹⁷⁵ In this case, the lack of clear information about the implications of the proposed mitigation has already been addressed.

372. The Framework has been recently revised, and it does not suggest the proposed development, with the identified harms, is acceptable or represents sustainable development.

The Alternative Site Assessment

373. COG consider that the need for an adequate Alternative Site Assessment is clear: to demonstrate that harm to the Green Belt, and other similarly important kinds of harm, cannot reasonably be avoided. In COG’s opinion it would have been clear to any experienced solar farm team, consulting the Hertsmere Local Plan, that with the parameters of locating a site within 5Km of the substation with which a contract was required; and having a land-take of at least 80Ha, Green Belt land would be required.

374. Seen in that context, COG say, that the Alternative Site Assessment is deficient. In other planning appeal decisions the need to look outside a Green Belt authority has been stated for smaller proposals, for example the 5.25MW scheme at Redeham Hall, Smallfield¹⁷⁶ and the Barrow Green Farm, Lingfield¹⁷⁷ proposals.

375. It is the position of COG that in a case involving development at much larger scale, the need for a comprehensive Alternative Site Assessment becomes even more pressing to demonstrate that the

¹⁷³ CD-NPP17 83/2.48.13, 2.48.15 last sentence.

¹⁷⁴ CD-NPP17 83/2.48.15 last sentence (mirroring the PPG).

¹⁷⁵ CD-NPP17 85/2.49.17

¹⁷⁶ CD-AGCOG2 IR paragraph 24, 39, 41, 59, 60

¹⁷⁷ CD-ADCOG3 DL paragraph 13, 17 and IR/ paragraph 65, 71, 75

benefits of development clearly outweigh the harms. Solar development is relatively footloose in terms of renewable power. Connections can be made, if appropriate, to pylons for example. There is no planning logic for stopping at an administrative border. COG is firmly of the opinion that there is no evidence before the Inquiry that the Green Belt harm could not be avoided.

376. COG say that it does not matter whether the deficiencies in the Alternative Site Assessment are held to diminish the case for VSC; or whether they reduce the weight that would otherwise be given to the generation of renewable power.¹⁷⁸ In either case, they reflect negatively in the planning balance, and substantially so.

Ecological Enhancement

377. COG submit that these benefits are very modest and by creating more enclosure would cause changes to the landscape which are not consistent with the existing open agrarian landscape.¹⁷⁹

Agricultural Land Quality

378. COG considers that agricultural land quality could be improved by other means and that there is no evidential indication of difficulty in using the agricultural land, which enjoys a grade of at least 3b. COG say that the benefit, should it arise, is only available more than thirty-five years hence, and then only if agricultural use is resumed.

Economic Benefits

379. COG considers that the economic benefits would result regardless of location and are short term and modest compared to the levels of harm that would arise. COG say that economic benefits and paying business taxes under legal compulsion should not attract any real weight in the planning balance.

New Permissive Rights of Way

380. COG says that there is no evidence of an existing problem with the PRoW that crosses the Belstone Football Club ground. COG considers that because the PRoW follows a natural 'desire line' it is unlikely that the proposed permissive path would be used in preference. In respect of the second permissive path COG considers that it would simply permit what is already tolerated and yield no significant benefit. COG is firmly of the opinion that the permissive path proposals would not mitigate or compensate the harm that would be caused to the PRoWs that summarised above

Educational Strategy

381. COG considers that the Appellant's offer of an educational strategy could be expected whatever the location of the development and is inconsequential in the scheme of things.

¹⁷⁸ CD-ADCOG1 at DL 25.

¹⁷⁹ CD-ID11/18/4.20

Overall Conclusion for COG

382. COG concludes that the proposed development is contrary to central elements of the Development Plan and contrary to the Development Plan as a whole. The Appellant has failed to demonstrate that the benefits of the scheme clearly outweigh the harm to the Green Belt and any other harm, including the harm by reason of heritage, landscape, amenity (footpaths) and loss of agricultural land. Similarly, the Appellant has failed to demonstrate that the benefits exceed the heritage harm to the range of heritage assets set out above. For the reasons set out above the Inspector is respectfully invited to recommend to the Secretary of State that the appeal should be dismissed.

Interested Party A

383. They are a long-standing resident who lives in the area, appeared before the Inquiry. Their submissions, including photographs are set out in DSD1 8, 9 and 10. They had many grounds of opposition and concerns and acknowledged that all these matters had become the subject of expert reports and noted the repeated use of adjectives like "the lower end of the scale," "limited," "moderate", "significant", "less than substantial" and "substantial" and thought that these adjectives were helpful, to a degree, to channel a rational thought process, but respectfully suggested that there was a need to and see what the proposed means in real terms. Points made which are considered to add additional information to assist the Secretary of State in determining the appeal are:

- Wrapping solar panels and inverters all around the West, North and East side of the Hilfield estate, in place of land that has been open park or agricultural land for centuries would seriously damage the setting of the Listed Buildings. The broader picture of long-distance open views and the setting of a tall hilltop asset should be considered.
- The worst part of the proposal is Field 1, where panels would be in the direct vista from the Castle, past the Gate House to the Lodge and vice versa. This was a view which Sir Jeffrey Wyattville designed and implemented and which is still present to this day. Sir Jeffrey Wyattville was the Architect to the King, who remodelled Windsor Castle. The appeal site would be intrusive and be in competition with, and a major distraction from the heritage assets.
- Topography is more than 'gently undulating.' Especially Field 1, facing Hilfield Lodge, and Field 5, which adjoins Hilfield Castle's grounds. The slopes in the site would make the panels more prominent, from both near and far.
- Hilfield Lodge is in residential use.
- The placing of panels in the sloping field opposite Hilfield Lodge would seriously impact on the setting of Hilfield Lodge, Hilfield Castle and The Gate House (which stands between the Castle and the Lodge).

- The proposed access point to the West is at Hilfield Farm is on a blind bend. There is already a problem with the number and size of the large vehicles going to, and from, the commercial uses in the Farm.

Interested Party B

384. They walk PRoWs in the area with the South Herts Hikers; a walking group that they organise. The group is based in Potters Bar much or the walking takes place in Hertsmere including the area around Aldenham. It has a large online membership and is affiliated to The Ramblers, Affiliated Club HFC 100. They are a volunteer with Hertfordshire County Council Countryside and Rights of Way Service and aware of the Hertfordshire Rights of Way Improvement Plan.
385. Their submissions, including maps and drawings, are set out in full in CD DSD1 39 and 40. The views expressed are personal views and do not represent views of the Ramblers nor of Hertfordshire County Council Countryside and Rights of Way Service.
386. The site is crossed by a network of public footpaths which cannot be considered in isolation and should be viewed in the context of all walking routes in the area, for leisure walking, active travel, to and from schools or places of work. They say the network has suffered severe loss since the 1960s.
387. Hilfield Lane, Dagger Lane, Butterfly Lane and 700m section of Aldenham Road North of the junction of Dagger Lane have no footway and no safe or feasible walking route along the verge. They consider that due to past road widening and increasing volume and speed of traffic, these roads are not safe or feasible walking routes for leisure walking or active travel and some public footpaths such as Aldenham Footpaths 34, 42 and 43 are effectively dead ends. The issues are addressed by a Hertfordshire Rights of Way Improvement Plan. They consider that the solar farm would do little to address the poor connectivity of walking routes and lack of opportunities for active travel.
388. They welcomed the permissive footpaths and drew attention to the Rights of Way Improvement Plan suggestion "*6/63 Aldenham Parish, Aldenham 32, Little Kendal Wood through to Aldenham 31, needs link, Score 2, Add RoW*". But they considered that another suggestion, "*6/61, Aldenham, Decent link from south Radlett to Haberdashers Aske's School. Avoiding busy roads*" should be addressed by means of a new footpath through the proposed solar farm. And that the lack of safe walking routes along Butterfly Lane and Hilfield Lane should have also been addressed.
389. They concluded that, the proposal would have a negative effect on existing public footpaths and insufficient new footpaths to enable active travel are proposed. The developer should work with Hertfordshire County Council Countryside and Rights of Way to implement suggestions in the Hertfordshire Rights of Way Improvement Plan that are within the proposed development site,

including providing safe walking routes by means of new footpaths parallel to and close to Hilfield Lane, Aldenham Road and Butterfly Lane plus Hertfordshire Rights of Way Improvement Plan suggestion 6/61. This would complete a walking route from South Radlett to Haberdashers Aske's School. These new footpaths should be dedicated as PRoWs; not permissive paths which could be closed in future.

Written Representations

390. At the time of the application there were 111 letters in support of the proposal with 1967 against and sixteen neutral. Public comments are summarised in the Officer Report at section 8.4.¹⁸⁰

391. At Appeal there are two letters in support. One agrees with the considered and objective assessment by officers as reported to the committee. That includes that this is an area of Green Belt that is not of particular quality or importance. The development does not undermine the overarching purpose of Green Belt legislation which is to contain development and urban sprawl. The temporary use of this small area in support of the Local Authority's position on the climate emergency. The other considers that in this time of energy crisis in the UK to have such a beneficial solar scheme turned down by the Hertsmere Borough Council Planning Committee against officer advice is, they consider, a nonsense.

392. At appeal objections were received from 108 individuals and organisations. Most of the issues are addressed by the cases for the Rule 6 Parties. Other matters include:

- The effect of development, particularly during construction, upon the living conditions of occupants of Hilfield Farmhouse,
- The effect of solar arrays in Field 14 upon the living conditions of occupants of 1-2 Medburn Cottages,
- Claims that the proposal is not an environment friendly "green energy" project but a financial scheme,
- Matters relating to modern slavery, ethical sourcing of solar panels and other equipment,
- The need for national security for both food and energy production,
- Effects upon air traffic operations at Elstree Aerodrome from Glint and Glare, and
- Concerns about toxic waste/leakage from hazardous materials including rare minerals and liquids such as cadmium, lead and lithium in solar panels from production to decommissioning.

¹⁸⁰ CD-PA27 Officer Report section 8.4 pp 39 et seq

Inspector's Findings

393. Numbers in square brackets [n] refer to earlier paragraphs.
394. The appeal site is located in the Metropolitan Green Belt. Framework paragraph 137 advises that the Government attaches great importance to Green Belt. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence. All proposals for development in the Green Belt should be treated as inappropriate unless they fall within one of the categories set out in paragraphs 149 or 150. Solar farms are not listed as a type of development that may be appropriate in the Green Belt. Paragraph 151 states that when located in the Green Belt, elements of many renewable projects will comprise inappropriate development.
395. The proposed development is by definition inappropriate development and substantial weight should be attached to that definitional harm. This is a matter of common ground [31] and all main parties agree on this.
396. Framework Paragraph 148 instructs that VSC will not exist unless the potential harms to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, are clearly outweighed by other considerations.
397. At a Case Management Conference, 11 August 2022, the main parties agreed that the main issues related to the effect of the proposed development upon:
- The significance of designated heritage assets by way of effects upon their settings, and whether any public benefits are sufficient to outweigh any harm(s).
 - The openness of the Green Belt and whether any benefits of the scheme amount to VSC and clearly outweigh any harm.
398. Subsequently, the reasons given by the Secretary of State for recovering the appeal were because the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies and proposals for significant development in the Green Belt.
399. Therefore, and taking into account the oral and written representations, and my observations on site, the main issues are:
- i) The effect of the proposed development on the openness and purposes of the Green Belt.
 - ii) The effect of the proposed development upon the significance of designated heritage assets by way of effects upon their settings, and whether any public benefits are sufficient to outweigh any harm(s). The designated heritage assets are:

Hilfield Castle, Grade II* Listed Building,
Hilfield Lodge, Grade II Listed Building,
Slades Farmhouse, Grade II Listed Building,
Penne's Place Scheduled Monument, and
Aldenham Park, Grade II Registered Park and Garden.

- iii) The effect of the proposed development upon landscape character.
- iv) Whether the proposed development would result in any other non-Green Belt harms, and
- v) Whether any harm by reason of inappropriateness, and any other harm, would be clearly outweighed by other considerations, including the significance of the proposed development for the delivery of renewable energy so as to amount to the VSCs required to justify the proposed development.

Main Issues

i) Green Belt

Openness

400. An essential characteristic of the Green Belt is its openness. The Court of Appeal in *Turner*¹⁸¹ confirmed that the openness of the Green Belt has a spatial aspect as well as a visual aspect. The Appellant agrees that there would be a change to the character of the land which would impinge upon the openness of the Green Belt causing harm which should be afforded substantial weight [93].
401. The spatial impact on openness would extend to an area of roughly 85Ha largely occupied by solar panel structures. They would have a three-dimensional form, up to a height of approximately 3m and with a solid upper plane [96-97].
402. The tempering effect [97] of the open nature of the supporting structures, ground beneath and gaps between rows would be limited. In addition, there would be other development. This would include solid container like buildings for a substation, the area of the battery stores, plus inverter/transformer stations in containers spread across the site.
403. Some viewpoints¹⁸² would allow views under, over and through the panels, with grass seen under panels in many views.¹⁸³ Even so, the panels would not be appreciated as individual elements. Rather, they would be more often experienced as a mass [150].

¹⁸¹ *Turner v SSCLG & East Dorset Council* [2016] EWCA Civ 466

¹⁸² CD ID19 Figure 9.1: Viewpoint 1 Photomontage (Left); Figure 9.6: Viewpoint 11- Photomontage (Left)

¹⁸³ CD ID19 Figure 9.1: Viewpoint 1- A41 Photomontage (centre) and (right)

404. Some open views across the site from higher ground, such as on PRow Aldenham 17, would remain post development. Several well used PRows pass alongside and through the site [152] from where there are many other views across the site. Post development several sections of paths would have 2.2m high mesh 'deer fencing' erected 5m either side of the centre line; higher than an average adult [333]. Beyond the fencing it might be only 3-4m to the closest parts of arrays. This fencing would at times appear more solid than open. In some areas the layered views of fencing and solar arrays beyond would have a combined effect, further reducing visual openness. Notwithstanding that development would be a relatively low-lying form, from the eye level of a walker, the effects of the loss of visual openness would be significant.
405. Once landscaping matures, tall hedgerows, would screen some of the wider views, but would also reduce the incidence of open views between fields [153]. In this way it would reduce visual openness.
406. Even allowing for some commodious and wide-open verges and a river corridor running through the proposed development, the overall effect of the 85Ha of proposed solar arrays and other ancillary development would be to significantly compromise the perception of the visual and spatial openness of this part of the Green Belt.
407. The site of the twenty battery stores and substation would be adjacent to Hilfield Farm. An Appeal, APP/N1290/W/19/3240825, for a proposed energy storage system on a site close to the site of this Appeal was dismissed. In that case the Inspector, taking into account a twenty-year lifetime, concluded that the harm to the openness of the Green Belt would be moderate. The current appeal is for a solar farm for thirty-five years and includes 85Ha of solar arrays. The battery stores and substation in the appeal now before the secretary of State would extend out further behind Hill Farm and would be in close proximity to the solar arrays. Together the battery stores and solar arrays in this case would have a much greater impact upon openness.
408. In conclusion, development would have a significant adverse effect upon both the spatial and visual qualities of the openness of the Green Belt. Substantial weight should be attached to these harms to the Green Belt.

The Purposes of Green Belt

409. Framework Paragraph 138 states that Green Belts serve five purposes:
- (a) to check the unrestricted sprawl of large built-up areas;
 - (b) to prevent neighbouring towns merging into one another;
 - (c) to assist in safeguarding the countryside from encroachment;
 - (d) to preserve the setting and special character of historic towns; and

(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land.

410. As part of work for a Local Plan review Hertsmere Borough Council commissioned Arup to produce a report "Green Belt Assessment (Stage 1) Report: Methodology and Assessment of Green Belt Parcels, January 2017". The Arup Report divides the Green Belt in Hertsmere into parcels and provides an assessment of how they perform against the Green Belt purposes set out in national policy.

411. The appeal site is partly in Parcel 9 and partly in Parcel 19 which are assessed as having "moderate" Green Belt value, and "strong" Green Belt value respectively.¹⁸⁴

412. However, this is a planning appeal, not a local plan review, the Appellant does not dispute the designation, and the Arup Report does not address solar farm development. Therefore, for the purposes of this appeal I attach little weight to the Arup Report. I have considered the appeal proposal against the purposes of the Green Belt having regard to the specific nature of the proposals.

(a) to check the unrestricted sprawl of large built-up areas, and (b) to prevent neighbouring towns from merging into one another

413. Although only 250m east of Bushey, the appeal site is separated from the built-up area of Bushy by the A41 and M1 transport corridor. It is 750m west of Borehamwood and separated by a strip of countryside bound by Watling Street on one side and the railway on the other. The southern edge of Radlett is reasonably well defined by built form and the appeal site clearly separated from it. The site is not directly between Radlett and Borehamwood or Radlett and Bushey and transport infrastructure provides strong separation between Bushey, Borehamwood, and Radlett. Letchmore Heath and Patchetts Green are not towns or large built-up areas.

414. An area of open countryside would remain between the appeal site and Radlett to the north and there would be retained open countryside between the eastern and western parcels of the appeal proposals. The proposed development would not abut any urban area. Nearby settlements would remain physically and visually separate from each other and the solar farm [94]. The physical characteristics of the solar arrays would appear quite different from built-up areas and towns.

415. In principle, it would not be necessary for a proposed development to touch surrounding settlements to result in either sprawling built-up areas, or to contribute to towns merging [257]. Even so, I find that the combination of the location of the proposed development and its physical characteristics mean that it would not physically or visually result in a sprawling built-up area, nor would it

¹⁸⁴ CD-PA4 a p.83

cause of any of the surrounding settlements to merge into one another.

416. I conclude that the proposed development would not run contrary to Green Belt purposes of checking the unrestricted sprawl of large-built up areas nor that of preventing towns from merging into one another.

(c) encroachment into the countryside

417. The appeal site is outside of any settlement boundary and comprises mainly fields used for the growing of crops. It sits within an area of Green Belt between Bushey, Radlett, and Borehamwood; three of the four main settlements within the administrative area of Hertsmere Borough Council. Development would reduce the actual extent to which the Green Belt is permanently open and free from built development in an area of countryside between these settlements.

418. I conclude that the introduction of development onto the site, and the extent to which the proposed development would be visible in the wider landscape would be harmful to purpose (c). The Appellant agrees that there would be encroachment [93]. This harm attracts further substantial weight against the appeal proposal.

(e) to assist in urban regeneration, by encouraging the recycling of derelict and other urban land

419. The nature of the proposed development is such that it requires a large surface area with good access to light. Previously developed land tends to be in smaller parcels and in this way unlikely to be suitable to provide the amount of space required for the proposed development. Even if such a site was available, the appeal proposal might not represent the most effective reuse and recycling of urban land. I am not persuaded that the proposal would run contrary to the purpose of assisting urban regeneration or encouraging the recycling of derelict or other urban land.

Green Belt Harm Conclusions

420. Framework paragraph 147 is unequivocal that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The proposal is for a significant amount of development that would, by definition, be inappropriate development in a Green Belt. The fundamental aim of Green Belt policy is to keep land permanently open. There would be a significant loss of visual and spatial openness arising from the extensive areas proposed to be developed. The proposal would also conflict with one of the five purposes of including land in the Green Belt; that is to protect the countryside from encroachment.

421. As a development with an operational period limited to thirty-five years the harms would not be permanent. But thirty-five years would be experienced for a considerable time, longer than most people's perception of one generation. That development would be

required to cease at some future point would have insignificant impact upon perceptions of the development as constant and enduring. The temporary nature of the development applied for does not materially reduce the Green Belt harms.

422. The Framework states that the Government attaches great importance to Green Belts. It was common ground between the Council and Appellant that substantial weight should be afforded to any harm to the Green Belt [33]. The Table of weight to be attributed to harms and benefits in the planning balance agreed between the Appellant and Council [also set out at paragraph 33] could be read to infer a single substantial negative weight for Green Belt harms. In response to a question at the Inquiry, the Appellant's Planning Witness agreed that each of the Green Belt harms should be given substantial weight. I agree, and conclude that collectively the sum of the substantial harms to the Green Belt by way of inappropriateness, harm to the openness of the Green Belt and harm to the purpose of protecting the countryside from encroachment, attract very substantial weight against the proposal.

423. Framework Paragraph 148 states that VSC will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. If VSC do not exist, the proposal would be contrary to national planning policy in the Framework. It would also be contrary to requirements of Core Strategy Policy CS13 and Policy SADM26 which seek to protect the Green Belt from inappropriate development, and ensure that development should not be harmful to the openness of the Green Belt.

ii) Heritage Assets

424. S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or setting or any features of special architectural interest which it possesses.

425. The Glossary to the Framework defines the setting of a heritage asset 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.*"

426. Framework paragraph 199 advises that 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.

427. Framework paragraph 202 requires that less than substantial harm to the significance of designated heritage assets, should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use.
428. Advice in the PPG includes that when considering large scale solar arrays, great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting.
429. The PPG (reference ID: 013-20150327) advises that as the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large-scale solar farms on such assets. Depending on their scale, design and prominence, a large-scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset.
430. Core Strategy Policy CS14 includes that development proposals must conserve or enhance the historic environment of the Borough and not cause harm to Listed Buildings, Historic Parks and Gardens and Scheduled Ancient Monuments or their setting. Policy CS14 predates the Framework and does not reflect the advice at paragraph 202. For this reason the weight I attach to Policy CS14 is limited.
431. Policy SADM29 includes advice that development proposals which fail to protect, conserve or where possible enhance the significance, character and appearance of a heritage asset and its setting would not be permitted. Proposals will not be permitted which would materially harm the setting or endanger the fabric of a listed building. Whilst this too is at variance with advice in the Framework, Policy SADM29 advises that applications would be considered in accordance with the Framework. For this reason I attach some, but not full, weight to this policy.
432. In respect of five designated assets the heritage experts for the main parties all conclude that where harm would arise it would be harm to the setting of the asset, and such harm would amount to less than substantial harm to the significance of the heritage assets.
433. At the beginning of the Inquiry the heritage experts agreed a table summarising their assessments of the level of less than substantial harm for each of the heritage assets they had assessed.¹⁸⁵

Hilfield Castle Grade II (list entry 1103569)*

434. As a Grade II* listed building Hilfield Castle is a heritage asset of the highest significance; only Grade I listed buildings and Scheduled Ancient Monuments being of higher significance. Hilfield Castle replaced Slys Hill and was constructed for G Villiers shortly after 1798, in a high-quality Gothic picturesque style. The architect,

¹⁸⁵ DSDI 2

Sir Jeffry Wyatville, was a notable English architect and garden designer, responsible for, amongst other things alterations and extensions to Chatsworth House and Windsor Castle. Hilfield Castle derives associative, historic, architectural, and artistic interest from its age and form as a late C18th house by Sir Jeffry Wyatville.

435. Hilfield Castle was sited in a commanding position [280] in the rural landscape to provide a dramatic context, in line with the picturesque aesthetic traditions of the time; and to enjoy commanding views [363] of surrounding countryside from the elevated situation. The evidence of the Appellant's Heritage Witness in their Proof of Evidence is that elements of setting that positively contribute to the significance include:

- Surviving parts of the immediate historic gardens;
- The surviving driveway approaches;
- The remnant of the fishpond/lake to the south;
- The former parkland areas to the north, south and west where their former historic character remains legible; and
- Hilfield Lane, which the Lodge fronts onto and from which the driveways are accessed, and which was re-routed to extend the core parkland.

436. The pleasure grounds were laid out between 1798 and 1803 and the house screened by tree planting from views from a nearby public road around 1798. In 1803 that lane was diverted to the south-west and the grounds extended. A plan of 1804 indicates parkland west of the road and western drives routed to take a more direct line to the new road line. The Appellant's Heritage Witness's written evidence, Proof of Evidence paragraph 6.10 (et seq), is that by this time:-

"[a] shorter but still serpentine south-western drive would have given sequential views, passing the lodge, revealing the main façade of the house, passing through the gatehouse, and reaching the rear of the main house, perhaps with glimpsed views to the southern parkland.

"The trees to the west of the rerouted Hilfield Lane had more of an appearance of relict trees from then-removed field boundaries. It was not uncommon for contemporary landscapes to have views out to wider areas, in contrast to earlier traditions where schemes and views were more contained by planted tree belts.

"The land to the west of the road might have had a degree of treatment to give the appearance of continuing parkland, which would have been perceived including when travelling away from the principal residence towards the western entrances, despite being

separated from the core of the parkland by the public road.”¹⁸⁶

437. An extract from a Bryant Map of 1820 indicates that the area west of the lane was largely laid out to parkland, albeit that the accuracy of the exact area cannot be relied upon. An early C19th estate map indicates the western area is still within the same ownership. Although an 1839 Tithe Map does not clearly identify parkland to the west, the Appellant’s Heritage Witness acknowledges that it is shown as one large enclosure and with the field name “*Western Lawn*”. An extract from an Ordnance Survey 6-inch Map, 1895-1899, indicates that the Western Lawn was no longer part of the parkland. Today it is farmed, in separate ownership and a power line with pylons crosses it. Trees and woodland limit views.
438. The geometry of Hilfield Castle, the level of architectural detailing to each façade and the location of the important views to the south indicate that the primary elevation of Hilfield Lodge is its southern façade. The Listing describes this elevation as the “*garden front*” and the garden as “*Garden (south) front.*”
439. On the 3 November site visit I observed that steps from the canted ground floor veranda, on the garden front elevation, direct the eye to a path and garden (south) front which would once have afforded extensive views over the ponds, lakes, and lawns directly ahead. However, from various positions the eye is also drawn to the west, and views through and around an open colonnade towards the approach to Hilfield Castle from Hilfield Lane. A photograph of a view looking west was included in Sales particulars in 1932.¹⁸⁷
440. I observed that elements of the view include sight of Hilfield Lodge and an adjacent gateway to the public highway in the valley bottom. The view enables visitors arriving and departing by Hilfield Lodge to be seen, and enables an appreciation of the historic functional, stylistic, and spatial relationship between the Lodge and the Castle.
441. A section of steeply rising farmed field beyond and above the canopies of trees in the valley bottom, forms a green backdrop to the overall view. The view is quite picturesque. The farmed field was part of the Western Lawn and in the appeal scheme before the Secretary of State now forms part of “Field 1” of the proposed solar arrays. Partial glimpses of canopies of former parkland trees within this field are discernible, and the former historic character of the field remains partially legible. Albeit farmed, rather than managed parkland, sight of part of this field contributes to an appreciation of the dramatic topographic situation and wider rural context.
442. As part of the Western Lawn, the evidence indicates that this field was not part of formal pleasure grounds, nor within the area of

¹⁸⁶ CD-ID18

¹⁸⁷ CD-ID18 Appellant’s Heritage Witness PoE pp 70, Plate 61

the principal, most important gardens and south facing views from the Castle. The parkland to the west may not have been long-lived, and it is likely that the view evolved and changed, particularly in the early years when the road was moved. Such changes form part of the history of the asset. Other changes to land ownership and farmland, and introduction of a power line with pylons, have not materially degraded the composition of the view from the Garden (south) front to Hilfield Castle.

443. From Field 1, there are reciprocal views toward Hilfield Castle. These views reveal the situation of Hilfield Castle on high ground overlooking surrounding countryside to the west.
444. The Appellant points out that advice in GPA3 includes that settings which closely resemble the setting at the time the asset was constructed or formed are likely to contribute particularly strongly to significance but settings which have changed may also themselves enhance significance [69]. From my site visit observations, I consider that this is a view where some changes in history have added to the asset's historical and aesthetic significance. There have also been some limited adverse changes, but they have not noticeably impacted the view. I find that the view as presently exists makes a strong contribution to the significance of Hilfield Castle.
445. In other areas, changes to the setting of Hilfield Castle, such as a reservoir, electricity substation and Elstree Aerodrome, have been more harmful to the setting and significance of Hilfield Castle. The effect of past unsympathetic development in the setting may be to make the parts which remain intact more important or precious [176]. The effect of these past unsympathetic developments around Hilfield Castle make the relatively unharmed setting to the west more important [186].
446. The Appellant's Heritage Witness agreed that land west of the road makes some contribution to the heritage significance of Hilfield Castle [86] and Lodge [87] through setting but in their Proof of Evidence (paragraph 6.43) state that this area "*lies beyond the now-secluded grounds of the Castle.*¹⁸⁸ Having seen the site I do not agree that all of Field 1 is secluded from the grounds of the Castle. There is a significant view of part of Field 1 from the garden (south) front to Hilfield Castle which still clearly forms part of the overall view and contributes to the setting and significance of Hilfield Castle.
447. Solar arrays situated on high ground in Field 1 would be clearly seen in limited but unmitigated views above and between the tree canopies. Their prefabricated form, materials and repetitive geometric character seen in an elevated situation would be discordant and jarring. The change would be noticeable and significant, and a much greater change from previous changes to the land e.g., from parkland to farmland.

¹⁸⁸ CD-ID18 3

448. Hilfield Castle is situated on ground at circa 100m Above Ordnance Datum and the valley bottom is around 81m Above Ordnance Datum. New tree and other planting along the Hilfield Lane in the valley bottom would do little to mitigate views of the solar arrays on the upper parts in Field 1 in the available views from the garden (south) front areas adjacent to the garden front elevation.
449. A Planning Statement for a revised application before the Council for consideration at the time of the Inquiry advises that "the [updated Heritage Impact] *assessment has found that removal of panels from the western land parcel will result in no change to the setting of Hilfield Castle Lodge and will maintain the current views of the tower of Hilfield Castle grade II* listed building from the west in Field 1, thereby maintaining its current setting*".¹⁸⁹ Under cross examination at the Inquiry, the Appellant's Heritage Witness accepted that they had advised against the inclusion of Field 1. Albeit that this was qualified as being an improvement [72].
450. The surroundings to the north of Hilfield Castle have changed in other ways too, including the construction of Elstree Aerodrome and the National Grid Elstree Substation which have harmed the rural setting of the asset. The land has been largely cut-off from Hilfield Castle by a substantial tree belt along the northern boundary, reducing its contribution to the significance of the asset.
451. Solar panels are proposed in an area of former C19th parkland broadly to the north of Hilfield Castle. The built form of the proposed solar arrays and other development would diminish the legibility of the former parkland, more so than the current agricultural use.
452. The proposed solar arrays in this area would cause some limited additional harm to the setting and the historical and aesthetic significance of the Castle. However, topography and landform in this area is such that views of the Castle and the ability to appreciate its dramatic setting would remain. In some views the solar arrays would sit alongside other past unsympathetic development. However, the additional harm would be limited and would not sever the last link between the asset and its original setting [174].
453. Approximately one dozen native Oak trees, reflective of the former parkland and field boundaries would be planted in Fields 1 and 5. In time they would enhance the legibility of parts of the former western and northern parkland areas and have a beneficial effect upon the setting of Hilfield Castle. The Appellant proposes that the trees would remain post decommissioning. These enhancements are accounted for under benefits later. However, the trees would not mitigate or offset the harmful effects of the solar arrays in Field 1 during the lifetime of the solar farm. The Appellant agrees [91].
454. The Heritage Witness for the Council concluded the level of less than substantial harm would be low. Historic England identified the

¹⁸⁹ DSD1 21 Planning Statement for the revised application – paragraphs 1.16 and 7.49

potential for a moderate level of harm. The Appellant accepts that there would be some harm at the low end of less than substantial harm to Hilfield Castle because solar panels in Field 1 would be placed in land which was once part of the wider parkland which had some visibility and co-visibility with the Castle.

455. From all of the evidence before the Inquiry, together with my observations from site visits, I conclude that solar arrays in Field 1 would be a noticeable discordant and jarring feature; detrimental to the setting of Hilfield Castle and an appreciation of an important picturesque view which assists in an understanding and appreciation of the significance of the asset, and therefore harmful to the significance of Hilfield Castle. Proposed solar arrays in an area north of the Castle would further diminish an appreciation of the wider rural setting of Hilfield Castle and the extent of former parklands and cause an additional, but minor, level of harm to the setting.

456. Planting trees, reflective of former parkland in Field 1 would reintroduce features that have been lost, enhance the legibility of the former parkland and have a beneficial effect upon the setting of Hilfield Castle [86], but these enhancements would not mitigate the harmful effects of solar arrays in Field 1. The Appellant accepts that the heritage benefits do not change the position that during the life of the solar farm there would be some heritage harm [91]. Overall, the level of harm to the significance of Hilfield Castle, a Grade II* listed building, would be low/medium in the less than substantial harm range.

Hilfield Lodge, Grade II (list entry 1103570)

457. Hilfield Lodge is a two-storey, rendered brick building with a single-storey porch that is characterised by crenelated and coped parapets, eclectic fenestration, and moulded string courses and hood moulds. Historic, architectural, and artistic interest is engendered by the age, form, and Gothic picturesque style of the architecture, as well as the associations of the buildings with Sir Jeffry Wyatville. Its significance is mainly derived from the building but the visual, functional, historical, and architectural link to the Castle is clearly apparent. The physical proximity and awareness of the former Western Lawn to the Castle (Field 1 of the solar arrays) just beyond the trees on the opposite side of Hilfield Lane, contributes to the wider setting within the Hilfield Castle estate and an understanding of its rural countryside location.

458. Solar arrays in Field 1 would be 'set back' from Hilfield Lodge but an access track would be constructed, and there would be 2.2m fencing with CCTV and infra-red cameras erected along the field boundary close to Hilfield Lodge.

459. Landscape proposals including new native planting, up to 9m in width, along the eastern edge of Field 1 could strengthen screening. But on the accompanied site visit I observed that there are views between trees along the field edge. There is also insufficient evidence to demonstrate how new planting could be achieved

alongside the proposed access track, particularly given the constraint of areas liable to flooding. This limits the weight I attach to proposed mitigation.

460. In the view from the garden (south) front to Hilfield Castle, the Lodge is seen in the valley bottom with the field beyond and above. This view illustrates the aesthetic and functional relationship between the two. Tree planting in the valley bottom would not screen solar arrays which would be seen to occupy the high ground of the field beyond. The visible solar arrays would appear to sit 'on top' of and 'above,' Hilfield Lodge in this view.
461. The proposed planting of trees in former parkland areas would also have a beneficial effect upon the setting of Hilfield Lodge [88] but would not mitigate the harmful effects of solar arrays in Field 1.
462. I conclude that solar arrays and associated development in former parkland to the Hilfield Castle estate would be a discordant and detracting feature that could not be fully mitigated and would be detrimental to the rural setting and picturesque views of Hilfield Lodge which assist in an understanding and appreciation of the asset, and would therefore be harmful to the significance of Hilfield Lodge. The level of harm would be low/medium in the less than substantial harm range.

Slades Farmhouse, Grade II (list entry 1103614)

463. Slades Farmhouse derives historic architectural and artistic interest from its age and general form as a vernacular farmhouse that is thought to be of C18th origin, and especially its principal south-west elevation. It is no longer part of a working farm complex, and the landholding has fluctuated over time [76].
464. On my site visit I observed that a front garden enables appreciation of the principal south-western elevation facing a former track known as Sawyers Lane. It is also the Appellant's position that it is from the garden that the features are best understood, and that the garden is the element of its setting that makes the most significant contribution to its significance [75]. Farm buildings to the rear, although put to various uses, add to legibility. So too, farmed fields immediately surrounding the farmhouse contribute to an appreciation of the significance of the asset. The Appellant accepts as much [77].
465. A large part of the observable farmed land has been historically associated with Slades Farmhouse. Although the present occupants of Slades Farmhouse do not farm the land, this dissociation through tenancy is not obvious in the landscape and a relationship through ownership endures to this day.
466. The proposed solar arrays would occupy a substantial area of the formerly associated farmed fields and come quite close to Slades Farmhouse. No solar panels are proposed in fields 19 and 20, immediately to the front of the principal elevation [77]. Even so,

solar arrays would be seen in some views of the principal elevation, and there would be some views of solar arrays from within Slades Farmhouse. The solar arrays would appear out of character and quite discordant in the available views. Mesh fencing, 2.2m high, would visually and physically truncate the farmhouse from the former farmland and would be a further discordant element.

467. Proposed landscaping would include a double hedgerow planted along a short section of the route of the former Sawyers Lane in front of Slades Farmhouse. Kept at a height of 1.5m the double hedgerow would maintain views of Slades Farmhouse. However, solar arrays would remain visible from first and second floor windows. Moreover, from my site visit observations, I very much doubt that a 1.5m high hedge would prevent all views of solar arrays, that would be up to 3m tall, from within the garden area. This would be to the detriment of understanding the asset's significance from where, the Appellant agrees, it is best understood [77].
468. The 2.2m high mesh fencing would also cut directly across the former alignment of Sawyers Lane. The double hedgerow proposal would lead only to this physical and visual barrier. The section of hedged lane would be unlikely to be understood as representing a former lane that ran through the landscape. This detail is quite underwhelming [285] and the proposed landscape strategy would do little to mitigate or offset the effects of development, and make only a very small contribution to enabling a better understanding of the significance of this asset. Former farm buildings have been repurposed. Uses include a coach depot and vehicles can be seen in some views. Some changes have detracted from the setting and significance of Slades Farmhouse. The solar arrays would be seen in some views with other detracting elements. However, the additional harm would be limited and the solar farm would not materially impact the remaining relationship between the farmyard buildings and farmhouse. An awareness of the former agricultural use of the land would also remain evident through hedgerows.
469. I conclude that solar arrays, fencing and associated development in former agricultural land around Slades Farmhouse would be discordant and detracting and would diminish the legible connection between farmhouse and farmland, and would be harmful to the significance of Slades Farmhouse. Effects would not be fully mitigated by the proposed landscape strategy. The level of less than substantial harm, taking into account the proposed mitigation, would be low/medium in the less than substantial harm range.

Penne's Place Scheduled Monument (entry 1013001)

470. A Scheduled Monument is a heritage asset of the highest significance. Penne's Place is a double moated site dating back to the C13th as the former Manor House of the Penne family.
471. There was little accord between the main parties at the Inquiry about the effect of the proposed development. The Council concluded that the harm caused would be at the lowest end of less than

substantial. COG found it would be Low (Minor) and the witnesses for the Appellant and Aldenham Parish Council concluded that no harm would be caused to the significance of Penne's Place Scheduled Monument [433 – table].

472. At the application stage, Historic England advised that development would cause a moderate level of less than substantial harm to the heritage significance of the Monument, however they took no part in the Inquiry and their opinion was not tested.
473. Penne's Place would have been set in a much wider open landscape. Aside from evidence that the Monument was once held in the same tenancy as Slades Farmhouse, there is little evidence about the extent of, and how, land in the wider area to the north would have been important to the setting of Penne's Place [78]. Nonetheless, undeveloped land to the north, including part of the appeal site is a remnant of the earlier wider setting of the Monument and offers some understanding of the former wide landscape that it would have been located within.
474. Butterfly Lane has been constructed and provides a physical and visual break between the Monument and that part of the appeal site that falls within it. The Monument is now within grounds to Haberdashers' School, set amidst quite dense vegetation and trees. The Monument has been physically altered and the immediate setting much changed in the last 150 years. The changes to the close setting have also diminished the contribution that the wider setting makes to the significance of the Monument.
475. However some limited glimpsed intervisibility [78] remains. On my visit I observed that these views, albeit limited, do assist in an appreciation of the former, wider setting. For example, from the access to the school from Butterfly Lane. There would be some awareness of proposed solar arrays on the other side of, and set back from, Butterfly Lane. Solar arrays in this area would diminish an appreciation of the wider setting and cause some harm to the significance of the Monument. Physical separation and strong vegetation would limit intervisibility. Planting as part of the appeal proposals would offer some mitigation, but in itself would further reduce intervisibility [197]. Overall there would be a low level of less than substantial harm to the significance of the Scheduled Monument.

Aldenham Park Registered Park and Garden Grade II (1000902)

476. The significance of this Grade II Registered Park and Garden is largely derived from the historic buildings and garden and parkland features contained within the designation area. The appeal site is neither part of the early or expanded C19th parkland.
477. The Registered Park and Garden is, by and large, designed to afford views to the south-west. Even so, a north-western gateway is a designed entrance offering views in and out of the Registered Park and Garden.

478. A path from the Registered Park and Garden leads towards the Slades Farm building group. Views towards open countryside and the appeal site are very restricted. From PRow's Aldenham 051 and Aldenham 044 crossing the appeal site, views towards the Registered Park and Garden are also limited by well wooded vegetation along Butterfly Lane. The Registered Park and Garden is very secluded in this locality. I was not persuaded that there were dynamic or kinetic views important to understanding the setting and significance of the asset [194].
479. The contribution that farmland forming part of the appeal site makes to the significance of the Registered Park and Garden is largely confined to areas of farmland seen in views gained on entering or leaving the north-western gateway. This view has not been designed and engineered in the same way as other views to the southwest [80]. Even so, the gateway is a designed feature and I observed that the drive and gateway lead the eye to the countryside beyond. In this way the appeal site opposite this gateway makes a small contribution to the significance of the asset as a designed country estate in the countryside. There would be no development in fields directly opposite the gateway [83]. However, there would be some limited views of solar arrays further away. In time planting would largely mitigate the views. The harm to the significance of Aldenham Registered Park and Garden by way of a change to setting would be very small and amount to a very low level of less than substantial harm.

Effects upon the settings of other Heritage Assets

Hilfield Gatehouse, Grade II (list entry 1346907)

480. Hilfield Gatehouse is part of the Hilfield group, located immediately south-west of Hilfield Castle and was designed by Sir Jeffrey Wyatville to house a water engine to serve the main house.
481. Following the move of the public road to the west, the Gatehouse became very much enclosed within the core grounds. The Gatehouse is revealed on the approach from the Lodge to the Castle. Views are limited and restricted. Standing outside the Gatehouse I was not aware of views toward the former parkland areas described elsewhere. The northern estate boundaries are quite enclosed. The Heritage Witness for Aldenham Parish Council considered the assets at Hilfield Castle collectively and found that a medium level of less than substantial harm would be caused. The view of the heritage experts for the Appellant and the Council were that no harm to the significance of this asset would arise. From my site visit observations, I conclude likewise.

Aldenham Senior School

482. The statutorily listed buildings comprise Aldenham School House Grade II (list entry 1103646), Library Grade II (list entry 1103647) and Elm Cottages, Grade II (list entry 1103648).

483. The School was founded as a free grammar school by Richard Platt in 1597. In addition to the statutorily listed buildings, Beevor's and McGill's Boarding Houses are assessed as having local heritage value. The buildings form an imposing establishment and have strong historical, architectural, and cultural significance.

484. Solar arrays would be constructed in fields to the rear. They would be set back from the building group and would not be prominent in views from upper floor windows, where the field pattern would remain evident. Development would not adversely affect the significance of the individual statutorily listed buildings and group.

Kendall House Grade II (list entry 1103523)

485. Listed for the architectural and historical interest of the barn and attached cowhouse, the buildings may have had historical connections with the surrounding agricultural land. Solar arrays would be set back some distance. Amongst other things woodland blocks prevent views towards fields where solar arrays would be located. The setting would be maintained, and development would not adversely affect the significance of this property.

Medburn House (local listing Medburn Kennels, No 115)

486. This residential property was formerly a School and School house. It appears on a list of locally listed buildings because of the strong design typical of the architecture used in the construction of early school buildings. It is located within close proximity to the appeal site.

487. The buildings were built as Medburn Boys Elementary School in 1864 for one hundred pupils by the Platt Charity of the Brewers Company and there are some known associations with Aldenham School. A footpath runs broadly between the two. From the rear garden there are views towards, and sounds of, Aldenham School, but due to distance both are very limited.

488. The appeal site is visible in direct views from the rear of the property. However, the solar arrays would be set back some distance. A parkland meadow with trees and other substantial screening is proposed between the rear of the property and the solar arrays. This would prevent views and maintain a rural setting to the rear and development would not adversely affect the significance of this property.

1 & 2 Medburn Cottages

489. Solar arrays would be quite close, but there is insufficient evidence to say that these changes would result in harm to the significance of this property.

Hilfield Farm, Hilfield Lane.

490. The farmhouse at Hilfield Farm is shown on the 1839 Tithe Map. The former farmyard has become quite industrial in character

and the National Grid Substation is nearby. Solar array development and a proposed battery storage area, substation, storage container, auxiliary transformer and control room would be located close by. The setting would be changed but there is insufficient evidence to say that these changes would harm the significance of this property.

Conclusions on Heritage Matters

491. A number of less than substantial harms have been found. The Appellant draws attention to *Bedford*¹⁹⁰ where it was held that substantial harm or total loss means harm that would “*have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced*” and submits that assessments of a medium level of less than substantial harm through indirect impacts on peripheral aspects of setting should be treated with a high degree of caution [74]. If a given asset were to experience substantial harm then that would weigh more heavily in the planning balance than if the same asset were to experience harm at the low end of less than substantial harm [116]. However, less than substantial harm does not necessarily equate to a less than substantial planning objection.
492. The statutory duty under S.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the building or setting or any features of special architectural interest which it possesses applies irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance. In the case of *Barnwell Manor* it was held that harm to a designated heritage asset must be given considerable importance and weight [169].
493. Framework, paragraph 199 states that great weight should be given to an asset’s conservation (and the more important the asset, the greater the weight should be).
494. In this case, development would result in less than substantial harms to the significance of Hilfield Castle, a Grade II* listed building, and Hilfield Lodge, Grade II. Proposals for reinstating trees would enhance the legibility of former parkland to Hilfield Castle but would not mitigate the effects of development.
495. I attach significant weight against the proposed development to the low/medium level of less than substantial harm to the significance of Hilfield Castle, a Grade II* Listed Building. I attach moderate weight against the proposal to the low/medium level of less than substantial harm to the significance of the Grade II Listed Building, Hilfield Lodge.
496. Solar arrays in farmland would result in less than substantial harm to the significance of Slades Farmhouse, a Grade II listed building. A double row of hedging on the alignment of a short section

¹⁹⁰ CD ADAP3 - R DCLG and Nuon UK Ltd v. Bedford Borough Council EWHC 2847

of the former Sawyers Lane would offer little mitigation to the effect of development, and the less than substantial amount of harm would be low/medium and attracts moderate weight against the proposed development.

497. With mitigation, the level of less than substantial harm to the significance of Penne's Place Scheduled Monument would be low. Nonetheless, as a heritage asset of the highest significance, the low level of harm attracts moderate weight against the proposed development. A very low level of harm to the significance of Aldenham Park Registered Park and Garden attracts limited weight against the proposal.
498. Overall, the Appellant's Planning Witness attached moderate weight to the harm to the heritage assets [117]. The Council's Planning Witness attached substantial weight [204]. Mindful of the statutory duty, advice at paragraph 199 of the Framework, and that harm would be caused to the significance of two heritage assets of the highest significance, I conclude that the overall the cumulative harm to the historic environment attracts substantial weight against the proposed development.
499. In failing to preserve the significance of listed buildings the proposed development would not accord with S.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990.
500. In causing harm to the settings of a number of heritage assets the proposals would fail to comply with requirements of Policies CS14 and SADM29 which include that the Council will not permit development proposals which cause harm to, or fail to protect, conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. Albeit that the weight I attach to the conflict with these particular policies is reduced [430-431].
501. Framework paragraph 202 requires that less than substantial harm to the significance of designated heritage assets, should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. I return to consider the legacy heritage benefits and undertake the balancing exercise against all public benefits as required by the Framework later.

iii) Landscape Character

502. The site is not within a designated landscape. The Council did not include a reason for refusal on landscape grounds, nor did the Council put forward evidence at the Inquiry.
503. At the Inquiry, the Appellant and COG called landscape witnesses. Aldenham Parish Council submitted evidence in writing but did not call a witness at the Inquiry. The Appellant accepts that there would be some 'short' and 'medium' term landscape and visual harm that needs to be weighed in the overall planning balance [53]. There was debate at the Inquiry about timescales, but as a matter of

fact an operational period of thirty-five years is proposed. It is common ground that over this period of time adverse impacts of Major-Moderate (first ten years) and Moderate (twenty-five years) would occur [167].

504. The Appellant's Planning Witness ascribes moderate weight against the proposal to harms to both landscape character and visual amenity [117]. In this case the likely visual impacts are strongly allied to the visual dimension of openness of the Green Belt. The Council agrees [166]. Therefore in this section I address landscape character only to avoid potential 'double counting' of visual impacts which I have already taken into consideration under the visual dimension of Green Belt openness. This approach is consistent with that taken by the Council and Appellant in the weighing of harms and benefits in the overall planning balance. [See the table at paragraph 33 of this report].
505. The site covers 130Ha with roughly 85Ha of solar arrays proposed. Such an extent of manufactured development would represent a sizeable change, roughly 11% of the Borehamwood Plateau Landscape Character Area [167].
506. Key characteristics of this Landscape Character Area that the appeal site exhibits can be described as an area of gently undulating landform and considerable pasture within an intact landscape framework. A combination of tall bushy hedgerows and field trees contain views into and across the landscape.
507. Whilst there are some detracting and fragmenting elements including main road corridors, the National Grid substation, and Elstree Aerodrome the appeal site is predominantly an intensive agricultural landscape, and this description is reasonably representative of its character.
508. It is inevitable that an array of solar panels covering almost 85Ha of the appeal site would have a significant impact on existing character. Rather than being a tract of relatively attractive open undeveloped, farmed countryside, the character would change to an area of countryside with a large solar farm within it. Whilst the framework of fields and hedgerows would not change, the solar panels and associated inverters, fencing and other infrastructure would be at significantly at odds with, and detract from, prevailing farmland landscape character.
509. A Landscape and Visual Impact Assessment for the Appellant recognises as much finding that "*there will be large scale effects on the character of the site given its changing from agricultural to built development.*"¹⁹¹ Large scale is described as total or major alteration to key elements, features, qualities, or characteristics, such that post development the baseline will be fundamentally changed. Even if effects were contained within 150m of the site they would still extend

¹⁹¹ CD-PA15 DLA Landscape and Visual Impact Assessment paragraph 7.2

over 85Ha. The changes to the landscape would clearly be noticeable.

510. Some boundaries of the site are quite open including the southern boundary of Field 5 and northern boundary of Field 4. Some effects would extend beyond the site. In the vicinity of Field 5, solar arrays would stretch across the landform and appear on the 'skyline'. The Landscape and Visual Impact Assessment acknowledges that medium scale adverse landscape effects would extend to land south of Field 5 around the PRow, Restricted Byway Bushey 038, leading to Elstree Aerodrome and the immediate vicinity to the north of Field 4 to the south of Letchmore Heath.
511. At Inquiry, the Appellant's Landscape Witness agreed that part of adjacent Aldenham Plateau Landscape Character Area could be affected where there was intervisibility from a publicly accessible area. From PRow Aldenham 017, at Batlers Green there are views across the appeal site towards Slades Farm. In this view a number of fields containing solar panels would be seen. The intervisibility of solar arrays would not elevate the impacts to be comparable to those to the Borehamwood Plateau Landscape Character Area [58], but there would be a more than barely perceptible adverse effect upon the gently undulating arable farmland character of a limited area of the Aldenham Plateau Landscape Character Area. Growing out and thickening up hedgerows within the site would not fully mitigate this effect.
512. As part of development, key landscape features include over 31,000m² of new structural screen planting. Existing field hedgerows would be kept and managed, some would be allowed to grow out more fully, and gap or infill planting undertaken where required to strengthen and thicken them. Roughly two dozen large native trees, such as Oak, and approximately 7000m² of orchard with native fruit and nut trees would be planted.
513. Over 65,000m² of Skylark Low Intervention Habitat Area would be managed with appropriate meadow grass mix and biannual grazing. In the Aldenham Brook Green Corridor new ponds would be created, scrub and invasive species removed, and new appropriate wildflower and grass mixes introduced. An area called the Hilfield Brook Green Wedge in the western parcel would be managed as tussocky grassland with wildflowers. Wild green corridors would connect woodland and water courses through the eastern parcel and strengthen water and wild grassland features in an Aldenham Brook Green Corridor. All would be managed and maintained for the duration of the development.
514. With the exception of some hedgerows, principally around Field 5, which do not appear to reflect either ancient field boundaries or the former C19th Parkland to Hilfield Castle, the proposed landscape strategy would improve the landscape framework of the site in a manner sympathetic to the aims for the Borehamwood Plateau Landscape Character Area and provide green infrastructure

outcomes. Even so, eleven areas of solar arrays would be enclosed by 2.2m high perimeter deer fencing. Areas of proposed parkland, orchard, and other habitat creation would be small in comparison to the scale of the land take for solar arrays. Access roads would be constructed throughout including in the Aldenham Brook Green Corridor and Hilfield Brook Green Wedge.

515. In time landscaping would provide structure to reduce, limit, soften and partially mitigate some effects. But the proposed landscape strategy would not result in the solar farm becoming well integrated into the landscape across the site as a whole, nor would the character of the landscape prevail over the solar arrays.
516. The Landscape and Visual Impact Assessment for the Appellant concludes that development would have a Major-Moderate and Adverse effect initially upon the Borehamwood Plateau Landscape Character Area. Even once the landscape strategy has been implemented, and planting matured, the report finds that there would be a "*long-term/semi-permanent*" Moderate Adverse landscape effect within the site.¹⁹² 85Ha represents a meaningful portion of the Borehamwood Plateau Landscape Character Area.
517. At Inquiry the Appellant's Landscape Witness advised that it would take 10-15 years for some hedgerows to reach a height at which they would screen development. On this basis, the largely unmitigated Major-Moderate Adverse effects would persist for roughly one third of the lifetime of the proposed development. Moderate Adverse effects would persist thereafter for up to twenty-five years. Irrespective of terminology to categorise the length of time, it would be a very long time in most people's experience. Residual landscape benefits post decommissioning must be weighed in the planning balance [62], but they would not mitigate the harms during the operational period.
518. In conclusion, during the operational period, development would have a significant adverse effect on landscape. In doing so it would be contrary to advice at paragraph 174 of the Framework that decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside.
519. Landscape harm attracts significant weight against the proposal. The proposal would also conflict with requirements of Core Strategy Policy CS12 and Policy SADM11 which, amongst other things, include that all development proposals must conserve and enhance the natural environment of the Borough, including landscape character in order to maintain and improve environmental quality, and conserve or improve the prevailing landscape quality, character, and condition.

¹⁹² CD-ID12a/10/App E; CD-PA15/36/7.3.1

iv) Whether the proposed development would result in any other non-Green Belt harms

Best and Most Versatile Land (BMV)

520. The combination of clay soils and a limitation of soil wetness led to a conclusion in an Agricultural Land Classification Report that the land is Grade 3b, recognised as being moderate quality agricultural land capable of producing moderate yields.¹⁹³ Following an independent review the Council agreed that the land is Grade 3b and no agricultural or soil experts gave evidence to the contrary at the Inquiry.
521. The Government aims for the UK to be self-supportive in food production and safeguard food security.¹⁹⁴ The land would retain an element of an agricultural use and there is no evidence to demonstrate that the height of the arrays would prevent sheep from grazing the grass.
522. Whilst the war in Ukraine and other matters heighten concerns about food security, a solar farm is fully reversible, would not be permanent and the land could be returned to agricultural use at the end of thirty-five years.
523. The proposal satisfies PPG advice that where a proposal involves greenfield land, poorer quality land should be used in preference to higher quality. It also accords with PPG advice that proposals should allow for continued agricultural use where applicable and as far as it encourages biodiversity improvements around arrays.
524. I conclude that there would be no conflict with Framework paragraph 174 regarding aims to protect BMV from significant, inappropriate, or unsustainable development proposals and all soils by managing them sustainably, nor with a requirement of Core Strategy Policy CS12 that in the case of the highest quality agricultural land (Grades 1, 2 and 3a), proposals will only be permitted where there is no likelihood of the land being sterilised for future agriculture. This issue is neutral in the planning balance.

Glint and Glare

525. A Glint and Glare Assessment (G&GA) considered effects upon a number of receptors.¹⁹⁵ Glint and Glare matters do not form part of the reasons for refusal, no issues were raised by relevant consultees and none of the main parties presented evidence.
526. Third parties in written submissions raise concerns upon the safety of operations at Elstree Aerodrome. The G&GA finds that for aviation receptors, the maximum impact is low, and no mitigation would be required. At the time of the application, Elstree Aerodrome commented that they had no safeguarding objections to the

¹⁹³ CD-PA14 section 3

¹⁹⁴ CD-NPP39

¹⁹⁵ CD-PA12

development as proposed. They were satisfied with the G&GA in respect of possible effects on air traffic operations at Elstree Aerodrome. They had been able to engage fully with the consultant compiling the report and subsequently discussed the report with twelve flying schools, main clients, and other stakeholders on and off the site. All were comfortable with the report's findings.¹⁹⁶ Elstree Aerodrome concluded that the proposed development would not impact upon the safety of operations at the aerodrome, and there is little technical or other expert evidence before the Inquiry to say otherwise.

527. Four transport receptors on Butterfly Lane would be affected and existing screening would only partially screen development. Additional screening is proposed which would in time fully block all views of the reflective areas.¹⁹⁷ Once established no impact would be expected. Aldenham Parish Council raised concern about the interim period before the screen is established. At the Inquiry, the parties agreed that, should permission be granted, a condition would be reasonable and necessary to require the submission and approval of details of the required landscape mitigation prior to solar arrays being constructed in the relevant fields. Such a condition would be enforceable and reasonable in all other respects and would ensure that the likely impacts would be satisfactorily mitigated.

528. The Highway Authority would require a planning condition to demonstrate that satisfactory visibility splays to Hilfield Farm could be provided. When determining effects for road receptors the G&GA assumes that existing vegetation along Hilfield Lane would be retained.¹⁹⁸ However, drawings for the Site Access to Land Parcel B East of Hilfield Lane indicate that visibility splays could potentially require cutting back or removal of hedgerows and planting.¹⁹⁹

529. During the Inquiry the Appellant submitted a note about a speed survey undertaken to inform this issue.²⁰⁰ The County Highway Authority did not have time to consider it. Therefore, the Council and Appellant agreed that should permission be granted, a condition (Annex A condition No 22) could require a speed survey and details of trees and hedgerows, should visibility splays have an impact upon existing vegetation.

530. However, that condition alone would not require replacement planting. In the event that existing vegetation is impacted, it would therefore also be necessary to require the submission and approval of details of new hedgerows and landscape mitigation which should be undertaken prior to solar arrays being constructed. Therefore, I have drafted a further condition to require such a scheme, and that it should be undertaken prior to solar arrays being constructed in Fields

¹⁹⁶ CD-PA27 Planning Officer Report

¹⁹⁷ CD- PA12 Pager Power Glint and Glare Assessment, Document reference RO12 pp 144, Figure 53

¹⁹⁸ CD-PA12 pp 137, Paragraph 9.6.3

¹⁹⁹ CD-DSDI 3 Construction Traffic Management Plan, October 2022 Dwg SK02

²⁰⁰ DSDI32

4 and 10, to ensure that glint and glare impacts for road users would be acceptable

531. The G&GA found ten dwellings where reflections are expected to last for more than three months per year but for less than one hour per day, but that the effect of some or no screening would result in low or moderate impact.²⁰¹
532. In particular, the G&GA identified potential for effects to dwellings on Hilfield Lane (G&GA dwelling No's 23 and 24). There are views through roadside vegetation. A proposal to increase planting along Hilfield Lane to a 9m wide buffer would be capable of mitigating impacts to an acceptable level.
533. On Aldenham Road the G&GA found that under the current baseline scenario, an observer in dwelling No 88, would have a clear view of the closest two areas. The G&GA took into account that the developer proposed screening in the form of vegetation next to the dwelling which would block all views of the closest development in reaching a conclusion of 'no impact expected'.
534. On Watling Street, the G&GA found that under the current baseline, observers in dwellings No's 99 to 102 would concurrently experience reflections from proposed solar arrays for more than three months per year but for less than one hour per day and would be only partially screened. The G&GA took into account that the developer proposed new screen planting and concluded that this would be sufficient to fully mitigate impacts once established.
535. An occupant of 1-2 Medburn Cottages, Watling Street objects to solar arrays in Field 14. On a site visit to this property, I observed that a number of existing large trees to a side boundary afford a noticeable degree of screening. Solar arrays in Field 14 would not have a materially adverse effect upon the living conditions of the occupiers.
536. Should permission be granted, and to ensure that the residential amenities of the occupiers of dwellings 23, 24, 88 and 99-102 are not adversely impacted, it would be reasonable and necessary to require submission in writing to, and approval by, the Local Planning Authority, of the proposed planting programme for landscaping measures to mitigate glint and glare effects upon these properties as identified in section 9.5 of the G&GA.
537. Subject to planning conditions as described (Annex A No's 23 and 25) I am satisfied that, if permission were to be granted, the proposal would not result in any materially harmful glint and glare effects. It would comply with a requirement of Policy SADM30 (ii) that development has a limited impact upon the amenity of occupiers of the site, its neighbours, and its surroundings in terms of outlook,

²⁰¹ CD-PA12 pp 126

privacy, light, nuisance, and pollution. This issue is also neutral in the planning balance.

Flood Risk and Drainage

538. There is some land in flood Zones 2 and 3, particularly in the area of Field 1. The Local Lead Flood Authority advised that a Flood Risk Assessment did not comply with the PPG and there was a lack of information but proposed conditions to be applied in the event that permission was granted.

539. The Local Lead Flood Authority did not give evidence to the Inquiry. A written expert opinion for the Appellant advises that some parts of the site are identified as being susceptible to surface water flooding, either directly associated with identified watercourses within the site or follow overland flow paths separate from watercourses. Any surface water flooding would generally be less than 600mm deep although it might exceed this along the routes of the watercourses.

540. Access tracks would be permeable, development would not result in an increase in surface water run off rates, and additional hedge and tree planting would be likely to result in a reduction in run-off when compared to the existing situation. The nature of the development is such that it would not alter or interfere with overload flow routes.²⁰²

541. Planning conditions included in the proposed schedule reflect those suggested by the Local Lead Flood Authority and could be imposed to manage flood risk and drainage. They would require, amongst other things, that development be carried out in accordance with the submitted Flood Risk Assessment including that the surface water run-off generated by the critical storm events be mitigated so that it would not exceed the greenfield surface water run-off rates for the relevant rainfall events up to and including the 1 in 100 year +40% climate change event.

542. With these conditions (No's 18-20 Annex A) I am satisfied that, if permission were to be granted, the proposal would not increase flood risk elsewhere and a requirement for a further Flood Risk Assessment is not necessary. The proposal would comply with advice at Framework paragraph 159 that where development is necessary in areas at risk of flooding, the development should be made safe for its lifetime without increasing flood risk elsewhere. It would also comply with a similar requirement in Policy SADM14. This issue neither weighs in favour nor against the proposed development and is neutral in the planning balance.

Noise

543. Solar panels do not generate operational noise. The storage batteries in twenty shipping containers at Hilfield Farm would have

²⁰² Appendix 3 CD-ID16

heating, ventilation, and air conditioning units. There would be some noise emitted from inverter/transformer stations distributed around the site. By the time the Inquiry closed Noise Experts for the Appellant and COG had entered into a Noise SoCG agreeing that, if granted planning permission, a planning condition could limit noise emissions for residential receptors, including occupiers of Hilfield Farm House, and users of PRowS to an appropriate level [99]. The Council and Aldenham Parish Council did not disagree.

544. A separate condition could require a Construction Traffic Management Plan. Limitations by condition of delivery hours during the construction phase to between the hours of 09.30-14.30 to avoid conflict with school traffic would also protect occupiers of Hilfield Farmhouse from unreasonable effects of noise upon their living conditions during that phase.

545. I conclude that with such conditions (No's 4 and 16 Annex A), and if permission were to be granted, the proposed development would not be likely to cause harm by way of noise. It would comply with advice in the Framework at paragraph 185 a) that planning policies and decisions should mitigate and reduce to a minimum potential adverse impacts resulting from noise from new development and avoid noise giving rise to significant adverse impacts on health and the quality of life. It would also reasonably satisfy requirements of Policy SADM20 (ii) that development which would create increases in background noise levels should be sited away from noise-sensitive development as far as possible and that noise mitigation measures should be taken to ensure there is no increase in background noise levels beyond the site boundary. This issue is neutral in the planning balance.

Personal Safety

546. Concerns were raised that fencing and landscaping proposals alongside a number of PRowS crossing the site would make some walkers feel unduly hemmed in. Aldenham Parish Council's Planning Witness told the Inquiry it was a particular concern for lone female walkers [260].

547. In places views would be 'channelled' and/or it would not be possible to easily see a clear open way ahead. Some people might feel anxious about personal safety along sections of PRowS where the corridor width between 2.2m high mesh fencing would be limited, particularly so if the way ahead is not clearly visible due to a change in direction. However, the sections of PRow that would be within such corridors would be limited, the PRow network crossing the site is quite extensive, and walkers would have choice. This matter neither weighs in favour nor against the proposal and is neutral in the planning balance..

Health, Safety and Hazards

548. Concerns relating to chemicals in the production of solar panels and recycling are beyond the scope of the Inquiry. Should

permission be granted, installing, maintaining, and removing equipment would be controlled under health and safety and environmental regulations separate from the planning system.

549. At the application stage Hertfordshire Fire & Rescue Service advised that they would require a suitable water source to be fitted at Hilfield Farm and that all twenty shipping containers should be separated with sufficient room for their fire engines to be able to execute a 'U turn' at speed between each of them.

550. The Council and Appellant agree that, should permission be granted, a 'Fire Risk Reduction Strategy and Emergency Response Plan' and decommissioning statements could be conditioned. COG proposed a condition requiring a scheme to be submitted and approved to install an impermeable sealed drainage system for all transformer and battery storage areas. This would be a reasonable and necessary requirement to prevent contamination and the Appellant has no objection. I am satisfied that with such conditions (Annex A No's 6 and 20), and if permission were to be granted, the proposal would satisfy requirements of Policy SADM21 for hazardous substances. This issue is neutral in the planning balance.

v) Considerations Which Weigh in Favour of the Proposed Development

Contribution to the Government's Climate Change Programme and Energy Policies

551. There are two inter-related elements to the proposal the solar panels and the battery stores. The solar panels generate electricity which can either go straight into the national grid or can be stored in the batteries and discharged into the national grid when there is a need for the electricity, allowing the productivity of the solar farm to be maximised [103].

552. A different application by the Appellant to National Grid may indicate a cumulative capacity of 57MW by 2027, but my findings and recommendation to the Secretary of State are confined to the planning application submitted; which is for a scheme which would generate up to 49.9MW. It is common ground between the Appellant and Council that the submitted 49.9MW scheme would provide power equivalent to the needs of about 15,600 homes and displace an estimated 25,400 tonnes of CO² per annum.

553. S.1 of the Climate Change Act 2008 states that "*It is the duty of the Secretary of State to ensure that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline.*" The parties agree that the delivery of the solar farm and battery storage would be a benefit but differ in the amount. The Appellant attaches substantial weight; the Council, significant, COG, moderate; and Aldenham Parish Council gives limited positive weight.

554. The Government has more recently declared that it aims to decarbonise UK power systems by 2035. The Ten Point Plan for a

Green industrial Revolution, November 2020, is oriented towards mobilising government investment and creating and supporting green jobs. It does not include a strategy for solar energy.

555. The Energy White Paper Powering Our Net Zero Future, December 2020, sets out how the UK will clean up its energy system and reach net zero emissions by 2050 and assumes more solar farms connect to the electricity system and that onshore wind and solar will be key building blocks of the future generation mix.²⁰³
556. The Net Zero Strategy: Build Back Greener October 2021, was presented to Parliament pursuant to S.14 of the Climate Change Act 2008 and sets out how the Government will transition to remove carbon from power, vehicles and gas boilers and deliver cheaper carbon free alternatives. It advises that in June 2021, the Government set in law the sixth carbon budget (CB6) limiting the volume of greenhouse gases emitted from 2033 to 2037. CB6 seeks to reduce emissions by approximately 78% by 2035 compared to 1990 levels. Paragraph 36 states that CB6 requires a sustained increase to the deployment of land-based renewables such as locally supported onshore wind and solar in the 2020s and beyond. Paragraph 77 considers potential recreational impacts and advises that some proposals may cause landscape issues for example, solar and onshore wind generation.
557. EN-1 recognises that major energy infrastructure projects are likely to be inappropriate development in a Green Belt. EN-1 is dated and only references solar energy as part of an essential increase in renewable electricity needed to enable the UK to meet its commitments under the EU Renewable Energy Directive.
558. EN-3 reiterates the urgent need for renewable energy electricity projects to be brought forward but does not specifically refer to solar.
559. Earlier draft updates to EN-1 and EN-3 identify that solar farms provide a clean, low cost and secure source of electricity. They also recognise that solar farms are one of the most established renewable electricity technologies in the UK and that the Government has committed to sustained growth in solar capacity to help meet net zero emissions. They did not refer to solar farms in a Green Belt.
560. A reference in the British Energy Security Strategy, April 2022²⁰⁴ is only to a proposal to consult on amending planning rules for ground-mounted solar, to strengthen policy in favour of development on non-protected land.
561. Revised draft EN-1 (March 2023) notes that demand for electricity could more than double by 2050 (paragraph 3.3.2). Paragraphs 3.3.20–3.3.24 note that a secure, reliable, affordable net zero system in 2050 is likely to be predominantly of wind and solar,

²⁰³ CD-NPP8 pages 30 and 45

²⁰⁴ CD-NPP31

and the important role of storage in achieving net zero is addressed at paragraphs 3.3.25-3.3.31. Paragraph 5.11.37 continues to affirm that in the Green Belt (paragraph 5.11.37) very special circumstances “*may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources*”.

562. Revised Draft EN-3 (March 2023) Section 3.10 refers to ‘solar photovoltaic generation’. Solar is a key part of the Government’s decarbonisation strategy (3.10.1) and solar has an important role in delivering the government’s goals for greater energy independence, and the Government is supportive of solar that is co-located with other functions, which specifically identifies storage (paragraph 3.10.2). Although paragraph 3.10.16 emphasises the preference for solar farms on brownfield and non-agricultural land.
563. Powering Up Britain – Energy Security Plan, March 2023 includes an Energy Security Plan. The Government states that ‘low cost renewable generation will be the foundation of the electricity system and will play a key role in delivering amongst the cheapest wholesale electricity in Europe’ (page 34). The Government’s commitment is to aim for 70GW of ground and rooftop capacity by 2035 and that this amounts to a fivefold increase on current installed capacity. There is a need to maximise deployment of both types of solar to achieve our overall target. Ground mounted solar is noted as being readily deployable at scale and states that the Government ‘seeks’ large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land. The Government considers that meeting energy security and climate changes goals is ‘urgent’ and ‘of critical importance to the country’, and further that these goals can be achieved together with maintaining food security for the UK’.
564. Some of the documents are drafts, some do not represent planning policy, and some of the Government’s policies and objectives are aimed at Nationally Significant Infrastructure Projects above 50MW in size. However, collectively they create a body of evidence giving an indication of broader Government policy that energy generation from solar, including onshore solar farms, is a key component of the overall Government’s business, energy, and climate change strategies to achieve the outcome of net zero greenhouse gas emissions by 2050.
565. The PPG (Reference ID: 5-003-20140306) advises that all communities have a responsibility to help increase the use and supply of green energy. Framework paragraph 152 advises that the planning system should support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change. It should help to shape places in ways that contribute to radical reductions in greenhouse gas emissions, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and support renewable and low carbon energy and associated infrastructure.

566. The Appellant refers to the Digest of UK Energy Statistics Annual data for UK, 2021. Changes between 2020 and 2021 could have been influenced by many factors. The Council does not dispute that nationally 33% of electricity is generated from renewable sources including solar energy, whereas 2018 data indicates that only 5.4% of energy consumed in Hertsmere is from renewable sources. Nor does the Council dispute that the electricity generated by the solar farm would increase the total amount of renewable electricity generated in Hertsmere to 20%.
567. The Council declared a climate change emergency in 2019 and the Council's Climate Change and Sustainability Strategy v.1.4, dated 26th June 2020 recognises that *"In order to meet the energy needs and our net zero emissions commitment before 2050, a significant amount of renewable energy capacity will need to be deployed within Hertsmere"*. Goal number 2 of its Climate Change Action Plan is that it should *"reduce reliance on fossil fuels and reduce emissions by increasing renewable energy capacity"*. One principle is to protect and enhance 'greenbelts' and action points include that the Local Plan should *"Identify areas suitable for the deployment of renewable energy projects in the Local Plan, including within strategic housing allocations, to ease and facilitate the planning process for large projects."*²⁰⁵
568. The Core Strategy recognises that it is important to contain policies which help to secure a more efficient use of natural resources.²⁰⁶ Policy CS17 states that the Council will also permit new development of sources of renewable energy generation subject to certain requirements. I find nothing in Policy CS17 to preclude renewable energy projects in the Green Belt. Nor is there anything to say that Policy CS13 would not apply to such projects in the Green Belt.
569. The Officer Report recognised the renewable energy benefits of the proposal and set out that the substantial amount of renewable energy that would be generated from the scheme would be a significant contribution towards addressing the Climate Emergency that the Council has declared, and towards meeting local and national policy on reducing carbon emissions, addressing climate change, and meeting the UK's obligations under the Paris Agreement of 2016.²⁰⁷ The Council acknowledges the pressing need to increase the supply of renewable energy generating capacity [140].
570. Whilst some argue that the energy produced would not directly supply/benefit homes in Hertsmere, the electricity generated would be fed into the National Grid, and would supply national needs from which Hertsmere would benefit.

²⁰⁵ CD-HSPD5 pp2 and 8

²⁰⁶ CD-HBCLP1 paragraph 5.43

²⁰⁷ CD PA-27 paragraph 12.10

571. A Statement by the Secretary of State for Communities and Local Government, 25 March 2015 underlined the importance of focusing solar growth on domestic and commercial roof space and previously developed land. There may be 250,00Ha of south facing commercial roofs in the UK. Cumulatively roof mounted PV panels on domestic and commercial buildings will play their part in the delivery of renewable energy. Up to 50% of the UK's electricity need and provision might be potentially capable of being delivered on brownfield land.²⁰⁸ Conversely, 50% might not. The Council's Climate Change Officer accepted that roof top mounted solar panels and similar small scale renewable schemes would not be enough to meet the "step change" that was required in renewable energy production in Hertsmeare Borough Council's area.

572. Some interested parties argue that the proposal is not an environment friendly green energy project but a financial scheme to create carbon credits, and that solar does nothing to help in lower carbon dioxide emissions from power generation in the UK; that energy from solar farms is very inefficient and unreliable as it is unable to guarantee a continuous supply under UK weather conditions; that fixed panels are not the most technologically advanced and efficient; that air conditioning units will require some of the electricity generated, and that the construction of a solar farm, including the recycling of panels, causes more carbon emissions than it would save.

573. Some interested parties argue that phasing out gas heating systems for homes and a switch over to electric cars would likely increase both individual household electricity consumption. In which case the energy generated would serve less homes. It is further argued that meeting a theoretical generating capacity of 49.9MW would require 124,750 commercial 400W panels working at 100% efficiency in bright sunlight every day of the year; but in a high latitude region with extensive cloud cover, like the UK, efficiency is only around 12% and will typically generate about 48W/hour per panel, and over one million panels would be needed to realise an output of 49.9MW.

574. These arguments lend weight to a need for more sustainable sources of electricity, not less, and the use of solar energy as one form of renewable energy is endorsed by the Government.

575. Framework Paragraph 158 advises that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, and approve the application if its impacts are, or can be, made acceptable. There is no requirement for the Appellant to demonstrate that their scheme is

²⁰⁸ CD-ID14 CPRE PoE paragraph 54

either the most productive or most efficient renewable energy project.

576. The need for energy security has been highlighted by recent international developments and the scheme would assist in achieving that aim. Against that recent international developments also highlight the need for food security. Land is a finite resource and some of these considerations pull in opposite directions.
577. Under the Planning Act 2008 development consent is required through the NSIP process for the construction of a solar farm with a generating capacity of more than 50MW. Attention was drawn to an application by the Appellant to the National Grid which may indicate a cumulative capacity of 57MW by 2027. However my findings and recommendation to the Secretary of State are confined to the planning application submitted; which is for a scheme which would generate up to 49.9MW.
578. Having considered the renewable energy benefits that the scheme would bring I conclude that the proposed solar farm with the potential to generate up to 49.9MW electricity together with energy storage would make a significant contribution to the delivery of low-carbon and renewable energy, in line with the Government's climate change programme and energy policies and the Council's Climate Change and Sustainability Strategy. This attracts substantial positive weight in favour of the development.

Biodiversity Net Gains

579. The total site area is 130Ha of which 85Ha would be developed. Roughly one third would be left as nature and wildlife areas. A Biodiversity Net Gain Assessment for the application calculated a net gain of 89.99% in area units and 24.98% in linear units [123]. Significant components of the BNG include the creation of approximately 75Ha modified grassland, 22Ha neutral grassland, 3Ha mixed scrub, 3Ha parkland, and 0.7Ha of orchard.
580. Many species that interested parties are concerned about, including Skylarks, Great Crested Newts, bats, and badgers are protected in law. Eleven areas would be surrounded by 2.2m high fencing. Nonetheless, gates to allow passage for small mammals including foxes and badgers could be provided in the fences. Open corridors through the proposed site would enable wildlife, including larger mammals such as muntjac deer, to roam.
581. The Environment Agency welcomed the extensive landscape management plan that includes restoration and enhancement of several ponds across the site, and a wide buffer zone for both the Hilfield Brook and Aldenham Stream. These would assist in the protection of these watercourses and their catchment area, improving water quality and providing good quality habitat for many species. Detailed specification of wildflower seed mixes could be controlled by conditions.

582. The proposals for habitat creation and enhancement and benefits for biodiversity would satisfy requirements in the Framework at paragraph 174 d) that planning policies and decisions should contribute to and enhance the natural and local environment by minimising impacts on and providing net gains for biodiversity, including by establishing coherent ecological networks that are more resilient to current and future pressures.
583. It would comply with an aim of Core Strategy Policy CS12 to conserve and enhance the natural environment of the Borough. It would also comply with aims of Policy SADM11 that the location and design of development and its landscaping should take opportunities to enhance habitats and green infrastructure links.
584. A 10% BNG requirement will become mandatory under the 2021 Environment Act. The level of benefit that would result from the appeal scheme would go significantly beyond national and local requirements. The extent of the BNG that would be delivered, over and above 10% constitutes a major public benefit and contributes to the VSC case in favour of the development. The Appellant's Planning Witness attached substantial positive weight to the BNG. The Council consider that it should carry significant positive weight partly because of the lack of policy imperative for this compared with, for example, Green Belt harm, and partly because the open areas which are delivering that BNG are provided in part to mitigate the harm that the appeal scheme would cause [214, see also the table at paragraph 33] Even so, I conclude that the extent of BNG attracts substantial positive weight in favour of development.
585. BNG does not offset Green Belt harm, similarly the weight to be afforded to BNG should not be less because of Green Belt harms.

Improvements to Soil and Agricultural Land

586. Development would provide the soil a fallow period to recover from intensive agricultural practices. Increasing soil organic matter and soil organic carbon, increasing soil biodiversity, and improving soil structure would be beneficial. But there is little evidence to say what extra benefits thirty-five years would provide, nor much to say what effect there would be to the clay conditions or soil wetness. The latter being described as limiting the entirety of the agricultural land on the site in the Agricultural Land Classification Report.²⁰⁹ On the basis of the evidence before me, I give limited positive weight to likely benefits of leaving the land fallow.

Landscape Legacy

587. The concept is illustrated on DWG No 8398 012C and proposals described in a Landscape Enhancement and Management Plan. Some details were revised during the Inquiry and DWG No 8398 013 Rev A Landscape Strategy Plan was submitted to support this.

²⁰⁹ CD-PA14, paragraph 5.1.5, page 12

588. The majority of the proposed landscaping would be required during the operational stage to prevent, or mitigate, harmful aspects of the development. For example, the Appellant's Landscape Witness informed the Inquiry that the potential for adverse impacts to PRoWs was an important design principle in the proposed green infrastructure framework, including the Hilfield Brook Green Wedge and Aldenham Brook Green corridor.²¹⁰
589. At the end of the thirty-five-year operational period the solar farm would be removed. A 'legacy landscape' would then be left where hedgerows would have been strengthened and enhanced. Specimen trees would be maturing. The river corridors and wildlife habitat areas would have been strengthened and enhanced. Some unsympathetic hedgerows, such as around Field 5 which do not appear to reflect either ancient field boundaries or the former C19th Parkland to Hilfield Castle, would have been removed.
590. The solar farm would be fully reversible. At the end of thirty-five years all structures and development would be removed, and the land reinstated for agricultural use. I have no doubt that, with the harmful effects of the development removed, the appeal site would be left with an enhanced landscape framework which would benefit the character and condition of the Borehamwood Plateau Landscape Character Area, and the Aldenham Plateau Landscape Character Area to a small degree though intervisibility.
591. These benefits would further aims of Policy SADM11 that development should be managed to help enhance and/or restore the character of the wider landscape across the Borough and conserve or improve the prevailing landscape quality, character, and condition, including as described in the Hertfordshire Landscape Character Assessments.
592. However, with the harmful elements of development removed at the end of the operational period, there would be no need for aftercare or on-going landscape mitigation [221]. To impose a condition, as proposed by the Appellant, requiring that site wide landscaping should be kept and managed once the solar development has been taken away would not comply with the Framework. This requires that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
593. The Appeal Scheme might be part of the Aldenham Estate's wider vision and aspirations for environmentally responsible long-term management. But these aspirations are not a planning matter and could change. They attract no weight in the planning balance.
594. Notwithstanding the above, I conclude that the structural landscape benefits that would remain once the solar farm had been

²¹⁰ CD-ID17 Paragraph 7.5.5 1

removed should be afforded moderate weight in favour of the scheme.

Heritage Legacy

595. The Appellant submits that the landscaping mitigation strategy is also a heritage mitigation and improvement strategy which would result in a long-term heritage gain [90].
596. Provision and subsequent retention of hedgerows to the front of Slades Farmhouse would demarcate the former Sawyers Lane, but the section is short, and hedgerows would need to be kept low. The section of lane would not be functional and would go nowhere. It would do little to strengthen the legibility of Slades Farmhouse in relation to the former lane and historic landscape. It would be of limited benefit to the significance of Slades Farmhouse.
597. The provision of, and subsequent retention of, roughly one dozen specimen Oak trees to enhance the legibility of the former parkland surrounding Hilfield Castle would have a long term minor beneficial effect in helping to reveal the significance of Hilfield Castle and Hilfield Lodge and could be secured by Tree Preservation Orders.
598. These benefits would be consistent with an aim of Core Strategy Policy CS14 to where possible, improve local environmental quality. Heritage legacy benefits attract moderate weight in favour of the proposals.

Creation of Two Permissive Footpaths

599. The Appellant clarified the PRoWs network during the Inquiry by reference to the Hertfordshire Definitive Map and Statement.²¹¹ The proposals fairly represent the recorded rights. It is not disputed that a number of additional footpaths are in use. One unrecorded path exists across Field 12. It is well trod and evident on an extract of a Google Map aerial photograph.²¹² Solar panels on, and fencing around, this field would prevent walkers following this route.
600. A proposed permissive path around the edge of the field would connect PRoWs FP31 and FP32. It would be longer but would serve the same purpose as the existing path linking the existing network and enable a circular route. However, its provision would be limited to thirty-five years and there is little to say whether the existing unrecorded route would be reinstated afterwards. If permission were to be granted, it could be secured by a planning condition (Annex A No 17).
601. A proposed permissive path around the corner of Fields 16 and 15 would enable walkers to avoid crossing Belstone's Football Club at Medburn Sports Ground. However, the route of the existing PRoW is

²¹¹ CD'S DSD1-15, DSDI 16 and DSDI-17

²¹² CD-DSDI 13 Image 1

more direct. There are no proposals to close the PRoW and scant evidence that it interferes with existing or proposed use.

602. The Appellant acknowledges that these are not benefits of the highest order [124]. I conclude that permissive paths should attract only limited weight in favour of development.

Education Strategy

603. Some walkers might experience walking the PRoWs as “*an interesting, unusual and educational walk*” about ‘green energy.’ The Appellant proposes an Educational Strategy including information boards to help inform and educate the general public and school pupils on the principles of renewable energy generation and nature conservation. Whilst a benefit, these are not significant matters in the greater scheme of things, and attract very limited weight positive weight in support of the proposed development.

Economic Benefits

604. Business rates from the development would be retained by the Borough. The Aldenham Estate would benefit but there is scant evidence to say that the proposal would amount to a necessary farm diversification. There would be economic benefits with the provision of between 70 and 80 direct and some unquantified indirect jobs during the construction phase, but the construction phase would be of short duration and there would be few jobs when the development is operational. Economic benefits therefore attract only limited weight in favour of the proposed development.

Other Matters

605. Although there is no requirement for a Green Belt sequential site assessment, evidence relating to the need for the development to be located on this Green Belt site can be pertinent to the consideration of whether VSC exist.
606. Evidence from other appeal decisions pulls in opposite directions. In APP/N2739/W/22/3290256 for a battery storage scheme, the Inspector attached substantial weight to harm to the Green Belt but accepted the evidence demonstrated that the battery storage needed to be close to an existing substation and went on find that VSC existed, and permission was granted.
607. In this case, the Design and Access Statement advises that “*location is driven first and foremost by the need to be close to an available grid connection point, recognising that the viability of a renewable energy led project reduces the further away it is. The Elstree Substation, located adjacent to the Site, has capacity which the Applicant has secured a Connection Agreement. The Applicant considered different sites in the area before concluding there are no preferable alternative sites which are suitable and available for the Proposed Development.*”

608. The appeal site is in close proximity to Elstree Substation and the provision for the connection is in place. A 5Km search radius is also consistent with those used in other cases [105]. But even if I were to accept that the appeal site is the most suitable within 5Km of Elstree Substation, other substations have capacity, and the Design and Access Statement advised that the Appellant is bringing forward several solar farms with battery storage.²¹³ It is not necessary to connect to a substation; connection could be made to an overhead line, and there is no adopted policy or legislative requirement to prefer distribution connected projects.
609. In dismissing APP/N1920/W/19/3240825 for the storage of batteries and associated equipment at Hilfield Farm, a site directly adjacent to the current appeal site, the Inspector had concerns about catchment area for comparative sites. They noted that the report did not explain why it was necessary to limit the area to only part of the Distribution Network Operator network, which as one of fourteen in the country was therefore, likely to relate to a larger area of the country, and potentially cover land that is not in the Green Belt.
610. The PPG (Reference ID: 5-013-20150327) includes advice that planning authorities should consider encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value. However, the Officer Report advised that there are no available brownfield sites in Hertsmere measuring 85Ha.
611. In the Interim Statement on Climate Change Hertsmere Borough Council has made a commitment to significantly increasing its renewable capacity. I agree with the Appellant in as much as an argument that Hertsmere could import renewable energy from less constrained areas elsewhere does not absolve the Council from taking responsibility for seeking to facilitate increased renewable and sustainable energy capacity within its area. Nevertheless, the evidence regarding alternative sites before this Inquiry is not sufficient to demonstrate that the proposed development has to be sited in the Green Belt. I conclude that the evidence on alternative sites neither attracts weight for or against the proposal.
612. To grant permission for a temporary solar farm would not change the status of the land as either Green Belt or countryside or make the site eligible for housing development; any further proposals for solar energy developments on this or other sites would fall to be considered on their own merits at the time. Concerns about the financial security and experience of the landowners and applicant, business structure, and future intentions, matters relating to modern slavery, ethical sourcing of solar panels and other equipment, are not material planning considerations within the remit of this Inquiry.
613. The Officer Report recommended permission be granted.

²¹³ CD-PA5 paragraph 6.1, page 18

614. Several appeal decisions are put before the Inquiry. Some are for battery storage only; some are not in a Green Belt. There were no appeals for a comparable scale solar farm within a Green Belt where the Secretary of State has granted permission when the Inquiry sat. Subsequent to the closure of the Inquiry three recent appeal decisions have been drawn to my attention by the Appellant. APP/W1525/W/22/3300222, and APP/V1505/W/22/3301454 both concerned proposals for solar farm development within the Metropolitan Green Belt. APP/C3240/W/22/3293667 concerns a site at Telford, Shropshire.
615. In respect of APP/W1525/W/22/3300222 the Inspector noted that the Council had not allocated any sites for renewable energy (paragraph 84), afforded substantial weight to harm to the Green Belt in terms of inappropriateness and loss of openness (paragraph 87). The benefits of renewable generation were held to be 'substantial', the delivery of suitable renewable energy projects fundamental to the transition to a low carbon future (paragraph 91), and that the solar farm requires grid capacity and a viable connection to operate (paragraph 92). Overall, the benefits were deemed to be of a sufficient magnitude to outweigh the substantial harm to the Green Belt and all other harm (paragraph 93).
616. The circumstances in respect of APP/V1505/W/22/3301454 were quite different as the appeal site was for only 3Ha of an overall 38Ha site, and permission was already granted for 35Ha. The appeal site was "the last piece of the jigsaw" and would cause limited additional harm. APP/C3240/W/22/3293667 does not concern a Green Belt site.
617. The Appellant acknowledges that not all energy projects in the Green Belt will amount to VSC [114] and that weighing the benefits of a scheme against the harms of the scheme is not a purely mathematical exercise, but an exercise of judgement [126]. Each case must be judged on its own merits.

Conditions

618. In the event that planning permission were to be granted planning conditions would be required to secure various aspects of the development. Framework paragraph 56 requires that planning conditions should only be imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.
619. A copy of the final draft schedule of conditions was submitted by the main parties at the end of the Inquiry.²¹⁴ I have had regard to the conditions suggested and the tests set out in the Framework.
620. Condition 1, commencement of development, is required to comply with the requirements of Section 91 of the Town and Country

²¹⁴ DSDI 46

Planning Act 1990 (as amended). However, the statutory period of three years is reduced to two years, reflecting the urgency of the need to increase and deliver renewable electricity as soon as is practicably possible.

621. The planning application describes the operational period as thirty-five years. Condition 2 is required to provide an appropriate mechanism to ensure that the operational period ceases at the end of that time because full planning permission has been sought and if no conditions are imposed once the permission is implemented the development could be completed and operated without restriction [128]. However, the VSC are predicated on the basis that the operational period will be limited to thirty-five years and thereafter the harms to the Green Belt and landscape will cease. It is reasonable and necessary to include a requirement that the operator advises the local planning authority of the date development commences and that the cessation of use is linked to the operational period proposed in the planning application. Recording the date of first commercial export is a reasonable means to determine the end of the operational period.
622. Condition 3, relating to decommissioning, is reasonable and necessary to ensure and that the land is satisfactorily restored for agricultural use in accordance with the terms of the application and the VSC which justify the granting of temporary planning permission on this Green Belt site and the public benefits that outweigh the (less than substantial) harm to neighbouring designated heritage assets.
623. The generating capacity of the scheme is dealt with by other legislation. Therefore, there is no need to impose a condition limiting the generating capacity to 49.9MW and the proposed schedule does not therefore include such a condition. Should the Secretary of State be minded to allow the appeal and grant permission the legal submissions on behalf of the Appellant [130-134] in this regard should be considered.
624. Reasoning for conditions including noise (Conditions 4 and 16 and report paragraphs 544-546), flood risk (Conditions 18-20 and report paragraphs 539-543), and glint and glare (Conditions 22 & 25 and report paragraphs 528-538) have been set out previously.
625. At the Inquiry, the main parties agreed that the landscape strategy, detailed planting plans, and specification of the landscaping mitigation for the operational phase, landscape and ecological management could all be secured by planning conditions. They would be necessary to conserve and enhance the biodiversity of the appeal site and to reduce the proposal's visual impact on the surrounding area. So too conditions relating to lighting (Condition 8), fencing (Condition 13), and colours of enclosures of battery stores and inverter stations (Condition 14). A condition requiring details of a grass grazing management plan is reasonable to ensure the land remains grazed in accordance with the terms of the application.

626. For reasons set out previously, provisions for requiring landscaping and heritage legacies beyond the operational period would not be necessary nor reasonable. The proposed schedule does not include such conditions. Should the Secretary of State consider otherwise they would need to consider the Appellant's legal submissions on restoration conditions [127-129] and the submissions from the Council on the use of such conditions [215-222].
627. I am satisfied that conditions in respect of Construction Operation Management Plan and Construction Traffic Management Plan are necessary in respect of management of safety for public rights of way, highway safety, wildlife interests and residential amenity during the construction phase. A condition in respect of archaeology is necessary to ensure that artefacts or features of archaeological interest are recorded or protected as appropriate during the installation works, pursuant to Policy SADM29. Requirements for details of a Battery Storage Plan and area is necessary for public safety.
628. Condition 17 is necessary to safeguard the amenity of the exiting PRow's and to ensure that the permissive paths are provided in accordance with the VSC which justify the granting of temporary planning permission on this Green Belt site and the public benefits that outweigh the (less than substantial) harm to neighbouring designated heritage assets which include the provision of new footpaths.
629. The Educational Strategy also forms a small part of the VSC and public benefits and therefore it is necessary and reasonable to impose Condition 9 to require details of the strategy and to ensure it is delivered.
630. The Appellant confirmed that they were agreeable to the imposition of the pre-commencement conditions. It is concluded that, if permission were to be granted, the conditions set out in the proposed Condition Schedule at Annex A would be necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects.

Conclusions on Main Issues and Planning Balance

631. I use the same terminology to attribute weight to the harms and benefits of the effects of development that the Appellant and Council have used [see table at 33]. That is, in ascending order of weight, neutral/no weight, limited, moderate, significant, and substantial. For the avoidance of doubt, 'very substantial weight' is greater than 'considerable substantial weight'.

Harms arising from the proposed development

Main issue i) : the Green Belt

632. The appeal proposal would result in harm to the Green Belt by way of inappropriateness, loss of openness, and harm to one of the

purposes of including land within it, namely (c) to assist in safeguarding the countryside from encroachment. As required by Framework paragraph 148, I attach substantial weight to each of the Green Belt harms identified. Collectively, the harms to the Green Belt attract very substantial weight against the proposed development.

Main issue ii) the Settings of five Designated Heritage Assets

633. The proposed development would result in a low/medium level of less than substantial harm to the significance of Hilfield Castle, a Grade II* listed building, attracts significant weight against the proposal. Low/medium levels of less than substantial harm to the significance of Hilfield Lodge, Grade II, and Slades Farmhouse, also Grade II, each attract moderate weight against. Penne's Place Scheduled Monument is another asset of the highest significance. A low level of less than substantial harm to the significance of this asset attracts moderate weight against. A very low level of harm to the significance of Aldenham Park Registered Park and Garden attracts limited weight against the proposed development.

634. Mindful of the statutory obligation to attach considerable importance and weight to the need to conserve heritage assets in a manner appropriate to their significance, and notwithstanding that harms would be for a limited period of thirty-five years and fully reversible, I conclude that harm to heritage assets overall attracts substantial weight against the proposal.

635. In causing material harm to the settings of a number of heritage assets the proposals would also fail to comply with requirements of Policies CS14 and SADM29 that the Council will not permit development proposals which cause harm to, or fail to protect, conserve or where possible enhance the significance, character and appearance of the heritage asset and its setting. Albeit that the weight I attach to these particular policies, and hence the conflict with them is reduced.

Main issue iii) - Effect Upon Landscape Character

636. For a period of approximately thirty-five years development would have a significant adverse effect on landscape character. The landscape harm that would arise attracts significant weight against the proposal and would conflict with requirements of Policies CS12 and SADM11 of the Development Plan.

Main issue iv) - Any Other Non-Green Belt Harms

637. No other material harms were found. Evidence from an assessment of alternative sites neither weighs in favour nor against the proposed development. Matters relating to glint and glare, best and most versatile agricultural land, noise, flood risk and drainage, personal safety, and health and safety are also found to be neutral in effect.

Main issue v) – Considerations Which Weigh in Favour of the Proposed Development

638. The Government is committed to cutting greenhouse gas emissions and the need for a move away from fossil fuel and towards renewable sources of energy production is supported. The solar farm could generate up to 49.9MW electricity and together with the proposed energy storage would make an early and significant contribution to the delivery of the Government's climate change programme and energy policies and the Council's Climate Change and Sustainability Strategy. These renewable energy benefits attract substantial positive weight in favour of the proposed development.
639. A BNG of 89.99% in area units and 24.98% in linear units constitutes a major public benefit and attracts substantial positive weight in favour of the proposal. Legacy landscape and heritage benefits and enhancements also attract additional moderate positive weight in favour of the proposal.
640. Improvements to soil and agricultural land, proposed permissive paths, and economic benefits each attract a limited amount of positive weight. A proposed education strategy attracts a very limited amount of positive weight in favour of development.

The Final Balances

641. The weighing of the benefits against the harms of the scheme is not a purely mathematical exercise. As the Appellant agreed in closing, what is needed is an exercise of judgement [126].
642. There are two final balances required by the Framework in this case. The balance required by Framework paragraph 148 to determine if VSC's exist, requires that the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
643. The balance required by paragraph 202 requires that less than substantial harm to the significance of designated heritage assets, should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. As the latter test requires the balancing of public benefits against only the heritage harms, I undertake that first.

Framework paragraph 202 balance

644. The considerable substantial positive weight to be attached to the public benefits of the delivery of renewable energy, substantial positive weight to biodiversity benefits, moderate positive weight for both legacy landscape and heritage benefits and enhancements, and additional more limited positive weight in favour of the development from other public benefits of improvements to soil, creation of permissive paths, education strategy and economic benefits (all identified as 'Considerations which weigh in favour of the proposed development' and set out above [551-604]), are collectively very

substantial and would outweigh the substantial negative weight to be attached to the overall harm to the designated heritage assets.

Framework paragraph 148 balance

645. However, the magnitude of the totality of the weight against the proposal, including very substantial weight against the proposal for harms to the Green Belt, together with substantial weight against for harm to heritage assets and significant weight against for harm to landscape character, is very great indeed.
646. The sum of all of the benefits that would arise from the proposed development amount to very substantial positive weight in favour of the development.
647. However, I conclude that these considerations do not clearly outweigh the harms to the Green Belt and other harms. The VSC required to justify development in the Green Belt as required by paragraph 148 do not exist.
648. In the absence of VSC's, the proposed development would also be contrary to requirements of Core Strategy Policy CS13 which seeks to protect the Green Belt from inappropriate development.

Conclusion

649. In the absence of VSC's, the proposed development is not in overall accordance with national planning policy for development in the Green Belt and conflicts with the Development Plan as a whole.

Recommendation to the Secretary of State

650. The appeal be dismissed and planning permission refused.
651. In the event that the Secretary of State disagrees and allows the appeal, it is recommended that the conditions at Annex A be applied.

Helen Heward

Planning Inspector

Annex A – Recommended Condition Schedule

1 Commencement of Development within Two Years

The development hereby permitted shall be begun before the expiration of 2 years from the date of this permission.

2 Operational Period

1) The developer shall submit:

i) a Notice of Commencement of development to the Local Planning Authority, stating the date on which development began. That Notice shall be made in writing to the Local Planning Authority no later than one month from the date of commencement.

ii) a Notice of 'First Export' Within one month of the First Commercial Export of electricity from the site to the Local Planning Authority, stating the date on which, the First Commercial Export of electricity commenced. That Notice shall be made in writing to the Local Planning Authority no later than one month from the date of the first commercial export.

2) The operation of the solar farm and battery storage that is hereby granted shall cease thirty-five years from the date of the First Commercial Export of electricity. Thereafter the land shall revert to agricultural use.

3 Decommissioning Method Statement (prior to first commercial export)

Prior to the first commercial export of electricity from the site, a Decommissioning Method Statement (DMS) shall be submitted in writing to the Local Planning Authority for approval. The DMS shall detail:

- a) How all structures, development and equipment are to be removed from the site (including fences, containers, access tracks, underground structures and construction bases, posts, cables, cameras, and lighting),
- b) The areas of land to be returned to agricultural use, save for the areas identified as not being restored to agricultural use in drawing 8398-12C,
- c) Measures to restore land to agricultural use including details how soil structure and conditions and biodiversity within the site
- d) Details for the management of the Public Rights of Way through the site during the decommissioning period.

Decommissioning shall be carried out in full accordance with the approved DMS.

No later than thirty-three years from the date of the first commercial export of electricity from the site, or six months before the approved DMS is to be implemented if the solar farm is to cease operation use before thirty-five years, review, and update of the DMS addressing any changes in best practice in the decommissioning process since the original DMS was approved, shall be submitted to the Local Planning Authority in writing for approval.

Decommissioning of the site for energy generation, as agreed in the latest approved DMS , shall be fully implemented no later than one year following the expiry of the operational period (as defined in condition 2), or no later than one year following the date on which the site has ceased to be in continuous use for energy generation (whichever is the sooner).

4 *Construction and Operation Management Plan*

Prior to the commencement of development, a Construction and Operation Management Plan (COMP) for the site shall be submitted to the Local Planning Authority for approval. The COMP shall include details of:

- a) the construction and management of the access tracks and their crossing during the construction and operation periods and how the Public Rights of Way network is to be managed during the construction process, including publication of Notices advising of the duration and extent of works which may affect the Public Rights of Way.
- b) how retained habitats within the site will be protected and how impacts associated with dust deposition, soil compaction and direct damage from machinery will be minimised or avoided during construction.

The approved plan shall be implemented thereafter.

5 *Approved Plans and Documents*

The development hereby permitted shall be carried out in complete accordance with the approved plans and drawings listed below: -

DWG EE-01-P01 Site Location Plan 26 October 2022 (red line and blue line)

Drawing HF1.0 revision v.b - Location Plan

Drawing HF1.1 revision v.c - Location Plan 1 - Eastern Parcel

Drawing HF1.2 revision v.c Location Plan - Western Parcel

Drawing HF2.0 revision 19B - Proposed Site Plan 27 October 2022

Drawing HF2.2 revision v.a - Proposed Site Plan - Western Parcel

Drawing HF2.1 revision v.a – Proposed Site Plan – Eastern Parcel

Drawing HF3.0 revision 03 - PV Elevations

Drawing HF4.0 revision 03 - Inverter Transformer Stations 28 October 2022

Drawing HF5.0 revision 02 - Internal Access Road Elevations
Drawing HF6.0 revision 02 - Fence and Gate Elevations
Drawing HF7.0 revision 02 - Weather Station Detail
Drawing HF8.0 revision 03 - Substation Elevations 28 October 2022
Drawing HF9.0 revision 03 - Control Room Elevations 28 October 2022
Drawing HF10.0 revision 02 - Auxiliary Transformer
Drawing HF11.0 revision 02 - CCTV Elevations 104
Drawing HF12.0 revision 03 - Battery Container Elevations 40ft 28 October 2022
Drawing HF13.0 revision 03 - Storage Container Elevations 28 October 2022
Drawing HF14.0 revision v.a - Field Topographical Data East
Drawing HF15.0 revision v.a - Field Topographical Data West

Reason: For the avoidance of doubt and in the interests of proper planning.

6 *Battery Safety Management Plan (pre-commencement)*

No battery stores shall be installed on the site until the following details have been submitted to and approved in writing by the Local Planning Authority:

- a) A Battery Safety Management Plan has been submitted to and approved in writing by the Local Planning Authority (who will consult Hertfordshire Fire and Rescue Service and the Environment Agency). The Plan shall cover the construction, operational and decommissioning phases. The Plan shall include proposals and details for:-

a Responsible Person for the scheme, (as defined under article 3 of the Regulatory Reform (Fire Safety) Order 2005, or under a subsequent legal amendment)

Management of fire risks and hazards,

Isolation of electrical sources to enable firefighting activities,

Measures to extinguish or cool batteries involved in fire, and management of toxic or flammable gases,

Measures to minimise environmental impacts in the event of an incident, including proposals for the containment of fire water run-off,

Measures for handling and disposal of damaged batteries,

Site training exercises and procedures

Provision of a fire hydrant within the site, in close proximity to the battery stores compound, capable of providing a minimum of 1,900 litres of water per minute for at least two hours.

- b) A layout plan for the battery storage area including sweep and turn circles/hammer head to ensure the safe access and turning of emergency vehicles.

Development shall be carried out, and operated at all times, in accordance with the approved Battery Safety Management Plan and layout plan.

7 *Archaeology (pre-commencement)*

A.) No development shall commence until an Archaeological Written Scheme of Investigation has been submitted to and approved in writing by the Local Planning Authority. The works shall thereafter be carried out in accordance with the approved details. The Archaeological Written Scheme of Investigation shall include the following:

- i) An assessment of the archaeological significance of the site
- ii) Research questions
- iii) The programme and methodology of site investigation and recording
- iv) The programme for post investigation assessment
- v) Provision to be made for analysis of the site investigation and recording
- vi) Provision to be made for publication and dissemination of the analysis and records of the site investigation
- vii) Provision to be made for archive deposition of the analysis and records of the site investigation
- viii) Nomination of a competent person or persons/organisation to undertake the works set out within the Archaeological Written Scheme of Investigation.

B.) Prior to the first commercial export of electricity from the site, the site investigation and post investigation assessment shall be completed in accordance with the programme that is set out in the approved Archaeological Written Scheme of Investigation.

8 *External Lighting Plan*

- a. No external lighting shall be installed unless it is in accordance with Condition 8B or with an External Lighting Plan (ELP) which shall have been submitted to and approved in writing by the Local Planning Authority. The ELP should include a base line survey to show the current lighting levels within residential areas neighbouring the development; it should also include a plan showing the location of proposed lighting in relation to sensitive wildlife habitats. The external lighting scheme shall be installed in accordance with the approved ELP and retained as such thereafter.
- b. No external lighting shall be installed or operated during the period of this planning permission, except for the manually operated lights to be attached to the substation and transformer / inverter cabinets for use in an emergency maintenance visit situation, as set out in section 4.2.7 of the Design and Access Statement. Details of such lighting to be provided in this regard shall be submitted to the Local Planning Authority and agreed in writing prior to installation on site.

9 *Educational Strategy (pre-export)*

Prior to the first commercial export of electricity from the site, an Educational Strategy shall be submitted to and approved in writing by the Local Planning Authority, setting out what measures are to be provided to inform and educate the general public and school pupils on the principles of renewable energy generation and nature conservation that pertain to this development. This Strategy shall include proposals for explaining the energy generated in real time, the content and location of any interpretation boards, and how to facilitate school visits. The approved Strategy shall be resubmitted to the Local Planning Authority for approval in writing before the fifth anniversary of the previously approved Strategy to update the proposals. The latest approved strategy shall then be implemented and maintained thereafter until the end of the operational period.

10 *Grazing and Grass Management Plan*

A.) Within one year of the first commercial export of electricity from the site, a Grazing Management Plan (GMP) shall be submitted in writing to the Local Planning Authority. The GMP shall detail which parts of the site shall be used for the grazing of livestock, during which months of the year, what animals or poultry are to be grazed there, and it shall set out details of how the grazing and mowing regime is to be managed. Any changes to the GMP during the lifetime of the permission shall be submitted to the Local Planning Authority for approval and shall not be carried out except in accordance with that approval.

B.) Within one year of the first commercial export of electricity from the site, the grazing of livestock shall commence on such parts of the site, at such times of year, and according to such principles as have been approved by the Grazing Management Plan.

11 *Landscape and management scheme*

No development shall be commenced until a detailed Landscape and Management Scheme ("the LMS") has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be based upon the principles within the submitted LEMP (April 2021) and the LEEP, and shall also be in general accordance with the details shown on Drawing 8398_12b and Landscape Strategy Plan Drawing 8398_013_Rev A.

The LMS shall include details of:

- A. Proposed species, location, planting density for all trees, shrubs, plants, and grassland mixes
- B. Landscape management regime for proposed planted areas, habitats, and open spaces for the duration of the operational development up to the point of its decommissioning (thirty-five years), including details of the managed height of hedgerows.

The LMS shall be implemented as approved in the first planting season following the first export of electricity from the site.

The Site shall be managed in full accordance with the LMS during the operational phase of the development hereby permitted.

Any trees, shrubs or plants that die within a period of thirty-five years from the completion of the development, or are removed and/or become seriously damaged or diseased in that period, shall be replaced (and if necessary continue to be replaced) in the first available planting season with others of similar size and species, unless the Local Planning Authority gives prior written permission for any variation. No hedgerows or trees shall be removed or shortened unless such works are specified in the approved plans. Replacement planting will not be required where good management of maturing vegetation requires appropriate thinning

12 *Ecological Enhancement and Invasive Species*

A.) The development shall be carried out in full accordance with the proposals that are set out in the Landscape Enhancement Management Plan (document R009, December 2020), Landscape and Ecology Enhancement Plan (drawing number 7533_012) and NEW PLAN and sections 5-7 of the Ecological Appraisal (document R013).

B.) No site clearance or other ground works within the application site shall commence until an Invasive Species Eradication Plan to control and remove the presence of Japanese Knotweed from the site has been submitted and approved in writing by the Local Planning Authority. This eradication plan shall include specific details of timescales and aftercare to ensure appropriate treatment for its long-term control and removal from the site. The development shall thereafter be implemented in accordance with the approved Invasive Species Eradication Plan unless otherwise agreed in writing by the Local Planning Authority.

13 *Fences*

The fences to be erected on the site shall comply with approved Drawing HF6.0 revision 02 - Fence and Gate Elevations. Other than those fences shown on the approved Site Layout drawing, no other fences shall be erected without the prior written agreement of the Local Planning Authority (save for any fences or means of enclosure that may be approved under condition 24 with regard to Glint and Glare), notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 1995 or any legislation amending or re-enacting the same.

All fences (except those around the substation and battery store compound) shall include gates to allow passage for small mammals including foxes and badgers. Wooden posts for CCTV cameras shall not exceed a height of 2.4m, and the cameras shall face inwards only (as per section 4.2.6 of the Design and Access Statement).

14 *Colour of Enclosures to the Battery Stores and Inverter Stations*

The enclosures for the battery stores and inverter stations shall be finished in one of the following colours, or in such other colour as has been agreed in writing by the Local Planning Authority: RAL 6002 leaf green, RAL 6005 moss green, RAL 6035 pearl green, RAL 7010 tarpaulin grey, RAL 7012 basalt grey or RAL 8007 fawn brown.

15 *Site Security*

The site shall be secured in accordance with the proposals that are set out in section 4.2.6 of the Design and Access Statement.

16 *Noise*

The Rating level of plant and equipment associated with the development shall be at least 10 dB below the background sound level at any affected residential properties where the Rating level and Background sound level are as defined and determined in accordance with BS 4142:2014+A1:2019.

The sound level of the ambient noise shall not be more than 1 dB higher than the sound level of the ambient noise in the absence of the specific noise of plant and equipment associated with the development along any public right of way, where ambient noise and specific noise are as defined and determined in accordance with BS 7445-1:2003

17 *Public Rights of Way and Permissive Footpaths*

Any fences hereby approved shall be erected not less than 5m from the centre line of any public right of way within the site.

Prior to commencement of the development a permissive path specification and strategy shall be submitted to the Local Planning Authority for approval. Prior to the first commercial export of electricity, the permissive paths (one adjacent to Fields 15 and 16, the other around Field 12, as shown on the Landscape and Ecology Enhancement Plan) shall be provided in accordance with the approved specification and strategy and shall be maintained and shall remain unobstructed for the lifetime of the development.

18 *Drainage Condition – Compliance with Flood Risk Assessment*

The development shall be carried out in accordance with the Flood Risk Assessment (reference R010 dated 16 April 2021 prepared by RMA Environmental) and the following mitigation measures:

- 1.) Limiting the surface water run-off generated by the critical storm events so that it will not exceed the greenfield surface water run-off rates for the relevant rainfall events up to and including the 1 in 100 year + 40% climate change event.
- 2.) Providing storage to ensure no increase in surface water run-off volumes for all rainfall events up to and including the 1 in 100 year + climate change event in above ground SuDS features.
- 3.) Discharge of surface water from the private drain into a suitable location, such as an ordinary watercourse or river.

The mitigation measures shall be fully implemented prior to occupation and subsequently in accordance with the timing/phasing arrangements embodied within the scheme, or within any other period as may subsequently be agreed, in writing, by the Local Planning Authority.

19 *Drainage Condition - Surface Water Drainage Scheme (pre-commencement)*

No development shall take place until a detailed Surface Water Drainage Scheme for the site, based on the approved drainage strategy and sustainable drainage principles, has been submitted to and approved in writing by the Local Planning Authority. The drainage strategy should demonstrate the surface water run-off generated up to and including 1 in 100 year + climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The scheme shall subsequently be implemented in accordance with the approved details before the first export of electricity from the site.

The Surface Water Drainage Scheme should include the following details:

- 1.) Fully detailed drainage strategy indicating how surface water will be managed on site for the solar panel areas, battery storage area, inverter stations and access road, including all SuDS features, discharge points and watercourses. If discharging to a watercourse, full details confirming the capacity and condition should be provided.
- 2.) Full details of the ordinary watercourses on site including their location, connectivity, details regarding any associated buffers and an impact assessment to ensure there is no detrimental impact on the watercourses.
- 3.) Assessment of SuDS (sustainable drainage) management and treatment.
- 4.) Detailed engineered drawings of the proposed SuDS features including cross section drawings, their size, volume, depth and any inlet and outlet features including any connecting pipe runs.
- 5.) Detailed assessment of existing overland flow routes and demonstration of how these will be managed as part of the development, including during the construction phase.
- 6.) Detailed post-development network calculations for all events up to and including the 1 in 100 year + 40% climate change event with half drain down times.

20 *Drainage Condition - SuDs*

Upon completion of the drainage works for each site in accordance with the timing/phasing arrangements, a management and maintenance plan for the SuDS features and drainage network must be submitted to and approved in writing by the Local Planning Authority. The scheme shall include:

- 1.) Provision of a complete set of "as-built" drawings for site drainage.
- 2.) Maintenance and operational activities.
- 3.) Arrangements for adoption and any other measures to secure the operation of the scheme throughout its lifetime.

21 Impermeable Drainage System Scheme (pre-commencement)

The development hereby permitted shall not be commenced until such time as a scheme to install impermeable sealed drainage systems for all transformer and battery storage areas have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be implemented as approved.

22 Hard Surface at Access A (pre-commencement)

No construction or installation shall be undertaken via site Access 'A' - i.e. the existing access to Field 1 - until the surface at the access bell-mouth is formalised to provide a hard surface, in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority including the details of arrangements for surface water drainage at that access to be intercepted and disposed of separately, so that it does not discharge onto the highway carriageway. The works shall have been completed in accordance with the approved details prior to Access A being brought into use for the purposes of the construction of that part of the solar farm development located in Field 1.

23 Visibility Splays at Access B (pre-commencement)

No construction or installation shall be undertaken via site access 'B' of the Construction Traffic Management Plan (document R005) - i.e., the existing access to Hilfield Farm - until the results of the speed survey and the required visibility splays have been submitted to the Local Planning Authority and approved. The visibility splays shall be provided in accordance with the approved details prior to the Access B being brought into use.

In the event that arboricultural works are needed, the submission shall be accompanied by an Arboricultural Report, an Arboricultural Impact Assessment and a Glint and Glare Mitigation Scheme. All to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. The Scheme shall detail the mitigation measures that are proposed, in accordance with the Glint and Glare Assessment (document RO12, issue 6 dated July 2021).

24 Construction Traffic Management Plan (pre-commencement)

No construction shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The CTMP shall include

- booking system details,
- compound layout,
- welfare facilities,

- wheel washing facilities,
- delivery hours (which shall not fall outside the hours of 09.30 - 14.30, to avoid conflict with local school traffic)
- Details of consultations carried out on the details of the proposed CTMP including with the Haberdasher's School

the proposed CTMP prior to submission to the Local Planning Authority.

The approved CTMP shall be implemented throughout the period of construction.

25 *Glint and Glare Mitigation for Roads and Dwellings (pre commencement)*

A Glint and Glare Mitigation Scheme shall be submitted in writing to the Local Planning Authority for approval prior to the commencement of development. The Scheme shall detail the mitigation measures that are proposed, in accordance with the Glint and Glare Assessment (document RO12, issue 6 dated July 2021).

The scheme shall include measures to mitigate effects upon road users on Butterfly Lane and occupiers of dwellings 23, 24, 88 and 99-102 as identified in the Glint and Glare Assessment (document RO12, issue 6 dated July 2021).

No solar panels shall be installed in the areas marked "Site 15", "Site 16" and "Site 17" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for road users on Butterfly Lane have been implemented as approved.

No solar panels shall be installed in the area marked "Site 13" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for dwellings 99-102 have been implemented as approved.

No solar panels shall be installed in "Site 1" and "Site 2" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for dwellings 23 and 24 have been implemented as approved.

No solar panels shall be installed in "Site 19" in Figure 5 of the Glint and Glare Assessment (document RO12, (Pager Power's ref 10025C) issue 6 dated July 2021) until the mitigation measures for dwelling 88 have been implemented as approved.

Such mitigation measures shall thereafter be retained throughout the operational period and until the development has been decommissioned and the solar arrays removed.

End of conditions

ANNEX B - APPEARANCES AT THE INQUIRY

FOR THE APPELLANT

Paul Tucker KC and Freddie Humphreys of Kings Chambers called

- Paul Burrell BSc Hons Dip Up MRTPI, Pegasus Group, (Planning Policy and Planning Balance)
- Alister Kratt LDA Design, (Openness and Landscape Effects)
- Gail Stoten BA (Hons) MCIfA FSA, Pegasus Group, (Heritage)
- Simon Chamberlayne Enso Energy (conditions round table session only)

FOR THE LOCAL PLANNING AUTHORITY

Emma Dring, Cornerstone Barristers called

- Laura Ashton MA MRTPI, LAUK (Planning)
- Maria Kitts BA (Hons) MA, Essex County Council (Heritage)

FOR ALDENHAM PARISH COUNCIL

Vivienne Sedgley, 4-5 Grays Inn called

- Valerie Scott BSc (Hons), MCD, MRTPI, HCUK Group (Planning)

FOR THE COMBINED OBJECTORS' GROUP

Wayne Beglan, Cornerstone Barristers called

- Emily Benedek UPP Architects and Planning (planning)
- Graeme Drummond, BSc (Hons) Dip LA Director and Owner of Open Spaces Landscape and Arboricultural Consultants Ltd (Landscape)
- Chris Berry BA (Hons) MRTPI, CPRE Hertfordshire (Green Belt)
- Jacob Billingsley, BA (Hons), MSt (Cantab) (Heritage)

COG collectively represented the following bodies:

Stop the Solar Plan Save our Green Belt (local objectors group)

CPRE Hertfordshire – the Countryside Charity

Letchmore Heath Village Trust

Radlett Society and Green Belt Association

Elstree and Borehamwood Green Belt Society

Save Radlett (local group of objectors)

Bhaktivedanta Manor (the UK's largest centre for the International Society of Krishna Consciousness)

Elstree and Borehamwood Town Council

INTERESTED PARTIES

- A Mr Jefferis
- B Mr Lauder

ANNEX C - CORE DOCUMENTS LIST**A. Planning Application Documents**

REF	DOCUMENT
CD-PA1	Application Forms and Certificates
CD-PA2	Site Location Plan
CD-PA2a	Site Location Plan Eastern Parcel
CD-PA2b	Site Location Plan Western Parcel
CD-PA3	Site Layout Plan
CD-PA3a	Site Layout Plan Eastern Parcel
CD-PA3b	Site Layout Plan Western Parcel
CD-PA4	Planning Statement
CD-PA5	Design and Access Statement
CD-PA6	Construction Traffic Management Plan
CD-PA7	Environmental Statement
CD-PA7a	Environmental Statement Technical Appendices
CD-PA7b	Environmental Statement Non-Technical Summary
CD-PA8	Noise Assessment Report
CD-PA9	Flood Risk Assessment
CD-PA10	Ecological Appraisal
CD-PA10a	Ecological Appraisal Appendices
CD-PA11	Landscape and Ecological Management Plan
CD-PA12	Glint and Glare Assessment
CD-PA14	Agricultural Land Classification Report and Review
CD- PA15	Landscape and Visual Impact Assessment
CD- PA15a	Landscape and Visual Impact Assessment Appendices
CD- PA15b	LVIA_FIGURE_8_Illustrative_Viewpoints
CD- PA15c	LVIA_FIGURE_9_Photomontages_part 1
CD- PA15d	LVIA_FIGURE_9_Photomontages_part 2
CD- PA15e	LVIA_FIGURE_9_Photomontages_part 3
CD- PA15f	LVIA_FIGURES_1 to 6
CD- PA15g	LVIA_FIGURE_7_Photopanel
CD- PA16	Biodiversity Net Gain report
CD- PA17	Ground Investigation
CD- PA18	Archaeological Evaluation Report
CD- PA19	Geophysical Survey Report
CD- PA20	Planning Committee 20211111 minutes
CD- PA21	Statement of Community Involvement
CD- PA22	Decision Notice
CD- PA23	Capacity Review - Jumar 1 of 1
CD- PA24	DLA-Planning-Report-Solar-Farm-Feb-2021
CD- PA25	Planning Committee update sheet 20211111
CD- PA26	Landscape and Ecology Enhancement Plan (LEEP) Rev G
CD- PA27	Planning Committee Report

CD- PA28	Screening Opinion
CD- PA29	Biodiversity Net Gain Metric 3.0
CD- PA30	Biodiversity Metric 3.0 Calculation tool
CD- PA31	PV Elevations - Drawing HF3.0 revision 03
CD- PA32	Inverter Transformer Stations - Drawing HF4.0 revision 02
CD- PA33	Internal Access Road Elevations - Dwg HF5.0 revision 02
CD- PA34	Fence and Gate Elevations - HF6.0
CD- PA35	Weather Station Detail - HF7.0
CD- PA36	Substation Elevations - HF8.0
CD- PA37	Control Room Elevations- HF9.0
CD- PA38	Auxiliary Transformer - HF10.0
CD- PA39	CCTV Elevations - HF11.0
CD- PA40	Battery Container Elevations 40ft - HF12.0
CD- PA41	Storage Container Elevations 40ft - HF13.0
CD- PA42	Topo Data East -HF14.0
CD- PA43	Topo Data West - HF15.0
CD- PA44	Hilfield Solar Farm Alternative Site Assessment

B. National Planning Policy / Guidance

REF	DOCUMENT
CD-NPP1	National Planning Policy Framework (NPPF) July 2021
CD-NPP2	Climate Change Act 2008
CD-NPP3	Climate Change Act 2008 (2050 Target Amendment) Order
CD-NPP4	Planning Practice Guidance Renewable & Low Carbon Energy
CD-NPP5	The Ten Point Plan for a Green Industrial Revolution (November 2020)
CD-NPP6	National Infrastructure Strategy (November 2020)
CD-NPP7	Energy White Paper (December 2020)
CD-NPP8	Net Zero Strategy: Building Back Greener (October 2021)
CD-NPP9	Conservation Principles Policies and Guidance April08
CD-NPP10	Managing Significance in Decision-Taking in the Historic Environment, Historic England, 2015
CD-NPP11	The Setting of Heritage Assets, Historic England (2017)
CD-NPP12	Statements of Heritage Significance
CD-NPP13	NPPG - Conserving and enhancing the historic environment
CD-NPP14	Guidelines for Landscape and Visual Impact Assessment (GLVIA) 3rd edition
CD-NPP15	Landscape Institute Technical Guidance Note 06/19
CD-NPP16	Written Ministerial Statement on Solar Energy. Protecting the Local and Global Environment, Planning update March 2015
CD-NPP17	EN-1 Draft Overarching National Policy Statement for Energy Sept 2021
CD-NPP18	EN-3-draft National Policy Statement for Renewable Energy Infrastructure Sept 2021
CD-NPP19	Clean Growth Strategy Correction Oct 2017 - Apr 2018

CD-NPP20	HEA Note 15 - Commercial Renewable Energy Development and the Historic Environment 2021
CD-NPP21	PPG – Green Belts
CD-NPP22	UK Solar PV Strategy_part_2 2014
CD-NPP23	PPG - Historic environment - GOV 23.07.2019
CD-NPP24	Renewable and low carbon energy - GOV.18 June 2015
CD-NPP25	Overarching National Policy Statement for Energy 2011 EN-1
CD-NPP26	National Policy Statement for Renewable Energy Infrastructure EN-3
CD-NPP27	Environment and Climate Change - Hansard - UK Parliament
CD-NPP28	Digest of UK Energy Statistics July 2022
CD-NPP29	Clean Growth Strategy
CD-NPP30	Achieving net zero
CD-NPP31	British-energy-security-strategy-April 2022
CD-NPP32	BSI - Methods for Rating and assessing industrial and commercial sound
CD-NPP33	LODGE TO HILFIELD CASTLE_1103570_Listing
CD-NPP34	HILFIELD CASTLE_1103569_Listing
CD-NPP35	SLADES FARMHOUSE, Aldenham_1103614_Listing
CD-NPP36	Penne's Place moated site, Aldenham_1013001_Scheduling
CD-NPP37	ALDENHAM HOUSE, Aldenham_1000902_RPG
CD-NPP38	NCA 111 Northern Thames Basin
CD-NPP39	Government Food Strategy- 2022

C. Hertfordshire County Council Planning Policy / Guidance

REF	DOCUMENT
CD-HCCP1	Hertfordshire Minerals Local Plan Review 2002-2016 (2007)
CD-HCCP2	Hertfordshire Waste Core Strategy & Development Management Policies (November 2012)
CD-HCCP3	Hertfordshire Waste Site Allocations Document (July 2014)
CD-HCCP4	Hertfordshire Landscape Character Area Assessment (2001) a) Hertfordshire Landscape Character Assessment Area 16 b) Hertfordshire Landscape Character Assessment Area 22
CD-HCCP5	GreenArc Strategic Green infrastructure Plan (with Hertfordshire) 2011

D. Hertsmere Local Development Plan

REF	DOCUMENT
CD-HBCLP1	Hertsmere Core Strategy (adopted 2013)
CD-HBCLP2	Hertsmere Site Allocations and Development Management Policies Plan (adopted 2016)

E. Hertsmere Supplementary Planning Documents / Guidance

REF	DOCUMENT
CD-HSPD1	Biodiversity Trees and Landscape SPD Parts A-D
CD-HSPD2	Interim Policy Statement on Climate Change (adopted 2020)
CD-HSPD3	Borehamwood Plateau Landscape Character Area
CD-HSPD4	Hertsmere Borough Green infrastructure Plan 2011
CD-HSPD5	Hertsmere Climate Change and Sustainability Strategy
CD-HSPD6	Climate-Change-Action-Plan

F. Inquiry Documents

CD-ID1	Appeal Statement - Appellant
CD-ID1a	Hilfield Metric 3.0 Assessment
CD-ID2	The Local Planning Authority's Appeal Statement
CD-ID5	Suggested Conditions
CD-ID6	Statement of Case – Rule 6 Party – COG
CD-ID6A	Appendix to Statement of Case - COG
CD-ID7	Statement of Case – Rule 6 Party – Aldenham Parish Council
CD-ID8	Statement of Common Grounds - Planning
CD-ID8i	Statement of Common Grounds Planning Summary table
CD-ID8A	Statement of Common Grounds - Heritage
CD-ID9	Local Planning Authority Proof of Evidence – Planning
CD-ID9a	Local Planning Authority Proof of Evidence – Heritage 1 of 2
CD-ID9b	Local Planning Authority Proof of Evidence – Heritage 2 of 2
CD-ID9c	Local Planning Authority Summary Proof of Evidence Heritage
CD-ID10	Proof of Evidence - R6P - Aldenham Parish Council
CD-ID10a	Summary Proof of Evidence Aldenham Parish Council
CD-ID10b	Appendices to Proof of Evidence Aldenham Parish Council
CD-ID11	COG Proof of Evidence Planning
CD-ID12	COG - Proof of Evidence - Landscape
CD-ID12a	COG - Appendices to Landscape Proof of Evidence
CD-ID13	CD-ID13 - COG Proof of Evidence Heritage
CD-ID13a	Appendix1_ to COG Heritage PoE -Legislation Policy
CD-ID13b	Appendix2 to COG's Heritage PoE - Methodology
CD-ID13c	Appendix3 to COG's Heritage PoE - Figures
CD-ID13d	Appendix4 to COG's Heritage PoE - Plates
CD-ID14	COG - Proof of Evidence - Green Belt
CD-ID15	COG - Proof of Evidence - Noise
CD-ID16	Appellant Proof of Evidence - Planning
CD-ID16a	Summary of Appellant's Proof of Evidence – Planning
CD-ID17	Appellant Proof of Evidence - Landscape
CD-ID18	Appellant's Proof of Evidence - Heritage
CD-ID18a	Summary of Appellant's Proof of Evidence - Heritage
CD-ID19	Appellant's POE FIGURES 1 to 12
CD-ID20	Statement of Common Grounds – Noise

G. Appeal Decisions and Judgements– referenced by the Council

REF	DOCUMENT
CD-ADHBC1	Hangman Hall Farm - 3266505
CD- ADHBC 2	Barnwell vs East Northamptonshire DC 2014
CD- ADHBC 3	R (Liverpool Open and Green Spaces Community Interest Company) v Liverpool City Council [2020]
CD- ADHBC 4	Recovered appeal reference 3136031 and 3136033 Rectory Farm, Upton Warren 2016
CD- ADHBC 5	Recovered appeal reference 3147854 Land at Snodworth Farm, Langho
CD- ADHBC 6	Recovered appeal references 3012014 and 3013836 Land North of Dales Manor BP, Sawston

CD- ADHBC 7	Wildie v Wakefield MDC [2013] EWHC 2769 (Admin)
CD- ADHBC 8	Green Farm Iron Acton Bristol - 3004513
CD- ADHBC 9	Havering Solar Farm Brentwood - 3134301
CD- ADHBC 10	Three Houses Lane North Herts - 3131943
CD- ADHBC 11	Redeham Hall Tandridge - 3146389
CD- ADHBC 12	College Farm Aldridge - 3148504
CD- ADHBC 13	Common Lane - 3140162 3140163* typo error in PoE
CD- ADHBC 14	Park Farm, Stratford on Avon 3029788

I. Appeal Decisions and Judgements – referenced by the Appellant

REF	DOCUMENT
CD- ADAP1	Forge Fields
CD- ADAP2	Mordue
CD- ADAP3	Nuon
CD- ADAP4	Palmer
CD- ADAP5	Catesby Estates and SSCLG v Steer judgment CoA
CD- ADAP6	Barnwell
CD- ADAP7	R (on the application of William Corbett) v The Cornwall Council v Stephen Tavener
CD- ADAP8	Land North of Halloughton
CD- ADAP9	Cleeve Hill Solar Park - Decision Letter
CD- ADAP10	Cleve Hill - Examining Authority's Report of Findings and Conclusions
CD- ADAP 11	Land West of Wolverhampton West Primary Substation 3292837
CD- ADAP 12	Cowley Road SODC Committee Report
CD- ADAP 13	Cowley Road Decision Notice January 2022
CD- ADAP 14	Land South of Monk Fryston Substation -3290256
CD- ADAP 15	Cranham Golf Course, St Marys Lane - 2227508
CD- ADAP 16	Land at Rowles Farm, Bletchington - 2207532

J. Appeal Decisions and Judgements– referenced by COG

REF	DOCUMENT
CD- AD-COG1	POE Appendix 1 Hilfield Farm 3240825
CD- AD-COG2	POE appendix 2 Land at Redeham Hall, Surrey 3146389
CD- AD-COG3	POE Appendix3 Land at Barrow Green 3133066

ANNEX D DOCUMENTS SUBMITTED DURING THE INQUIRY

DSDI 1 - Inspector's Site Visit Itinerary (PDF 311kb)
 DSDI 2 - Heritage SoCG Summary table
 DSDI 3 - Construction Traffic Management Plan Oct 2022 Rev A Complete
 DSDI 4 - Appellant Opening Statement
 DSDI 5- LPA Opening Statement
 DSDI 6 APC Opening statement
 DSDI 7 COG Opening Statement
 DSDI 8 Member of Public Statement - Redacted
 DSDI 9 Representation to PINs on Solar Farm
 DSDI 10 Photos - tendered 20-10-22
 DSDI 11 Statement of Common Ground -General

DSDI 12 GLVIA 3rd edition 2013
DSDI 13 LPA Culled Google Maps Photos of permissive path routes
DSDI 14 LEMP April 2021
DSDI 15 Definitive Map Clarification Note 24.10.22
DSDI 16 Definitive Map Photos 24.10.2022
DSDI 17 Definitive Map Viewing Request - Aldenham PRow 31 32 and 44
DSDI 18 Draft Conditions Schedule 27.10.2022
DSDI 19 Statement of Common Ground - Noise 26.10.2022
DSDI 20 Transport Note 27.10.2022
DSDI 21 Planning Statement 1355502
DSDI 22 8398_013 Landscape Strategy Plan
DSDI 23 Note on Glint & Glare for Planning Condition 01.11.2022
DSDI 24 Conditions 01.11.22
DSDI 25 Hilfield Solar Farm Note 31.10.2022
DSDI 26 Hilfield Substation Elevations REV03
DSDI 27 Hilfield Storage Container Elevations 40ft REV03
DSDI 28 Hilfield Proposed Site Plan REV19B
DSDI 29 Hilfield Inverter Transformer Stations REV03
DSDI 30 Hilfield Control Room Elevations REV03
DSDI 31 Hilfield Battery Container Elevations 40ft REV03
DSDI 32 TN06 Hilfield Solar Farm Speed Survey Summary 22.11.01
DSDI 33 Note on FRA Condition 01.11.2022
DSDI 34 8398_013A Landscape Strategy Plan
DSDI 35 Hilfield Inquiry Note Photomontages 02.11.22
DSDI 36 Appellant Note on Capacity 03-11-22
DSDI 37 Hilfield Conditions 04.11.22
DSDI 38 I'm Your Man Limited v Secretary of State for the Environment
DSDI 39 Aldenham Solar Farm Appeal Comments 2022_v2
DSDI 40 Aldenham Solar Farm Appeal Comments 2022_v3_page7
DSDI 41 EE-01-P01 Site Location Plan
DSDI 42 Closing Submissions on Behalf of the Combined Objectors Group
DSDI 43 Closing Submissions on Behalf of the Combined Objectors Group
Appendix 1
DSDI 44 APC Rule 6 Closing Submissions
DSDI 45 Appellant's Closing Submissions
DSDI 46 Hilfield Conditions 03.11.22
DSDI 47 LPA Closing Submissions Including Additional Oral Points
DSDI 48 Email to Planning Inspector from 1-2 Medburn Cottages
DSDI 49 Hilfield Solar Farm Appeal Additional Information PRow
Measurements

ANNEX 5 – DOCUMENTS SUBMITTED AFTER THE CLOSE OF THE INQUIRY

Further Comments on behalf of the Appellant, 12th May 2023

In response to the invitation from PINS to comment on the six documents below by email of 4th May 2023, the Appellant wishes to draw attention to the following matters in respect of each document:

Revised draft National Policy Statement (EN-1), March 2023

A revised Draft of NPS EN-1 was published in March 2023. The Appellant considers that the guidance set out in EN-1 (and also EN-3 below) should be afforded significant weight as it is the latest statement of Government planning policy on solar farms.

Section 3.3 of the NPS sets out a useful synopsis of the need for new electricity infrastructure, noting that demand for electricity could more than double by 2050 (paragraph 3.3.2), whilst the specific need for additional generating plants and energy storage are highlighted (paragraph 3.3.4). The specific benefits of providing electricity storage are identified and explained (paragraph 3.3.6).

The role of wind and solar is addressed at paragraphs 3.3.20–3.3.24 – explaining that a ‘secure, reliable, affordable net zero system in 2050 is likely to be predominantly of wind and solar’. The role of storage is addressed at paragraphs 3.3.25-3.3.31 – explaining that ‘storage has a key role to play in achieving net zero and providing flexibility to the energy system’.

Revised draft National Policy Statement (EN-3), March 2023

The revised Draft of NPS EN-3 includes a specific Section 3.10 on ‘solar photovoltaic generation’. The Introduction highlights that solar is a key part of the government’s decarbonisation strategy (3.10.1), that solar has an important role in delivering the government’s goals for greater energy independence, restates the five-fold increase in solar deployment before 2035, and that the Government is supportive of solar that is co-located with other functions, which specifically identifies storage (paragraph 3.10.2).

Powering Up Britain – Energy Security Plan, March 2023

The Government published a suite of documentation under the Powering Up Britain in March 2023. This included an Energy Security Plan (‘The ESP’). The Government states that ‘Low cost renewable generation will be the foundation of the electricity system and will play a key role in delivering amongst the cheapest wholesale electricity in Europe’ (page 34).

The ESP continues to examine the role of solar over pages 37/38, and it reaffirms the Government’s commitment to aim for 70GW of ground and rooftop capacity by 2035. It again states that this amounts to a fivefold increase on current installed capacity. The ESP then concludes on this matter ‘We need to maximise deployment of both types of solar to achieve our overall target’.

The ESP considers ground mounted solar, which is noted as being readily deployable at scale (as is the case with the Proposed Development). It continues to say that the Government 'seeks' large scale solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land (the latter category being the case with the Appeal Site which is not BMV grade 1.8. The ESP restates that the Government considers that meeting energy security and climate changes goals is 'urgent' and 'of critical importance to the country', and further that 'these goals 'can be achieved together with maintaining food security for the UK'.

The ESP further encourages deployment of solar technology that delivers environmental benefits, with consideration for ongoing food production or environmental management. The Proposed Development would assist in delivering both and food production through sheep farming, and environmental benefits through delivering a significant increase in Biodiversity Net Gain as was explained at the Inquiry.

APP/W1525/W/22/3300222 (Chelmsford, Essex) – 06022023

The appeal allowed a solar farm and BESS in the metropolitan Green Belt. The parallels with the Hilfield Appeal also concern the sites being currently farmland and both would be in place for 40 years.

Whilst clearly each Proposed Development needs to be determined on its own merits, it is noted that some considerations are very applicable to the Hilfield appeal. The Inspector noted that the then older draft NPS (September 2021) can be a material consideration (paragraph 78), that the Council had not allocated any sites for renewable energy (paragraph 84), that the Inspector afforded substantial weight to harm to the Green Belt in terms of inappropriateness and loss of openness (paragraph 87), and that whilst there is support for renewable energy projects in the Green Belt, it does not confer automatic approval (paragraph 90). Yet the benefits of renewable generation were held by the Inspector to be 'substantial' and the delivery of suitable renewable energy projects is fundamental to the transition to a low carbon future (paragraph 91), and that the solar farm requires grid capacity and a viable connection to operate (paragraph 92). Overall, these benefits were deemed to be of a sufficient magnitude to outweigh the substantial harm to the Green Belt and all other harm, and that national green belt policies would be satisfied (paragraph 93).

APP/V1505/W/22/3301454 (Herongate, Basildon), 05042023

The appeal allowed an addition to a solar farm which had previously been granted in the Green Belt. Again, whilst substantial weight was given to the harm to the openness of the Green Belt, on the basis of the weight applied in respect of climate change (paragraph 30), the Inspector did not need to even weigh the further benefits such as biodiversity and economic benefits in the very special circumstances balance (paragraph 31).

APP/C3240/W/22/3293667 (Telford, Shropshire), 27th March 2023

The appeal for a solar farm was allowed by the Secretary of State. Despite applying great weight to conserving and enhancing the landscape and scenic beauty of the AONB and further to the 'valued landscape' in the specific terms of Framework para 174(a) (paragraphs 13,14 and 30), in balancing the benefits of the proposal, he afforded significant weight to the production of electricity, and also significant weight to the provision of enhanced biodiversity planting and additional permissive footpath links.

LPA's response to additional documents submitted by the Appellant

The Draft NPS' (En-1 and EN-3)

The consultation on these drafts closes on 25 May 2023. Thereafter the Government will need to examine the responses, issue a formal response, and publish revised drafts if necessary. Whilst the new drafts represent progress compared with the 2021 versions considered during the inquiry, given their status they can carry no more than limited weight at this time.

Draft EN-1 continues to affirm that the normal policy approach to the Green Belt applies. It recognises (para 5.11.37) that very special circumstances "may include the wider environmental benefits associated with increased production of energy from renewables and other low carbon sources". This is not in dispute; the disagreement is whether those (and other) benefits are sufficient in this case.

The changes to the section of draft EN-3 on solar photovoltaic generation appear to be presentational. Text has been split up into shorter paragraphs and the consideration of impacts is structured differently (it is now organized by reference to stages of the decisions making process rather than impact by impact).

"Powering Up Britain"

This is a high-level strategy which expressly builds on British Energy Security Strategy CD-NPP31 and the Net Zero Strategy CD-NPP8 and has a consistent message to other similar strategies and plans presented during the inquiry.

In respect of solar it says (p. 37-38): "The Government seeks large scale ground-mount solar deployment across the UK, looking for development mainly on brownfield, industrial and low and medium grade agricultural land"

In the "forward look" section it mentions PD rights for rooftop solar, but nothing in respect of ground-mounted to suggest any change in policy direction.

Appeal decisions

The Appellant has provided three recent appeal decisions where solar development was allowed. In general, each case falls to be decided on its merits and the proposals, sites, and issues in each of these cases were different to the Butterfly Lane appeal. Taking each appeal in turn:

APP/W1525/W/22/3300222 (Chelmsford, Essex)

49.9MW solar farm in the Green Belt. It was concluded that there would be no harm to designated heritage assets and only negligible harm to one NDHA (para 27). The site comprised 6 fields clustered round the A130, with pylons and a water treatment works adjacent (para 30); this together with the existence of other locally approved solar farms was clearly material to the balance (para 89).

APP/V1505/W/22/3301454 (Herongate, Basildon)

A 3ha site which was part of a larger proposal - the remaining 35ha had already been approved by the neighbouring LPA (paras 3 and 4). The site formed approximately one quarter of a field, the rest of which would be covered with solar panels under the approved scheme. Therefore there would be limited additional harm to the Green Belt (paras 9, 19). This was a critical point in the planning balance (para 30).

APP/C3240/W/22/3293667 (Telford, Shropshire)

A SoS decision, allowing a 30MW (see IR para 5.15) solar farm against the recommendation of his Inspector. The site was not in the Green Belt, and furthermore the proposal was found to be in accordance with development plan as a whole (para 28). Note that SoS gave 'significant' (not substantial) weight to generation of electricity (para 29) – see para 75 of the LPA's closing submissions on this point.

Aldenham Parish Council Rule 6 party

Revised draft National Policy Statement EN-1 (March 2023)

Revised draft National Policy Statement EN-3 (March 2023)

Powering up Britain: Energy Security Plan (March 2023)

The former two are drafts, and all three are of only peripheral relevance. They do nothing to alter the fundamental tests addressed in APC's closing submissions.

Notably, and in-keeping with this:

- a. The enhanced status of the Green Belt is re-iterated in EN-1 [5.11.2].
- b. It continues to be made plain that the Government is looking for solar farms to be developed on brownfield or industrial land: 'where possible, utilise previously developed land, brownfield land, contaminated land and industrial land' (EN-3 at [3.10.14]).
- c. It continues to be made plain that 'Applicants should explain their choice of site, noting the preference for development to be on brownfield and non-agricultural land' (see EN-3 at [3.10.6]). As previously highlighted, the Appellant has not done so.
- d. The Energy Security Plan maintains the focus on brownfield sites for ground-mounted solar: the Government is 'looking for development mainly on brownfield, industrial and low and medium grade agricultural land' (top of p.38). This allows for the possibility of medium grade agricultural land

(top of p.38) but clearly does not contemplate the Green Belt; no mention is made of the Green Belt whatsoever.

APPEAL DECISIONS

These are cherry-picked by the Appellant and not binding. All are fundamentally different to the present appeal.

APP/W1525/W/22/3300222 (Chelmsford, Essex)

There were other nearby solar farms: Material considerations were the grant of planning permission for two other nearby solar farms since permission was initially refused [2]. There was no harm to any listed buildings [22-23].

There was much less landscape harm: In Chelmsford the adverse impact was found to reduce to minor or negligible [35-48]. Here, the Appellant's own LVIA concludes that there is 'a high magnitude of major-moderate adverse effects for receptors within the Site' (CD-PA15 LVIA p.44). APC has already made submissions as to why arguments that such harm would reduce over time are unconvincing.

The decision is also an example of an appellant providing visual representations of the likely long-term visual effects relied on [36]; a notable and unhelpful omission here.

AAPP/V1505/W/22/3301454 (Herongate, Basildon)

There were other nearby solar farms: Approximately 35 hectares of surrounding agricultural fields had approval for a solar farm, including (i) approximately three quarters of the same field in which the appeal site was located being covered with solar panels, and (ii) three fields to the north being similarly affected [19].

The site did not concern heritage assets. The question of whether any benefits outweighed the harm did not arise. The site did not concern landscape harm [7]. The site was much smaller: Only 2.4MW [18]. Its effect on the Green Belt is not comparable. No public rights of way: The only public right of way was on the far side of another solar farm that already had permission [20].

APP/C3240/W/22/3293667 (Telford, Shropshire)

The site was not in the Green Belt. The question of 'very special circumstances' did not arise. The site did not concern heritage assets. The question of whether any benefits outweighed the harm did not arise. As a result, the scheme was found to be in accordance with the development plan [28]. That is not the case here.

The Combined Objectors Group (COG) Rule 6 party

The Combined Objectors Group (COG) Rule 6 party requests the Inspector to consider the following points with regards to the email received on 4 May 2023 concerning three additional appeal decisions as well as their comments

on the Revised draft National Policy Statement EN-1 (March 2023), Revised draft National Policy Statement EN-3 (March 2023) and Powering up Britain: Energy Security Plan (March 2023).

The COG is mindful that the Public Inquiry was formally closed on 4 November 2022 and no submissions were allowed to be submitted after the closing.

The COG wishes to respond in a lawful way but note that the Revised draft National Policy Statement EN-1 (March 2023) and Revised draft National Policy Statement EN-3 (March 2023) are still in draft form and are out to public consultation until 25 May 2023 and the Inspector should be mindful of this point.

Revised draft National Policy Statement EN-1 (March 2023)

The COG considers the most significant changes to this document relate to the critical national priority for increased offshore wind which whilst highly supported by the COG are not pertinent to this appeal. Nevertheless, although the document concludes that there is a critical national priority for the provision of nationally significant new infrastructure, the appeal site does not meet the size requirement for significant national infrastructure, as it is under 50MW in size.

Revised draft National Policy Statement EN-3 (March 2023)

It is noted that in paragraph 2.61 there is reference to specific renewable generation proposals below 50 MW being brought into the NSIP regime under section 35 of the Planning Act 2008. However, this appeal site is not listed on NSIP. Additionally, COG wishes to highlight paragraph 3.10.16 which emphasises the preference for solar farms on brownfield and non-agricultural land.

POWERING UP BRITAIN

The COG considers that there is nothing in the section "accelerating deployment of renewables", nor elsewhere in the report, that should override the considerations put forward by the COG in the appeal, with regard to Green Belt, Heritage, Landscape and Visual Impact, agriculture, and the conclusions in COG's planning balance.

APPEAL CASES

The COG considers that the appeal decisions submitted are late in terms of when they have been brought into the equation for this appeal process and are readily distinguishable from the appeal scheme.

APP/W1525/W/22/3300222

This appeal was for 49.9 MW, the largest of 3 sites in the Chelmsford area. The other two sites were 8MW and 36.7 MW totalling hundreds of acres near a huge reservoir and straddling the A130. None of the sites affect local

towns or residents, nor do they lead to coalescence, and the site in question only represents a small part of the vast Chelmsford Green Belt. Public footpaths are not used for pedestrian access.

This appeal is fundamentally different to the Butterfly Lane scheme as only 8MW will be located in Green Belt land whilst 36.7MW are adjacent, whereas the scheme in question is entirely within Green Belt land.

The solar arrays were said to be relatively modest in mass and footprint in their spacing, reducing the overall scale of the development. After decommissioning the land will be returned to its former condition, whilst the land subject of our appeal, as has been admitted, will never revert to agricultural use.

APP/V1505/W/22/3301454

This appeal site was for only 3 ha of an overall 38 ha site, plus underground cabling. Permission was already granted for 35 ha plus underground cabling which establishes a precedent. In the determination of "very special circumstances" different considerations applied because this was "the last piece of the jigsaw", and the cabling would not be visible. In view of the earlier permissions, the appeal was allowed on the basis of there being "limited additional harm." COG accepts this point and considers the fact that there is no extant permission for a solar farm on the Butterfly Lane site to be a material consideration and therefore the two schemes are not comparable. Furthermore, the site here only affected one footpath and one bridle way rather than the multiple PROWs which are the subject of this case.

APP/C3240/W/22/3293667

This appeal was for 30MW. This 98-acre site will only have 74 acres with panels and the land will be returned to agricultural use after decommissioning. The fact that plans exist to enhance the car park area so people can park and walk, highlights how different this is from the current case, where residents have direct pedestrian access from their homes. Additionally, whilst the site is located in an Area of Outstanding Natural Beauty (AONB) this scheme was not located on Green Belt land.



Department for Levelling Up, Housing & Communities

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RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

APPENDIX 21

**Appeal APP/P3040/W/23/3329235 – Land to the west of Wood Lane and
Stocking Lane, Kingston Estate, Gotham, Nottinghamshire**



Appeal Decision

Inquiry held on 21 – 24 May 2024

Site visits made on 20, 23 and 24 May 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8th July 2024

Appeal Ref: APP/P3040/W/23/3329235

Land to the west of Wood Lane and Stocking Lane, Kingston Estate, Gotham, Nottinghamshire, NG11 0LF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Ms Sarah Rocks (Renewable Energy Systems (RES) Ltd) against the decision of Rushcliffe Borough Council.
 - The application Ref is 22/00319/FUL.
 - The development proposed is the installation of a renewable energy generating solar farm comprising ground-mounted photovoltaic solar arrays, together with substation, inverter stations, security measures, site access, internal access tracks and other ancillary infrastructure, including landscaping and biodiversity enhancements.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The Council confirmed (26 April 2021) that an Environmental Impact Assessment was not required. There is no reason to disagree.
3. It was questioned whether it was appropriate for the proposal to be considered under the provisions of the Town and Country Planning Act 1990 rather than it being a Nationally Significant Infrastructure Project. The National Policy Statement for Renewable Energy Infrastructure EN-3 (November 2023) indicates that the generating capacity of a site is to be determined by the maximum combined capacity of the installed inverters. The appellant has confirmed that this will not exceed 49.9MW AC and a condition to this effect is proposed. In addition, it was confirmed that the level of 'overplanting' on the site would be limited to approximately 5%. As a result, I am satisfied that it is appropriate for the appeal to be determined as a 49.9MW scheme under the Town and Country Planning Act 1990.
4. At the time of the Inquiry the Council had commissioned a Solar Farm Landscape Sensitivity and Capacity Study. I understand that this was published on 4 July 2024. However, it was agreed at the Inquiry that the findings of this study should not be taken into account if they were published before my decision was issued. I have determined the appeal accordingly.

Main Issues

5. The parties are agreed that the proposal is inappropriate development in the Green Belt in terms of local and national policy.

6. Given this, the main issues in the appeal are:

- The effect of the proposed development on the openness of the Green Belt and the purposes of including land within it;
- The effect of the proposed development on the character and appearance of the landscape;
- The effect of the proposed development on users of the nearby public rights of way network; and
- Whether the harm to Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

The site, the surrounding area and the proposal

7. The appeal site comprises 16 fields in a mix of arable and pastoral use which total approximately 80ha. The site is split into a northern and southern section by Leake New Wood and a number of other mature mixed woodlands surround the site. Field boundaries are mainly defined by mixed hedgerows. A number of bridleways and public rights of way cross the site or lie adjacent to it, including one which forms part of the long distance walking route known as Midshires Way.
8. The site occupies elevated and gently undulating land between the villages of Gotham and East Leake. It is also within the Nottinghamshire – Derbyshire Green Belt. The land immediately adjacent to the site comprises other agricultural land, dense mature woodlands and a golf course with the occasional individual farmstead or dwelling. The wider area has a rolling topography and contains a mix of agricultural land, villages, woodlands and commercial uses including the British Gypsum works and the Ratcliffe-on-Soar power station.
9. The proposal would consist of ground mounted solar arrays arranged in rows in 15 of the 16 fields, along with essential electricity generation infrastructure, internal access tracks, security fencing, pole mounted CCTV cameras and boundary landscaping. The proposal would have a 40 year operational lifespan after which all equipment other than the sub-station would be removed.

Planning policy context

10. The development plan comprises the *Rushcliffe Local Plan Part 1: Core Strategy (adopted December 2014)* (LP1), the *Rushcliffe Local Plan Part 2: Land and Planning Policies (adopted October 2019)* (LP2). The northern part of the site is covered by the *Gotham Neighbourhood Plan (made January 2020)* (GNP). Whilst the southern section of the site abuts a ridgeline identified within the *East Leake Neighbourhood Plan (ELNP)* (made November 2015), the southern part of the site is not covered by it.
11. The reason for refusal references Policy 16 of LP2 which deals with developments for renewable energy and Policy 21 of the same which deals with development in the Green Belt. In addition, within evidence and/or at the inquiry the Council have also referred to LP1 Policies 2 and 10 which deal with

Climate Change and Design and Enhancing Local Identity respectively and Policy 34 of LP2 which covers Green Infrastructure and Open Space Assets.

12. The *National Planning Policy Framework* (the Framework), the *Planning Practice Guidance* (PPG), the *National Policy Statement on Energy* (EN-1) and the *National Policy Statement on Renewable Energy Infrastructure* (EN-3) are all material considerations.

Green Belt Openness and Purposes

Openness

13. Policy 21 of LP2 indicates that development in the Green Belt will be determined in accordance with the Framework. The Framework indicates that the Government attaches great importance to the Green Belt. The fundamental aim is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permanence. Openness has both a visual and spatial element.
14. The appeal site comprises 16 open fields. The proposal would introduce development in the majority of these fields with the appellant indicating that the buildable area of the proposal would be 50% of the entire site. Although the footprint of the posts holding the arrays would be small, the panels themselves are larger. They would have the effect of covering more of the ground area, albeit that their mass would be broken up by the grass in between each row and the fact that there would be 'airspace' and functioning soil beneath the panels. In addition, there would be access tracks, fencing, a substation and inverters as part of the proposal. As a result, I consider that the proposal would diminish the openness of what comprises a significant area of the Green Belt spatially.
15. Despite occupying an elevated position, the topography and surrounding woodland means that, at present, views of the site from much of the surrounding countryside and nearby highways are limited even in the winter. As such, visually the current openness of the site is largely only perceived from the footpaths and bridleways in the immediate vicinity of the site. Whilst the surrounding mature mixed woodlands include areas of coniferous trees, none appeared to be predominantly commercial plantations that would have a greater propensity to being felled in their entirety and thus significantly altering the current level of enclosure and containment they provide to the site.
16. The existing boundary hedging largely prevents views into a number of the fields, and it is proposed to maintain and infill gaps in this. New hedging is also proposed along field boundaries where none exists at present. It is stated that both the existing and proposed hedging would be maintained at a height of between 3 and 4m. Given the height of the proposed panels and associated structures, they would be largely screened from view by this vegetation, with views of the proposal being restricted to field access points. For much of the new hedgerow planting it is proposed to use 'instant hedging'. This would be planted in advanced of the construction phase which would help to ensure the screening effect of the planting was achieved earlier than would be case if 'normal' hedging was used. Nonetheless, it would still take several years to be fully mature.

17. Nonetheless, on small stretches of some of the surrounding public rights of way the proposed new hedging would restrict some currently open views across fields towards woodlands such as from around viewpoint 8 and from the bridleway along fields 7 to 10 and field 15. It would also result in the loss of a long range view westwards near Cuckoo Bush Farm, and the view across field 11 possible on the bridleway that runs along the edge of this field. As a result, visually the proposal would cause some harm to the perception of openness from these rights of way. However, the degree of this harm is limited and its extent localised.
18. The PPG indicates that when assessing the impact of a development on the openness of the Green Belt, the duration of the development and its remediability, and the degree of activity it would be likely to generate, are matters to take into consideration. The proposal would occupy the site for 40 years, after which it could be returned to agricultural use. This can be secured by condition. Whilst not permanent it is still a significant period of time, during which the openness of the Green Belt would be reduced. In addition, apart from during the construction phase and during decommissioning, the development would generate minimal activity.
19. Taking all of the above together, both visually and spatially, the proposal would result in moderate harm to the openness of the Green Belt. This adds to the harm caused by reason of inappropriateness.

Purposes

20. As defined by paragraph 143 of the Framework, the Green Belt serves 5 purposes (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; (c) to assist in safeguarding the countryside from encroachment; (d) to preserve the setting and spatial character of historic towns; and (e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
21. The main parties are agreed that the proposal would not conflict with purposes (a), (b), (d) or (e). The Parish Councils consider that given the proximity to East Leake, which has a population of around 9,000 the proposal would be contrary to purpose (a). The appeal site is not immediately adjacent to the built edge of East Leake or any other settlement, being separated from it by open land. As a result, the proposed development would be visually discrete from it. Moreover, the solar panels and associated infrastructure would be relatively low-lying features, that would have a completely different character and form to the residential development in East Leake. As such, the proposal would not be seen as the spreading out of the settlement and would not be contrary to this purpose. In addition, nothing I have seen, read or heard leads me to conclude that the proposal would be contrary to purposes (b), (d) or (e).
22. With regard to purpose (c) the appeal scheme would introduce man-made structures into 15 fields and would change their character. Nonetheless, the solar arrays would be located within the existing field pattern and the scheme would retain and enhance the existing field boundaries which would result in limited visibility of the scheme from outside the site. Furthermore, the solar arrays would be low-lying, open sided features, that would be temporary in nature, limiting the overall effect on the countryside.

23. Nonetheless, the proposal would cause encroachment into the countryside, contrary to this purpose. I agree with the appellant's conclusion that the degree of harm in this respect would be moderate.

Green Belt conclusion

24. The parties agree that the proposal is inappropriate development in the Green Belt. This is, by definition, harmful to the Green Belt. The development would also cause some harm to the openness of the Green Belt and by causing a degree of encroachment into the countryside would conflict with one of the purposes of including land in the Green Belt. In line with paragraph 153 of the Framework, the harm to the Green Belt from these matters results in substantial weight against the proposal. The proposal would not accord with LP2 Policy 21 or the Framework outlined above.

Character and appearance of the landscape

25. Amongst other things Policy 16 of LP2 indicates that renewable energy schemes need to be acceptable in terms of their landscape and visual effects. Outside of settlement boundaries, LP1 Policy 10 requires that new development should conserve, or where appropriate, enhance or restore landscape character and states that proposals will be assessed with reference to the Greater Nottingham Landscape Character Assessment.
26. At a national level the appeal site lies within National Character Area 74: Leicestershire and Nottinghamshire Wolds, whilst at a regional level, the East Midlands Regional Landscape Character Assessment identifies the site as being within the Clay Wolds Area. Key characteristics of both these areas, together with the landscape management opportunities are set out in the proof of evidence of the appellant's landscape witness.
27. As set out in the Greater Nottingham Landscape Character Assessment, the appeal site lies within the Nottinghamshire Wolds Regional Character Area and within this character area it is in the Gotham and West Leake Wooded Hills and Scarps Draft Policy Zone (DPZ). Key characteristics of this DPZ include: a rural character although urban elements such as villages, power station, industry and quarrying are frequent in the landscape; a mixture of woodland, arable and pasture with woodland generally on higher ground; a modern field pattern with field boundaries being mainly hedgerows; and rides and areas of open land are interspersed between plantation woodland. I observed all these characteristic features during my site visits.
28. It is considered that the landscape condition of the DPZ is good and that it has a strong landscape character and so the overall landscape strategy is to 'conserve'. Landscape actions include: conserving the distinctive pattern of hills with large blocks of woodland on high ground, and arable farming on lower ground and pasture on steeper and higher slopes; conserving the field patterns; and conserving hedgerows and encouraging infill planting in gaps rather than timber fencing.
29. The appellant submitted a Landscape Visual Appraisal (LVA) with the application which at the time was reviewed by an independent landscape expert on behalf of the Council. The LVA was also reviewed by the appellant's landscape witness, who also undertook his own analysis of the effect of the proposal on the landscape which took account of the changes in the design of

the proposal during the determination of the application. On the basis of this he formed his own professional judgements, which differ in part from the findings of the LVA. A number of criticisms of the LVA were raised by an interested party who considered that it underestimated the landscape and visual effects. Given the diverging views in the evidence before me, whilst I have taken into account the various evidence presented to me, I have come to my own conclusions based on this and what I observed on my visits to the site.

30. In the vicinity of the site the woodlands and existing hedgerows often create a significant sense of enclosure which contrasts with the extensive views that are possible for example when looking north near field 11 or south when on the footpath between Crownend Wood and Leake New Wood. Whilst some of these panoramic views reveal a tranquil landscape with scattered farmsteads and buildings, in others the agricultural landscape is interspersed with various urban influences including larger settlements, industrial development and the nearby power station. Nevertheless, the immediate vicinity of the site has a distinctly rural character.
31. The site itself is not covered by any national or local landscape designations and whilst typical of the area, is not particularly notable in landscape character terms. Whilst it is clearly highly valued by local people, with reference to paragraph 180 of the Framework, I do not consider it is a "valued landscape". Overall, I consider that the landscape in the area has a medium value and a medium sensitivity to change.
32. Despite the modest height of the panels and most of the associated supporting infrastructure, the straight rows of panels and the horizontal emphasis of the scheme, to the extent that it would be perceived, would appear out of place in this rural landscape.
33. However, through the grazing of sheep the agricultural use of the land would continue. Whilst this would result in all the fields being used for pasture (alongside the panels) rather than the current mix of arable and pasture, such a change in agricultural use could take place at any point in time without the need for planning permission.
34. In addition, the proposal would retain the field layout and existing boundary hedging which, along with the proposed infilling of hedges, and the planting of new hedgerows and tree belts would be beneficial to the landscape character as well as diminishing the effect of the uniform rows of panels. Furthermore, due to the high degree of visual containment of the site, the proposal would not have any detrimental impact on the landscape character of the wider area. So overall, I consider the magnitude of change to the local landscape character brought about by the proposal would be low.
35. Taking into account the sensitivity and capacity of the landscape to absorb change, and the low magnitude of change the proposal would result in, I consider that the proposal would result in a minor adverse effect on landscape character during the lifetime of the development.
36. The extent of visibility would vary from season to season. But, as set out above, the topography and existing woodlands surrounding much of the site, which largely comprise a mix of coniferous and deciduous trees, means that long distance views of the proposal would not generally be possible either from roads in the area or the public rights of way network in the wider surrounding

countryside. Whilst open views towards the site are possible from the bridleway adjacent to Cottagers Wood, I observed that views of the site itself are limited and are a very small component of the wider panorama.

37. There are a number of public rights of way that cross or abut the site. The existing boundary hedges are currently of a height that prevents views into many of the fields that form the site, albeit that in the past the hedges may have been maintained at a lower height that enabled views across some fields. The appellant highlighted that farm stewardship programmes encourage hedges to be left to grow higher to improve biodiversity.
38. Nonetheless, views of the site are possible in places where field boundaries are currently open, and where there are gaps in the existing hedgerows or field accesses. It is proposed to infill gaps in the existing boundary hedges, and to plant new boundary hedges and tree belts that would restrict these views. Even though advanced planting of 'instant hedging' is proposed in most places, it would still take a number of years for the new planting to fully mature. As such, during the construction period and initial operational years the proposal would be visible from a number of points along the adjacent public rights of way and those which cross the site.
39. Moreover, although when fully mature in summer visibility of the proposal would be limited to field access tracks, in winter the screening impact would be lessened, although the planting would still to a certain degree interrupt views of the panels and associated infrastructure. The substation infrastructure includes a 15m lattice type tower. The substation is set well back from public vantage points and the topography and existing woodlands means it would not be readily visible in views from the surrounding rights of way network or further afield, despite its height. In this respect it is considerably shorter than the telecommunication tower adjacent to field 7 which can be seen in some longer range views.
40. Whilst there are no views where the full extent of the proposal would be possible, the considerable size of the proposal would be apparent to those traversing through the area particularly on the bridleway that goes along Wood Lane and Stocking Lane.
41. Additionally, a significant level of hedgerow would need to be replanted at the junction of Wood Lane and Kegworth Road in order to create adequate visibility splays at this junction which is to be used by construction traffic. Until this hedge is re-established this work would also have an adverse visual impact in the vicinity of this junction.
42. Although the visual impact of the proposal would be localised, in the short term the proposal would result in a moderate adverse visual impact. With advanced planting of instant hedging this would reduce to minor/negligible relatively quickly.
43. There are a number of other proposals for solar farms in the wider area, although some of these do not currently have planning permission. Whilst there were distant views of some wind turbines, on my site visit I did not see other solar farms. Of those solar farms which have consent there would be little intervisibility either due to distance or the topography. Consequently, I do not consider there would be an adverse cumulative visual impact arising from the proposal.

44. In addition, taking into account the fact that the character of the wider area is one which includes a large power station and industrial uses, I consider that the proposal, together with the other consented solar farms, would not cumulatively have a detrimental impact on the character of the area.
45. All in all, I consider that the proposal would cause slight harm to both the character and appearance of the landscape, thus there would be some limited conflict with the policies set out above.

Effect on users of the public rights of way network

46. The area around the appeal site contains an extensive network of bridleways and footpaths that are clearly well used and highly valued by local people and riders. In particular, the considerable network of off-road bridleways makes it an attractive area for horse riders. The proposed development would not result in loss or diversion of any of these rights of ways and a new permissive path is proposed to the south of fields 7 – 10.
47. The nature of the various routes around the site vary quite considerably. Many are quite wide with grass verges either side of a crushed stone track, while others are unsurfaced and/or narrow. At points, such as when passing through the woodland the paths are enclosed, at other times they have hedges to both sides and at other points are open and have wide ranging views. The contrasting character in my opinion adds to their attractiveness.
48. The proposed gapping up of existing hedges along field boundaries would have limited visual impact on the users of the rights of way, as they provide only glimpsed views into fields. However, the proposed planting along what are currently open boundaries such as in field 11 and along the southern side of the path adjacent to fields 7-10 would result in the loss of views across these fields. Whilst these views are not long range views they still provide a sense of openness, that would be curtailed.
49. The 'green lanes' that are proposed here would be a generous width with grass verges before hedges and other planting, and so would not create a tunnelling effect. Moreover, they would reflect similar 'green lanes' already found in the vicinity such as adjacent to fields 5 and 6, and between fields 6 and 7. Whilst in time, people would adapt to these changes and they would become no less attractive than the existing 'green lanes', initially current users familiar with the routes would no doubt notice the loss of openness at these points of the network.
50. Long range views are currently possible from Bridleway 12 in the immediate vicinity of viewpoint 3. Whilst the panels would be set back some distance from this farmstead, ensuring a degree of openness would remain, the long range views that are currently possible would not be retained due to the proposed tree belt. However, the proposal would not impact on the panoramic views northwards possible near field 11 or those southwards when emerging from the woodland on bridleway 3 or 12.
51. Medium range open views across fields towards woodlands are also possible around viewpoint 6 and 8. These views would be curtailed to a certain extent by the proposed hedging in fields 15 and 13. However, on the whole given the distance from the rights of way to these hedges the visual impact on users

- would be limited although some limited adverse impact for users would occur when travelling northwards along bridleway 13 between viewpoint 6 to 5.
52. Generally, once the proposed planting has matured, views of the solar farm would largely be limited to where field access points are adjacent to a route. Such views would be brief and so this would limit the negative experience the proposal would cause to users.
53. Whilst the eye level of riders is significantly higher than walkers, as it is proposed to maintain the hedges at a height of between 3 and 4m, this would be sufficient to ensure that in the long term the visual impact on riders would be no different to other users.
54. The appellant's acoustic impact assessment identified that the main noise associated with the solar farm would be associated with the inverters and the substation. These are largely set some distance from the public right of way network. The assessment was considering the impact on the nearest residential properties rather than the rights of way network. However, given its findings, and in the absence of any substantive evidence to the contrary, I am satisfied the noise created would not have a detrimental impact on users of the network.
55. Whilst I understand that horses are more sensitive to noise and vibration than humans, the British Horse Society noted that apart from the proposed new permissive path, the inverters are generally located away from the bridleways, and raised no specific concern in this regard. Nor have I been provided with any substantive evidence to show that solar farms have an unacceptable impact in this regard.
56. The noise during the construction period would be greater and would be more likely to have an adverse impact on users, as would the impact of construction traffic using the stretch of Wood Lane between Kegworth Road and the site compound in field 5. The necessary widening of this lane may not require the removal of the existing hedgerows but would reduce the depth of the current grass verges which would have a detrimental visual impact on this rural lane. It is indicated that the construction phase would be a relatively short period of time, and the Construction Transport Management Plan which can be secured by a condition, would seek to minimise the impacts. Nevertheless, the construction period would have a detrimental impact on users of the network.
57. Overall, given the high sensitivity of the users of the rights of way network, I consider that through the loss of the sense of openness and certain views of the proposal, and the impact of the construction phase, the proposal would initially result in moderate adverse impact on users of the public rights of way network. This would reduce to minor over time. Whilst the proposed new footpath would be a welcome addition and would provide an alternative route through the area, this would not compensate for the adverse impact the proposal would have on users. Therefore, there would be some conflict with Policy 34 of LP2 which seeks to protect Green Infrastructure assets, including rights of way, from development that adversely affects their green infrastructure function.

Other Considerations

Benefits arising from the provision of renewable energy

58. The proposal would supply up to 49.9MW of renewable energy, which is estimated to provide sufficient electricity to power around 13,500 homes. The site benefits from an immediate connection to the grid by way of underground cable to the existing nearby 132kV power line.
59. In recent years both the Government and the local council have declared an Environmental and Climate Change Emergency. Various recent government publications have highlighted the need to significantly increase generation from onshore wind and solar energy production, as it seeks to ensure that by 2035 all our electricity will come from low carbon sources. To achieve this ambitious target, it is clear that considerable growth in large scale solar farms will be necessary and this cannot be achieved solely by the use of brownfield land or roof top installations.
60. The recent Written Ministerial Statement (May 2024) confirms that solar power is also a key part of the government's strategy for energy security, net zero and clean energy. Whilst to improve energy security the Government's Energy Security Strategy (April 2022) expects a five-fold increase in solar capacity by 2035, I do not consider that this increase in capacity is in addition to the increase in capacity it foresees as being required to address the climate change emergency. As such, I see the benefits the proposal can make to energy security and addressing climate change are linked.
61. I have been provided with various differing evidence regarding the current rate of progress towards meeting these ambitious targets. Nonetheless, government guidance remains that there is an urgent need for new renewable energy generating capacity.
62. In addition, the Council is seeking to be carbon neutral by 2030 and is seeking to support local residents and businesses reduce their carbon footprint so that the borough will be net zero for its emissions by 2050.
63. Whilst I note the concerns raised about the efficiency of solar farms and their ability to produce power when it is most needed, the government clearly identifies solar energy as a form of renewable energy in which they want to see significant growth. Moreover, the efficiency of the panels has improved markedly in recent years.
64. Nonetheless, the proposed development would make a valuable contribution to achieving these local and national goals. The support in both national and local policy for renewable energy is caveated by the need for the impacts to be acceptable, or capable of being made so, nevertheless, the renewable energy benefit of the proposal must be accorded substantial weight.

Alternative Sites

65. There is no national or local policy requirement to carry out an assessment of alternative sites for solar farm developments. Nevertheless, the appellant has provided a Grid Capacity Analysis which sets out an assessment of alternative sites that could connect to the 132kV Ratcliff-on-Soar to Willoughby network where the Distribution Network Operator has indicated that there is some capacity available. The appellant has secured a viable grid connection to this

- network with a connection date in 2026, which is much earlier than many renewable energy schemes.
66. However, the Council drew my attention to a recent appeal decision¹ for an energy storage facility at Barton in Fabis where it was concluded that the assessment of alternative sites did not demonstrate that there were not alternative sites outside the Green Belt as it had focused solely on the Nottingham East and Ratcliffe-on-Soar 132kV network.
67. The search area was limited to land within 2km of the 132kV line as the appellant have stated that economically and electrically a scheme would not be viable beyond this distance. However, no evidence has been provided to support this assertion and the Council pointed to other appeal decisions where the proposals used larger search areas. The fact that an overhead connection of more than 2km might make the proposal a National Significant Infrastructure Project, does not justify restricting the search area to this distance.
68. Putting the appropriateness of the search area to one side, a total of 11 potential sites were identified within the search area. However, consideration was only given to sites which had a single land ownership and were a minimum of 300 acres. Whilst generally it is likely to be easier to deal with a single landowner, that is not necessarily the case and to rule out sites in multiple land ownership could have ruled out potential sites. Moreover, given the appeal site is 200 acres it is not clear why alternative sites need to be a minimum of 300 acres.
69. Whilst some of these sites had a number of constraints that mean they are not realistic alternative sites, with sites F and G a key reason for ruling them out appears to be due to their size. For site F it is stated that only around 200 acres would remain once high level constraints were removed. These high level constraints include removing the land in the Green Belt. If the same high level constraint was applied to the appeal site, then the entire site would have been discounted.
70. Once various known constraints have been applied to sites F and G, the assessment indicates that 155 acres and 160 acres remain respectively. Given the appeal site is 200 acres in total and requires 100 acres to accommodate the solar panels, the conclusion that these sites are too small, having already removed large amounts of the sites for various known constraints, appears inappropriate.
71. It is indicated that both these sites are further away from the grid connection point and so would have higher construction costs. Nevertheless, they both lie within the 2km area which the appellant has indicated is the threshold for schemes to be viable. Whilst this distance might make the scheme less profitable, there is no specific evidence that shows these sites would be unviable.
72. Consequently, I consider that the assessment of alternative sites is not robust. Therefore, even if it is considered that it is appropriate for the search area to focus solely on 2km from this 132kV network, I am not satisfied that this assessment shows that there are no potential non-Green Belt alternative sites

¹ Appeal Reference APP/P3040/W/23/3324608

that might be suitable. As a result, I give no weight to the appellant's suggested benefit that there are no alternative sites to the appeal site.

73. Whilst I note the comments that brownfield land should be used in preference to greenfield, the Council's register of brownfield land shows there is very little brownfield land available in the borough and none of the sites it includes are large enough to accommodate the proposal.

Biodiversity and Ecology

74. The appellant's ecological assessment considered the potential impacts of the development on ecology and an updated survey which includes badger and bat surveys forms one of the suggested conditions. Within a 5km radius of the site are five Sites of Special Scientific Interest and seven Local Nature Reserves. The assessment concluded that there would be no adverse effects on the integrity of any of the statutory designated sites and that with the implementation of the recommended measures, there would be no significant adverse effects on any designated nature conservation site. Nothing leads me to a different conclusion.
75. The assessment considered that the intrinsic ecological value of the site itself is low in terms of habitats and that it had limited potential to support wildlife. The proposal would include a variety of landscape and biodiversity measures including new and improved native hedging, new native trees, species rich grassland, and the provision of bird and bat boxes, hedgehog houses and invertebrate hotels.
76. The deer proof fencing would prevent some larger mammals from crossing the fields, however smaller mammals would still be able to cross the fields and the areas of woodland and green lanes would still be accessible to all wildlife. The ecological assessment concluded the proposal would not be likely to have significant adverse impacts on local wildlife.
77. The biodiversity metric shows that the proposal would result in a substantial increase in biodiversity net gain in terms of habitat and hedgerow units. As such, the limited amount of existing hedging that would need to be removed to facilitate the development would be more than adequately compensated for. Resting the land from arable farming would also result in long term benefits for the soil. This adds to the environmental benefits of the scheme.
78. It is proposed that the new planting of hedges and trees would remain after the decommissioning of the site. However, as outlined above, in a number of places this curtails long distance views or the current openness of the site which contrasts with the more enclosed areas. As such, I do not consider the long term retention of the proposed landscaping is a benefit of the scheme.
79. Overall, I give significant weight to the biodiversity and environmental benefits that would result from the appeal scheme.

Agricultural land

80. Government publications recognise that achieving the climate change and energy security goals needs to be done alongside maintaining food security. Where it is necessary to use agricultural land, it is indicated that preference should be given to using poorer quality agricultural land rather than the Best

and Most Versatile (BMV) land. It is not disputed that the appeal site is not BMV land.

81. During the operational period it is indicated that the land around the solar panels would be used for the grazing of sheep. So apart from small areas of fixed infrastructure, the majority of the land would still be used for some agricultural purpose during the 40 year period the solar farm operated. It is the intention that it would be returned fully to agricultural land at the end. This accordance with policy is a neutral factor.
82. The appellant has suggested that a benefit of the proposal is that it would enable the diversification of an agricultural business. However, the proposal would be operated by the appellant and would not be part of an agricultural business. Whilst the landowner(s) would receive an income stream for the use of the land, which may help the viability of their business, I am not persuaded that this in itself represents the diversification of an agricultural or rural land use based business as supported by the Framework. As such, I give this only minimal weight.

Use of best available technology

83. It is stated that, by the use of bifacial solar panels, the appeal scheme would be using the best available technology that would deliver greater levels of solar efficiency and reduces the amount of land required to produce the same output. However, the Council highlighted that the proposal was designed to use either 580W or 610W panels rather than the newer 750W panels. As such, the appeal scheme would not appear to be making the use of the best available technology, even if the use of such panels would not significantly impact on the amount of land required overall. Therefore, I give this no weight.

Good design

84. Various changes to the design of the scheme have taken place since it was first subject to pre-application discussions with the Council. These include removing panels from field 16 and half of field 15. However, the fact that the appellant was prepared to make changes to the design during the determination process to reflect comments from the local community or statutory consultees, is not in my opinion a positive benefit of the scheme but reflects the fact that the scheme was not acceptable due to the harm it caused. Whilst the way the scheme has been designed may have helped to mitigate the harm it would cause, as outlined above, I consider a degree of harm to the landscape still remains. In any case the Framework (paragraph 131) states that good design is a minimum expectation not a positive benefit of the scheme.

Economic Benefits

85. The proposal would result in some economic benefit during the construction period albeit this would reduce significantly once the development was operational. It would also result in the generation of additional business rates. It was suggested that the proposal could result in some harm to local businesses that rely on the use of the public rights of way network. The effect on the public right of way network has been considered above. Whilst I have concluded that the proposal would cause some harm to the users of the rights of way network, I am not persuaded that this would lead to the loss of viability

of any existing businesses. However, overall, I only give limited weight to the economic benefits.

Other Matters

86. The site and wider area have been subject to historic gypsum mining but it has been confirmed that there will be no future extraction on the site. The application was accompanied by a Mining Risk assessment which indicates that the majority of the site is classified as 'low' risk with some small, localised areas being 'medium' risk. The appellant has stated that the layout of the proposal has taken account of this and located 'sensitive' infrastructure away from the areas of 'medium' risk to mitigate the effects of any future subsidence.
87. The Local Historic Environment Record indicates that there are two non-designated heritage assets within the appeal site. Exclusion zones were implemented around these as part of the design of the scheme layout. Additionally, the application was accompanied by a Cultural Heritage Impact Assessment which assessed the potential direct and indirect effect of the proposal on both designated and non-designated heritage assets. The Council's Conservation Officer was satisfied that this showed the proposal would not harm the significance of any designated or non-designated heritage asset. I agree with this conclusion.
88. The application was accompanied by a Glint and Glare Assessment which considered the impacts on a wide range of different local receptors and concluded that, after taking account of mitigation measures, the impact on all receptors would be low or none and therefore not significant.

Planning Balance and Conclusion

89. It is agreed that the proposal is inappropriate development in the Green Belt. This, by definition, is harmful to the Green Belt. In addition, the proposal would result in moderate harm to the openness of the Green Belt and would be contrary to one of the purposes of including land in the Green Belt. In line with the Framework, I give substantial weight to the harm the proposal would cause to the Green Belt.
90. In addition, the proposal would cause slight harm to the character and appearance of the landscape and have a minor adverse impact on the users of the rights of way network in the immediate vicinity of the site.
91. On the other side of the planning balance, the Framework sets out a presumption in favour of sustainable development, and renewable energy development is central to achieving a sustainable low carbon future as well as improving energy security. The appeal scheme would make a significant contribution to this, and I give substantial weight to the contribution the proposal makes to the renewable energy benefits that includes both cutting greenhouse gas emissions and improving energy resilience and security.
92. In addition, I give significant weight to the biodiversity and environmental enhancements that would be achieved by the appeal scheme and limited weight to its economic benefits.

93. An absence of harm with regard to matters such as heritage, archaeology, highways, flood risk and living conditions are neutral factors that neither weigh in favour or against the proposal.
94. The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters, including the advice in EN-1 and the Framework regarding very special circumstances and renewable energy projects.
95. In this case, although quite finely balanced, I consider that the harm to the Green Belt and that caused to the character and appearance of the landscape and the users of the rights of way network are not clearly outweighed by the other considerations identified. Therefore, the very special circumstances needed to justify the development do not exist and the proposal would conflict with the policies in the development plan outlined above and the Framework.
96. Consequently, I conclude that the appeal should be dismissed.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Patrick Robinson of Burges Salmon

He called:

Mr Andrew Cook BA (Hons) MLD
CMLI MIEMA CEnv

Executive Director, Pegasus Group

Mr Nigel Cussen Bsc (Hons) DipTP
MRTPI

Senior Planning Director Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Mr Killian Garvey Counsel

He called:

Ms Emily Temple BSc (Hons) MSc
MRTPI

Executive Director and Founder ET
Planning

INTERESTED PARTIES:

Cllr Matt Barney

Nottinghamshire County Councillor and
Rushcliffe Borough Councillor

Mr Peter Mostyn

Local resident

Ms Amy Hunt

Local resident

Ms Helen Hamilton

Marches Planning & Environment on
behalf of East Leake Parish Council,
Gotham Parish Council and West Leake
Parish Meeting

Ms Sue Lewis

East Leake Parish Clerk

Ms Carly Tinkler CMLI FRSA MIALE

Interested Party

Cllr Chris Garbett

East Leake Parish Council

Ms J Bromell

West Leake Parish Meeting

Cllr Lesley Way

Rushcliffe Borough Council and local
resident

Cllr Carys Thomas

Rushcliffe Borough Council and local
resident

Ms Val Peacock

Local resident and business owner

Mr Thomas Griffiths

Steward of The Rushcliffe Golf Club

Ms Jade Almazan

Local resident and business owner

INQUIRY DOCUMENTS

INQ1 Opening Statement by Council

INQ2 Opening Statement by Appellant

INQ3 Statement made by Mr Peter Mostyn

INQ4 Statement on behalf of East Leake Parish Council, Gotham Parish Council
and West Leake Parish Meeting made by Ms Helen Hamilton

INQ5 Statement made by Ms Carly Tinckler

- INQ6 Statement made by Cllr Carys Thomas
- INQ7 Statement made by Mr Thomas Griffiths
- INQ8 Extract of Proof of Evidence of Mr Nigel Cussen for Appeal Ref: APP/P3040/W/23/3330045 submitted by the Council
- INQ9 Written Ministerial Statement on Solar and protecting our Food Security and Best Most Versatile (BMV) Land
- INQ10 Closing Statement by the Council
- INQ11 Closing Statement by the Appellant

CORE DOCUMENTS

Can be accessed using the following link:

[Kingston Estate Planning Inquiry - Rushcliffe Borough Council](#)

APPENDIX 22

**Appeal APP/K2420/W/21/3266505 – Hangmans Hall Farm, Twenty Acre Lane,
Sutton Cheney, Nuneaton**



Appeal Decision

Virtual Hearing Held on 20 & 22 April 2021

Unaccompanied Site Visits made on 19 April & 21 April 2021

by Cullum J A Parker BA(Hons) MA MRTPI MCMi IHBC

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 4 May 2021

Appeal Ref: APP/K2420/W/21/3266505

**Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney,
Nuneaton, CV13 0AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr David Meehan of Elgin Energy EsCo Limited against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 19/01256/FUL, dated 6 November 2019, was refused by notice dated 8 July 2020.
 - The development proposed is described as '*Construction of a solar park, to include the installation of solar photovoltaic panels to generate approximately 35 MW of electricity, with DNO and Client substations, inverters, perimeter stock fencing, access tracks and CCTV. Landscaping and other associated works.*'
-

Decision

1. The appeal is dismissed.

Applications for costs

2. At the Hearing an application for partial costs was made by the Appellant. This is the subject of a separate decision.

Preliminary Matters

3. I undertook two site visits; one before opening the Hearing and a second one during the Hearing. Prior notice was given to the main parties and this matter was raised during my opening, where no parties sought an accompanied site inspection.
4. During my site inspections I saw that site notices had been placed at various public places, including entrance points for Public Rights of Ways. I have also been provided with copies of notification letters and a newspaper notice. Whilst the Hearing was undertaken as a virtual event, I am content that the appropriate notices have been given in this instance.
5. I note that near to the appeal site lies the Ashby Canal Conservation Area. The main parties agreed at the Hearing that any impact on this designated heritage asset including its setting arising from the proposal does not constitute a reason for the refusal of permission. Nor did they suggest its dismissal on this basis. I see no reason not to concur with that position.

Main Issues

6. The main issues are:

- The effect of the proposed development on the character of the countryside;
- The effect of the proposal on the significance of nearby heritage assets, with specific regard to the Registered Battlefield 'Battle of Bosworth (Field) 1485' and, if any harm or loss to that significance, whether there is clear and convincing justification for this;
- The effect of the proposed development on buried archaeology interests.

Reasons

Character of the countryside

7. The appeal site is located broadly to the west of the Registered Battlefield 'Battle of Bosworth (Field) 1485' and to the south of Sutton Cheney. Permission is sought for the construction of a solar park on a site of approximately 62 hectares. This would consist of ground-mounted solar arrays in rows on an east-to-west alignment together with associated works. Planning permission is sought for a 30-year operational period, following which the solar park would be decommissioned and the appeal site returned to agricultural use.¹
8. Whilst accepting that the proposal would be 'adverse in nature for both landscape and visual effects' the Appellant's landscape expert concludes that this would be Minor adverse and localised and/or could be mitigated. To the contrary, the Local Planning Authority's (LPA) landscape expert concludes that the impact would be Moderate-Major adverse. In both cases, these are assessments and conclusions undertaken in accordance with GLVIA 3.
9. Whilst this can be a useful tool in determining how to assess impacts on landscape, it is clear that the LPA's reason for refusal refers to 'significant adverse impact' on the undeveloped and rural character of the countryside. In this respect, the proposal would result in a change to the character of the appeal site from roughly ten open fields used for a mixture of pastoral or arable farming to a majority of the site being covered by solar arrays, with the potential for some pastoral farming taking place around these.
10. I acknowledge that the appeal site is not visible in its entirety as one entity. Nonetheless, at the very least, users of the PROW and to a lesser extent surrounding highways, will see rows of industrial human-made solar arrays rather than the natural beauty and open character of the countryside that is currently present. I note the Appellant's point that the site could be partially screened through implementation of the submitted *Environmental Enhancement Strategy* (EES). However, this relies in part, on allowing reinforced stretches of hedges growing to a locally uncharacteristic height of around 4 metres, where the prevailing pattern is of closely clipped hedges of around 2 metres in height.

¹ As detailed in the Appellant's *Appeal Statement of Case*, pages 4-6, dated January 2021

11. Ms Ahern, for the LPA, explained at the Hearing that the Appellant's LVIA had placed too much emphasis on physical definitions. Instead, she suggested it is important to take into account the natural, cultural and perceptual elements of the landscape and how this results in an experience of ruralness associated with people and history. This approach appears to be both proportionate and logical given that how humans interact with the natural environment extends to more than just visual senses.
12. In the LPA's view, the proposal would result in a large-scale development that would adversely affect its rural and tranquil nature. It would also intrude on perceptions of field patterns, the rural setting of the nearby villages, and that the site directly links into and contributes to the strong historical character of the area.
13. Mr Cook, for the Appellant, directed the Hearing to Paragraph 170)b) of the Framework, which requires that planning decision should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. In this respect, he put forward that the proposal would be assimilated into the landscape, and that the proposal takes into account the receptor site and how the works fits into this.
14. However, the fact remains that the proposal would introduce numerous rows of solar arrays, deer fencing, and other associated structures that would be at odds with the prevailing rural character of the area – not only in simple visual terms, but also in terms of how the site links into the natural, cultural and perceptual elements of the wider area. This is especially acute in this instance given the proximity of the Registered Battlefield and how the landscape and character of the area has both changed but has also retained features of interest that relate to all three elements Ms Ahern identifies.
15. I note the points made by the Appellant that the site cannot be easily seen in its entirety, and that the EES, which can be secured by means of a planning condition, provides for various enhancements – such as tree and hedge planting. I also note that the EES suggests the provision of a 'heritage trail route' by providing a short stretch of permissive footpath near to the Ashby Canal, utilising a diverted existing PROW T65/2 that would dogleg around the site, and diverting existing PROW T68/3 for a short part to potentially provide an educational facility in the form of a circle of logs and opening up some views towards the Registered Battlefield. There is also the opportunity to provide new information boards and public art as set out in the EES. These are commendable activities which, nonetheless, could potentially take place regardless of whether permission was forthcoming or not.
16. I therefore conclude that the proposal would have a significant adverse effect on the character of the countryside and that the mitigation measures proposed are insufficient to detract from or mitigate this. Accordingly, it would be contrary to Policies DM2, DM4, DM11, and DM12 of the *Sites Allocation and Development Management Policies Development Plan Document (2016)* SADMPD, which amongst other aims seeks to ensure development in the countryside will be sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. It would also conflict with Paragraph 170 of the Framework as indicated above.

Impact on the significance of the Battle of Bosworth (Field) 1485

17. Full details of the historical record are presented in the evidence of the main parties, which I will not rehearse here. However a brief synopsis is useful. The Battle of Bosworth took place on 22 August 1485. Whilst taking place over a few hours and directly concerning only a few thousand men, its importance in English history cannot be understated.
18. It is generally regarded to be the key event signifying the end of the War of the Roses, seeing the dynastic change between the House of York part of the Plantagenet family with the death of Richard III, to the start of the Tudor dynasty under Henry VII, and the era from which history moved from the medieval to the early modern period. The Battle itself is notable for other reasons too, such as the last battle in which an English King died on the battlefield and the first extensive use of artillery in England in such a manner.
19. In terms of significance, as suggested by the Appellant's heritage expert², the significance of the battle site largely lies within the bounds of the Registered Battlefield; as extended following the reinterpretation of the landscape. Nevertheless the appeal site makes a modest contribution to how the Battlefield is experienced and the events of 1485. Historic England identify four key elements including Topographical integrity, which indicates that whilst agricultural land management has changed since the battle, the battlefield remains largely underdeveloped and permits the site of encampments and the course of the battle to be appreciated. It is possible to see this within the wider landscape, which the appeal site forms part of, where there is generally an absence of large-scale developments, structures or buildings of a man-made nature outside of existing settlements.
20. It is important to note that the appeal site itself lies outside of the Registered Battlefield, which was mostly recently extended in 2013 following further study of both the landscape archaeological and documentary evidence. Nonetheless, the Framework indicates that the setting of a heritage asset are the surroundings in which the heritage asset is experienced. This is a logical starting point in assessing any potential impact arising from the proposal.
21. Both main parties agree in their respective written submissions that the proposal would result in less than substantial harm to the significance of the Registered Battlefield 'Battle Bosworth (Field) 1485'. However, they disagree on the magnitude of that harm on a scale within the less than substantial harm threshold. The Appellant considers that it would be to the lower end of any such spectrum whereas the LPA considers it would be to the higher end. Beyond the reference within the national Planning Practice Guidance, which indicates that the within each category of harm, 'the extent of harm may vary and should be clearly articulated'³, there is no explicit spectrum.
22. To articulate here, the harm in this case would principally be the impact on views from and to the Battlefield⁴, the erosion of shared landscape characteristics between the appeal site and the Battlefield, and the loss in how an observer would experience the events of August 1485 through tracing the most recent and constantly developing interpretation of the events of the battle

² See G Stoten Heritage Appeal Statement, Page 23, paragraph 6.51

³ Paragraph: 018 Reference ID: 18a-018-20190723 Revision date: 23 07 2019

⁴ As articulated by G Stoten Heritage Appeal Statement, page 25 onwards

through the landscape. The latter two aspects even in light of how the landscape has changed since 1485 through various changes in the rural landscape including with agricultural farming practices and the insertion of the Ashby Canal, for example.

23. As such, and as a matter of planning judgement, I concur with the views of the main parties that the proposal would result in at least less than substantial harm to the significance of the Registered Battlefield through adverse changes in its setting arising from the proposal. This is a view that concurs with those of the Government adviser on the historic environment, Historic England, who consider that the proposal site lies within a highly sensitive location within the setting of the Battlefield which will harm its significance.
24. Considerable importance and weight should be given to the need to conserve such assets in a manner appropriate to their significance. The Framework indicates at Paragraph 196, where less than substantial harm is identified this should be weighed against the public benefits of the proposal. This is echoed in the pre-Framework publication *Overarching National Policy Statement for Energy (EN-1) July 2011*⁵ at section 5.8 and in particular paragraphs 5.8.12 to 22.
25. In this case, the Appellant considered the benefits⁶ to be (summarised here):
- (i) The generation of renewable energy and the contribution to a low carbon economy; with the proposal generating electricity to power around 10'500 homes and contributing to meeting the UK's commitment to reduce greenhouse gas emissions by 100% or net zero compared to 1990s levels by 2050, and be in accordance with Paragraph 148 of the Framework which sets out that the planning system should support the transition to a low carbon future in a changing climate. It would also be for a time limited period of 30 years;
 - (ii) The provision of a heritage trail and education facility which would enhance public access by including permissive paths to form a circular walk linking with other existing Public Rights of Way and the provision of interpretation boards;
 - (iii) Landscape enhancements which are considered to create a more coherent landscape framework across the appeal site which would enhance landscape character;
 - (iv) Ecological enhancements which include additional planting, re-profiling of existing ponds, and the provision of bat and bird boxes; and,
 - (v) Economic benefits including construction jobs and a capital investment of around £35 million.
26. Taken together, I do not find that these public benefits outweigh the less than substantial harm to the significance of the designated heritage asset through changes to its setting. These changes would deprive future generations of

⁵ As indicated within the document itself, EN-1 is likely to be a material consideration, see paragraph 1.2.1.

⁶ Detailed in pages 29 to 32, Planning Appeal Statement of J Walker, January 2021, and confirmed orally at the Hearing by P Burrell.

being able to understand and experience the events leading to and of the battle itself, and appreciating the rural character of the Battlefield and the wider context. Even taking into account the time limited nature of the proposal – for around 30 years after which it would be removed – this would be an extensive period of time where people will be deprived of features within its setting that contribute to its significance.

27. Accordingly, the proposal would be contrary to Policies DM2, DM4, DM11, DM12 of the SADMPD, which, amongst other aims, seek to ensure that the benefits of the proposal will outweigh any harm caused and that proposals that adversely affect the Bosworth Battlefield or its setting should be exceptional and such proposal will be assessed against their public benefits. It would also be contrary to the Policies identified in the Framework and the paragraphs within EN-1; both of which are material considerations.

Potential impact on buried archaeological remains

28. Paragraph 189 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. In this case a desk-based assessment was submitted by the Appellant. At the Hearing the main parties discussed various ways in which a field evaluation can take place; including geophysical/LiDAR surveying and a metal detector survey.
29. Leicestershire County Council (LCC), acting in its capacity as professional advisers to the LPA on archaeology, reaffirmed its position at the Hearing that due to the lack of trial trenching at the appeal site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, it considers that the decision-maker is then unable to undertake the balancing exercise set out at Paragraph 197 of the Framework.
30. If further field evaluation work was undertaken, such as trial trenching, the hypothesis of LCC is that this might further reveal the precise route of the 'Roman Mancetter Road', and such survey work might demonstrate the existence of a road on the same route during the late-medieval period at around the time of the Battle of Bosworth. If that were the case, then that road might have reasonably been used by Richard III and the Royalist host to travel to the camps from the Leicester direction in the days before the battle.
31. To the contrary, the Appellant points to the study by Foard and Curry in their book *Bosworth 1485: A battlefield Rediscovered* (2013), who concluded that this route was unlikely to be extant at the time of the battle. Instead, it is suggested that a route to the north of the appeal site known as 'Leicester Lane' was the most probable route.⁷ However, there is little further evidence before me or that I have been directed to, such as metal detecting or trial trenching surveys, that corroborate this particular theory in depth.
32. I have also been directed to the position generally accepted between the main parties and Historic England that there is evidence of medieval landscape in the form of ridge and furrow within the appeal site. The Appellant contends that the presence of this feature within part of the landscape infers that it is very unlikely the Roman Road or other roadway following its line was still extant at the time of the Battle. At the Hearing, LCC further developed the hypothesis

⁷ See G Stoten Heritage Appeal Statement, page 14, Plate 2, showing Figure 4.14 from Foard and Curry (2013)

- that the geophysical surveys showed the potential line of the roman road in an arc across the northern part of the site which includes the area of ridge and furrow. This interpretation of the survey results was disputed by the Appellant.
33. The metal detector survey report conclusion found that 'a number of finds of Roman date were made, including some of a character unusual for a rural site. The distribution of these finds has some similarity with the line of the Mancetter Road which is postulated to have passed through this area'. The same survey found that 'no finds that could be clearly related to the Battle of Bosworth...were made'⁸.
 34. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of ridge and furrow medieval farming practices; yet it is unclear whether there is any discernible evidence to the route of the Roman Road passing through the site and even less clear whether such road was present at the time of the Battle of Bosworth. At the same time, I heard that geophysical surveys can provide limited information in which to ascertain such details. Conversely, there is metal detecting surveying which found a number of finds from the Roman period in roughly the location of where the Roman Mancetter Road may have been located (in the north east edge of the site).
 35. My role is to consider what is reasonable and proportionate based upon the available evidence before me. As identified elsewhere, the Battle of Bosworth was a dynasty changing epochal event in English and British history. Even today, as will future generations, we are still learning about the events that took place in late August 1485. I have no doubt as to the professional expertise of the Appellant's heritage witness. Nevertheless, despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.
 36. An understanding of the significance of any heritage asset is the starting point for determining any mitigation, and therefore I am unable to assess whether the mitigation proposed would be appropriate. Similarly, I cannot be certain of the potential harm that may result to the archaeological interest from the appeal proposal, for example through the siting of solar arrays and the groundworks required.
 37. The heritage asset might have archaeological interest which could be unlocked through further field evaluation which would enable a greater understanding of any remains and their wider context. On this basis, and given that the significance of the potential remains could be of local and potentially regional importance (or greater if associated with the adjacent Registered Battlefield), I find that the Council's approach is proportionate to the potential asset's importance and no more than is sufficient to understand the potential impact of the proposal. This approach is consistent with Paragraph 189 of the Framework which sets out that developers should submit an appropriate desk-based assessment and where necessary a field evaluation.
 38. Furthermore, I do not consider that the imposition of a planning condition would provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, given the affected land immediately adjoins

⁸ G Stoten Heritage Appeal Statement, Appendix 4, Metal Detecting Survey Report 2021 (Draft 4), University of Leicester Archaeological services, page 22

land that forms part of the Registered Battlefield. I acknowledge the Appellant's example of an appeal where an Inspector considered a suitably worded planning condition in order to address incomplete archaeology information (ref 3243720). I do not have the full details of that scheme before me. Nonetheless, that was on a different appeal site in Trafford, in a different part of the country and with no relationship with the Registered Battlefield at Bosworth.

39. I have carefully considered the archaeological matters arising in this instance and find that whilst the evidence is not compelling that there was a road present on the appeal site at the time of the Battle, the evidence is incomplete. I therefore conclude that the appeal proposal fails to provide sufficient evidence regarding potential archaeological remains or features of interest, such that I cannot be assured that material harm to archaeological remains would not result.
40. Accordingly, the appeal would fail to accord with Policy DM11, DM12 and DM13 of the SADMPD, which, amongst other aims, seeks to ensure that all proposals which have the potential to affect a heritage asset will be required to demonstrate an understanding of the significance of the heritage asset, and the impact of the proposal on the asset, and that particular regard will be had to maintaining archaeological remains of the Battlefield. Those Policies requires an approach to the conservation of archaeological remains that is consistent with the Guidance, Framework, and other material considerations such as EN-1. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework

Planning Balance and Conclusion

41. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, requires that if regard is to be had to the development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
42. I have found that the proposed development would not accord with the adopted development plan Policies DM2, DM4, DM11, DM12 and DM13, nor when the SADMPD is considered as a whole. There would also be conflict with Policies of the Framework and the *Overarching National Policy Statement for Energy (EN-1) July 2011*, as aforesaid.
43. Material considerations put forward by the Appellant include a number of benefits in the form of; renewable energy at a time when local and national governments have declared a 'climate emergency' and are seeking to move to a low carbon economy, the provision and/or diversion of permissive and Rights of Way footpaths, landscape and ecological enhancements, and economic benefits. These benefits taken together are afforded significant weight. However, these material considerations are not sufficient to outweigh the conflict with the development plan and the harm identified in the three main issues.
44. Whilst I am not entirely convinced that such a balance is required in this case, the Appellant has suggested that 'any adverse impacts of the proposed development would be significantly and demonstrably outweighed by the benefits, were it to be found that the proposed development did not accord

with the development plan as a whole⁹. This echoes the wording of Paragraph 11 of the Framework and Policy DM1 of the SADMPD.

45. For clarity, I find that the adverse impacts of allowing the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework and/or development plan when taken as a whole.

46. For the reasons given above, I conclude that the appeal should be dismissed.

Cullum J A Parker

INSPECTOR

⁹ Planning Appeal Statement (author J Walker), Page 34, Para. 9.36 (presented by P Burrell)

APPEARANCES

FOR THE APPELLANT:

Paul Burrell, BSc(Hons), DipUP, MRTPI	Executive Director	Pegasus Group - Planning
Andrew Cook, BA(Hons), MLD, CMLI, MIEMA, CENV	Executive Director	Pegasus Group – Environment
Gail Stoten, BA(Hons), MCIfA, FSA	Executive Director	Pegasus Group – Heritage

FOR THE LOCAL PLANNING AUTHORITY:

Rhiannon Hill, BSc(Hons) MA MRTPI	Team Leader, DM	HBBC
Paul Grundy, BSc(Hons) MA, PgCert	Senior Planning Officer (Conservation and GIS)	HBBC
Richard Clark BA(Hons) MA	Team Manager (Heritage)	Leicestershire CC
Sophie Clarke BA(Hons)	Senior Planning Archaeologist	Leicestershire CC
Kate Ahern BSc MSc CMLI	Director of Landscape Planning	Land Use Consultants Limited

DOCUMENTS SUBMITTED AT THE HEARING

1. Site Location and Land Rights Plan, Drawing Number P18-0089_31
Dated 24/04/2021
2. List of suggested conditions (amended) 21.04.2021
3. Template of a Permissive Path Agreement
4. Rebuttal Note Heritage

END

APPENDIX 23

**Appeal APP/DO840/W/22/3293079 – Land at Tregorrick Farm, Tregorrick, St
Austell, Cornwall**



Appeal Decision

Site visit made on 2 January 2023

by Neil Pope BA(HONS) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 January 2023

Appeal Ref: APP/D0840/W/22/3293079

Land at Tregorrick Farm, Tregorrick, St Austell, Cornwall, PL26 7AG.

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr M Hilditch of E H Energy Ltd against the decision of Cornwall Council (the LPA).
 - The application ref. PA20/11504, dated 23/12/20, was refused by notice dated 7/9/21.
 - The development proposed is a ground mounted solar PV farm with battery storage and associated infrastructure.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Amended plans, including alterations to the proposed landscaping layout, were considered by the LPA when it determined the application. I have taken these amended plans into account in determining the appeal.
3. In submitting the appeal, and in attempt to overcome the LPA's concerns regarding the impact upon archaeological interests, the appellant has submitted a further amended layout plan¹. In essence, this plan shows the proposed compound, including the battery storage element and part of the proposed access track, sited further south² to that shown on the layout plan to which the LPA's decision notice relates. Amongst other things, the amended site layout plan also shows a reduction in the number of solar modules³.
4. The LPA has been able to consider some elements of the proposed amended site layout and, on its own, the reduction in the number of proposed solar modules⁴ would amount to a minor amendment that would be unlikely to prejudice the interests of any interested party. However, interested parties to this appeal, including the Parish Council and local residents, have not been afforded an opportunity of commenting upon the proposed repositioning of the compound and access track. This is not an insignificant change to the layout of the proposed development. In all likelihood, this is a matter upon which some interested parties would expect/wish to be consulted upon.
5. I am mindful of the Wheatcroft Principles⁵ and guidance issued by the Planning Inspectorate⁶. If an appellant believes that amending its proposals would

¹ The latest version is drawing ref. SHF.378.002.PLD.002 D.

² Under plan ref. SHF.378.002.PLD.002.D, the proposed compound would be about 20 metres further south.

³ Approximately 322 fewer modules, equating to about a 0.15 MW reduction in capacity.

⁴ Less than 3% of the total number of modules in the layout plan to which the LPA's decision notice relates.

⁵ *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37].

⁶ Annex M of the 'Procedural Guide: Planning appeals – England (updated 21 December 2022)'.

overcome the LPA's reasons for refusal it should normally make a fresh application. The appeal process should not be used to evolve a scheme.

6. If I was to determine the appeal on the basis of the details shown on the amended layout plans that were submitted after the appeal was lodged it would be tantamount to 'sidestepping' the rights of interested parties. To avoid such procedural unfairness, I have determined the appeal on the basis of the plans that were considered by the LPA when it determined the application.
7. The appeal site lies outside, but forms part of the extensive setting to the Cornwall Area of Outstanding Natural Beauty (AONB)⁷.

Main Issue

8. The main issue is whether any adverse effects of the proposed development, with particular regard to the likely impact upon: the character and appearance of the area, including the setting of the AONB; the agricultural industry and the need to protect the best and most versatile (BMV) agricultural land; and archaeological interests, would outweigh the benefits of the proposal, including the production of energy from a renewable resource.

Policy Context

9. The development plan includes the Cornwall Local Plan Strategic Policies 2010-2030 (LP). My attention has been drawn to numerous policies. The most important ones to the determination of this appeal are LP policies 14 (renewable and low carbon energy), 21 (best use of land), 23 (natural environment) and 24 (historic environment).
10. The LPA has produced its Climate Emergency Development Plan Document (DPD). Hearings were held in June 2022, as part of the Examination into the soundness of this DPD. Consultation in respect of the proposed modifications to the DPD has taken place and the Examiner's 'Fact Check' Report has recently been issued to the LPA. This document has reached a very advanced stage and can be given considerable weight. This includes policy RE1 (proposals for renewable and low carbon energy).
11. My attention has also been drawn to the Cornwall Renewable Energy Planning Advice Supplementary Planning Document (SPD), published by the LPA in 2016. Amongst other things, this incorporates 'An Assessment of the Landscape Sensitivity to On Shore Wind Energy and Large Scale Photovoltaic Development' (ALS) that was published in 2011. This Assessment was updated as part of the evidence base to the above noted DPD. I have determined the appeal on the basis of the most up-to-date version of the ALS.
12. I have also taken into account the provisions of the National Planning Policy Framework (the Framework). Amongst other things, this aims to increase the use and supply of renewable energy whilst ensuring that adverse impacts are addressed satisfactorily. The Framework also provides that development within the setting of an AONB should be sensitively located and designed to avoid or minimise adverse impacts on such designated areas.

⁷ I am mindful of the duty under section 85(1) of the Countryside and Rights of Way Act 2000.

13. The Written Ministerial Statements relating to renewable energy and solar development dated 24 April 2013, and 25 March 2015, have also been taken into account.
14. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. The target for carbon emissions was initially set at 80% of the 1990 baseline figure by 2050. This was amended to 100% 'net zero' by section 2 of the Climate Change Act 2008 (2050 Target Amendment) Order SI 1056 in July 2019. This constitutes a legally binding commitment to end the UK's contribution to climate change.
15. The UK Solar PV Strategy sets out guiding principles for the deployment of solar energy development in the UK. Amongst other things, this recognises that solar PV assists in delivering carbon reductions, energy security and affordability for customers. It acknowledges that large scale developments can have a negative impact on the rural environment and on local communities. This Strategy was published a number of years ago and has moderate weight.
16. In determining the appeal, I have also taken into account relevant provisions of the Cornwall Area of Outstanding Natural Beauty Management Plan 2022-2027 (MP). These include policies PD-P11 (development within the setting of the AONB) and PD-P14 (renewable energy). I note from the MP that the appeal site is adjacent to the South Coast Central part of the AONB. The special qualities of this part of the AONB are described as including, an extremely tranquil and well-managed farmed landscape with a globally renowned, stunning coastline that extends east across Mevagissey Bay and on to St. Austell Bay. The MP can be given moderate weight.

Reasons

Character and Appearance

17. This 9.3 ha appeal site includes four regular shaped fields with hedgerow boundaries. These fields form part of the upper section of a steeply sloping valley side. Vehicular access is from Tregorrick Road. This also affords access to an overspill car park⁸ for the adjacent St. Austell Rugby Football Club.
18. The appeal site is approximately 0.7 km from the A390, which runs along the southern edge of St. Austell. The village of Tregorrick is about 0.35 km to the west and Menagwins Sewage Treatment Works (STW) is 0.9 km to the south west. The boundary of the AONB is about 0.25 km to the south of the site.
19. As I saw during my site visit, the appeal site forms part of the open countryside along the southern fringes of St. Austell. I walked many sections of the network of public rights of way that bisect the surrounding landscape, including sections of paths within the AONB. Amongst other things, I noted that the area around the appeal site is popular for outdoor recreational activities/pursuits. These include walking, cycling, horse riding and golf⁹.
20. During my visit, I also noted the elevated and prominent position of the appeal site within the local landscape. This was especially apparent when viewed from the south and west. Its green, unspoilt, open qualities form an integral part of the attractive rural surrounds to St. Austell. Notwithstanding some lighting

⁸ This car park was in use during my visit, with children playing on an adjacent sports pitch.

⁹ Porthpean golf course lies to the east and west of the appeal site and St. Austell golf course lies further west.

columns at the rugby club and a nearby telecommunications mast which appear on the skyline above the site, the above noted attributes of the appeal site provide a pleasing contrast to the built environment of the town and to the mining landscape that exists to the north of St. Austell. The site makes an important contribution to the character and appearance of the local area.

21. The appeal site lies within the Gerrans, Veryan and Mevagissey Bays Landscape Character Type (LCT), as defined within the Cornwall and Isles of Scilly Landscape Character Assessment 2007. This LCT includes a high farmland plateau that is intersected by stream valleys that give rise to an undulating landform. The undulating high plateau of a mixture of arable and pastoral farmland is one of its key characteristics. The visual sensitivities of this LCT include a very peaceful, rural landscape which has a relatively unspoilt character and few obvious build structures in the countryside. Its attractive balance of arable and pasture land, and even woodland distribution is noted as giving this LCT a special quality.
22. The above noted ALS identifies this LCT, overall, as being of medium sensitivity to solar PV developments between 5-10 ha in size. Strategic landscape guidance, set out in the ALS for this LCT, aims to avoid locating solar developments on the steep upper slopes of the stream valleys where they would be particularly visible.
23. The proposed development would result in much of the appeal site being covered with arrays of photovoltaic panels. The maximum height of the solar panels would be 2.75 metres from ground level. The proposed substation, transformer/invertor units, battery stores, CCTV poles and compound and perimeter fencing would, in the main, also be of limited heights. In addition, some new landscape planting is proposed, including a new Cornish hedge.
24. Overall, the development would not be unduly high and the new planting would help to strengthen the pattern of fields/hedgerows within the local landscape. Nevertheless, the proposal would markedly change both the character of the site and the south west facing slope of the hillside of which it forms part.
25. The large number of proposed arrays and the ancillary works would considerably erode the green, unspoilt, open qualities of the appeal site. This sizeable and overtly man-made addition to the local landscape, with its regimented lines of solar panels, utilitarian substation, units and stores, would have an urban/industrial character. In effect, the proposed development would denude the naturalistic attributes and countryside character of the site and contrast awkwardly with the unspoilt character of the fields on the lower slopes of the valley side.
26. The proposal would upset the balance of arable and pasture land within this part of the LCT and seriously detract from the pleasing contribution the site makes to the countryside to the south of St. Austell. Whilst this change in character would be limited to a period of 30 years and would be largely reversible, the harmful effects that I have identified would endure for a significant period of time.
27. The proposed development would be seen from numerous parts of the public realm, including some land within the AONB. Seeing a development does not in itself amount to a harmful impact and there is no planning policy preclusion on solar farms within the countryside. Some landscape and visual harm is an

almost inevitable consequence of accommodating this type of development within rural areas.

28. In this instance, due to the elevated and prominent nature of the appeal site, the proposed development would be very conspicuous within the local landscape. In particular, when seen from sections of the popular public rights of way to the south and west¹⁰, as well as from parts of the St. Austell Golf Club¹¹ on the western side of the B3271, the rows of solar panels would appear as a striking and very discordant addition to this part of the countryside.
29. The proposed arrays would dominate the upper south/south west facing slope of the hillside and would have a serious adverse impact upon the appearance and visual amenities of the area. In all likelihood, most high sensitivity receptors would deem the impact to be major, adverse with lesser harm experienced by those using St. Austell golf course. Given the topography of the appeal site, the proposed landscape planting would have a negligible effect in mitigating the visual harm that I have identified.
30. In some instances, and when viewed from a distance, solar arrays can be akin in appearance to water within a landscape and may be considered less intrusive within the countryside¹². However, that is very unlikely to be the case in the appeal before me. Here, the proposed arrays would 'cling' to the steep upper slope of the valley side and would appear as a very conspicuous and incongruous addition in the countryside to the south of St. Austell.
31. The harm that I have identified above to the character and appearance of the area weighs very heavily against granting planning permission.
32. The proposed development would be seen from some parts of the South Coast Central section of the AONB and could not reasonably be described as very small scale as provided for in LP policy 14(4). Whilst it would be a very detracting addition to the character and visual qualities of the local landscape there is nothing to demonstrate that it would harm the tranquillity¹³ of this section of the AONB, or an appreciation of the coastline. I note that the Cornwall AONB Unit advised the LPA that the effects would be such so as not to require comment "*in the context of the primary purpose of the designation.*"
33. Nevertheless, when seen by high sensitivity receptors within the AONB, the proposal would, in effect, bring urban/industrial development very much closer to a section of this nationally designated landscape. In so doing, it would erode the quality of views from the northern edge of the AONB and, in all likelihood, detract from the enjoyment/experience of some public rights of way in this section of this nationally important landscape. There would be some limited harm to the setting of the South Coast Central section of the AONB.
34. The proposed development would conflict with the provisions of LP policy 23, the objectives of the LPA's SPD (including the strategic landscape guidance) and the thrust of MP policies PD-P11 and PD-P14.

¹⁰ From these parts of the public realm the proposal would be seen by 'high sensitivity' visual receptors. This includes the section of footpath that runs between Managwins Farm and Roseweek. For whatever reason, this was not selected as a viewpoint within the appellant's Landscape and Visual Impact Assessment.

¹¹ The main purpose of those using the golf course would be to play golf, but many users would appreciate the pleasing attributes of the landscape. Such people could reasonably be termed 'moderate sensitivity' receptors.

¹² During my visit, I noted the arrays along the valley floor adjacent to the STW.

¹³ Some short-term erosion of tranquillity could be expected in part of the AONB during the construction phase.

Agriculture/BMV

35. The appellant's Agricultural Land Classification Report identifies the vast majority of the appeal site (94.8%) as grade 3b and 4 agricultural land. The remainder of the site 0.48 ha (5.2%), which is the area nearest to the access track, has been identified as grade 3a agricultural land. This smaller part of the site comprises BMV, as provided for within the glossary to the Framework.
36. To ensure the best use of land, national and local planning policies, in essence, seek to avoid development on BMV. In particular, account needs to be taken of the economic and other benefits (including food production) of BMV. In this regard, I understand that part, or all, of the appeal site has previously been used to grow crops/potatoes.
37. The proposed development would only involve the use of a very small quantity of BMV¹⁴. Whilst the cumulative impact of the incremental use of BMV for development unrelated to agriculture could be significant, the appellant has informed me that sheep would be allowed to graze the land after the proposed development was completed¹⁵. Agriculture, albeit in a much less intensive manner, would therefore continue in association with this proposed scheme for renewable energy. As already noted above, the development would also be reversible and for a limited period of time. If deemed appropriate, more intensive agricultural use could resume upon cessation of the development.
38. There is no cogent evidence before me to demonstrate that the proposal would entail the harmful loss of BMV or result in any significant adverse impact upon the agricultural industry or food production. There would be no conflict with the provisions of LP policy 21. The appellant has also informed me that, having reviewed the LPA's brownfield land register, there are no suitably sized brownfield/previously-developed sites available or viable¹⁶ as an alternative to the appeal site.

Archaeology

39. The LPA's Archaeologist has advised that the proposed development lies within an area characterised¹⁷ as Medieval Farmland with a probability for the survival of buried archaeological remains. There are also a number of known buried heritage assets located nearby. These include a Bronze Age barrow, a Prehistoric enclosure, Medieval ridge-and-furrow and post-Medieval mining remains. This suggests that the appeal site could contain important archaeological interests that could be harmed by the proposed development.
40. The application was accompanied by a number of supporting documents. This included a Historic Environment Assessment. However, there was no geophysical survey results necessary to ascertain the likely impact upon archaeology. I concur with the LPA's Archaeologist that, given the site context, it would have been inappropriate to require the submission of a geophysical survey as a condition of any approval.
41. The appeal was accompanied by a report that sets out the findings of a geophysical survey and a separate Written Scheme of Investigation for a

¹⁴ During my visit, I noted that some agricultural machinery was being stored on part of the BMV.

¹⁵ I have witnessed sheep grazing on land around solar arrays elsewhere within South West England.

¹⁶ Including having a suitable point of access/connection to the grid.

¹⁷ Cornwall & Isles of Scilly Historic Environment Record.

Programme of Archaeological Work. Amongst other things, the survey identifies archaeological interest/activity within the site. This includes a combination of former field systems and three discontinuous sub-circular features, possibly representing later Prehistoric ring ditches or stock enclosures. At a late stage in the appeal, the appellant submitted a separate report (dated November 2022) detailing the results of an archaeological trench evaluation within the site¹⁸. This confirms the presence of important archaeological interests¹⁹ in part of the appeal site.

42. As already noted, the receipt of this latest archaeological report prompted the appellant to submit an amended site layout plan. I have set out above why I am unable to take this into account. On the basis of the plans to which the LPA's decision notice relates, the proposed compound and access track would be likely to result in harmful disturbance to important archaeology. This would amount to moderate harm. The Framework requires a balanced judgement to be undertaken and to weigh this harm against the benefits of the proposal.

Benefits

43. The proposed development would have a generating capacity of up to 6MW with battery storage facility. It is intended that 1.4MW would be supplied directly to Menagwins Sewage Treatment Works (STW) by a dedicated private wire connection²⁰. On behalf of the appellant, it has been calculated that the remainder (4.6MW) would be sufficient to generate electricity for about 1,600 homes and could save approximately 2,400 tonnes of CO₂. I have also been informed that some of the electricity generated could be supplied to the rugby club. If this were to occur, there would be a direct community benefit.
44. The proposal would allow South West Water Limited who operate the STW to reduce its carbon emissions and, at the same time, reduce the pressure on the local electricity system. I understand that local electricity substations are at or over capacity and that reinforcement works are required to the local grid network to avoid stress and to accommodate the likely increase in pressure with future planned growth in/around St. Austell area. This includes electric vehicle charging points. The STW is a critical piece of local infrastructure and I note the support for the appeal scheme from the water company.
45. The proposed development would increase energy generation from a renewable source, as well as increasing local capacity. The supply of electricity to the STW would remove a significant local user of electricity from the grid and, in so doing, create 'headroom' for growth elsewhere within this part of Cornwall. The proposal would assist in helping to meet the UK target of net zero carbon emissions by 2050 and the reduction of carbon emissions by 78% of 1990 levels by 2035. It would also help increase the security of supply. I attach considerable weight to these benefits.
46. The development would result in ecological benefits, such as enhanced wildlife corridors/habitat connectivity, the planting of species rich grasses and wildflowers. There would be an expected 10% biodiversity net gain. A biodiversity management plan would also be formulated for the site, some new

¹⁸ Amongst other things, this found archaeological features within eight of the twelve trenches that were dug.

¹⁹ There is no indication that these remains amount to anything other than non-designated heritage assets.

²⁰ I have been informed that this grid connection was secured in July 2020 and was designed specifically for the operators of the sewage treatment works.

hedgerow and meadow planting undertaken and the provision of bird and bat boxes. I afford such ecological benefits moderate weight.

47. During the construction phase, there would be benefits to local economy with the likelihood of some construction workers using local accommodation, shops, restaurants etc... There would also be the potential to source local materials where possible. I attach limited weight to these economic benefits.
48. The development could also result in some educational benefits. This could include school and college visits being undertaken, so as to better understand how a solar farm operates and its role in helping to address climate change and support biodiversity. I afford such benefits some limited weight.

Other Matters

49. The appeal site lies within the extended settings of a number of listed buildings²¹. The LPA has informed me that the proposed development would not affect the setting of any listed building. I concur with the finding in the appellant's Historic Environment Assessment that the proposal would not affect the significance of any designated heritage asset. There is nothing of substance to refute this finding. The proposal would preserve the settings of designated heritage assets that can be found within the local landscape.
50. The application was supported by the LPA's officers. However I note that a finely balanced recommendation was made. I also note the findings of some other Inspectors in appeal decisions for solar farms elsewhere. Each case must be determined on its own merits and no two sites are exactly the same. The topography of the site in the appeal before me and its landscape context are very different to the other cases that have been drawn to my attention. These other decisions are not on all fours with the case before me and do not set a precedent that I am bound to follow.

Conclusion

51. I do not set aside lightly the benefits of the proposal, especially at a time when there is added pressure on the security of energy supplies. The benefits would be sufficient to outweigh the harm to archaeological interests that I have identified. As a consequence, there would be no conflict with the provisions of the Framework that are aimed at conserving the historic environment or LP policy 24. However, national and local planning policies and guidance also require careful consideration of the landscape and visual impacts of solar farms within the countryside. Even under current circumstances, increasing energy supplies from renewable sources does not override all other considerations.
52. In this instance, the adverse effects of the proposed development upon the character and appearance of the area, including the setting of the AONB would, on balance, outweigh the benefits of the proposal. The proposed development would conflict with the provisions of LP policy 14, DPD policy RE1 and the provisions of the Framework when read as a whole.
53. Given all of the above, I conclude that appeal should not succeed.

Neil Pope
Inspector

²¹ The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

APPENDIX 24

**Appeal APP/J1860/W/23/3325112 – Birchall Green Farm, Sinton Green,
Hallow**



Appeal Decision

Hearing held on 29 and 30 November 2023

Site visit made on 1 December 2023

by Tom Bristow BA MSc MRTPI AssocRICS

an Inspector appointed by the Secretary of State

Decision date: 21 March 2024

Appeal Ref: APP/J1860/W/23/3325112

Birchall Green Farm, Sinton Green, Hallow WR2 6NT

- The appeal is made under section 78 of the Town and Country Planning Act 1990 as amended against a refusal to grant planning permission.
 - The appeal is made by Tyler Hill Solar Ltd. against the decision of Malvern Hills District Council ('MHDC').
 - The application ref. 21/01846/FUL, dated 15 September 2021, was refused by notice dated 25 January 2023.
 - The development proposed is described on the application form as 'development of a solar farm with ancillary infrastructure, security fence, access, landscaping and continued agriculture, to generate power to feed into the local distribution network.'
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. Only an applicant is entitled to appeal. The appellant is, however, the same corporate entity as made the application. Notwithstanding the plans referenced in the statement of common ground between the main parties, the appellant advanced revised plans at the hearing relating to the proposed southern access.¹ I did not reach a view at the hearing as to whether those revised plans should be accepted.²
3. I will return to those plans as necessary, albeit they are not significant in determining the appeal, to the description of development above, and also to a screening request for a scheme at Fitcher Brook in relation to the Planning (Environmental Impact Assessment) Regulations 2017 as amended (the 'EIA Regulations'). The proposal before me was screened to the effect that an Environmental Statement was not required.

Statutory and policy context

4. Statute requires that planning proposals are determined in accordance with the development plan unless material considerations indicate otherwise.³ Here the development plan includes policies of the South Worcestershire Development Plan (adopted 25 February 2016, the 'SWDP'). The development plan must be read as a whole; different elements pull in different directions.

¹ Hearing documents 7, 8 and 9.

² With reference to *Bernard Wheatcroft Ltd. v Secretary of State for the Environment and Harborough District Council* [1982] JPL 37, and *Holborn Studios Ltd. v The London Borough of Hackney* [2017] EWHC 2823.

³ Section 38(6) of the Planning and Compulsory Purchase Act 2004 as amended.

5. Paragraph 225 of the National Planning Policy Framework (20 December 2023, the 'NPPF') sets out how existing policies should not be considered 'out-of-date' simply because they were adopted prior to its publication. Their degree of consistency with the NPPF is, instead, relevant. Whilst an earlier version of the NPPF was extant at the time of the hearing, I have taken account of the main parties' comments in respect of the latest iteration.
6. I have had regard to various other material considerations in addition to the NPPF, including the South Worcestershire Renewable and Low Carbon Energy Supplementary Planning Document (adopted July 2018, the 'SPD'), the Planning Practice Guidance ('PPG'), and the emerging SWDP review (submitted for examination on 27 September 2023, the 'SWDPR'). On account of its stage of preparation the main parties agree that only 'limited weight' may, at most, be accorded to the SWDPR.
7. Two grade II listed buildings, Boatley Cottage and Lovely Cottage, are located nearby (the 'listed buildings').⁴ I have therefore determined the appeal in the context of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended (the 'LBCA1990'). My attention has also been drawn to a raft of documentation referring to the value of enabling renewable energy generation in the light of climate change.⁵

Relevant policies

8. MHDC's decision notice cites conflict with 5 SWDP policies in the context of a single reason for refusal centred upon landscape effects. As reflected in GLVIA3 and TGN02/21,⁶ there is a close relationship between landscape character and heritage. Whilst I will turn to those development plan policies individually, at this juncture I note that policy SWDP27 'Renewable and Low Carbon Energy Schemes' is broad-brush. It sets out how 'proposals for stand-alone renewable and other low carbon energy schemes are welcomed and will be considered favourably having regard to the provisions of other relevant policies in the Plan.' NPPF paragraph 157 similarly sets out how the planning system should support the transition to a low carbon future.
9. Policy SWDP1 'Overarching Sustainable Development Principles' is similar in that whether development complies with that policy relies on assessing the relationship of a scheme to the development plan as a whole. Following on from policy SWDP1, policy SWDP2 sets a settlement hierarchy to guide the distribution of development. Criterion A.iii. to policy SWDP2 sets out how the development strategy and site allocations are founded upon 'safeguard[ing] and (wherever possible) enhancing the open countryside'. Nonetheless, renewable energy projects are subsequently given as an example of development which may be acceptable in the open countryside.

Main issue

10. The main issue is the effect of the development proposed on landscape character and historic significance.

⁴ List entry nos. 1302063 and 1349351.

⁵ Including at section 7.8 of the appellant's statement of case, under section 7.6 of the Statement of Common ground, and referenced at schedule 2 to this decision.

⁶ The Landscape Institute and Institute of Environmental Management & Assessment's Guidelines for Landscape and Visual Impact Assessment: Third edition, and the Landscape Institute's Technical Guidance note 02/21 'Assessing landscape value outside national designations'.

Reasons

The site and its surroundings

11. The site is an irregular area of undulating, predominantly pastoral, land of about 36ha. It is bounded and subdivided by hedgerows. There are occasional copses within and next to the site. The site is, largely, part of a wider land holding.⁷ However an element of the site to the south, near where access to the substation is proposed, appears to extend beyond the land holding into a field opposite.⁸
12. The site falls within the open countryside some 1.2km from Sinton Green, the nearest settlement named in the SWDP. Sinton Green is described in policy SWDP2 as a 'lower category' village, reflecting its position in the settlement hierarchy relative to others. The nearest settlement higher in the hierarchy, Hallow, is some 3.2km away.
13. Broadly, the site slopes downwards from the east and north to the south-west towards Monk Wood, a Site of Special Scientific Interest ('SSSI') and also a Local Wildlife Site of ancient semi-natural woodland.⁹ Grimley Brook is to the north-west. The handful of properties at Oakhall Green, arranged around the convergence of historic lanes, are set at about 60m above Ordnance Datum ('AOD'). Birchall Green Farm buildings are set at about 54 to 58m AOD, a comparable level to land near the listed buildings.
14. By the irregular boundary of Monk Wood, the ground level at the appeal site is about 48m AOD, reflecting a significant level change across the site. That boundary is demarcated by a low bund and ditch, potentially remnants of the reclamation of the appeal site from woodland.
15. Reflecting principally the propensity of the land to drain, the appellant's Agricultural quality report ('AQR') identifies that 39% of the site is grade 3a in terms of agricultural land classification ('ALC'), one category of best and most versatile agricultural land ('BMV').
16. There are two public rights of way passing through the site. Footpath 526(C) enters the site from the south-east. Footpath 525(C) tracks instead beside the site from the carriageway to the south, close to the proposed southern access. Those footpaths converge close to a copse beside the site, connecting thereabouts with footpath 524(C).
17. Footpath 524(C) tracks north-westwards through the site towards Grimley Brook, thereafter rounding the northern extent of Monk Wood before connecting with bridleway 503(B) and footpath 520(C). The former heads through the SSSI, the latter returns roughly along the western boundary of Monk Wood. There are also various permissive paths through Monk Wood.
18. The wider landscape here is also criss-crossed by public rights of way. Footpath 519(C), for example, connects footpath 520(C) referenced above to the carriageway running between Monk Wood and Monk Wood Green Site of

⁷ Blue-edged on plan no. P001.300.05.

⁸ As remains shown via hearing document 7.

⁹ Plan no. P001.001.02.

Special Scientific Interest. Reflecting the intimate historic evolution of the landscape, various rights of way stop at roads. That is the case, for example, of footpath 525(C) and 532(C), the latter by Oakhall Green.

19. The consequence of that arrangement of public rights of way and roads is that, in order to walk in a circular route, you would almost invariably need to do so along stretches of narrow rural lanes. I heard from many local residents how Monk Wood and Monk Wood Green are popular locations to visit in their own right. I saw a handful of walkers around those locations during my site visit. They are managed so as to encourage visitors. Many individuals here evidently experience the countryside actively, as opposed to it forming part of the backdrop to life.
20. Although the site is bisected by power infrastructure, that is not a particularly significant influence. There are three pylons only between the lanes to the north and south either side of the site, all of which are located close to hedgerows or trees. The power lines themselves are set high above a changing topography.

Boatley Cottage and Lovely Cottage

21. The listed buildings are either side of the lane to the north of the appeal site running between Oakhall Green and Ockeridge. There is some indication that they originated as part of the same historic holding; list entries indicate that elements of both date from the seventeenth century. There are visual differences between the two, notably in relation to latter alterations (to Boatley Cottage in particular).
22. Nevertheless both are modest properties. Both are something of a loose local vernacular featuring timber-framed walls with brick infill. The list entries indicate a sequence of alterations to them, likely reflecting changes in prosperity and building preferences over centuries. More recent alterations have not notably diluted the historic integrity that they possess (which attests to their evolution in connection with what could be wrought from the land).
23. The former agricultural connection between the listed buildings and the appeal site no longer exists. I acknowledge that there has been change to the character of the landscape over time, notably through some reduction in hedgerows. That reduction likely occurred since the mid twentieth century in order to accommodate modern agricultural machinery, as indicated in the appellants' Cultural Heritage Baseline and Impact Assessment ('CHBIA').
24. Nevertheless there remains a significant historic character to the appeal site and its surroundings. The CHBIA, for example, sets out how there is an easily recognisable landscape structure relative to the 1840 Tithe map. There is little change to the boundaries of Monk Wood evidenced further back still, which is referenced in documents from 1240. There is also some archaeological interest embodied in the site. The history reflected by the site contributes positively to the setting, understanding and appreciation of the listed buildings.¹⁰

¹⁰ More so, from a visual perspective, in relation to Boatley Cottage (elements of which are visible from within the appeal site given that Boatley Cottage is set an elevated level relative to parts of footpath 524(C)).

Landscape policies

25. Part A, criterion ii. to policy SWDP25 'Landscape Character' sets out how development proposals should be 'appropriate to, and integrate with, the character of the landscape setting'. Criterion A.iii. is that development should 'conserve, and where appropriate, enhance the primary characteristics defined in character assessments and important features of the Land Cover Parcel...'
26. Criterion B to policy SWDP25 requires a Landscape and Visual Impact Assessment, or Landscape and Visual Appraisal for development which is not 'EIA' development (as here). That is a terminological distinction drawn also in GLVIA3, TGN02/21 and in Carly Tinkler's observations on behalf of Grimley Parish Council. However that distinction does not, in my view, qualify the substantive reasoning in the appellant's Landscape and Visual Impact Assessment (undertaken by UBU Design Ltd., the 'LVIA'). Criterion B to policy SWDP25 further sets out how such assessment or appraisal work should 'include proposals to protect and conserve key landscape features and attributes and, where appropriate, enhance landscape quality.'
27. Policy SWDP21 'Design' is broad, and summarily references, amongst other things, the more specific provisions of policies SWDP6, SWDP25 and also SWDP24 'Management of the Historic Environment'. In summary, and amongst other things, policy SWDP21 sets out how all development should integrate effectively with its surroundings, reflect the characteristics of a site, and complement character (including in respect of landscape quality).
28. In a similar manner to the foregoing, NPPF paragraph 180 sets out how planning decisions should contribute to and enhance the natural and local environment by, amongst other things, 'protecting and enhancing valued landscapes', and 'recognising the intrinsic character and beauty of the countryside.' In my view 'recognising' connotes a degree of protection regardless of whether a landscape is designated, or 'valued'. Likewise NPPF paragraph 135 sets out how decisions should ensure, again amongst other things, that development will add to the overall quality of the area and be sympathetic to local character and history, including landscape setting.

Landscape methodology

29. GLVIA3 and TGN02/21 (the 'technical documents') set out a methodological approach for evaluating the effects of schemes in landscape terms, TGN02/21 applying outside of designated landscapes. 'Landscape' itself is a complex concept. The site may be said to be a landscape in itself, but it is also part of a wider landscape, or landscapes, of perhaps indeterminate extent. Both technical documents draw a distinction between landscape as viewed and as a resource, albeit there is inevitably some overlap between the two concepts.
30. The appellant's LVIA and landscape statement of case, Carly Tinkler's observations, and UBU Design Ltd.'s response, all take GLVIA3 as a common methodology.¹¹ Many local residents have also set out their perspective on landscape character. Those representations may not reference the approach

¹¹ Albeit that TGN02/21 is not referenced in the LVIA, UBU Design Ltd. has responded to Carly Tinkler's observations wherein TGN02/21 is referenced extensively.

in the technical documents. However that makes those observations, founded on lived experience, no less valid.

Landscape, the visual dimension

31. Establishing a visual baseline involves defining the area in which the development may be visible, the different groups of people who may experience views of the development, the places where they will be affected and the nature of the views and the visual amenity at those points.¹² 'Visual receptors' are the people who will be affected by changes in views or visual amenity at different places, who will likely have differing responses depending on the context.
32. GLVIA3 further guides that 'landscape professionals should assess the nature of a landscape or visual receptor's sensitivity by combining judgements about its susceptibility to change arising from the specific proposal with judgements about the value attached to the receptor.'¹³ Different receptors may be differentially affected by change.
33. Terminologically 'sensitivity' is arrived at by combining judgements about value and susceptibility. GLVIA3 gives further guidance as to the susceptibility of visual receptors to change and in respect of the value attached to views. The 'magnitude' of effect comprises judgements about the size and scale of the effect, the geographic extent of the area that will be affected, the duration of the effect and its reversibility.¹⁴

Landscape as a resource

34. GLVIA3 references the 'inclusive nature' of the term landscape as in the European Landscape Convention;¹⁵ 'landscape is an area, as perceived by people whose character is the result of the action and interaction of natural and/or human factors'.¹⁶ Landscape character is therefore 'not just about the physical elements and features that make up a landscape, but also embraces the aesthetic, perceptual and experiential aspects of the landscape that make different places distinctive.'¹⁷
35. Components of the landscape that are likely to be affected are often referred to as 'landscape receptors', being the 'constituent elements of the landscape, its specific aesthetic or perceptual qualities and the character of the landscape in different areas'.¹⁸ As above, landscape receptors' sensitivity is arrived at by combining judgements about value and susceptibility. 'Landscape value' is summarised in TGN02/21 as 'the 'inherent' component, which is independent of the development proposal, while the other component, susceptibility is development specific.'¹⁹ Susceptibility to change is the ability of the landscape receptor to accommodate the proposed development.²⁰

¹² GLVIA3, paragraph 3.15.

¹³ GLVIA3, paragraph 3.24.

¹⁴ GLVIA3, paragraphs 3.26 and 6.39.

¹⁵ ETS No. 176.

¹⁶ Council of Europe, 2000.

¹⁷ GLVIA3, paragraph 2.19.

¹⁸ GLVIA3, paragraph 3.21.

¹⁹ TGN02/21, paragraph 2.3.1.

²⁰ GLVIA3, paragraph 5.39.

36. That a landscape is neither designated, nor 'valued' as in NPPF paragraph 180.a), does not equate to an absence of value. MHDC explained at the hearing how, unlike elsewhere, there are no locally designated landscapes established via the SWDP. GLVIA3 and TGN02/21 are, however, 'evidence-based' in approach as opposed to drawing undue inference from the absence of local designations.²¹

Landscape judgements

37. For all the detail and terminology in GLVIA3, and TGN02/21, assessing landscape and visual effects is founded on a sequence of judgements. For that reason, different practitioners may rationally arrive at different outcomes. For that reason also, GLVIA3 cautions how numerical scoring or weighting can suggest a 'spurious level of precision', and therefore recommends word scales to describe effects.²²
38. Word scales, however, vary from practitioner to practitioner and are imprecise. For example here, the appellant advocates that 'substantial' weight be given to the benefits of solar energy generation, MHDC favouring 'significant'. NPPF paragraph 163 uses neither word. More broadly, balancing different factors in planning is not reducible to a mathematical equation. Relevant factors may exist in different equations, let alone in different units.

Heritage policies

39. Section 66(1) of the LBCA1990 requires, in summary, that I have special regard to the desirability of preserving (listed) buildings or their settings, i.e. the surroundings in which heritage assets are experienced. As with landscape methodology there is an experiential dimension to setting beyond visibility.
40. Policy SWDP6 'Historic Environment' sets out how 'development proposals will be supported where they conserve and enhance the significance of heritage assets, including their setting. In particular this applies to:... ii. The historic landscape, including locally distinctive settlement patterns, field systems, woodlands and commons and historic farmsteads and smallholdings.'
41. Neither the NPPF, nor the LBCA1990, require that proposals both conserve (or preserve) and enhance integrity.²³ Nonetheless, part A to policy SWDP24, in any event, sets out how development proposals will, amongst other things, be 'considered in accordance with the Framework [and] relevant legislation...'
42. Recognising that heritage assets are irreplaceable resources, NPPF paragraph 205 sets out '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.' The NPPF uses the terminology 'substantial' and 'less than substantial harm' to distinguish between levels of effects to heritage assets. Often a scale, or spectrum, is applied within the latter category for finer-grain analysis. Nonetheless NPPF paragraph 206 sets out how any harm, not just that which is substantial, should require 'clear and convincing justification'.

²¹ An issue addressed in TGN02/21 including at paragraph A3.5.

²² GLVIA3, paragraphs 3.27 and 8.10.

²³ As addressed in paragraph 6.4 of the appellant's Heritage statement of case referring to appeals ref. APP/X1355/W/21/3275009 and APP/X1355/Y/20/3265941.

Relevant landscape character assessments

43. Of 159 National (landscape) Character Areas ('NCAs') defined by Natural England, the site falls within, and to the western fringes of, NCA106 the 'Severn and Avon Vales'. Albeit referring to an extensive landscape, the summary to NCA106 begins by describing that area as a 'low-lying open agricultural vale'. NCA106 is further described as a generally open landscape, with small pasture fields and isolated farmsteads prevalent in the west as opposed to a more regular pattern of enclosure to the east.
44. With reference to the Worcestershire County Landscape Assessment ('WCLA'), the site falls within the 'Wooded Estatelands' and 'Principal Timbered Farmlands' landscape character types ('LCTs'). Amongst other features, the WCLA describes the Wooded Estatelands LCT as an often open, rolling agricultural landscape with blocks of woodland (commonly ancient). The WCLA characterises the Principal Timbered Farmlands LCT as a small to medium scale wooded agricultural landscape with an organic enclosure pattern.
45. At a finer grain level the site falls within Land Cover Parcels ('LCPs') MW54a, MW54b and MW47.1g. MW54a and MW54b fall within the 'Hallow Principal Timbered Farmlands' LDU, which is characterised as a relatively open rolling lowland pastoral landscape with occasional farmsteads and scattered hedgerows. LCP MW47.1g falls within LDU MW47.1 'Ockeridge Wooded Estatelands', which is described similarly as above, albeit with greater emphasis on undulating topography and discrete blocks of ancient woodland.

Landscape and visual baseline

46. There is a strong consistency in landscape character assessments here. The site presently reflects, and contributes clearly to, the characteristics identified above. It is agricultural, predominantly open and undulating. The appellant describes the site as characterised by 'dense hedges'. However hedges within and around the site are instead comparatively sparse, aligned with the foregoing landscape characterisation in NCA106 and the WCLA. The appellant's Preliminary Ecological Appraisal ('PEA') itself describes hedgerows to the south as 'poor quality'.
47. Similarly, I did not observe what the appellant describes as 'belts of woodland'. There are instead copses and discrete blocks of woodland about, including Monk Wood (again consistent with the foregoing). The relative absence of development nearby, and the distance of the site from settlements, contribute to a sense of remoteness and tranquillity. There is also a clear and appreciable historic character to the landscape here.
48. I acknowledge, given the topography and landscape features, visibility of the site in conjunction with its surroundings is not extensive (less than a featureless zone of theoretical visibility would indicate). However, on account of the topography, there are comparatively open views across the site from properties and their plots at Hallow Green and at Boatley Cottage.
49. There are also relatively open views of the site in conjunction with its surroundings along the two public rights of way running through the site. As above, public rights of way here appear well used and the landscape more

broadly is experienced actively by many. Albeit that my site visit was in winter, I also saw partial views across the appeal site from vantage points along carriageways to the north and south. In summary, the site as part of the landscape has a clear value, both as a resource and visually.

50. Moreover, in my view, the site performs relatively strongly in relation to the factors identified in box 5.1 of GLVIA3 with reference to table 1 of TGN02/21 which may assist in defining whether a landscape is 'valued'. Inherent in my reasoning above is that the site embodies some cultural heritage. There is a notable integrity of historic field patterns, and few detracting features in terms of landscape condition. The site possesses clear recreational and scenic qualities. Perceptually it is relatively remote and tranquil.
51. Moving from value to sensitivity, the LVIA explains how the Worcestershire County Council document entitled Landscape Character Assessments, Supplementary Guidance, Technical Handbook (2013); 'charts the sensitivity of the landscape character areas within the County. The majority of the proposed sites (sic.) falls within an area of high sensitivity'. The Technical Handbook explains that sites or landscape units that have been classified with high sensitivity would be most sensitive and least accommodating to change, on the basis of loss of landscape character; here presumption would be against development on landscape character grounds (sic.).²⁴
52. The appellant's LVIA, however, defines landscape sensitivity here as only 'medium high'. That appears to be on the argument that the Technical Handbook is aimed at 'residential development rather than renewable energy schemes'.²⁵ However that rationale in terms of susceptibility does not appear expressly set out in the Technical Handbook. Instead the Technical Handbook, aligned with landscape characterisation studies, looks at landscape receptors such as hedges and field patterns as components of the 'resilience' of a given landscape component to change.
53. Landscape receptors may be affected by renewable energy development as by other forms of development. Whilst solar panels are lower-lying than many other forms of development, they may nevertheless be of a comparable magnitude, including by virtue of covering an extensive area. Setting aside the Technical Handbook and drawing together my reasoning above, the site possesses a high degree of sensitivity,²⁶ and is visible by sensitive receptors (notably walkers and local residents). It is unclear why the LVIA ascribes only a 'medium high' sensitivity to those making use of public rights of way.²⁷
54. Similarly the LVIA indicates those travelling along rural lanes should be accorded a low sensitivity. However GLVIA3 guides that travellers 'tend to fall into an intermediate category of moderate susceptibility to change'.²⁸ That rating may also be premised on the appellant's characterisation of the site as having dense hedges and bands of woodland (which, as set out above, does

²⁴ Paragraph 2.3.9.4.

²⁵ LVIA, paragraph 5.1.

²⁶ Distinguishing landscape character here from circumstances at an unsuccessful appeal for a 45MW solar park at Woodhall Farm within MHDC's administrative area (ref. APP/J1860/W/16/3142020), where the landscape there was judged by the Inspector to have a 'medium' sensitivity to change.

²⁷ Potentially an extension of the argument regarding susceptibility with reference to the Technical Handbook addressed in paragraph 52 to this decision.

²⁸ GLVIA3, paragraph 6.33.

not accord with my observations). Many travelling along rural lanes by vehicle here will need to proceed slowly on account of their winding and narrow historic nature, and may well be travelling in order to appreciate the countryside rather coincidentally passing through it.

The development proposed

55. In summary, the proposal is for the installation of 43,440 solar panels which would have a peak generating capacity of 25MW. Panels would be arranged in rows aligned with the topography, in four clusters. There would be associated access provision, a substation built, and also 4.8 linear kilometres of 2m high deer fencing installed. The panels' lowest edge would be around 1m from the ground, in order to enable grazing of the land by sheep. No element of the panels would reach higher than 2.8m relative to adjacent ground level.
56. 1.78ha of the 36ha site is to be given over to habitat enhancement. There is some ambiguity in the information before me as to the height new hedgerows around solar panel clusters are proposed to reach, or to be maintained at; there are references both to 1.5m and 3m. In any event, however, hedgerow planting would be substantial, and maintenance thereof could be addressed via condition were the proposal acceptable as a whole.²⁹ As clarified at the hearing, 1.84 linear kilometres of new hedgerows would be planted, contributing towards the appellant's intention to deliver biodiversity net gain ('BNG') of 24.69%.³⁰ The installation is intended to have a generating life of 40 years.

The effects of the development proposed

57. As noted above, there has been some change in landscape structure over time. Solar panels themselves would be comparatively modest in height. Access and pathway provision would be at ground level. I also accept that, on account of the topography and intervening landscape features, visibility of the site is relatively localised, the appellant acknowledging that 'there would be a noticeable change to the character of the site itself'.³¹
58. The LVIA sets out how 'the magnitude of change to the landscape character types and areas will be small due to the relatively small proportion of the character areas being effected (sic.)', and that 'the proposals forming this planning application will not have a significant detrimental impact to the rural character of the landscape within South Worcestershire'. Those findings reflect that extensive hedgerow planting and augmentation is also proposed. I acknowledge that planting would, over time, screen elements of the proposal from view to some extent. I have also noted above that the scheme is designed with a generating life of 40 years, after which it is the appellant's intention to remove the panels.
59. However for 5 principal reasons I disagree with the appellant's position that the effects of the scheme should be ascribed 'limited adverse weight'. Firstly the engineered and uniform nature of solar panel arrays and fencing, along with their extent, would significantly diverge from the presently open and

²⁹ Including to emulate the heights predicted in LVIA visualisations.

³⁰ Of relevant to policy SWDP5 also.

³¹ Statement of case, paragraphs 6.57 and 8.110, Landscape statement of case paragraph 8.5.

organic character of the site. New hedgerows would take some time to become established and therefore to afford screening.

60. Secondly, significantly, the clusters of solar panels and hedgerows proposed would be clearly at odds with historic landscape structure and its remaining legibility. The planting of 1.84km of linear hedgerows would, furthermore, be uncharacteristic of the landscape character here as described above (emphasising that it is generally open with relatively sparse hedges).
61. Whilst I acknowledge that the appellant has presented what they consider to be proportionate evidence,³² thirdly the LVIA quote in paragraph 58 of this decision does not expressly set out what character areas or assessments have been factored into that summation. Similarly with reference to that quote, it is difficult to conceive of a type of development of such magnitude that it could significantly detrimentally affect 'the landscape within South Worcestershire' as a whole.
62. Fourth, I have reasoned that the site and visual receptors have, in my view, a greater degree of sensitivity than they have been ascribed in the LVIA. The SPD and PPG, moreover, encourage solar farms to be located on relatively level ground (or reference the potential implications of their installation in undulating topography).³³
63. As noted above there is a significant level change through the site such that, even if new planting reached considerable height, solar panels would remain partially visible from various vantage points. Whilst I acknowledge that solar farms are becoming an increasingly common feature of rural areas, the site is characteristically remote with little meaningful influence of built development at present. Experientially panels and hedges would enclose the openness of views which is intrinsic to landscape character.
64. Fifth, the appellant's evidence is, on occasion, ambiguous. The landscape statement appears to refer to two different versions of the 'most recent' landscape mitigation and enhancement plan.³⁴ The appellant furthermore states that that 'all [existing] hedges will be retained as part of the development'.³⁵ However that is incorrect. Both the PEA and the Arboricultural Impact Assessment ('AIA') indicate that some existing hedgerow will be lost to facilitate the southern access to the site.³⁶
65. It also emerged at the hearing that not all elements of the scheme are intended to have a lifespan of 40 years. A lifespan of 40 years is, in itself, lengthy. Nonetheless, the substation and access to it, are intended to be permanent features. Hedgerow planting would also in all likelihood remain. The development would not be 'reversed entirely at the end of the operational life of the scheme'.³⁷

³² UBU Design Ltd.'s response to Carly Tinkler's observations.

³³ SPD paragraph 5.9., PPG Reference ID: 5-013-20150327.

³⁴ At paragraphs 2.5 and 4.17.

³⁵ Statement of case, paragraph 2.6.

³⁶ PEA page 17, AIA paragraph 5.3.4.

³⁷ Appellant statement of case, paragraph 8.12.

66. I therefore conclude that the proposal would have major adverse effects to the landscape as a resource and also visually, effects that would not meaningfully reduce over time. The scheme would be clearly detrimental to existing landscape character, seriously adversely affecting the experience and perception of the landscape here compared to present circumstances.
67. The scheme would also result in harm, albeit less than substantial and towards the lower end of a spectrum within that categorisation, to the setting of the listed buildings. The proposal would therefore fail to accord with relevant elements of SWDP policies SWDP6, SWDP21, SWDP24, SWDP25 (and thereby policies SWDP27 and SWDP1), the clear expectations of the LBCA1990, and would also conflict with the approach in NPPF paragraphs 135 and 180.b).

Other matters

Renewable energy generation

68. The appellant argues that the scheme would have various benefits, and I agree that the need for renewable energy generation nationally may fairly be ascribed substantial weight. I acknowledge that the scheme would also be economically beneficial, in terms of associated employment during construction and operation and associated supply chain implications. NPPF paragraph 163.a) sets out how applicants are not required to demonstrate the 'overall need' for renewable energy. That is, fairly, characterised in the appellant's 'Site Selection' paper ('SSP'),³⁸ as an 'unconstrained need for new renewable energy capacity'.
69. The function of the SSP is, however, to explain the rationale for this scheme relative to other potential locations. The appellant invites me to give 'moderate positive weight' to the scheme on account of its location relative to elsewhere.³⁹ In essence that is an argument relevant to NPPF paragraph 163.b) in terms of reaching a judgement as to whether or not the impacts of a specific scheme 'are (or can be made) acceptable.'
70. Notwithstanding the judgment in *Bramley*,⁴⁰ which also refers to other case law on consideration of alternatives, it has been expressly put to me that the SSP is material and should carry weight. I will return to the implications of the scheme in respect of agricultural land, but now turn to the two other principal arguments made via the SSP, the technical feasibility of grid connectivity and scheme viability.
71. Reflecting that the grid was designed for centralised generation, rather than more numerous smaller sites, the SSP explains initially how 'project locations are determined in relation to available grid connection capacity', thereafter explaining how the Bishop's Wood to Hereford circuit was 'identified as having some capacity to connect a generation project'. Part of the 132kV overhead line is mapped at SSP figure 2.

³⁸ August 2021, updated via hearing document 10.

³⁹ Appellant statement of case, paragraphs 8.100 to 8.102.

⁴⁰ *Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing And Communities & Ors* [2023] EWHC 2842 (Admin) (15 November 2023).

72. The SSP then sets out that 'connections to the 132kV network are expensive and the identified overhead circuit needs to pass through or close to the site or landholding to ensure a viable connection can be made. Therefore, the line and area up to 1km on each side in Figure 2 forms the study area for potential sites.' Within that study area, only sites of a minimum of 21ha have been reviewed as anything significantly smaller than this is discounted on the basis that would make 'the project unviable on a cost per megawatt basis'.
73. Setting aside that it is impossible to interrogate why alternative sites became unavailable,⁴¹ there is no evidence before me as to the extent of the Bishop's Wood to Hereford circuit. It is certainly more extensive than the element shown at SSP figure 2, its name indicating that it may run for tens of miles. As above the SSP refers to the capacity of the circuit to accommodate 'a generation project.' That may be an offhand phrase. However if there is only capacity for a single project, that would suggest the need for a more expansive and thorough search to justify the specific location of a scheme.
74. Even given the extent of the 132kV overhead line shown at SSP figure 2, it is unclear how that justifies the need for a connection 'to pass through or close to the site or landholding'. Local residents drew my attention to an EIA screening request to the Council for a solar farm at Fitcher Brook relatively nearby.⁴² I was told at the hearing on behalf of the appellant that each scheme could operate in isolation, and there is no substantive countervailing evidence to that.
75. That said a plan submitted with the screening request for Fitcher Brook shows a cable connection between that site and the proposed substation here. The applicant in that instance is not the same as here, albeit a representative of the appellant clarified at the hearing that there is some corporate connection between the two. It therefore appears that, in theory, the two schemes could operate in conjunction.
76. It is outwith my remit to address whether any EIA screening opinion should, or would, take into account the cumulative implications of the two schemes (and any future scheme would be judged on its merits). However there is no indication that the Fitcher Brook site would be within the 1km area identified in the SSP if it were brought forward separately.
77. I note that while in the case to which *Bramley* relates there was consideration of a 5km search radius around existing substations, the SSP does not deal with existing substations in any detail. There is furthermore no evidential basis for 1km as opposed to any other distance. I acknowledge that applying a 'sequential' test in respect of other planning matters such as in respect of flooding or town centre development, involves some degree of comparability between a scheme and potential alternative locations. However, again there is no evidential basis for the SSP statement that projects smaller than 21ha would be 'unviable'.
78. For the above reasons the SSP is an inadequate evidential basis to robustly justify the particular location of the scheme before me, or thereby to give

⁴¹ SSP Table 1 simply refers to their being 'initially available but later became unavailable'

⁴² Ref. M/23/00707/SCR.

particular weight to meeting national needs or realising economic benefits here specifically.

Best and Most Versatile agricultural land ('BMV')

79. NPPF paragraph 180 sets out how planning should contribute to and enhance the natural and local environment, including by recognising 'the economic and other benefits' of BMV. NPPF footnote 62 further sets out that 'where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality...'. Paragraph 5.11 of the SPD expresses a preference for previously developed land or non-BMV land.
80. Supporting paragraph 16 to SWDP policy SWDP13 sets out how a locally-set threshold of two hectares reflects a 'significant loss of BMV agricultural land', to which criterion H of policy SDWP13 relates. That paragraph also sets out how 17.1% of land in Worcestershire is not BMV, 26.9% is ALC grades 1 and 2 and the remaining 56% simply ALC grade 3 (undifferentiated between grade 3a and 3b). As above, the AQR indicates that 39% of the site should be considered ALC category 3a, therefore BMV. That is not incomparable with land in Worcestershire taken as a whole on account of the majority of agricultural land being undifferentiated ALC grade 3.
81. As noted above, the appellant contends that the scheme would enable continued grazing and therefore no loss of BMV. That is a principle accepted at other appeals.⁴³ Drawing upon those decisions, the appellant invites me to ascribe moderate positive weight to the benefits 'arising in respect of agriculture, land quality and soil resource (with continued pastoral farming, and soils resting and recovering from intensive arable use)'.⁴⁴ For 4 principal reasons, however I disagree with that position.
82. Some local residents suggested that much of the land on site is better quality than it has been assessed in the AQR. Heather Rendall, Chair of the Wichenford Local Heritage Group, referred me to historic evidence of crop yields associated with Boatley Cottage and Lovely Cottage. Ted Lewis, a neighbouring landowner and farmer, explained that the appeal site was used for growing wheat in the 1960s. He also explained how farming and farm machinery in particular has evolved since ALC was introduced.⁴⁵
83. However, and setting historic uses of the site aside, the evidence before Inspectors in other cases is not before me. As alluded to above, agricultural practices have inevitably moved on since even 1988, and not all place a toll on the land requiring the necessity of 'recovering'. Moreover, on the appellant's own evidence, unlike circumstances potentially occurring elsewhere, there is no indication of intensive arable use here in recent times.
84. Secondly the BMV figure of 39% does not relate to what proportion of BMV land would be covered by solar panels. Although I accept the SSR indicates

⁴³ Statement of case paragraphs 6.27 to 6.32. Notably appeal refs. APP/H1705/W/22/3304561, APP/G2712/W/23/3315877 and APP/C3240/W/22/3308481.

⁴⁴ Appellant statement of case, paragraph 8.95.

⁴⁵ ALC being introduced via the Ministry for Agriculture Food and Fisheries' Technical report 11 of 1966, the AQR drawing from the Ministry for Agriculture Food and Fisheries' criteria for grading the quality of agricultural land of 1988.

that there is potentially a greater prevalence of BMV towards the north of the study area, it appears that the scheme is not arranged so as to avoid transgressing BMV.

85. In direct numerical terms the quantity of available BMV land on site would be reduced (whether by posts supporting solar panels, infrastructure provision or hedgerow planting). It appears that the appellant accepts that there would be some loss of agricultural land, albeit only around 5% of the site as a whole.⁴⁶ Moreover, cross-referencing my reasoning in paragraph 65 of this decision, some land would be permanently lost.
86. Thirdly solar panels will shade the ground beneath them. I heard at the hearing how the appellant's BNG assessment had taken account of the potential in that respect, by ascribing a reduction in species richness to areas shaded by panels. Moreover in this instance clusters of solar panels would also be surrounded by 1.84 linear kilometres of hedges, which will cast further shade. At a basic level light is one of the three inputs to photosynthesis (upon which many forms of agriculture, including grazing, are intrinsically reliant).
87. Fourth the scheme would reduce the agricultural uses to which the land could be put. Continued sheep grazing may be achievable, but the land could realistically only be put to that purpose. Albeit that ALC is established without reference to field boundaries, the extensive subdivision of the site by hedgerows would likely render any future cropping impractical.
88. The implications of the scheme in terms of BMV cannot therefore reasonably be said to be either a positive or neutral implication of the scheme. Whilst policy SWDP13 and the NPPF do not prevent development of BMV land, I cannot rationally find other than the effects of the proposal in this respect carry limited adverse weight against the scheme.

Biodiversity

89. As noted above, the appellant's position is that the scheme aims to deliver significant BNG of 24.69%. Whilst that does not appear unachievable relative to the current nature of the site, there are also various ambiguities in the evidence before me in respect of ecology, particularly as regards Monks Wood SSSI (ancient semi-natural woodland protected on account of its fauna and associated flora, particularly invertebrates). Statute places duties on me in respect of conserving and enhancing biodiversity generally, and in respect of SSSIs specifically.⁴⁷
90. The PEA states 'through this assessment it is determined that some of the impacted habitats on the proposed site, including the hedgerows and trees could provide supporting habitat for Monks Wood SSSI. The impacts have been assessed within the report and determined that they would be low but also managed to limit their impact.'⁴⁸ That cannot logically be read other than as indicating that there may be some adverse effect to the ecological integrity

⁴⁶ Statement of case, paragraph 8.94.

⁴⁷ Section 40 of the Natural Environment and Rural Communities Act 2006 as amended and section 28(G) of the Wildlife and Countryside Act 1981 as amended.

⁴⁸ Paragraph 4.12.

of the SSSI. It appears that there has been no specific survey of invertebrates or lower plants.⁴⁹

91. Moreover the PEA does not recommend provision of bird boxes on site 'in an effort to discourage generalist species becoming established near Monks Wood SSSI'.⁵⁰ It is unclear how bird boxes would afford a different function in that respect relative to 1.84 linear kilometres of new hedgerow.
92. Moreover the non-technical summary to the appellant's Bat Survey Report ('BSR') states, rather than the relevant study area, that 'the site area extends of approximately 65 hectares in total'. It is unclear how that marries up with the site before me. The BSR further sets out, in the context of the PEA and preliminary roost assessment, that 'bat roosting features were seen in the trees on the boundaries of the fields in a number of locations'.⁵¹
93. It is unclear if that refers to Monk Wood, nevertheless given that is ancient semi-natural woodland supporting populations of invertebrates, that may. Whilst the BSR identified a 'low' activity of bat species across the sites based on a single survey of around three hours on 26 May 2021, that would not have accounted for certain bat activity by virtue of the time of year.⁵² That is an evidential shortcoming,⁵³ particularly set against recent scientific research brought to my attention.⁵⁴
94. Opposite the existing pedestrian field access in the south-western corner of the appeal site by Monk Wood is a post with a sign reading 'Worcestershire County Council Highways, Roadside Verge Nature Reserve' (the 'RVNR'). That post is shown in PEA photo 12. There is a similar post and sign a short distance away to the east.
95. Those signs further explain that 'the verge between the posts is designated for its rare plants or animals. It has specialised management to benefit them. Please do not cut or damage this area'. I understand that stretch of verge is protected on account of its species rarity or variety, or both.
96. It appears that the visibility splay proposed at the southern access point comes close to the RVNR.⁵⁵ There is reference to a survey of 'roadside verges' in the PEA, all of which were determined to be neutral grassland.⁵⁶ There is also therein reference to 'poor quality hedgerows'.⁵⁷

⁴⁹ Paragraph 2.6 of the Chartered Institute of Ecology and Environmental Management's Guidelines for Preliminary Ecological Appraisal, second edition, setting out that 'the availability of records of protect or priority species will vary in any particular location, as it may be dependent on the presence of local experts (particularly the case for invertebrates and lower plants)', albeit the PEA identifies a low potential for invertebrate associations with Monk Wood.

⁵⁰ Paragraph 5.13.

⁵¹ BSR, paragraph 1.4.

⁵² With reference to table 2.2. of the Bat Conservation Trusts' Good Practice Guidelines in respect of Bat Surveys for Professional Ecologists, 3rd Edition.

⁵³ ODPM 6/2005, paragraph 99 setting out how 'It is essential that the presence or otherwise of protected species, and the extent that they may be affected by the proposed development, is established before the planning permission is granted, otherwise all relevant material considerations may not have been addressed in making the decision.'

⁵⁴ 'Renewable energies and biodiversity: Impact of ground-mounted solar photovoltaic sites on bat activity', Journal of Applied Ecology, Volume 60, Issue 9.

⁵⁵ Notwithstanding that hearing documents 7, 8 and 9 indicate there may be no need, in terms of vehicular tracking, to extend the appeal site into the field on the opposite side of the lane.

⁵⁶ Paragraph 3.22.

⁵⁷ PEA, paragraph 5.54.

97. However neither of those references appear to take account of the RVNR, and there is moreover no reference to that designation in the PEA. Consequently, notwithstanding the intention to deliver significant BNG, for the above reasons I cannot reach the view that the scheme would be acceptable in respect of biodiversity in the context of the statutory duties upon me.

Planning balance

98. Nationally there is a pressing and urgent need for renewable energy generation. Some representations express support for the scheme with that in mind. The proposal would also have economic benefits. However, as reasoned above, there is no compelling justification for the scheme here specifically. Whilst significant BNG may be achievable, the evidence before me is insufficient as regards potential adverse ecological effects elsewhere.
99. The scheme would result in major adverse effects to the landscape as a resource and also visually, seriously detracting from the intrinsic character and beauty of the countryside and the experience of it. I have also identified that harm, albeit limited, would result in terms of the effect of the proposal on BMV.
100. NPPF paragraph 163.b) guides that applications for renewable and low carbon development should be approved if its impacts are (or can be made) acceptable. The PPG sets out that the benefits of delivering green energy does not automatically override 'environmental protections and the planning concerns of local communities'.⁵⁸
101. Inherent in my reasoning above is that even if the scheme were acceptable in all other respects, and even were the public benefits of the proposal to outweigh the harm to the setting of the listed buildings set one against the other, no other material considerations would justify allowing the appeal.

Conclusion

102. For the above reasons, having considered the development plan as a whole along with all other relevant material considerations, I conclude that the appeal should be dismissed.

Tom Bristow

INSPECTOR

⁵⁸ PPG reference ID: 5-003-20140306.

SCHEDULE 1, APPEARANCES

FOR THE APPELLANT:

Nigel Cussen	Pegasus Group
Emma Ridley	Pegasus Group
Laura Garcia	Pegasus Group
Chris Schofield	Enzygo
Derek Allan	Enzygo
Frances Horne	Pegasus Group

FOR MHDC:

Simon Jones	Development manager
Chris Lewis-Farley	Tree and landscape officer
Jane Sedgeley-Strachan	Natural Heritage and Biodiversity officer

INTERESTED PARTIES:

Adam Collett	Chairman, Grimley Parish Council ('GPC')
Dr Chris Betts	Local resident and on behalf of GPC
Carly Tinkler	On behalf of GPC
Lisa Stevens	Clerk, GPC
Francesca Beamish	On behalf of GPC
Heather Rendall	Chair, Winchenford Local Heritage Group
Steven Bloomfield	Worcestershire Wildlife Trust
Dominique Cragg	Worcestershire Wildlife Trust
Dean Clarke	Councillor, Hallow Ward
Kathy Parkes	Local resident
Richard Rees	Local resident
Annette Collett	Local resident
Jill Moffat	Local resident
Ted Lewis	Local resident
Gill Williams	Local resident
Andy Sinclair	Local resident
Ali Wilby	Local resident
Georgie Moore	Local resident
Keith Parker	Local resident
Maureen Guest	Local resident
Joanna Parker	Local resident
Roger Tym	Local resident
Bryn Parry-Jones	Local resident
Christopher Betts	Local resident
Jed Marston	Local resident

SCHEDULE 2, HEARING DOCUMENTS

1	Inspector's draft agenda for the hearing, 21 November 2023
2	Participation list compiled during the hearing
3	Grimley Parish Council annotated site visit map (v1)
4	Grimley Parish Council annotated road map related to proposed vehicle routing
5	Plan no. P001.301.20 with viewpoints
6	Solar Panel Recycling sheet/ method statement
7	Revised southern site access, plan no. C20063-ATP-DR-TP-0015
8	Revised site location plan, plan no. THJ002.300.06
9	Revised proposed site layout plan, plan no. TH002.301.21
10	Map entitled 'Birchall site selection alternative sites' along with detailed mapping in respect of areas A through E
11	MHDC report to committee for application ref. M/22/01073/FUL
12	Appeal ref. APP/J1860/W/16/3142020
13	Worcestershire County Council Landscape Character Assessment, Supplementary Guidance: Technical Handbook, August 2013.
14	Worcestershire Wildlife Consultancy report to Worcestershire Wildlife Trust, ref. 2022/035 A-E v1, June 2022
15	Map of site and surroundings illustrating ancient, veteran and mature trees and Worcestershire Wildlife Trust Reserves
16	Draft condition related to appeal ref. APP/A1910/W/23/3317818 regarding fencing

NB. Documents above are ordered logically by whom they were advanced. In addition, reference was made at the hearing to a High Court judgement of 17 November 2023,⁵⁹ to rights of way mapping, to the Government's Powering up Britain,⁶⁰ and to the positions of the United Nations and Intergovernmental Panel on Climate Change on renewable energy. Those are matters of public record, as is correspondence on behalf of the Friends of the Gwent Levels and the Gwent Wildlife Trust regarding renewable energy. Neither the foregoing, nor other references to matters of public record, are listed specifically as hearing documents.

⁵⁹ Peak District and South Yorkshire Branch of the Campaign to Protect Rural England, R (On the Application Of) v Secretary of State for Transport [2023] EWHC 2917 (Admin) (17 November 2023).

⁶⁰ Published 30 March 2023.

APPENDIX 25

**Appeal APP/D1265/W/23/3317593 – Land at Crupton Farm, Crupton Lane,
Crupton**



Department for Levelling Up,
Housing & Communities

Mr B Spiller,
Chapman Lily Planning Ltd
Unit 5, Designer House Sandford Lane
WAREHAM
BH20 4DY
Email: brett.spiller@clplanning.co.uk

Our ref: APP/D1265/W/23/3317593
Your ref: P/FUL/2021/01920

3 April 2024

By email only

Dear Sir

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY ENVIROMENA ASSET MANAGEMENT UK LIMITED
LAND AT CRUXTON FARM, CRUXTON LANE, CRUXTON DT2 0EB
APPLICATION REF: P/FUL/2021/01920**

This decision was made by Felicity Buchan MP, Minister for Housing and Homelessness, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of P W Clark MA(Oxon) MA(TRP) MRTPI MCMI, who held a public local inquiry from 25 to 27 July and on 2 August 2023 into your client's appeal against the decision of Dorset Council (the Council) to refuse your client's application for planning permission to install ground-mounted solar panel photovoltaic solar arrays, substations, inverter stations, security fencing, access tracks, landscaping and other associated works, in accordance with application Ref. P/FUL/2021/01920, dated 27 May 2021.
2. On 20 April 2023, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, but disagrees with his recommendation. He has decided to dismiss the appeal and refuse planning permission. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Environmental Statement

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the Supplementary Environmental Information (SEI). Having taken account of the Inspector's comments at IR4, the Secretary of State is satisfied that the Environmental Statement (ES) and other additional information provided complies with the above Regulations and that sufficient information has been provided for him to assess the environmental impact of the proposal.

Matters arising since the close of the inquiry

6. In December 2023, the Council published the following guidance documents: Planning for climate change: Interim guidance and position statement, Sustainability statement and checklist for planning applications (which came into effect on 15 January 2024) and Listed buildings and energy efficiency: what you can do for climate change. The Secretary of State is satisfied that the publication of these documents does not affect his decision or necessitate a referral back to parties.
7. A revised version of the National Planning Policy Framework (the Framework) was published on 19 December 2023 and amended on 20 December 2023. On 17 January 2024, the Secretary of State wrote to the main parties to afford them an opportunity to comment on the revised Framework and revised National Policy Statements (NPS) EN-1 and EN-3. Representations were received from CL Planning (on behalf of the appellant) and the Council. These are listed in Annex A to this decision letter. Copies of the letters listed in Annex A may be obtained on request to the email address at the foot of the first page of this letter. The Secretary of State notes that paragraph 163a of the revised Framework now states that local planning authorities should recognise that even small-scale [renewable or low carbon development] projects provide a valuable contribution to significant cutting greenhouse gas emissions. He addresses this point in paragraph 28 below. As set out in paragraph 12 below, he finds that NPS EN-1 and EN-3 are material considerations, and he considers them at paragraph 28. The IR contains paragraph references to the previous version of the Framework; this decision letter refers to both the old and the new paragraph numbers, where these are different.
8. On 22 November 2023, Areas of Outstanding Natural Beauty (AONBs) were renamed as National Landscapes. For convenience in this decision letter the Secretary of State retains the terminology used by the Inspector. As there is no change to the statutory or policy framework covering these areas, he does not consider it is necessary to refer back to parties on this matter.
9. Provisions relating to mandatory Biodiversity Net Gain (BNG) have been commenced for planning permissions granted in respect to an application made on or after 12 February 2024. Permission granted for applications made before this date are not subject to mandatory BNG.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.
11. In this case the development plan consists of the West Dorset, Weymouth & Portland Local Plan adopted in October 2015. The Secretary of State considers that relevant development plan policies include those set out at IR22-24.

12. Other material considerations which the Secretary of State has taken into account include the Framework and associated planning guidance (the Guidance), as well as those other documents listed at IR26-27.

Emerging plan

13. The emerging plan comprises an Options Draft (IR25). The Secretary of State considers that the emerging policies of most relevance to this case include COM10 and ENV4.
14. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Due to the very early stages of local plan preparation the Secretary of State considers little weight can be attached to these emerging plan policies.

Main issues

The effects of the proposal on the character, appearance and special qualities of the Dorset AONB

15. The Secretary of State agrees that although there will be physical changes to the site, it represents a tiny fraction of the AONB and of the Landscape Character Area in which it lies (IR96). He further agrees much of the physical character of the site would remain unaltered (IR97) and the vast majority of the impact on the character, appearance and special qualities of the Dorset AONB would be visual (IR98).
16. For the reasons given at IR99-103 the Secretary of State agrees that the inconsistency between the Landscape and Visual Impact Assessment (LVIA) methodology and the overall ES (and SEI) methodology means that the appellant's evidence has tended to underestimate the impacts of the proposal (IR103). The Secretary of State has taken this into account in reaching his conclusions. For the reasons given at IR104-105 he agrees with the methodology adopted by the Inspector.
17. For the reasons given at IR106 the Secretary of State agrees that the effects of the proposal on the site itself would be transformative, but it is only two fields within a very large AONB and Landscape Character Area, so the overall effect of that immediate impact (as opposed to longer distance views from across the valley) would be tiny – a big event on a small site. He further agrees within the close vicinity of the site, topography and surrounding hedgerows mean that the site cannot be seen until one is right upon it and proposed hedgerow planting would, after a period of time, hide the solar arrays from view at close quarters (but not from sight in longer-distance views).
18. For the reasons given at IR107-108 the Secretary of State agrees that from the site itself, the proposed development would obstruct views outward and so would undoubtedly cause harm to the AONB (IR129). Like the Inspector he considers it would therefore be contrary to policy ENV1(i), which prescribes that development which would harm the AONB, including its uninterrupted panoramic views, will not be permitted.
19. The Secretary of State agrees with the Council's views at IR109 in respect of the damage to the character of the site as a result of the creation of a green lane. For the reasons given at IR127 he agrees that there would effectively be no loss of dark skies as a result of the development proposed.

20. Like the Inspector at IR128, the Secretary of State does not accept that the proposal would have only a limited and localised visual effect. He notes that the site would be visible from a number of locations in a wide-ranging arc of about 100 degrees to the north-east of the site at distances of up to 4km or so, and agrees with the Inspector that from some of these locations it would appear at the centre of a view or as the focal point of a direction of route along a footpath, while from locations closer to the site such as Hogs Cliff Bottom, it would be more prominent (IR128). The Secretary of State agrees with the Inspector's assessment of the impact from various locations as set out at IR110-126 and IR130-132. He agrees that from longer-distant views the effect would be an indistinguishable dark mass which would be accepted as just another, different coloured field, but in nearer views the solar farm would be identifiable as what it is (IR132).
21. Overall, the Secretary of State considers there would be limited harm from longer-distance views towards the site and moderate harm to views from Hog Cliff Bottom where it would be hard to avoid seeing the site and recognising it for what it is. He agrees the effects of the proposal on longer distant views towards the site would not present a clear breach of policies COM11, ENV1 and ENV10 or the planning guidelines for the Landscape Character Area (IR133). For the reasons given at IR163 the Secretary of State agrees that there is partial conflict with clause (iii) of ENV10 because although sufficient soft landscaping would be provided to hide the photovoltaic panels from close-range views, the slope of the hillside means that it would be ineffective in long-range views.
22. The Secretary of State has found at paragraph 18 above that there is conflict with policy ENV1(i). For the reasons given at IR162, he agrees with the Council that in practice, clause (iii) requiring appropriate measures to moderate adverse impacts means that the policy read as a whole envisages a judgement to be made on a balance between harm, mitigation and benefits. Although there will be harm to the AONB, contrary to policy ENV1, this would not be conclusive on its own (IR162). The Secretary of State has returned to this matter in paragraph 37 below.
23. In line with paragraph 182 (formerly 176) of the Framework, the Secretary of State considers that great weight should be attached to the harm he has found to the AONB.
24. Paragraph 183 (formerly 176) of the Framework states that when considering applications for development within an AONB, permission should be refused for major development other than in exceptional circumstances, and where it can be demonstrated that the development is in the public interest. Taking account of footnote 64 (formerly 60) of the Framework, the Secretary of State considers the proposed development is major development. The Secretary of State's conclusions on the AONB test are set out at paragraph 40 below.

The effects of the proposal on the recreational benefit of the Macmillan Way

25. The Secretary of State agrees with the Dorset AONB Partnership that the development will substantially alter the character of the site and lead to the direct loss of a fine panoramic view from a section of a promoted route (IR47 bullet 22). He disagrees with the Inspector's conclusions at IR139 and finds that the harm to the recreational benefit of the Macmillan Way would not be adequately mitigated as the alternative permissive route would not provide a view of equivalent panoramic value to that which would be lost (IR47 bullet 22). He further finds that the proposal would not comply with Development Plan policy COM7(v) as the development degrades the attractiveness of a route (Macmillan Way), and the compensatory enhancements (the alternative permissive route) would not lead to a net improvement to the public right of way network. Overall, the Secretary of State disagrees with the inspector's conclusion at IR141 and concludes that the harm to the recreational benefit of the Macmillan Way would not be adequately mitigated through

the planning obligation proposed. He finds harm to the recreational benefit of Macmillan Way carries moderate weight.

The contribution which the development proposed would make to the accepted national need for renewable energy and the cost of, and scope for meeting the need for it in some other way.

26. The Secretary of State notes that the proposal would have an 11.8MW generating capacity representing 0.02% of the government's target of a further 56GW of solar capacity by 2035, and that Dorset enjoys strong solar irradiance and therefore would be expected to host large amounts of future solar photovoltaic arrays in any future net zero scenario (IR142). He further notes the Council largely accepts it has no strategy, targets or sites for their implementation of renewable energy (IR143), and monitoring data on solar photovoltaic development had not been collected since 2016 (IR144).
27. For the reasons given at IR142-155 the Secretary of State agrees at IR150 that alternative suitable locations are likely and that opportunities undoubtedly exist with high levels of solar irradiation outside the AONB or within its less sensitive parts. However, he has taken into account that a primary substation in the Maiden Newton area is one of the few anywhere in the Council area outside the built-up area of Bournemouth itself identified as having unconstrained capacity to accept generation (IR152). He agrees at IR153 that there is substance in the appellant's argument that in a constrained grid, capacity should be used wherever possible. He further agrees that the megawattage available at this point of connection would not justify the cost of a connection to a site outside of the AONB and so there is no need for viability evidence to demonstrate that any site making use of this point of connection would be limited to a radius of 3km.
28. As set out in paragraph 7 of this decision the Secretary of State has also taken into account the publication of EN-1 and EN-3. These documents enhance the need for the stated types of major energy infrastructure and urgency given to the delivery of that infrastructure. The Secretary of State further acknowledges substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008 (EN-1, paragraph 3.2.7). He further acknowledges that government has concluded that there is a critical national priority (CNP) for the provision of nationally significant low carbon infrastructure (paragraph 4.2.4), and that low carbon infrastructure for the purposes of this policy means for electricity generation, all onshore and offshore generation that does not involve fossil fuel combustion (paragraph 4.2.5 bullet point 1). He has had regard to the Framework at paragraph 163a (formerly 158) concerning the ability of small-scale projects to provide a valuable contribution to significant cutting greenhouse gas emissions.
29. Overall, the Secretary of State agrees that the need for renewable energy generation could not be met in other ways, that the appeal proposal would make an essential contribution both to the accepted national need for renewable energy and to Dorset's need and that the cost of, and scope for meeting the need for it in some other way would be prohibitive in the short to medium term (IR155). However, he notes that the Council proposes to identify suitable sites in the new Local Plan, having regard for landscape, the historic environment, amenity, ecology, and productive farmland impacts and other constraints (IR46) and therefore this position may change in the longer term. He further agrees that the development is integral to the Council making its proportional contribution towards meeting national targets for renewable energy (IR179), but notes that the scale of the proposal would represent a modest contribution towards renewable energy per annum to power approximately 4,800 homes or 10% of those in the AONB, and that contribution needs to be balanced against the harms identified. Overall, he considers that the development's contribution towards renewable energy targets carries significant weight. The Secretary of State considers that there is not full accordance with the first

bullet point of COM11(i), which requires any adverse impacts on the local landscape, townscape or areas of historical interest to be satisfactorily assimilated. For the reasons given at IR164, he agrees that the effect of policy COM11 is to require a judgement to be made on a balance between harm, mitigation and benefits. He addresses these matters further at paragraph 37 below.

30. The Secretary of State further notes that paragraph 163b (formerly 158b) of the Framework states that an application for renewable or low carbon development should be approved if its impacts are (or can be made) acceptable (IR176). Taking into account the harm to the AONB which he has identified and the harm to the recreational benefits of Macmillan Way, he considers that overall, the impacts of the scheme are not acceptable, and disagrees with the Inspector at IR176 that the Framework's policy on renewable energy at paragraph 163 (formally 158) favours the proposal.

Any other benefits or disbenefits to be weighed in the planning balance

31. The Secretary of State acknowledges that a little less than half the site is Best and Most Versatile (BMV) agricultural land and the need for, as per the Written Ministerial Statement of 25 March 2015, any proposal for a solar farm involving BMV agricultural land would need to be justified by the most compelling evidence (IR156). For the reasons given at IR156-157 the Secretary of State agrees that the solar farm would be superimposed on continued (albeit restricted to pastoral) agricultural use and although this would limit agricultural opportunities and thus reduce agricultural productivity, this would, over the lifetime of the development, improve the quality of the land. The Secretary of State, overall, considers that this temporary reduction in agricultural productivity carries limited weight against the scheme. In reaching this conclusion he has taken into the account the additional text which has been added to footnote 62 (formerly footnote 58) of the revised Framework. He further agrees the proposal is not in conflict with ENV8 for the reasons given at IR172.
32. The Secretary of State notes the BNG position for the scheme set out at IR158 and agrees the development complies with ENV2(vi) (IR166). He considers the BNG of over 71% for area-based Habitat Units and net gains of over 26% for linear-based units should carry moderate weight given the modest 18 hectare scale of the site for solar development.
33. The Secretary of State agrees that the economic benefits arising from construction activities are also matters to be taken into account (IR159) and considers they should carry limited weight.
34. For the reasons given at IR160 the Secretary of State agrees the fact that the proposal is for a temporary or time-limited development and that any disbenefits would be reversed at the end of 40 years' operation should carry limited weight.

Planning conditions

35. The Secretary of State had regard to the Inspector's analysis at IR73-92, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework. However, he does not consider that the

imposition of these conditions would overcome his reasons for dismissing this appeal and refusing planning permission.

Planning obligations

36. The Secretary of State has had regard to the Inspector's analysis at IR11, IR72 and IR140, the planning obligation dated 16 August 2023, paragraph 57 of the Framework, the Guidance and the Community Infrastructure Levy (CIL) Regulations 2010, as amended. However, as he has found at paragraph 25 above, harm to the recreational benefit of the Macmillan Way would not be adequately mitigated. He therefore disagrees with the Inspector's conclusion that the obligation complies with Regulation 122 of the CIL Regulations 2010 and the tests at paragraph 57 of the Framework. He therefore attaches no weight to the submitted obligation.

Planning balance and overall conclusion

37. For the reasons given above, the Secretary of State has found that the appeal scheme is in conflict with policy ENV1(i) and COM7(v) and is in partial conflict with ENV10(iii) and COM11(i). He has also found that policy ENV1 read as a whole and COM11 envisage a judgement to be made on a balance between harm, mitigation and benefits. Taking into account his conclusions set out above, the Secretary of State has concluded that the balance between harm, mitigation and benefits in this case indicates that the proposal is not in accordance with the development plan taken as a whole. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

38. Weighing in favour of the proposal is the development's renewable energy production which carries significant weight. BNG carries moderate weight, while the temporary nature of the proposal and the economic benefits arising from construction activities each carry limited weight.

39. Weighing against the proposal is harm to the AONB which carries great weight, harm to the recreational benefits of Macmillan Way which carries moderate weight and the temporary reduction in agricultural productivity which carries limited weight.

40. In line with paragraph 183 (formally 177) of the Framework, the Secretary of State has gone on to consider whether there are the exceptional circumstances required to justify this proposed development in terms of his conclusion that it constitutes major development in paragraph 24 of this letter, and whether it can be demonstrated that the development is in the public interest. In terms of paragraph 183a (formerly 177a), he notes that under paragraph 163 (formerly 158) of the Framework, applicants are not required to demonstrate the overall need for renewable or low carbon energy; he considers that the benefits of the renewable energy production carry significant weight and that the development is integral to Dorset meeting national targets for renewable energy. He has further found that there would be economic benefits arising from construction activity. In terms of paragraph 183b (formerly 177b) of the Framework, he has concluded that the need for renewable energy generation could not be met in other ways, and that the cost of, and scope for meeting the need for it in some other way, would be prohibitive in the short to medium term. In terms of paragraph 183c (formerly 177c), he is not satisfied any detrimental effect on the environment, the landscape and recreational opportunities have been considered and as far as possible moderated. Overall, the Secretary of State disagrees with the Inspector's conclusions on exceptional circumstances at IR179. He does not consider that these factors together constitute exceptional circumstances which justify major development in the AONB.

41. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that the overall conflict with the development plan and the material considerations in this case indicate that permission should be refused.
42. The Secretary of State therefore concludes that the appeal should be dismissed, and planning permission refused.

Formal decision

43. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission to install ground-mounted solar panel photovoltaic solar arrays substations, inverter stations, security fencing, access tracks, landscaping and other associated works, in accordance with application Ref. P/FUL/2021/01920, dated 27 May 2021.

Right to challenge the decision

44. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.
45. A copy of this letter has been sent to the Council, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully



Decision officer

This decision was made by Felicity Buchan MP, Minister for Housing and Homelessness, on behalf of the Secretary of State and signed on her behalf

Annex A Schedule of representations

Representations received in response to the Secretary of State's reference back letter of 17 January 2024

Party	Date
Chapman Lily Planning	18 January 2024
Dorset Council	31 January 2024
Chapman Lily Planning	31 January 2024
Dorset Council	2 February 2024
Chapman Lily Planning	9 February 2024
Dorset Council	9 February 2024

General representations

Party	Date
Dorset Council	21 February 2024
Chapman Lily Planning	21 February 2024
Dorset Council	22 February 2024



The Planning Inspectorate

Report to the Secretary of State for Levelling Up, Housing and Communities

by P W Clark MA(Oxon) MA(TRP) MRTPI MCM I

an Inspector appointed by the Secretary of State

Date 27 September 2023

Inquiry Held on 25-27 July and 2 August 2023

Land at Crupton Farm, Crupton Lane, Crupton DT2 0EB

File Ref: APP/D1265/W/23/3317593

<https://www.gov.uk/planning-inspectorate>

File Ref: APP/D1265/W/23/3317593

Land at Cruxton Farm, Cruxton Lane, Cruxton DT2 0EB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Enviromena Asset Management UK Limited against the decision of Dorset Council.
- The application Ref P/FUL/2021/01920, dated 27 May 2021, was refused by notice dated 8 November 2022.
- The development proposed is to install ground-mounted solar panel photovoltaic solar arrays substations, inverter stations, security fencing, access tracks, landscaping and other associated works.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

ABBREVIATIONS

AC	Alternating Current
AIA	Arboricultural Impact Assessment
AONB	Area of Outstanding Natural Beauty
BEIS	Department for Business, Energy and Industrial Strategy (until 2023)
BMV	Best and Most Valuable agricultural land
BNG	Biodiversity Net Gain
BRE	Building Research Establishment
BS	British Standard
CCTV	Closed Circuit television
CD	Core Document
CEES	Climate and Environmental Emergency Strategy
CO ₂	Carbon dioxide
CTMP	Construction Traffic Management Plan
DC	Direct Current
DEFRA	Department for Environment, Food & Rural Affairs
DMS	Decommissioning Method Statement
DNO	Distribution Network Operator
DOC	Discharge of Conditions
DEKES	Digest of United Kingdom Energy Statistics
Eg	For example
EIA	Environmental Impact Assessment
ES	Environmental Statement
GLVIA3	Guide to Landscape and Visual Impact Assessment 3 rd edition
Guidance	National Planning Practice Guidance
GW	Gigawatt; 1,000 MW
GWh	Gigawatt hours
ha	Hectare(s)
HGV	Heavy Goods Vehicle
IPCC	Intergovernmental Panel on Climate Change
LCA	Landscape Character Area
LEMP	Landscape Ecological Management Plan
LPA	Local Planning Authority
LV	Low voltage
LVIA	Landscape and Visual Impact Assessment
MW	Megawatt; one million watts, 0.001GW
MWh	Megawatt hours
NE	Natural England
NNR	National Nature Reserve
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
OAL	Open Access Land
OS	Ordnance Survey
PFA	The name of a professional consultancy
PINS	The Planning Inspectorate
POC	Point of Connection
PRoW	Public Right of Way
PV	Photovoltaic

REPD	Renewable Energy Planning Database
RPA	Root Protection Area
RSPB	Royal Society for the Protection of Birds
SOCG	Statement of Common Ground
SofS	Secretary of State
SEI	Supplementary Environmental Information
SSEN	Scottish and Southern Electricity Networks
SSSI	Site of Special Scientific Interest
SW	Surface Water
TGN	Technical Guidance Note
UK	United Kingdom
UNFCCC	United Nations Framework Convention on Climate Change
VP	Viewpoint
WMS	Written Ministerial Statement
ZTV	Zone of theoretical visibility

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Procedural Matters

1. The description of development was changed by the Council on registration of the application. The revised description is used by the appellant on the appeal form and is used in this report.
2. An EIA Screening Opinion was issued by the LPA on 12th March 2021 in respect of a solar farm and ancillary infrastructure (application ref: P/ESC/2021/00682). The Screening Opinion concluded that the proposed development is EIA development on the grounds of landscape and visual effects.
3. No formal Scoping Opinion was sought or provided. Direct discussions between the appellant's Chartered Landscape Architect and the Council's landscape officer led to an agreement that all matters other than Landscape could be scoped out of the Environmental Statement.¹
4. An Environmental Statement was submitted by the Appellant as part of the planning application and supported by further Supplementary Environmental Information. It is agreed between the parties that sufficient environmental information has been provided by the Appellant to comply with the EIA Regulations and to allow a lawful decision to be made².
5. The appeal was originally to have been decided by an Inspector, in accordance with the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997. On 20 April 2023, in exercise of his powers under s79 and paragraph 3 of Sch 6 of the Town and Country Planning Act 1990, the Secretary of State directed that he will determine this appeal instead of an Inspector. The reason for the Direction is that the appeal involves proposals which raise important or novel issues of development control and/or legal difficulties.
6. A Case Management Conference was held on 25 May 2023, in accordance with the recommendations of the Rosewell Report.³ This identified the main issues in this case as;
 - i. The effects of the proposal on the character, appearance and special qualities of the Dorset Area of Outstanding Natural Beauty.
 - ii. The effects of the proposal on the recreational benefit of the Macmillan Way.
 - iii. The contribution which the development proposed would make to the accepted national need for renewable energy and the cost of, and scope for meeting the need for it in some other way.
 - iv. How the proposed reinstatement at the end of forty years is to be secured.

¹ Environmental Statement, paragraphs 1.2.5 and 2.4.1 and Table 2.1 (CD1.8).

² Statement of Common Ground dated 10.5.23 paragraphs 6.3 and 8.2 (CD8.6).

³ The Independent Review of Planning Appeal Inquiries December 2018 by Bridget Rosewell OBE.

- v. Any other benefits or disbenefits to be weighed in the planning balance.
7. The application was amended during its consideration by the Council to include a route for construction traffic into the site from the south off Greenford Lane. Further amended plans were submitted with the appeal which include a revised Landscape Strategy including the provision of a new permissive path. The Council is content to proceed based on the revised plans.⁴ PINS's Procedural Guidance points out that to avoid the risk of challenge to a decision, an appeal will normally proceed on the basis of the plans considered by the Council when it made its decision and that the appeal should not be used as a way of evolving a proposal.
 8. The appellant was advised that in order to reduce the chances of someone claiming that they would be prejudiced by the consideration of revised plans, they should immediately advertise their request for the Inquiry to consider revised plans as widely as the Council itself originally advertised the proposal. This was done, with a 30-day consultation period expiring on 30 June 2023. The appellant has confirmed that during that time no correspondence was received either through the dedicated consultation website or via email or by telephone.⁵
 9. I am therefore satisfied that nobody would be prejudiced by proceeding on the basis of the revised plans and that is what I have done.
 10. The Inquiry sat from 25 to 27 July and on 2 August 2023. An accompanied site visit was carried out on 1 August 2023. The Inquiry was formally held open until 17 August to allow for a signed and sealed s106 agreement to be submitted.
 11. The s106 agreement provides for the creation of a permissive path in parallel with the Macmillan Way along the west side of the site on land immediately outside the site boundary to the west of the hedgerow which currently borders the Macmillan Way and bounds the site. The need for the obligation and its compliance with the CIL regulations is considered later in my report.

The Site and Surroundings

12. Numerous documents describe the site and its surroundings.⁶ The site comprises approximately 18 hectares (ha) of agricultural land located across

⁴ Advice given by Emyr Jones at the Case Management Conference.

⁵ E-mail dated 5 July 2023 from Steven Bainbridge of Chapman Lily Planning Limited to Inspectorate's Case Officers filed in folder 09 Other Appeal Documents of Inspector's file. The consultation arrangements are described in Steven Bainbridge's Proof of Evidence paragraph 2.5 and Appendix 1 (CD8.18) and confirmed in Matthew Pochin-Hawkes's Proof of Evidence, paragraph 2.6. (CD8.20).

⁶ Statement of Common Ground dated 10.5.23 section 2, pages 2-3 (CD8.6); Appellant's Statement of Case, section 2, pages 4-5 (CD8.4); Council's Statement of Case, section 1, page 3 (CD8.5), Council's Committee Report, section 4 (CD3.1); Andrew Cook's Proof of Evidence, paragraphs 2.24-2.34 (CD8.19); Sarah Barber's Proof of Evidence paragraphs 4.13-4.23 and 4.35-4.36 (CD8.21); Matthew Pochin-Hawkes's Proof of Evidence, paragraph 2.1

two agricultural fields at Cruyton Farm which lies 0.7km south-west of Dorchester Road (A356) near the village of Maiden Newton in Dorset, about 11 km north-west of the centre of Dorchester. The appeal site sits on a north-facing slope of Notton Hill on the south side of the valley of the River Frome.

13. The appeal site lies within a predominantly undeveloped agricultural landscape. The nearest properties to the site are situated in Cruyton (circa 550m north-east), with dispersed dwellings in Notton including Notton Hill Barn (circa 300m south-east) and Greenford Farm (circa 700m west). The hamlet of Cruyton is located circa 550m north-east of the site with other residential areas in the wider vicinity of the site including the village of Maiden Newton (circa 1.4km) to the north, the hamlet of Wynford Eagle (circa 1.7km) to the west and the village of Frampton (circa 2km) to the east. The fringes of Dorchester are approximately 8km south-east of the site.
14. An existing agricultural track from Cruyton Farm serves the site. The proposed panels and associated infrastructure would be located in both fields, separated by existing hedgerows. The existing access is proposed to be utilised for operational purposes. Access to the site for construction purposes only will be mostly along a temporary access to be constructed from the southern point of the solar farm to Greenford Lane⁷ which is an unclassified road to the west of the site, running south from the A356 at Maiden Newton to the A35 at Kingston Russell.
15. The topography of the appeal site declines approximately 38m from the southern boundary to the northern boundary⁸. The two fields within the site are predominantly geometric in their form. The northern field slopes more steeply

(CD8.20); Arboricultural Impact Assessment section 2 (CD1.3); Arboricultural Survey report, section 2 (CD1.4); Flood Risk Assessment paragraphs 1.2 and 3.1-3.14 (CD1.11); Ecological Assessment Report sections 1.2 and 3.4 (CD2.2) and Appendices 4 (Biodiversity Management Plan), paragraphs 2.1.2 to 2.1.4 (CD2.2a) and 6 (Confidential Badger Survey Report) section 1.2 (CD2.2c); Planning Statement section 2; Heritage Desk-Based assessment, paragraphs 2.1 and 5.5-5.7 (CD1.14); Environmental Statement, sections 3.2, 5.3 and 6.3 (CD1.8) and Appendix 2.1 (Council's Screening Opinion dated 12 March 2021)(CD3.3), Appendix 3.3 (Landscape and Environmental Management Plan) paragraphs 2.1 to 2.3 (CD2.3), Appendix 5.2 (Dorset Council Landscape Officer's comments in response to pre-application advice request)(CD1.9); Environmental Statement Non-technical Summary, pages 3 and 8-10 (CD1.10); Supplementary Environmental Information: Non-technical Summary, pages 3 and 8-10 (CD2.9); Supplementary Environmental Information sections 3.2, 5.3 and 6.3 (CD2.10); Design and Access Statement, section 2 (CD1.6).

⁷ Andrew Cook's Proof of Evidence, paragraph 2.34 (CD8.19).

⁸ According to the Statement of Common Ground, paragraph 2.3 (CD8.6). The Environmental Statement and Supplementary Environmental Information (both paragraph 3.2.3) (CDs 1.8 and 2.10) say 25m as does the Council's Landscape Officer (in her pre-application comments attached as Appendix 5.2 (CD1.9)). The Topographical Survey, attached to the Environmental Statement as Appendix 3.1 (CD1.9) shows the lowest point of the northernmost field to be 140.08m AOD (confirmed by Sarah Barber orally in evidence in chief), the highest point of the southern field to be 183.75m AOD, a difference of 43.67m. (In oral evidence in chief, Sarah Barber referred to a figure of c186m in the hedgerow boundary and a spot point of 196.6 in the southern boundary hedgerow).

than the southern. The northern field has previously been used as a game bird rearing area with an area of 'pens' spread across part of the slope. The pens are constructed of timber and wire netting and are periodically moved around the wider farm unit. The boundaries of the site are formed by a mixture of dense hedgerows and mature trees, mostly of moderate quality, with a small high quality⁹ woodland block within the site at the northern boundary.

16. A Public Right of Way (PRoW), (Footpath S29/19 of the Dorset Council's Definitive Map) runs along the western boundary of the appeal site. A further PRoW runs along the southern boundary of the site (Footpath S29/20). These paths are part of the Macmillan Way promoted route, a long-distance walking route. The comprehensive network of public rights of way and Open Access Land in the locality are illustrated in the Environmental Statement, figures 3.1 and 3.4.¹⁰ There are frequent pockets of Open Access Land (OAL) where there is public access.¹¹
17. There are no International or European designated sites (Ramsar, Special Protection Area or Special Areas of Conservation) within close proximity of the appeal site. There are a number of designated sites within a 5km radius of the site. The closest are the Cerne and Sydling Downs SAC and Hog Cliff SSSI/NNR (both circa 1.3km north-east). Although the appeal site falls within the SSSI Impact Risk Zone, the proposed development does not meet the criteria for the types of development which would be considered as likely to generate potential adverse effects on the SSSI's notified features whereby the Local Planning Authority (LPA) would be required to consult with Natural England.¹² There are also a number of non-statutory designated sites for nature conservation within 2km; four Sites of Nature Conservation Interest, three Habitat Restoration Sites and one Dorset Wildlife Trust Reserve.¹³ The arable land and hedgerows within the appeal site are listed as Local Biodiversity Action Plan habitats within the Dorset Biodiversity Strategy¹⁴.
18. The appeal site is located within the Dorset Area of Outstanding Natural Beauty (AONB), National Character Area 134 (the Dorset Downs and Cranborne Chase)¹⁵ and Upper Frome Valley Landscape Character Area¹⁶. Key

⁹ Arboricultural Impact Assessment (CD1.3), and Arboricultural Survey report (CD1.4), both section 3, table 1, contradicted by both documents' Tree Survey Plan and Schedule which categorises it as B2.

¹⁰ Statement of Common Ground, paragraph 8.22 (CD8.6); Environmental Statement paragraphs 5.3.24 and 5.3.25 (CD1.8).

¹¹ Andrew Cook's Proof of Evidence, paragraph 2.32 (CD8.19).

¹² Ecological Assessment Report, paragraph 3.2.3 (CD2.2); Environmental Statement, paragraph 3.2.7 (CD1.8).

¹³ Ecological Assessment Report, paragraph 3.2.5 (CD2.2).

¹⁴ Ecological Assessment report, paragraph 3.3.2 (CD2.2).

¹⁵ Statement of Common Ground, paragraph 8.23 (CD8.6); Andrew Cook's Proof of Evidence paragraph 5.6 (CD8.19).

characteristics of the LCA include a series of broad, undulating valleys with associated chalk streams with surrounding, expansive open uplands that offer fine panoramic views enabling an appreciation of the structure of the farmed downland and undeveloped rural character with a sense of seclusion and tranquillity. The topography plan, figure 5.1 in the ES, details contour lines at 20m intervals and reflects the general topography of the area. Drawing P20-0981_05 illustrates the complex landforms within the surrounding area.¹⁷

19. There are no designated heritage assets within the appeal site itself and the site is not located within a Conservation Area. A cluster of Grade II and Grade II* Listed Buildings exist within the hamlet of Crupton (circa 500m north). A further two Grade II listed buildings are located circa 610m north-east of the site. There are no Scheduled Monuments, Registered Parks and Gardens, Registered Battlefields or World Heritage Sites located within 1km of the site.
20. The appeal site is located within Flood Zone 1 which confirms that the site has a low probability of flooding from rivers or sea. The site has a low risk of surface water flooding.
21. The appeal site comprises approximately 8ha of Grade 3a 'Good Quality' agricultural land and approximately 10ha of Grade 3b 'Moderate Quality' agricultural land.¹⁸

Planning Policy

22. The site falls within the Maiden Newton and Frome Vauchurch Neighbourhood Plan Area designated in September 2015 but no Neighbourhood Plan has been made, nor even a draft published for consultation¹⁹. Consequently, the Statutory Development Plan covering the appeal site consists solely of the West Dorset, Weymouth & Portland Local Plan adopted in October 2015 ("the Development Plan"). The policies cited in the Decision Notice include:
 - ENV1 – Landscape, Seascape and Sites of Geological Interest
 - ENV10 – The Landscape and Townscape Setting
 - COM11 – Renewable Energy Development
23. Other policies cited in the Council's Committee Report include:
 - ENV 2 – Wildlife and Habitats
 - ENV 4 – Heritage Assets
 - ENV 5 – Flood Risk

¹⁶ Andrew Cook's Proof of Evidence paragraph 5.14 (CD8.19); Environmental Statement, paragraph 3.2.8 (CD1.8).

¹⁷ Statement of Common Ground, paragraph 8.21 (CD8.6).

¹⁸ Agricultural Land Classification Report, Section 1; executive summary (CD1.2).

¹⁹ Planning Statement, paragraph 5.4 (CD1.14).

- ENV 9 – Pollution and Contaminated Land
- ENV 12 – The Design and Positioning of Buildings
- ENV 15 – Efficient and Appropriate Use of Land
- ENV 16 – Amenity
- SUS 2 – Distribution of Development
- COM 7 – Creating a Safe and Efficient Transport Network
- COM 9 – Parking Standards in New Development

24. The two main parties agree²⁰ that a further policy not mentioned in the Decision Report or Committee Report but relevant to the consideration of the appeal proposals is:

- ENV 8 – Agricultural Land and Farming Resilience

25. The Council is in the early stages of preparing a new Local Plan²¹. An Options draft was published for consultation between January and March 2021 but a Consultation Draft is not expected until December 2024, followed by submission for examination in April 2025. Relevant policies in the Options Draft include;

- COM10 (Low Carbon and Renewable Energy Development)
- ENV4 (Landscape)

26. Other relevant documents include²²:

- Dorset AONB Management Plan 2019 – 2024²³
- Dorset AONB Landscape Character Assessment²⁴
- West Dorset Landscape Character Assessment 2009
- Dorset Council Climate and Ecological Emergency Strategy, final version published July 2021
- Dorset Climate and Ecological Emergency Strategy Progress Report – 2022

²⁰ Statement of Common Ground paragraph 7.5 (CD8.6); Appellant’s Statement of Case, paragraph 6.5(d) (CD8.4) and appellant’s Planning Statement paragraph 5.11 (CD1.14). The Appellant’s Planning Statement adds policy INT1 – Presumption in favour of sustainable development and policy ENV10 – the Landscape and Townscape Setting.

²¹ Appellant’s Statement of Case, paragraphs 6.6-6.7 (CD8.4).

²² Statement of Common ground paragraph 7.6 (CD8.6).

²³ Appellant’s statement of Case, paragraph 6.10 (CD8.4) references policies C1(a), C3(f), C4(a), C4(c), and C4(d); Sarah Barber’s Proof of Evidence for the Council (CD8.21), paragraph 3.7 references policy C1(a).

²⁴ Statement of Common Ground paragraph 8.24 (CD8.6).

- Natural Environment, Climate and Ecology Strategy 2023-25 Refresh
- Natural Environment, Climate & Ecology Action Plan
- Guidance for Large Scale Solar Arrays in the Dorset AONB (February 2011)²⁵

27. The two main parties also agree²⁶ that there are a number of policy statements and guidance dealing with both planning policy and energy policy at the national level which comprise other material considerations in the determination of the appeal:

- National Planning Policy Framework (July 2021, now September 2023)
- National Planning Practice Guidance²⁷
- Overarching National Policy Statement for Energy (EN-1) (July 2011)
- Draft National Policy Statement for Energy (EN-1) (September 2021)
- National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)
- Draft National Policy Statement for Renewable Energy Infrastructure (EN-3)
- UK Government Solar Strategy 2014
- Written Ministerial Statement on Solar Energy: protecting the local and global environment made on the 25th March 2015
- Climate Change Act 2008
- Climate Change Act (2050 target amendment) Order 2019
- Clean Growth Strategy published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017
- UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019
- Energy White Paper: Powering our Net Zero Future published in December 2020

²⁵ Statement of Common Ground paragraph 8.19 (CD8.6).

²⁶ Statement of Common Ground paragraph 7.7 (CD8.6). The appellant's Statement of Case paragraph 7.1 (j) (CD8.4) and the Council's Statement of Case paragraph 6.1 (CD8.5) both add the government's Food Strategy published in June 2022. The appellant's Planning Statement Addendum (CD2.6) adds the Paris Agreement of the United Framework Convention on Climate Change, 12 December 2015 and the Carbon Budget Order 2021.

²⁷ The appellant's Planning Statement paragraph 5.21 (CD1.14) references Guidance paragraph 0.13 (ID: 5-013-20150327).

- UK Government press release of acceleration of carbon reduction to 2035, dated April 2021
- The latest version of the 'Digest' of United Kingdom Energy Statistics
- UK Energy Statistics Press Release published by the BEIS, June 2020.
- 'Achieving Net Zero' published by the National Audit Office in December 2020
- UK Energy in Brief, published by the BEIS 2021.
- Net Zero Strategy: Build Back Greener, dated October 2021
- The Climate Crisis: A Guide for Local Authorities on Planning for Climate Change, prepared by the Town and Country Planning Association, dated October 2021
- British Energy Security Strategy, dated 7th April 2022
- Growth Strategy, dated 23rd September 2022
- Powering Up Britain, dated March 2023
- Powering Up Britain: Energy Security Plan, dated March 2023
- Powering Up Britain: Net Zero Growth Plan, dated March 2023

The Proposals

28. The planning application which is the subject of this appeal is described in several of the submitted documents.²⁸ Planning permission is sought for the construction of a solar farm with a capacity of approximately 11.8MW for a temporary period of 40 years from the date of the first export of electricity from the appeal site, after which period the land would be reinstated to its current status as agricultural land.
29. The proposed development is expected to generate enough clean renewable electricity per annum to power approximately 4,800 homes (based on average

²⁸ Statement of Common Ground, 10 May 23, section 3, pages 4-8 (CD8.6); Appellant's Statement of Case, section 3, pages 6-8(CD8.4), Council's Statement of Case, section 2, page 3 (CD8.5); Council's Committee report, section 5(CD3.1); Andrew Cook's Proof of Evidence, section 3 (CD8.19); Sarah Barber's Proof of Evidence paragraphs 4.1, 4.3 to 4.8 and 4.10 (CD8.21); Appellant's Glint and Glare Study, section 2 (CD1.16); Arboricultural Impact Assessment, section 5 (CD1.3); Flood Risk Assessment paragraphs 1.3 and 3.31-3.45 (CD1.11); Ecological Assessment Report, paragraph 4.3.8 (CD2.2); Planning Statement section 3 (CD1.14); Planning Statement Addendum section 3 (CD2.6); Revised Construction Traffic Management Plan, paragraphs 1.2-1.8 and 2.2-2.5 (CD2.7); Environmental Statement, section 3.3 and paragraphs 5.4.2 to 5.4.4 and 6.5.1 to 6.5.4 (CD1.8) and Appendix 2.1 (Council's Screening Opinion dated 12 March 2021 (CD3.3)) and Appendix 5.2 (Dorset Council Landscape Officer's comments in response to pre-application advice request)(CD1.9); Environmental Statement Non-technical Summary, page 4 (CD1.10); Supplementary Environmental Information: Non-technical Summary, page 4 (CD2.9); Supplementary Environmental Information section 3.3 and paragraphs 5.4.3 to 5.4.10 and section 6.4 (CD2.10); Design and Access Statement, sections 3 and 4 (CD1.6).

UK household electricity consumption). It is anticipated that approximately 3,100 tonnes of CO₂ will be saved by the project each year.

30. The proposed solar farm would consist of solar photovoltaic panels placed on metal arrays arranged in rows on an east to west alignment. Associated infrastructure includes inverters, boundary landscaping, perimeter fencing and access. Plant and other equipment to support the generation of electricity is located around the site, adjacent to internal tracks to ensure access can be achieved to these for maintenance purposes.

Proposed Development Components

31. The main components of the proposed development comprise:

- Rows of Solar photovoltaic (PV) panels known as strings. The arrays of photovoltaic cells (typically laid out in tables of 27 or 54 modules - in total 21,978 modules) face to the south at approximately 25 degrees from the horizontal to maximise the absorbency of the sun's rays and minimise solar glare. Each string of panels would be mounted at approximately 0.6m from the ground at the lowest point (the southern edge) rising to up to 2.54m at the highest point (the northern edge), on a metal frame, with metal supports, pile driven into the ground to a depth of approximately 1 to 2m, depending on ground conditions, without the need for concrete foundations. The arrays are spaced approximately 5.6m apart to avoid any shadowing effect from one panel to another.
- Inverters and transformers distributed across the solar arrays. The inverters are essential pieces of infrastructure required to convert the electricity generated by the solar array from direct current (DC) to alternating current (AC) and to increase the electricity voltage thereby minimising losses and to ensure the on-site electrical system operates safely.
- Plant and equipment necessary to export the electricity generated onsite to the electricity network:
 - 1no. DNO substation enclosure measuring 7m (L) x 3.11m (W) x 3.45m(H);
 - 1no. Customer Switchgear/T Boot enclosure measuring 5.92m (L) x 2.96m (W) x 2.95m (H);
 - 3no. Typical LV Switch/Transformers measuring up to 2.7m (H) within a fenced enclosure and;
 - Approximately 500m of underground cabling exiting the appeal site from the north and connecting into a grid connection point pole located on the landowner's land.
- Underground cabling to connect the panels and inverters/transformer stations to the proposed on-site substation and control room;
- Security deer-type fencing with gates at necessary locations, up to 2.2m in height which enclose the perimeter of the appeal site. A 150mm gap between the bottom of the fence netting and ground level will be provided.

- Security and monitoring CCTV/infra-red cameras will be installed along the internal perimeter of the appeal site – exact details to be agreed by condition prior to installation.
32. No permanent operational lighting is required at the appeal site. Manually operated lights may be attached to the substation and inverter/transformer stations in the event of an emergency maintenance visit being required in the hours of darkness.
33. The existing PRowS located along the western and southern boundaries of the appeal site will be retained along their existing routes for the duration of the construction and operation of the proposed development.

Access

34. Access to the appeal site will be off both Cruyton Lane and Greenford Lane. Following completion of construction, gates would be installed at the access points that adjoin these public highways for security purposes.²⁹
35. During the construction phase, the majority of HGVs will arrive at a lay down area off of Greenford Lane using an existing farm access. Access to the site for construction purposes only will be along a temporary access to be constructed from the southern point of the solar farm to Greenford Lane.³⁰ Bridleway S61/4 and Footpath S29/19 are located along this route. The solar farm components will then be delivered to the site via tractor and trailer along this presently unpaved and informal route from Greenford Lane to the south-western corner of the southern field.
36. The Cruyton Lane access will be used for a minimal amount of HGV movements during the construction phase. Its predominant use will instead be for maintenance purposes during the operation phase of the proposed development where there will be minimal vehicular movements associated with the development. Lighter vehicles during the construction phase will access the site via an existing farm track connecting to Cruyton Manor Farm and then to Dorchester Road A356.

Landscaping and biodiversity enhancements

37. The layout of the proposed development provides for no loss of existing trees and hedgerows within the appeal site.
38. A new native hedgerow will be planted along the western boundary of the appeal site on the outside of the perimeter fence measuring approximately 370 linear meters in length. A smaller native hedgerow measuring 20 linear meters in length will be planted to infill a gap between the northern and southern fields of the appeal site. The new hedgerows will be maintained at a height of 2.5-3m.

²⁹ Andrew Cook's evidence, paragraph 3.13 (CD8.19).

³⁰ Andrew Cook's evidence paragraph 2.34 (CD8.19).

39. Any missing areas in the existing hedgerow and tree belt along the northern, eastern and southern boundaries of the appeal site will be infilled with new planting. It will then be maintained at a minimum height of 2.5-3m. The existing hedgerow between the northern and southern parcels of the appeal site will be retained and maintained at a minimum height of 2.5-3m.
40. Within the appeal site, grass underneath the proposed solar panels will be subject to conservation grazing with any bare areas created during construction sown with a grazing mix. An area of wildflower meadow seeding will be provided in the south-western corner of the appeal site. The existing PRoW along the western boundary of the site will be maintained at a minimum of 4m wide and sown with an appropriate shade tolerant grassland mix to be managed at a height of 150mm.
41. Biodiversity enhancement measures will also be provided including the creation of grassland and wildflower meadow seeding. The Biodiversity Net Gain Report submitted as part of the planning application (prepared by Avian Ecology, V4, dated February 2022) calculates a net gain of 34.32% in habitat units, plus 10.26% gain in hedgerow units³¹, updated to a net gain of 71.05% in habitat units and 26.76% in hedgerow units when recalculated using DEFRA metric 4 (attached as Appendix 7 to Steven Bainbridge's evidence).

Construction and operation

42. Construction is expected to take place over approximately three-four months.³² It is anticipated that construction vehicles associated with the proposed development will travel from the M5 motorway. All vehicles will then route via the A35, approximately 4.2 kilometres to the south of the site, using the Kingston Russell junction to travel northbound onto Greenford Lane, returning via the Roman Road priority junction with the A35. Any construction vehicles that route from the east will use the Roman Road priority junction with the A35 instead of the Kingston Russell junction, as the former provides a dedicated right turn lane and provides the appropriate visibility splays.
43. Once installed, the solar farm would require infrequent visits for the purposes of maintenance or cleaning of the site. Such work typically requires around one visit to the site per month, made by light van or 4x4 type vehicles. The facility would be unmanned, being remotely operated and monitored.

Decommissioning

44. The proposed development would export renewable energy to the National Grid for a period of 40 years. The scheme, including the supporting framework for the solar panels, is fully reversible. These structures can be removed from the appeal site and the land reinstated to agricultural use. Most of the component parts, including the aluminium framework and silicon in the module panels, can

³¹ Ecological Assessment Report, paragraph 4.4.1 (CD2.2).

³² The construction activities and hours of work are canvassed in the Environmental Statement, paragraphs 3.4.5 and 3.4.6. Plant and equipment to be used is detailed in the ES paragraph 3.4.9 (CD1.8).

be recycled. The landscape and biodiversity mitigation and enhancement measures would remain.

The Case for Enviromena Asset Management UK Limited

45. Despite a plethora of somewhat repetitious documentation, the appellant's case is relatively straightforward:

- There is a climate crisis, recognised internationally, nationally and locally.³³
- The response to the climate crisis depends on renewable energy.³⁴

³³ Appellant's Planning Statement May 2021, paragraphs 4.6-4.14 (CD1.14); Appellant's Planning Statement Addendum paragraphs 4.13-4.37 (CD2.6); Appellant's Statement of Case, paragraph 7.1 (CD8.4) referencing the Climate Change Act 2008 (CD8.24); UK government Solar Strategy 2014 (CD8.27); Written Ministerial Statement on Solar Energy 25 March 2015 (CD8.28); the Climate Change Act (2050 target amendment) Order 2019 (CD8.31); the Clean Growth Strategy published by BEIS in October 2017 (CD8.29); Parliament's declaration of a Climate and Ecological Emergency in May 2019 (CD8.30); Dorset Council's declaration of a Climate and Ecological Emergency (also noted in Statement of Common ground paragraph 8.12); the Energy White Paper: Powering our Net Zero future, December 2020 (CD8.30); the UK government's press release of April 2021 accelerating carbon reduction by 2035 (CD8.32); Net Zero Strategy: Build Back Greener, October 2021 (CD8.39); the British Energy Security Strategy, April 2022 (CD8.40); government Food Strategy June 2022; Overarching National Policy Statement for Energy (EN-1)(July 2011) (CD8.25); draft National Policy Statement for Energy (EN-1)(September 2021) (CD8.41); National Policy Statement for Renewable Energy Infrastructure (EN-3)(July 2011) (CD8.26); draft national Policy for Renewable Energy Infrastructure (EN-3)(September 2021) (CD8.42). The appellant's Material Considerations Update Note of August 2022 (CD2.4) adds; the Intergovernmental Panel on Climate Change (IPCC) second part of Sixth Assessment Report, Climate Change 2022: Impacts, Adaptation and Vulnerability (February 2022) and a contemporaneous Joint Statement from the UK, Egypt and UNFCCC issued in response to the IPCC report; the IPCC report of 4 April 2022, "Climate Change: Mitigating Climate Change"; a Parliamentary debate on 1 June 2022 and the report of the Climate Change Committee on 29 June 2022, "Progress in reducing emissions: 2022 Report to Parliament"; Steven Bainbridge's evidence paragraphs 6.1 8.12-8.13, 8.15-8.17, 8.20 and 8.69-74 (CD 8.18) referencing Development Consent Order reference EN010085; appellant's NPPF §177 Compliance Note, paragraphs 3, 4 & 5 (CD2.5).

³⁴ Appellant's Planning Statement (May 2021), paragraphs 4.4 and 4.5 (CD1.14), referencing the European Union Renewable Energy Sources Directive (2009/28/EC) and the European Union 2030 Energy and Climate Change Framework; appellant's Planning Statement paragraphs 5.24 and 5.28 (CD1.14); Appellant's Planning Statement Addendum paragraphs 4.13 to 4.37 (CD2.6) referencing the government's Net Zero Strategy of October 2021 (CD8.39); Appellant's Statement of Case, paragraphs 7.2 (CD8.4) (referencing the Digest of UK energy Statistics (CD8.48)); 7.5(g) and (h) (referencing NPPF paragraphs 152 and 158); 7.9 (referencing NPPG paragraph 013 (ID: 5-013-20150327)), 7.10-7.14 (referencing the Overarching National Policy Statement for Energy (EN-1) (CD8.25) paragraphs 1.2.1 and 3.4.1 and its draft revision of September 2021 (CD8.41), section 2.3 and paragraphs 2.3.2 and 2.3.4) 7.17 (referencing the National Policy Statement for Renewable Energy Infrastructure (EN-3) (CD8.26) and its revised draft of September 2021, paragraph 2.47.1 (CD8.42)); Steven Bainbridge's evidence, paragraphs 2.29, 8.18, 8.21, 8.24, 8.37, 8.51-8.54 and 8.57 (CD8.18); appellant's Material Considerations Update Note of August 2022 (CD2.4), paragraph 3.13, referencing the IPCC report "Climate Change 2022: Mitigating Climate Change" of 4 April 2022 and paragraphs 3.28 to 3.33 referencing the Energy Bill and quoting from the BEIS consultation on its Review of Electricity Market Arrangements.

- Energy security reinforces dependency on renewable energy.³⁵
 - Solar power is expected to make a major contribution to renewable energy supplies.³⁶
 - The rate at which solar power is delivered needs to be accelerated.³⁷
 - The proposal would have an 11.8MW capacity³⁸ representing 0.02% of the government's target of a further 56GW of solar capacity by 2035³⁹. Site
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³⁵ Reference is made to the British Energy Security Strategy, April 2022 (CD8.40). Appellant's Statement of Case paragraph 9.6 (CD8.4), referencing Dorset Council's Climate and Ecological Emergency Strategy (CD8.51); Steven Bainbridge's evidence, paragraphs 6.2, 8.7 and 8.27-8.28 (CD8.18); appellant's Material Considerations Update Note, August 2022 paragraphs 3.8 and 3.9 (CD2.4), referencing the Department for Business Energy and Industrial Strategy's Factsheet on Russia- Ukraine and UK energy supply published 25 February 2022 and the SofS BEIS's tweet of 28 February 2022 and paragraphs 3.25-3.27 referencing a report from the Stonehaven consultancy "Beyond Sticking Plasters: Cost of Living and the Energy Crisis.

³⁶ Appellant's Statement of Case (CD8.4), paragraphs 7.15 (referencing draft revised EN-1 paragraph 2.3.4 (CD8.41)), 7.19 (referencing draft revised EN-3 paragraph 2.47.1 (CD8.42)); Steven Bainbridge's evidence (CD8.18) paragraphs 8.9 and 8.14, 8.19, 8.22, 8.25, 8.26, 8.29-8.32 (referencing the government's commitment to aim for 70GW of ground and rooftop capacity by 2035, up from 14GW currently) 8.34, 8.38, 8.55 and 8.58-8.59; The appellant's Material Considerations Update Note of August 2022 (CD 2.4), paragraph 3.21 notes the publication by Atkins of an analysis showing that the UK will need to build 12-16 GW of new generation capacity each year between now and 2035 to hit decarbonisation targets and that the average rate for the last five years was just 3.2GW per year. The appellant's Planning Statement Addendum (CD2.6) paragraph 4.4 notes the key issues set out on page 26 of the final (July 2021) version of the Council's CEES (CD8.51), including "every opportunity to utilise renewable energy to meet current demand needs is to be taken" and "Dorset Council's renewable energy capacity need to increase by a factor of 60 to meet demands"; the Planning Statement Addendum (CD2.6) paragraph 4.8 notes the publication of a report by Regen, Dorset Low Carbon Energy Route Map and Evidence Base (not included as a Core Document but filed at 1.3 of folder LPA SoC within folder LPA within folder 03 statement(s)/proofs within folder 0 Inspector file of PINS horizon file); its Executive Summary notes that in 2019, Dorset met only 5% of its energy demand through local low carbon energy generation compared with 10% in Cornwall. The appellant's Planning Statement Addendum (CD2.6) paragraph 4.24 references paragraph 11 of the government's Net Zero Strategy of October 2021 (CD8.39); "A low-cost, net zero consistent electricity system is most likely to be composed predominantly of wind and solar generation, whether in 2035 or 2050."

³⁷ In cross-examination, the Council's witness, Matthew Pochin-Hawkes accepted that the key commitment of 70GW of solar by 2035 required deployment of an average of 83MW per week.

³⁸ Appellant's Planning Statement paragraph 6.2 (CD 1.14).

³⁹ In footnote 165 to her closing remarks, the appellant's advocate records Steven Bainbridge's response for the appellant when asked to comment on paragraph 5.28 of Matthew Pochin-Hawkes's evidence for the Council which suggests that the appeal proposal would make a negligible contribution of below 0.001% to the national target of an additional 56GW by 2035. She records Steven Bainbridge's response as 0.2%. In fact, the correct calculation is 0.02% but the error does not necessarily invalidate the point made.

would generate 13,755MWh of energy pa⁴⁰; enough renewable electricity per annum to power approximately 4,800 homes⁴¹ (based on average UK household electricity consumption) or 10% of those in the AONB⁴². It is anticipated that approximately 3,100 tonnes of CO2 will be saved by the project each year.⁴³

- Solar power can only be harvested where it can be connected to the grid and the grid has capacity.⁴⁴
- There is an available point of connection and grid capacity at Cruxton.⁴⁵ In a constrained grid, capacity should be used wherever possible⁴⁶. There is no evidence that this capacity could be transferred to a different point on the grid⁴⁷. The scheme is “oven-ready” and can be deployed quickly whereas the availability of possible future grid enhancements is unknown,⁴⁸ the deliverability of projects on the SSEN embedded capacity

⁴⁰ Appellant’s NPPF §177 Compliance Note paragraph 6 (CD 2.5).

⁴¹ Appellant’s Planning Statement May 2021 (CD1.14) says 4,781.

⁴² Steven Bainbridge, oral evidence in chief.

⁴³ Appellant’s Statement of Case, paragraphs 3.2 and 9.32(a)-(e) (CD8.4), Statement of Common Ground paragraph 8.11 (CD8.6).

⁴⁴ Appellant’s Statement of Case (CD8.4), paragraphs 7.20, 7.21, referencing draft revised EN-3 paragraph 2.48.12 (CD8.42) and Appellant’s Statement of Case, paragraph 9.9 (CD8.4); Steven Bainbridge’s evidence paragraph 2.16 (CD8.18), referencing Dorset Council’s Planning for Climate Change – Interim Guidance and Position Statement (CD8.53) paragraphs 3.2.13 “The capacity of the electricity grid, and the proximity and availability of a grid connection can be a significant factor in locating a renewable energy development” and 3.2.21 “ Assessment of an application against criterion b) of paragraph 177 will be informed by the proximity and availability of connection to the electricity grid, as the costs associated with forming new connections and upgrading infrastructure to accommodate development can be significant and potentially prohibitive to a development.” Steven Bainbridge’s evidence (CD8.18) paragraphs 6.3, 6.4; appellant’s NPPF §177 Compliance Note paragraph 10 (CD2.5); Appellant’s Planning Statement Addendum, paragraph 7.7-7.8 (CD2.6); Appellant’s Sequential Analysis Study paragraph 3.7 (CD2.8); the point was agreed by Matthew Pochin-Hawkes in cross-examination.

⁴⁵ Appellant’s Statement of Case, paragraphs 9.9 and 9.10 (CD8.4); Appellant’s Sequential Analysis Study paragraph 3.5 (CD2.8).

⁴⁶ Accepted by Matthew Pochin-Hawkes in cross-examination. His view was that landscape constraints made the use of this point of connection impossible.

⁴⁷ Accepted by Matthew Pochin-Hawkes in cross-examination.

⁴⁸ Agreed by Matthew Pochin-Hawkes in cross-examination.

register is unknown⁴⁹ and even if all the projects on the SSEN register did come forward there would still be a need for more.⁵⁰

- The site is relatively close (500m) to the grid connection point.⁵¹
- No preferable site is available to exploit the Point of Connection.⁵²
 - Other than the AONB itself, there are few designated environmental or heritage assets nearby.⁵³
 - The site has a low probability of flooding.⁵⁴
 - The site slope is gentle.⁵⁵
 - Surrounding land parcels' use would not cause limitations of shade or dust creation.
 - Landowner is willing.⁵⁶

⁴⁹ Accepted by Matthew Pochin-Hawkes in cross-examination.

⁵⁰ Agreed by Matthew Pochin-Hawkes in cross-examination.

⁵¹ Statement of Common ground paragraph 8.15 (CD8.6)

⁵² Appellant's Statement of Case, paragraphs 2.6-2.9, 9.11 and 9.12 (CD8.4); Steven Bainbridge's evidence, paragraphs 2.3, 6.3 and 8.8 and appendix 6 (CD8.18); appellant's NPPF §177 Compliance Note paragraphs 11-19(CD2.5); appellant's Planning Statement Addendum, paragraph 7.3 and 7.9 (CD2.6); Appellant's Sequential Analysis Study(CD 2.8); Environmental Statement (CD1.8) paragraph 4.2.4 summarises the reasons for choosing the site; in cross-examination, Matthew Pochin-Hawkes accepted that the megawattage available at this point of connection would not justify the cost of a connection to a site outside of the AONB.

⁵³ Statement of Common Ground, paragraph 8.19 (CD8.6); Andrew Cook's evidence (CD8.19) paragraphs 8.15 and 8.16 assert compliance with AONB management plan policies A2 and A3 protecting the historic environment and promoting environmental resilience (CD8.49); Ecological Assessment Report dated February 2022 by Avian Ecology (CD2.2), paragraph 4.2.3 advises that "Given the distance between the Site and any statutory designations (excluding the AONB) it is considered highly unlikely that any direct or indirect impacts on any statutory designated sites or the habitats and species they support will occur as a result of the proposed solar development"; Heritage desk-Based assessment, March 2021, paragraphs 6.6 and 6.7 (CD1.12); Design and Access Statement paragraphs 2.6, 2.7 and 2.9 (CD1.6).

⁵⁴ Appellant's Statement of Case, paragraph 2.10 (C8.4); Statement of Common Ground (CD8.6) paragraphs 8.49 and 8.50, confirming compliance with Development Plan policy ENV5 (CD4.1); Flood Risk Assessment April 2021 by PFA Consulting (CD1.11); Design and Access Statement paragraph 2.10 (CD1.6).

⁵⁵ Andrew Cook's evidence, paragraph 4.2 (CD8.19); Design and Access Statement paragraph 2.3 (CD1.6).

⁵⁶ Appellant's Statement of Case, paragraph 9.13 (CD8.4)

- Subject to compliance with the proposed Construction Traffic Management Plan, both construction and operational traffic can be accommodated on the highway without objection from the highways authority.⁵⁷
- Dorset enjoys high solar irradiance.⁵⁸
- Contrary to NPPF paragraph 155, the Development Plan has no strategy for renewable energy development, has no specific site allocations for renewable energy⁵⁹ and no target of numerical need for renewable energy.⁶⁰
- Dorset has no landscape capacity study or equivalent in its Development Plan.⁶¹
- Dorset's Development Plan policy COM11 encourages renewable energy⁶² but sets three provisos and requires that the benefits of the development significantly outweigh any harm – a higher bar than set by the NPPF and so, the policy is not compliant with the NPPF.⁶³ Its emerging local plan policy COM10 is hardly changed from COM11.⁶⁴
- Dorset Council's Planning for Climate Change – Interim Guidance and Position Statement March 2023 moderates the requirement to one where the benefits will need to "suitably" outweigh any adverse impacts.⁶⁵

⁵⁷ Statement of Common Ground, paragraph 8.42 (CD8.6); Appellant's Planning Statement Addendum paragraphs 7.25-7.30 (CD2.6); Design and Access Statement paragraphs 4.2-4.6 and 5.4 (CD1.6).

⁵⁸ Appellant's Statement of Case (CD8.4) paragraph 9.6, referencing Dorset Council's Climate and Ecological Emergency Strategy (CE8.51) and Statement of Case (CD8.4) paragraph 9.12; appellant's NPPF §177 Compliance Note paragraph 20 (CD2.5); appellant's Planning Statement Addendum (CD2.6) paragraph 4.10 referencing Regen report June 2021, Dorset Low Carbon Energy Route Map and Evidence Base, paragraph 3.1.1 (not included as a Core Document but filed at 1.3 of folder LPA SoC within folder LPA within folder 03 statement(s)/proofs within folder 0 Inspector file of PINS horizon file).

⁵⁹ Statement of Common ground, paragraph 8.3 (CD8.6); Steven Bainbridge evidence paragraph 2.3 (CD8.18).

⁶⁰ Accepted by Matthew Pochin-Hawkes in cross-examination.

⁶¹ Statement of Common ground, paragraph 8.3 (CD 8.6).

⁶² Statement of Common Ground paragraph 8.4 (CD8.6).

⁶³ Steven Bainbridge's evidence paragraph 2.7 (CD8.18); In cross-examination, Matthew Pochin-Hawkes accepted that the policy included a tilted balance against renewable energy development.

⁶⁴ Steven Bainbridge's comment when giving evidence in chief.

⁶⁵ Steven Bainbridge's evidence (CD8.18) paragraphs 2.15 and 2.16, referencing Dorset Council's Planning for Climate Change – Interim Guidance and Position Statement March 2023 paragraph 3.3 (2(b)) (CD8.53).

- Dorset’s Development Plan policy SUS2 supports renewable energy generation in the countryside, outside development boundaries.⁶⁶
- Dorset’s Climate and Ecological Emergency Strategy July 2021 says renewable energy development at scale is required.⁶⁷
- Due to size requirements, a solar farm of the scale proposed can only be accommodated outside of urban areas in a rural location.⁶⁸
- Much of Dorset (42%) is an AONB⁶⁹. The AONB houses 74,000 residents, and includes large settlements such as Lyme Regis, Bridport, Beaminster and Swanage. It accommodates major roads, electricity transmission lines and is no bar to solar farm development.⁷⁰ The Council does not argue that renewable energy development can be accommodated entirely outside the AONB or that a scheme for renewable development outside the AONB would preclude a finding of exceptional circumstances to justify the present case.⁷¹
- The AONB Management Plan, policy C3, supports renewable energy production.⁷²
- The site chosen would cause limited harm⁷³.
 - Site is a tiny part of the AONB’s 1,128 sq km.⁷⁴

⁶⁶ Statement of Common Ground, paragraph 8.7 (CD8.6).

⁶⁷ Statement of Common ground, paragraph 8.13 (CD8.6).

⁶⁸ Appellant’s NPPF §177 Compliance Note paragraph 12 (CD2.5); Appellant’s Planning Statement Addendum, paragraph 7.4 (CD2.6); Design and Access Statement paragraph 3.5 (CD1.6).

⁶⁹ Dorset Council’s Planning for Climate Change – Interim Guidance and Position statement paragraph 3.2.16 (CD8.51) says approximately 56% of its area is covered by its two AONB designations; the 42% referred to in the appellant’s evidence presumably refers to the AONB which includes the site.

⁷⁰ Guidance for Large Scale Solar Arrays in the Dorset AONB published in February 2011; Statement of Common Ground, paragraph 8.6 (CD8.6); Andrew Cook’s evidence paragraph 8.4 (CD8.19); Steven Bainbridge’s evidence, paragraph 2.3 (CD8.18); appellant’s Planning Statement Addendum (CD2.6) paragraph 4.10 referencing Regen report June 2021, Dorset Low Carbon Energy Route Map and Evidence Base, paragraph 3.1.1.

⁷¹ Accepted by Matthew Pochin-Hawkes in cross-examination.

⁷² Andrew Cook’s evidence, paragraph 8.18 (CD8.19).

⁷³ Environmental Statement paragraphs 5.2.39 and 6.6.4 (CD1.8); Supplementary Environmental Information, paragraphs 5.2.40, 5.7.4 and 6.5.4 (CD2.10); Design and Access Statement paragraph 3.8 (CD1.6).

⁷⁴ Appellant’s Statement of Case, paragraphs 9.22 and 9.30(c) (CD8.4); Andrew Cook’s evidence paragraphs 8.1 and 8.4 (CD 8.19); Appellant’s Planning Statement Addendum paragraph 7.17 (CD2.6).

- Site is a tiny part of National Character Area 134 (Dorset Downs and Cranborne Chase) which extends over 1,400 sq km.⁷⁵
- Site not situated in a built-up area or close to habitation.⁷⁶
- There would be no unacceptable glint or glare.⁷⁷
- Close views of full extent of installation minimised by existing and new hedgerows.⁷⁸
- Height of development minimised, less than that of surrounding hedgerows, some crops such as maize, or agricultural practices covering large areas of rural land, such as glasshouses or poly-tunnels.⁷⁹
- Existing public rights of way (a small section of the 290-mile Macmillan Way⁸⁰) retained on existing alignments in protected corridors.⁸¹
- There would be no effect on the night sky.⁸²
- Within the context of the AONB, the site is unremarkable.⁸³

⁷⁵ Andrew Cook's evidence, paragraph 5.5 (CD8.19); Environmental Statement paragraph 5.3.33 (CD1.8)

⁷⁶ Appellant's Statement of Case paragraph 9.12 (CD8.4); Statement of Common Ground (CD8.6) paragraph 8.40 confirms compliance with Development Plan policy ENV16; Andrew Cook's evidence paragraph 7.5 (CD8.19); Design and Access Statement paragraphs 2.2 and 3.7 (CD1.6)

⁷⁷ Statement of Common Ground paragraph 8.39 (CD8.6); Andrew Cook's evidence paragraph 7.6 (CD8.19); Solar Voltaic Glint and Glare Study, April 2021 by Pager Power (CD1.16)

⁷⁸ Appellant's Statement of Case, paragraph 9.18 (CD8.4); Andrew Cook's evidence paragraphs 6.11-12 (CD8.19); Steve Bainbridge's evidence (CD8.18) paragraph 8.75, referencing appeal decision APP/H1705/W/22/3304561 (CD6.8); appellant's NPPF §177 Compliance Note paragraph 23 (CD2.5); Design and Access Statement paragraph 5.2 (CD1.6)

⁷⁹ Appellant's Statement of Case, paragraph 9.18 (CD8.4); Environmental Statement paragraph 3.3.8 (CD1.8); Design and Access Statement paragraphs 3.15, 3.17, 3.19 and 3.24 (CD1.6); oral evidence in chief of Andrew Cook; accepted by Sarah Barber in cross-examination.

⁸⁰ Steven Bainbridge's evidence paragraph 5.2 (CD8.18)

⁸¹ Appellant's Statement of Case, paragraphs 9.18 and 9.30(e) (CD8.4); Statement of Common Ground paragraph 8.46 (CD8.6); Andrew Cook's evidence (CD8.19), paragraph 5.8 claiming compliance with National Character Area 134's Statement of Environmental Opportunity SE03 and paragraph 6.10; Steven Bainbridge's evidence (CD8.18) paragraphs 5.3 to 5.5 and 5.8; conceded by Sarah Barber in cross-examination.

⁸² Accepted by Sarah Barber in cross-examination.

⁸³ Andrew Cook's evidence paragraph 5.4 (CD8.19); accepted by Sarah Barber in cross-examination.

- Limited and localised visual effect.⁸⁴ New permissive footpath provides alternative panoramic views.⁸⁵
 - Effect on tranquillity visual, not aural.⁸⁶
 - Other than on site itself, little or no actual physical change to the landscape⁸⁷. Even on the site itself, the solar panels would sit lightly on the ground, the topography of which would be retained.⁸⁸
 - The AONB's special qualities would be materially unaffected⁸⁹ and would be protected through the contribution which the proposal would make to protect against climate change.⁹⁰
 - Proposal accords with the guidelines of the Dorset AONB Landscape Character Assessment.⁹¹
 - Wider views within the AONB restricted by topography and vegetation and impact reduced by distance, retention of existing landscape pattern, scale, structure and characteristic features.⁹²
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⁸⁴ Andrew Cook's evidence, paragraphs 8.6-8.7 (CD8.19); Steven Bainbridge's evidence (CD8.18), paragraphs 4.6, 5.5 and 5.6 and 5.7, claiming compliance with Development Plan policy COM7; Environmental Statement (CD1.8) chapter 5, largely superseded by Supplementary Environmental Information (CD2.10), chapter 5; extent of view-zone defined in ES paragraph 5.3.60 and in SEI paragraph 5.3.67; summary of findings of ES tabulated in appendix 5.6 (CD1.9), largely superseded by table 5.6A in Supplementary Environmental Information document (CD2.10).

⁸⁵ Appellant's Statement of Case (CD8.4), paragraphs 9.26-9.28; Statement of Common ground (CD8.6) paragraph 8.48; Andrew Cook's evidence (CD8.19) paragraphs 6.13 and 9.7; Steven Bainbridge's evidence (CD8.18), paragraph 5.6.

⁸⁶ Appellant's Statement of Case, paragraph 9.20 (CD8.4); Appellant's Planning Statement Addendum paragraph 7.15 (CD2.6); Environmental Statement paragraph 5.2.42 (CD1.8); Andrew Cook's evidence paragraph 5.44 (second and third sentences) (CD8.19).

⁸⁷ Andrew Cook's evidence section 4 and paragraphs 5.7, 5.13, 5.16, 5.32, 5.36, 5.41-5.43, 5.44 (first sentence) and 9.5 (CD8.19); Steven Bainbridge's evidence paragraphs 4.1 to 4.4 (CD8.18); largely conceded by Sarah Barber in cross-examination; Appellant's Planning Statement Addendum paragraphs 7.12-14 (CD2.6); the findings of the Environmental Statement are tabulated in its Appendix 5.5 (CD1.9), largely superseded by appendix 5.5A from the Supplementary Environmental Information document (CD2.10).

⁸⁸ Accepted by Sarah Barber in cross-examination.

⁸⁹ Andrew Cook's evidence, paragraph 8.17 (CD8.19); Supplementary Environmental Information paragraphs 5.2.41 to 5.2.45, 5.7.5 to 5.7.9 and 6.5.5 to 6.5.10 (CD2.10).

⁹⁰ Steven Bainbridge's evidence paragraphs 2.26 to 2.29 (CD8.18); Andrew Cook's evidence, paragraphs 8.5-8.6 (CD8.19).

⁹¹ Andrew Cook's evidence, paragraphs 5.16, 5.25-5.35 (CD8.19).

⁹² Appellant's Statement of Case, paragraphs 9.19 and 9.22 (CD8.4); Statement of Common Ground (CD8.6) paragraph 8.37 confirms compliance with Development Plan policy ENV4;

- Of 25 representative viewpoints, three would experience effects of major adverse significance, ten (mostly at Fore Hill and Hog Cliff or Hog Cliff Bottom) would experience moderate adverse effects, four (and walkers at a fifth) would experience minor to negligible effects and seven (and road users at an eighth) would experience negligible or neutral effects.⁹³
 - Only about half of the site would be Best and Most Valuable Agricultural Land.⁹⁴ Pastoral agricultural use by sheep would continue.⁹⁵
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Andrew Cook's evidence paragraphs 6.5, 6.14-6.23, 8.8, 8.10 (CD8.19); Steven Bainbridge's evidence (CD8.18), paragraph 4.6 and 8.64 referencing appeal decision APP/B3030/W/21/3279533 (CD6.1); Appellant's Planning Statement Addendum paragraphs 7.12-14 (CD2.6); Environmental Statement paragraph 3.3.8 and chapter 5 (CD1.8), largely superseded by Supplementary Environmental Information, chapter 5 (CD2.10); extent of view-zone defined in ES paragraph 5.3.60 and in SEI paragraphs 5.3.67 and 5.4.24; "A review of the ZTV shows that the extent of potential intervisibility/yellow shading including the Application Site (e.g. direct and potential indirect effect) forms a limited portion of the 5km radius study area and is limited to the southwestern flank of the Frome valley, which in the context of the Dorset AONB is very localised."; summary of findings of ES tabulated in appendix 5.6, largely superseded by table 5.6A in Supplementary Environmental Information document; Design and Access Statement paragraph 3.23 and 5.2 (CD1.6); in cross-examination, Sarah Barber accepted that from across the valley, the viewer experiences a wide angle of view, of which the site is a small component, that the vertical proportion of the view that would be occupied by the scheme is small and that existing electricity pylons along the ridgeline in the far distance beyond the site can be seen. The Council's advocate in his closing remarks pointed out that, as the site is on a slope, it is correct that there is no visibility from the south but that cannot justify the description of it having a "*very limited visual envelope*"; the same is true of most sloped areas, eg on the various sides of Snowden but it would be absurd to describe those slopes as having very limited visual envelopes just because they are not visible from the other side of the mountain summit.

⁹³ Supplementary Environmental Information paragraph 5.4.73 (CD2.10); in cross-examination Andrew Cook characterised the effects as ranging between negligible and minor and pointed out that some people would be pleased to see measures designed to deliver renewable energy.

⁹⁴ Appellant's Statement of Case (CD8.4), paragraph 7.22, referencing draft revised EN-3, paragraph 2.48.13 (CD8.42) and appellant's Statement of Case (CD8.4) paragraphs 9.29 and 9.30; Andrew Cook's evidence paragraph 3.6 (CD8.19); Steven Bainbridge's evidence (CD8.18) paragraph 8.63, referencing appeal decision APP/B3030/W/21/3279533 (CD6.1); Agricultural Land Classification report by Amet Property April 2021 (CD1.2); Sequential Analysis Study paragraph 1.3 (CD2.8).

⁹⁵ Appellant's Statement of Case, paragraph 9.30(b) (CD8.4), Statement of Common Ground paragraph 8.35 (CD8.6); Andrew Cook's evidence, paragraphs 4.5, 4.7 and 5.42 (CD8.19); Steve Bainbridge's evidence (CD8.18) paragraph 8.68, referencing appeal decision APP/Y1138/W/22/3293104 (CD6.4); appellant's NPPF §177 Compliance Note paragraph 23 (CD2.5); Appellant's Planning Statement paragraph 5.22 (CD1.14); Appellant's Planning Statement Addendum paragraph 7.9 (CD2.6); Design and Access Statement paragraph 3.3 (CD1.6); conceded by Sarah Barber in cross-examination.

- Minimal loss of agricultural land for substation and transformers.⁹⁶
Loss of BMV agricultural land not a reason for refusal.⁹⁷
 - There would be environmental benefits not related to energy provision, resulting in Biodiversity Net Gain.⁹⁸ The proposal would comply with Development Plan policy ENV10.⁹⁹
 - By retaining existing trees and hedgerows.¹⁰⁰
 - By planting new trees and hedgerows.¹⁰¹
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⁹⁶ Andrew Cook's evidence paragraph 5.37 (CD8.19); The submitted Ecological Assessment Report dated February 2022 by Avian Ecology, paragraph 4.3.6 (CD2.2) observes that "Current BRE guidance (Biodiversity Guidance for Solar Developments. Eds G E Parker and L Greene.) states that, as panels are raised above the ground on posts, over 95% of a site used for solar farm development is still accessible for plant growth and complementary agricultural activities, such as conservation grazing."

⁹⁷ Statement of Common ground, paragraph 8.32 (CD8.6)

⁹⁸ Appellants Planning Statement Addendum, paragraphs 7.21-7.24 (CD2.6); Appellant's Statement of Case, paragraphs 9.18 and 9.30 (CD8.4); Statement of Common Ground paragraph 8.52 (CD8.6) confirms compliance with Development Plan policy ENV2, also SOCG paragraph 8.58; Steve Bainbridge's evidence (CD8.18) paragraph 8.33 and 8.76, referencing appeal decision APP/H1705/W/22/3304561 (CD6.8); The submitted Ecological Assessment Report dated February 2022 by Avian Ecology, (CD2.2) paragraph 4.3.6 observes that "The current RSPB briefing note on Solar Energy (*Solar Energy: RSPB Policy Briefing, December 2014.*) also states that biodiversity gains are possible where intensively cultivated arable or grassland is converted to extensive grassland and/or wildflower meadows between and/or beneath solar panels and in field margins." The submitted Biodiversity Management Plan dated December 2021 by Avian Ecology (CD2.2a) (attached as Appendix 4 to the submitted Ecological Assessment Report dated February 22) points out in paragraph 1.1.3 that the BRE publication Biodiversity Guidance for Solar Developments advises that "*Recent research suggests biodiversity gains on solar farms can be significant*". Paragraph 4.3.7 of the submitted Biodiversity Management Plan calculated the Biodiversity Net Gain as 39% for area-based units and 22% for linear-based units based on DEFRA metric v2. The biodiversity net gain calculations based on DEFRA metric v4 are attached as appendix 7 to Steven Bainbridge's evidence (CD8.18). They show a BNG of 71.05% for habitat units and 26.76% for hedgerow units.

⁹⁹ Steven Bainbridge's evidence, paragraphs 2.22 to 2.25. (CD8.18)

¹⁰⁰ Statement of Common Ground, paragraph 8.56 (CD8.6); Andrew Cook's evidence (CD8.19) paragraph 5.8, claiming compliance with National Character Area 134, Statement of Environmental Opportunity SE02; Arboricultural Impact Assessment by Barton Hyett Associates April 2020, section 6 (CD1.3); submitted Biodiversity Management Plan by Avian Ecology, section 3 (Cd2.2a); Design and Access Statement, paragraphs 3.7, 3.10 and 3.20 (CD1.6).

¹⁰¹ Andrew Cook's evidence, paragraphs 3.8(iii) and (iv), 3.14, 4.12, 5.38 and 5.39 (CD8.19); Steven Bainbridge's evidence paragraph 4.5 (CD8.18); submitted Biodiversity Management Plan by Avian Ecology, sections 4 and 5 (CD2.2a); appellant's Planning Statement (May 2021) paragraph 6.6 (CD1.14); Design and Access Statement, paragraphs 3.7, 3.10, 3.20 and 3.24 (CD1.6); in cross-examination, Sarah Barber conceded that there would be biodiversity gains resulting from the new hedging but retained her view that it would be inconsistent and harmful to the landscape character of the site.

- By establishing 15.31ha of grassland beneath the solar panels¹⁰², a wildflower meadow and nature conservation features, including bird and bat boxes.¹⁰³
 - By removing land from intensive agriculture whilst retaining sheep grazing.¹⁰⁴
 - By improving the site's handling of rainwater run-off.¹⁰⁵
 - There would be local economic benefits,¹⁰⁶ including farm diversification.¹⁰⁷
 - The proposal is for a time-limited period of 40 years, following which the site would be reinstated.¹⁰⁸
 - All relevant matters other than the single reason for refusal are satisfactory¹⁰⁹. The presence of adverse effects does not make a scheme automatically unacceptable.¹¹⁰ The benefits of energy production and
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¹⁰² Ecological Assessment Report dated February 2022 by Avian Ecology, paragraph 4.3.8 (CD2.2); Planning Statement (May 2021), paragraph 6.9 (CD1.14).

¹⁰³ Andrew Cook's evidence, paragraphs 3.8(v) and (vi) and 3.14 (CD8.19); submitted Biodiversity Management Plan by Avian Ecology, paragraphs 4.2.1 and 4.2.5 (CD2.2a).

¹⁰⁴ Appellant's Statement of Case (CD8.4), paragraph 9.21, referencing Dorset AONB "Guidelines for Large Scale Solar PV Arrays"; Andrew Cook's evidence paragraphs 3.8(ii), 4.11 and 5.11-5.12 (CD8.19); Steve Bainbridge's evidence (CD8.18) paragraph 8.78, referencing appeal decision APP/H1705/W/22/3304561 (CD6.8); Arboricultural Impact Assessment by Barton Hyett Associates April 2020, paragraph 6.3 (CD1.3); Arboricultural Survey Report by Barton Hyett Associates March 2021, paragraph 5.2 (CD1.4); Appellant's Planning Statement Addendum paragraph 7.16 (CD2.6); Environmental Statement paragraph 5.2.30 (CD1.10), quoting Dorset AONB Partnership Board's Guidance for Large Scale Solar Arrays in the Dorset AONB.

¹⁰⁵ Flood Risk Assessment April 2021 by PFA Consulting, paragraph 3.64 (CD1.11).

¹⁰⁶ Appellant's Statement of Case (CD8.4), paragraphs 9.7, referencing support from Maiden Newton Parish Council, and 9.8; Statement of Common Ground paragraph 8.58(g) (CD8.6); Steven Bainbridge's evidence (CD8.18), paragraphs 6.2 and 8.77 referencing appeal decision APP/H1705/W/22/3304561 (CD6.8); appellant's Planning Statement (May 2021), paragraph 6.11 (CD1.14).

¹⁰⁷ Appellant's Planning Statement (May 2021), paragraph 6.13 (CD1.14)

¹⁰⁸ Appellant's Statement of Case (CD8.4), paragraph 7.23, referencing draft revised EN-3 paragraph 2.49.13 (CD8.42). Statement of Common Ground, paragraph 8.28, 8.33, 8.34 and 8.57 (CD8.6); Andrew Cook's evidence paragraph 4.15 (CD8.19); Steven Bainbridge's evidence section 7 (CD8.18); appellant's Planning Statement paragraph 5.23 (CD1.14); Design and Access Statement paragraphs 1.3 and 3.4. (CD1.6).

¹⁰⁹ Steven Bainbridge's evidence, paragraph 2.3 (CD8.18).

¹¹⁰ Accepted by Matthew Pochin-Hawkes in cross-examination.

economic and environmental benefits would outweigh the harm.¹¹¹ The proposal would therefore comply with the Development Plan overall and policy ENV1 in particular.¹¹²

The Case for Dorset Council

46. The Council's case is also straightforward;

- Section 85 of the Countryside and Rights of Way Act 2000 places a statutory duty on relevant authorities to have regard to the purpose of conserving and enhancing the natural beauty of AONBs in performing their planning functions¹¹³. The location of the proposal within an AONB would have adverse effects on most of its Special Qualities of undeveloped rural character, tranquillity, remoteness, dark night skies and uninterrupted panoramic views and is contrary to its primary purpose which is the conservation and enhancement of the landscape and scenic beauty of the designated area, contrary to Development Plan policies ENV1 and COM11 and Dorset AONB Management Plan policy C1(a).¹¹⁴
 - The central factor that makes the site inappropriate for the proposed development is its sloping topography on the southern side of the Frome Valley and associated inability to appropriately mitigate adverse effects within the AONB. The topography and north-facing aspect also reduces the efficiency of the site for renewable energy generation.¹¹⁵
 - The appellant's Landscape and Visual Impact Assessment (LVIA) underestimates the harm which would be caused.¹¹⁶ The

¹¹¹ Appellant's Statement of Case paragraph 9.23 (CD8.4); Steven Bainbridge's evidence (CD8.18) section 8, referencing appeal decisions APP/B3030/W/21/3279533 (CD6.1) and APP/Y1138/W/22/3293104 (CD6.4); appellant's Planning Statement, section 7 (CD 1.14); Appellant's Planning Statement Addendum sections 7 and 8 (CD2.6); Design and Access Statement paragraph 3.8.(CD1.6).

¹¹² Steven Bainbridge's evidence, paragraphs 2.17 to 2.20 and section 8 (CD8.18).

¹¹³ Matthew Pochin-Hawkes's evidence paragraph 5.10 (CD8.20).

¹¹⁴ Council's Statement of Case, paragraphs 8.7 and 8.15 (CD8.5); Committee report paragraphs 2 and 14.18 (CD3.1); Sarah Barber's evidence paragraphs 7.3 to 7.5 and 7.10-7.11 (CD8.21); Matthew Pochin-Hawkes's evidence paragraphs 5.10, 5.11 and 5.16 (CD8.20). In closing submissions, the Council's advocate submitted that the development would detract from three out of four characteristics, the exception being dark skies.

¹¹⁵ Matthew Pochin-Hawkes's evidence, paragraph 5.42 (CCD8.20).

¹¹⁶ Council's Statement of Case, paragraphs 8.7 and 8.11 (CD8.5); Sarah Barber's evidence (CD8.21) paragraph 4.13(a) points out that paragraph 5.3.4 of the appellant's Landscape and Visual Impact Analysis underestimates the height of land on the north side of the Frome Valley from which viewpoints arise; her evidence paragraph 4.25, points to restricted or blocked views when looking north/north-east from the Macmillan Way; her evidence paragraphs 4.27 and 4.40 point out that, contrary to the assertion within paragraph 1.7 of Appendix 5.1 of the appellant's Environmental statement that "*even with clear visibility the proposals would not be perceptible in the landscape beyond this distance*" (1km), the

photomontages used in the LVIA do not provide winter views, misrepresent the colour of the rear of the solar panels and do not recreate the ability of the human eye to detect contrasts between the colour and texture of the manmade panels and the wider natural landscape.¹¹⁷

- The two fields within the site would be changed from a familiar and appropriate rural agricultural use to an industrial scale energy production use, physically altering the land cover and perception of this sensitive upland landscape through the installation of massed modern elements and utilitarian energy generation infrastructure.¹¹⁸
- Every part of the zone from which the development would be visible is distinctly rural.¹¹⁹ The UK government's Solar Strategy (2014) acknowledges that large-scale solar farms can have a negative impact on the rural environment.¹²⁰

appellant's own LVIA shows that the site would be clearly visible at distances between 1.5 and 2.5km distant (eg from Grimstone Down 3.6km to east); In Sarah Barber's evidence, paragraphs 5.4-5.12 describe and tabulate her disagreements with the appellant's LVIA judgements on the proposal's physical effects on the landscape. However, as the appellant's advocate pointed out in her closing remarks; "in oral evidence it became clear that Ms Barber's Proof had conflated the impact on the individual landscape features of the site with the visual impacts arising. Looking at the impact on landscape elements considered as physical features, there is now following cross-examination extensive common ground between her and Mr Cook." In Sarah Barber's evidence, paragraphs 6.1 to 6.19, 7.9 and 7.12 describe and tabulate her disagreements with the appellant's LVIA judgements on the proposal's visual effects on the landscape. Under cross-examination, these judgements were modified and an amended tabulation submitted as Inquiry Document 1. The remaining points of disagreement concern viewpoint 5 (Farm Hill Bottom and Hog Cliff National Nature Reserve and Open Access Land), 10 (from the Macmillan Way, entering the site from the north), 15 (Fore Hill), 17 (from a Public Right of Way south of Blastmoor Hill Barn, 19 (from Hog Cliff Bottom), 20 (from Hog Cliff Farm Track), 21 (from Open Access Land north of Combe Bottom), 24 (Fore Hill), 25 (the Macmillan way within the site) and viewpoints (A) and (B) not considered within the appellant's LVIA. The Council's advocate pointed out in his closing submissions that the appellant's landscape witness employs a fixed approach to the threshold for significance, regardless of context of the project, contrary to the Landscape Institute's Guide to Landscape and Visual Impact Assessment paragraph 3.33, for reasons which were not adequately explained but which favours the appellant and that, of the four landscape architects who have appraised the appeal proposal, the appellant's landscape witness is alone in regarding moderate effects as not significant.

¹¹⁷ Sarah Barber's evidence, paragraphs 6.10-6.12 and 6.19 (CD8.21). In oral evidence in chief, she referred to the back sheets of the solar panels as a grey buff tone.

¹¹⁸ Sarah Barber's evidence paragraphs 5.12(b) and (c) and 7.8 (CD8.21); Matthew Pochin-Hawkes's evidence paragraph 5.13; (CD8.20).

¹¹⁹ Sarah Barber's evidence paragraph 4.26 (CD8.21).

¹²⁰ Matthew Pochin-Hawkes's evidence paragraph 5.9 (CD8.20).

- Whilst Planning Practice Guidance does not preclude solar farms from AONBs¹²¹, exceptional circumstances to justify the development within the AONB do not exist¹²², contrary to NPPF paragraph 177(c)¹²³ and paragraph 5.9.8 of the National Policy Statement for Energy (EN-1).¹²⁴
- NPPF paragraph 176 advises that great weight should be given to conserving and enhancing landscape and scenic beauty in AONB. That applies regardless of the significance of the effect.¹²⁵
- The proposal does not comply with Development Plan policy ENV10 as it fails to contribute positively to the maintenance and enhancement of local identity and distinctiveness of the landscape character area of the Upper Frome Valley as set out in the West Dorset Landscape Character Assessment (2009)¹²⁶. The appeal site demonstrates the key characteristics and special qualities of this landscape character area; fine panoramic views from distinct linear ridgelines, undeveloped rural character with a sense of seclusion and tranquillity and a strong sense of rural tradition.
- The PV Panels would be orientated south – on the north facing slope – working against the landform.¹²⁷
- The detrimental effect on the Macmillan Way (a recreational resource) would not be acceptable.¹²⁸

¹²¹ Matthew Pochin Hawkes's evidence (CD8.20) paragraph 5.8 referencing Guidance paragraph 013 Reference ID: 5-013-20150327.

¹²² Council's Statement of Case, paragraph 8.17 (CD8.5).

¹²³ Matthew Pochin-Hawkes's evidence, paragraph 5.6 (CD8.20).

¹²⁴ Matthew Pochin-Hawkes's evidence, paragraph 5.7 (CD8.20).

¹²⁵ Sarah Barber's evidence, paragraphs 3.2 and 3.4 (CD8.21); Matthew Pochin-Hawkes's evidence, paragraph 5.5 (CD20).

¹²⁶ Committee report, paragraph 2 (CD3.1); the key characteristics of the Landscape Character Area are set out in Sarah Barber's evidence paragraphs 4.36-4.38, 7.5-7.8 (CD8.21).

¹²⁷ Sarah Barber's evidence, table 4 and paragraph 7.8 (CD8.21); draft EN-3 paragraph 3.10.10 points out that a favourable south-facing aspect is more likely to increase year-round irradiance levels (CD8.42).

¹²⁸ Council's Statement of Case, paragraphs 8.5 and 8.15 (CD8.5); committee report paragraphs 14.19 and 14.27 (CD3.1); the value of the Macmillan Way is set out in Sarah Barber's evidence paragraph 4.31 (CD8.21) and in Matthew Pochin-Hawkes's evidence paragraphs 5.18-5.21 (CD8.20); at paragraphs 5.4 and 5.5 and in table 3 Sarah Barber points out that effects on the Macmillan Way where it runs through the site were not assessed within the appellant's LVIA.

- Within the Dorset section of the Macmillan Way there are currently no existing solar developments that directly impact on its experiential qualities.¹²⁹
- The solar panels and security fencing would be visible at close range before planted screening takes effect.¹³⁰
- The additional hedging proposed would produce a tunnelling effect.¹³¹
- Existing long distance panoramic views of an undeveloped rural scene characteristic of the special qualities of the AONB would be blocked or restricted.¹³²
- The alternative permissive footpath proposed offers limited panoramic views of the Maiden Newton settlement, not characteristic of the special qualities of the AONB.¹³³
- Appreciation of the landscape from Public Rights of Way and areas of Open Access Land would be harmed by an isolated, discordant and incongruous development, quasi-industrial in appearance within an open upland landscape, contrary to Development Plan policies ENV1, ENV10 and Dorset AONB Management Plan policy C2.¹³⁴
 - The site is highly visible in local and mid-range views from numerous elevated vantage points to the north and north-east of the Frome Valley, particularly from Fore Hill and Hog Cliff (a National Nature Reserve¹³⁵) because of the sloping topography of the site (which means that hedgerows planted or retained as screening would be ineffective), the undulating topography of its surroundings and the dense network of Public Rights of Way and of Open Access Lands.¹³⁶

¹²⁹ Sarah Barber's evidence paragraph 4.32 (CD8.21).

¹³⁰ Sarah Barber's evidence paragraph 5.12(e) (CD8.21).

¹³¹ Committee report, paragraph 14.27 (CD3.1); Sarah Barber's evidence paragraph 5.12(e) (CD8.21); Matthew Pochin-Hawkes's evidence paragraph 5.22 (CD8.20).

¹³² Sarah Barber's evidence, paragraph 5.12(e) (CD8.21); Matthew Pochin-Hawkes's evidence paragraph 5.22 (CD8.20).

¹³³ Council's Statement of Case, paragraph 8.10 (CD8.5); Sarah Barber's evidence paragraph 4.33 (CD8.21); Matthew Pochin-Hawkes's evidence paragraph 5.23 (CD8.20).

¹³⁴ Council's Statement of Case, paragraph 8.7 (CD8.5); committee report, paragraphs 14.18 and 14.20 (CD3.1).

¹³⁵ Sarah Barber's evidence paragraph 4.13(c) (CD8.21).

¹³⁶ Council's Statement of Case, paragraphs 3.2, 8.3 and 9.11 (CD8.5); committee report paragraph 14.19 (CD3.1); Sarah Barber's evidence, paragraphs 6.1 and 6.2 (CD8.21); Matthew Pochin-Hawkes's evidence, paragraphs 5.14 and 5.25 (CD8.20).

- Planning guidelines for the Landscape Character Area from which these views are experienced include; *“Conserve and enhance the distinctive undeveloped character of the open downland landscape and the long ranging views especially from roads, Rights of Ways and key viewpoints.”*¹³⁷
- The appellant’s proposed mitigation would itself be harmful.¹³⁸
- The presence of the solar farm and off-site biodiversity enhancement area would limit agricultural opportunities for the lifetime of the development reducing the agricultural productivity of the site which includes Best and Most Valuable agricultural land.¹³⁹ The 2015 Written Ministerial Statement on Solar Energy reiterated the need to protect the local environment, including higher quality agricultural land.¹⁴⁰
- Whilst recognising that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions, the proposal’s contribution to the national need for renewable energy would be small¹⁴¹ and so its contribution towards the conservation and enhancement of the AONB by reducing the effects of climate change is nothing more than innumerate speculation.
- The need for renewable energy generation could be met in other ways:¹⁴²
 - Dorset Council’s Cabinet approved the ‘Natural Environment, Climate and Ecology Strategy 2023-25 Refresh’, the ‘Natural Environment, Climate & Ecology Action Plan’ and ‘Interim Guidance and Position Statement’ on 28 March 2023.¹⁴³

¹³⁷ Sarah Barber’s evidence paragraph 4.39 (CD8.21), including other relevant planning guidelines.

¹³⁸ Council’s Statement of Case, paragraphs 8.7 and 8.14 (CD8.5); committee report paragraph 14.20 (CD3.1); Sarah Barber’s evidence, table 4 and paragraph 5.12(d) (CD8.21).

¹³⁹ Council’s Statement of Case, paragraphs 8.14, 8.15 and 9.12 (CD8.5); Committee report paragraph 14.5 (CD3.1); Sarah Barber’s evidence paragraph 5.12(c) (CD8.21); Matthew Pochin-Hawkes’s evidence, paragraphs 5.52-5.54. (CD8.20).

¹⁴⁰ Matthew Pochin-Hawkes’s evidence, paragraph 5.9 (CD8.20); draft EN-3, paragraph 3.10.14 advises that the use of BMV agricultural land should be avoided where possible (CD8.42).

¹⁴¹ Matthew Pochin-Hawkes’s evidence, paragraph 5.28 (CD8.20). In that paragraph he suggests that the appeal proposal would make a negligible contribution of below 0.001% to the national target of an additional 56GW by 2035. His calculation is mistaken; the correct figure would be 0.0210714% but that does not necessarily invalidate his point.

¹⁴² Council’s Statement of Case (CD8.5), paragraph 8.12, referencing the Renewable Energy Planning Database (CD8.44), SSEN’s register identifying Points of Connection (CD8.60) and the World Bank Group Solar Resource Maps showing UK irradiation (CD8.57); Council’s Statement of Case, paragraph 9.2 (CD8.5); committee report, paragraph 14.17 (CD3.1); Matthew Pochin-Hawkes’s evidence paragraphs 4.2, 5.29 and 5.35 (CD8.20).

¹⁴³ Council’s Statement of Case, paragraph 4.1 (CD8.5).

- The Strategy will include identifying suitable sites in the new Local Plan, having regard for landscape, the historic environment, amenity, ecology, and productive farmland impacts and other constraints.¹⁴⁴
 - The Dorset Low Carbon Energy Route Map and Evidence Base (2021) and Dorset Low Carbon Investment Opportunities (2021) documents identify opportunities for renewable energy deployment whilst recognising planning and grid constraints¹⁴⁵. Opportunities exist with high levels of irradiation outside of the AONB or within less sensitive parts of the AONB.¹⁴⁶
 - Scottish & Southern Electricity Network (SSEN)'s Distribution Future Energy Scenario Report for Southern England Area (2021) comments on grid capacity for generation but does not cite this as a constraint for Dorset.¹⁴⁷
 - SSEN's June 2023 register of generation and storage resources that are connected, or accepted to connect, to the electricity distribution networks identifies 22 emerging solar projects within Dorset which have an accepted POC (including the appeal site). The majority are outside the AONB. They have a registered capacity of over 800MW.¹⁴⁸
 - The appellant's area of search for alternative sites was too limited.¹⁴⁹ No viability evidence to substantiate claim that site is limited to within 3km of a Point of Connection.¹⁵⁰
 - Not every Point of Connection need be utilised.¹⁵¹ There are other POCs within Dorset which would not necessitate the development of
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¹⁴⁴ Council's Statement of Case, paragraph 4.3 (CD8.5).

¹⁴⁵ Council's Statement of Case, paragraph 4.5 (CD8.5).

¹⁴⁶ Council's Statement of Case, paragraphs 9.6 and 9.9 (CD8.5); Matthew Pochin-Hawkes's evidence (CD8.20) paragraph 5.40 points out that the Council has given planning permission for three solar farms within the AONB (at Southern Counties Shooting Ground, at Rampisham Down and at Bryanston, Blandford Forum which illustrate ways in which major solar farms can be appropriately accommodated within the Dorset AONB in a less harmful way.

¹⁴⁷ Committee report paragraph 14.17 (CD3.1).

¹⁴⁸ Matthew Pochin-Hawkes evidence, paragraph 5.41 (CD8.20).

¹⁴⁹ Council's Statement of Case, paragraphs 8.4 and 9.4 (CD8.5); Committee report paragraph 14.16 (CD3.1); Matthew Pochin-Hawkes's evidence paragraphs 5.38 and 5.43 (CD8.20).

¹⁵⁰ Council's Statement of Case, paragraph 9.3 (CD8.5); Matthew Pochin-Hawkes's evidence paragraph 5.38 (CD8.20).

¹⁵¹ Council's Statement of Case, paragraph 9.5 (CD8.5); Matthew Pochin-Hawkes's evidence paragraph 5.38 (CD8.20).

the proposed site and significant upgrades to grid infrastructure are expected within the lifetime of the proposed development.¹⁵²

- The temporary nature of the proposal is half a lifetime, a permanent rather than temporary feature.¹⁵³
- The site is poorly suited to the proposed development due to: its north-facing aspect; topography and visually exposed location within the Dorset AONB; resultant adverse landscape and visual effects; presence of best and most versatile agricultural land (BMV); and proximity to public rights of way¹⁵⁴. Whilst some benefits are recognised¹⁵⁵ (the environmental effects of producing renewable energy, economic benefits and biodiversity net gain), these would not outweigh the harms to the Dorset AONB, Public Rights of Way and Open Access Land and agricultural productivity. Proximity to a Point of Connection does not override the harms identified.¹⁵⁶ Exceptional Circumstances to justify the development within the AONB do not exist.¹⁵⁷

The Case for the Dorset AONB Partnership

47. The case for the Dorset AONB Partnership is set out in its representations of 30 July 2021 to the Council on the original application, in its subsequent representations of 12 January 2022 on the supplementary information provided by the applicant, in its written representations dated 12 May 2023 to the Inspectorate and in its opening submissions to the Inquiry dated 26 July 2023 and its undated closing submissions. In summary, the case is as follows;

- The key difficulties in accepting this proposal arise from its elevated and isolated position amongst the downs; the fact that the promoted Macmillan Trail runs directly alongside the site, and; the clear visibility of the site from locations on the other side of the valley (including Hog Cliff National Nature Reserve and a range of footpaths above Maiden Newton). The site is an upland spur between two coombes, elevated, widely visible and clearly characteristic of the protected downland that it exemplifies, with its

¹⁵² Matthew Pochin-Hawkes's evidence paragraph 5.55 (CD8.20); under cross-examination, Steven Bainbridge accepted that the government's commitment to a five-fold increase in the deployment of solar energy could not occur without the delivery of network reform referred to in the government's Energy Security Plan at page 50.

¹⁵³ Committee report, paragraph 14.19 (CD3.1); Sarah Barber's evidence paragraph 5.12(a) (CD8.21); Matthew Pochin-Hawkes's evidence paragraph 5.15 (CD8.20).

¹⁵⁴ Matthew Pochin-Hawkes's evidence, paragraphs 5.37 and 6.3 (CD8.20).

¹⁵⁵ Matthew Pochin-Hawkes's evidence, paragraphs 5.46-52, 5.55 and 6.2 (CD8.20).

¹⁵⁶ Council's Statement of Case, paragraph 9.8 (CD8.5).

¹⁵⁷ Council's Statement of Case, paragraphs 8.13 and 8.17 (CD8.5); committee report paragraphs 14.21 and 14.29 to 14.31 and 16.1 (CD3.1); Matthew Pochin-Hawkes's evidence, paragraph 6.1 (CD8.20).

fine views, tranquil/remote experience and strong undeveloped rural character.

- The significant landscape and visual effects of the proposal conflict with the primary purpose of the AONB designation, which is to conserve and enhance natural beauty, to which NPPF attaches great weight.
- AONBs are an important resource for wellbeing and recreation; their protection is therefore in the public interest.
- The AONB can better respond to the climate and ecological emergency through nature recovery and increased soil carbon storage rather than through large scale renewable energy production.
- Over 75% of England and nearly half of Dorset is not subject to AONB designation, so alternative suitable locations are likely.
- National Planning Policy does not encourage large scale developments within AONBs. Major proposals should only be permitted in exceptional circumstances and in the public interest.
- Exceptional circumstances may include the weight attached to the need, the inability to meet this without an AONB location and considerations concerning the moderation of effects on the environment, landscape and recreation. The proposal does not exhibit overriding exceptional considerations and so fails the major development test of NPPF paragraph 177. It is difficult to consider the Biodiversity enhancements as being of exceptionally high value.
- The AONB team works to deliver as many renewable energy proposals that are compatible with the designation as possible. Some developments have shown considerable benefits beyond renewable energy production and have had impacts not substantially in conflict with the purpose of AONB designation, eg permission WD/D/14/001307 for a 9MW solar farm at the Southern Counties site, a brownfield and contaminated site with localised adverse effects; and permission WD/D/14/002974 for a 17.3MW solar farm at Rampisham Down where special circumstances included:
 - The limited visibility of the site
 - The Rampisham Down SSSI Management Scheme
 - Removal of non-telecommunications masts on Rampisham Down
 - Woodland Management Scheme
 - Heritage Management Plan
 - Landscape and Ecology Management Plan

There has recently been a substantial increase in large-scale proposals in the setting of the AONB. The AONB team has worked to improve their prospects of consent. The vast majority do gain consent and are expected to be implemented delivering greater levels of energy production than would result from this appeal proposal. An example is the 49MW scheme at North Dairy Farm, Pulham, approved while the Inquiry was sitting.

- The following Management Plan objectives and policies are considered particularly relevant to the decision being taken: Objective C1, policy C1a¹⁵⁸; Objective C3, policy C3.f¹⁵⁹; Objective C4, policies C4a¹⁶⁰, C4c¹⁶¹ and C4d¹⁶². In addition, the following are highlighted as relevant to the balancing exercise; C2.d¹⁶³; C2.e¹⁶⁴ and C2.f¹⁶⁵.
- The need for the development is supported by AONB Management Plan Policy C3.f in general terms but only if 'compatible' with the objectives of the designation, which this proposal is not, for the following reasons;
 - the inherent sensitivity of the site, occupying an elevated area of open downland, largely devoid of modern development, that is visible from both local and more distant footpaths, results in an insurmountable challenge.
 - the proposed development is of quasi-industrial appearance. Its aesthetic character results in contrast and juxtaposition with the underlying 'natural' character of the site and its wider landscape setting.
 - the development proposals foreseeably adversely affect some of the special qualities that underpin the designation, particularly:

¹⁵⁸ C1a: Support development that conserves and enhances the AONB, ensuring sensitive siting and design respects local character. Development that does not conserve and enhance the AONB will only be supported if it is necessary and in the public interest. Major development decisions need to include detailed consideration of relevant exceptional circumstances.

¹⁵⁹ C3.f: Support renewable energy production where compatible with the objectives of AONB designation.

¹⁶⁰ C4a: Remove existing and avoid creating new features which are detrimental to landscape character, tranquillity, and the AONB's special qualities.

¹⁶¹ C4c: Protect and where possible enhance the quality of views into, within and out of the AONB.

¹⁶² C4d: Protect the pattern of landscape features, including settlements, that underpin local identity.

¹⁶³ C2.d: The key test of a proposal against the statutory purpose of the AONB will be its ability to demonstrate that the proposed change would conserve and enhance landscape and scenic beauty.

¹⁶⁴ C2.e: The conservation and enhancement of the AONB's special qualities will be a significant consideration in the planning balance.

¹⁶⁵ C2.f: Proposals that are harmful to the character and appearance of the area will not be permitted unless there are benefits that clearly outweigh the significant protection afforded to the conservation and enhancement of the AONB. Where impacts cannot be mitigated, planning gain and compensatory measures will be considered.

- “Uninterrupted panoramic views to appreciate the complex pattern and textures of the surrounding landscapes”. The development would remove views from a promoted route running close to the site. It would also reduce the quality of views towards the site from the other side of the valley, adding an identifiable unnatural texture to the landscape that would not support the appreciation of natural beauty but rather, contrast with its surroundings.
 - “Striking sequences of beautiful countryside that are unique in Britain.”
 - “Tranquillity and remoteness”. Perceptions of tranquillity are strongly influenced by visibility. Whilst activity and development associated with traditional agricultural land management are broadly accepted and do not strongly detract from tranquillity, solar farms invoke a different reaction. The installation would also change the perception of the site from that of a remote location to one where serviced infrastructure has been installed.
 - “Undeveloped rural character”. The character and appearance of fields currently cultivated for cereal crops is substantially different from that of a solar farm. The scale and extent of infrastructure would be transformative and felt widely, across an impact zone of several kilometres incorporating a wide range of locations with public access but with a strong sense of undeveloped character.
- The AONB’s Landscape Character Assessment notes that the Upper Frome Valley’s key characteristics include fine panoramic views afforded from elevated land, such as this site. This elevation not only provides outward views but makes the site a notable feature within the undeveloped upland structure of the farmed downland in wider landscape views, particularly from the opposite slopes of the valley.
 - The site is at a point in the Upper Frome Valley where landform transitions from valley sides to relatively flat downland. The site forms part of an isolated and open area, with a strong sense of undeveloped rural character. Whilst some development is found in this elevated landscape, this is predominately small scale and relates to the agricultural management of the land. Overall, undeveloped rural character, with a sense of seclusion and tranquillity are among the defining characteristics, with the site largely expressing these. The contention that the site is ‘unremarkable’ appears to overlook the prevailing valued characteristics of this typical downland landscape, which is a representative component of a nationally designated landscape.
 - The strong rural character of the site and the wider area, alongside the intervisibility between the site and the land to the north and east, which contains numerous rights of way and open access land, suggests that the use of the site for a PV array would be likely to result in the introduction of a discordant element, at odds with its wider environment.
 - Given the elevated location of the site and its intervisibility with public rights of way and open access land in a broad arc from the north to the

east, it is difficult to accept the LVIA's suggestion that site selection itself has served to moderate the effects of the development.

- The planning guidelines for the character area recognise that the overall aim should be to conserve the strong pattern of existing features. Notably, it is recommended that we should conserve and enhance the distinctive undeveloped character of the open downland landscape and the long ranging views especially from roads, footpaths/bridleways and key viewpoints. It is also recommended that we ensure farm diversification projects do not have a negative impact of local character.
- In light of the above guidelines and with respect to the relatively extensive visibility of the site, the LVIA for this project should have identified that the proposal will result in significant landscape and visual effects on the character and appearance of the AONB.
- The LVIA commonly understates the scale and significance of the impacts and the degree to which the development would be perceived as a discordant built feature within its sensitive landscape context. The use of a restricted definition of tranquillity in undertaking the LVIA means that the extent of impacts upon this important quality have not been fully considered. The LVIA submitted does not fully describe or predict the significant landscape and visual effects of the development. It utilises a 5km study area, which is appropriate to the project. However, there are the following issues with the plans and images provided:
 - The LVIA provides a screened ZTV, but not a bare earth version. Although substantial differences are not anticipated, a bare-earth ZTV is a commonly expected element of the desk study for a LVIA.
 - The ZTV provided does not clearly highlight areas of public access within the OS base-layer, including public rights of way, open access land, roads and the railway line.
 - There is no figure that illustrates the wider AONB landscape character areas in the study area and/or a figure showing these areas in relation to the theoretical visibility of the development.
 - The photographs and photomontages provided suffer from a lack of clarity for a number of reasons. Firstly, the images appear to have been compressed, with the resolution being relatively low. Secondly, issues such as the atmospheric and lighting conditions, alongside camera focus, mean that several photos are fundamentally lacking definition. For example:
 - The photograph from viewpoint 1 is taken facing southwards during the morning in January. The relatively low position of sun appears to have resulted in the more distant features on the landscape (including the site area) appearing relatively washed-out. Comparison of the image with a monitoring photograph taken in May from the same location (<http://gigapan.com/gigapans/186953>), shows a substantial difference, including the ability to see across to the Hardy

Monument on the South Dorset Ridgeway, with the site seen in the wider foreground.

- The photograph from viewpoint 2 appears to suffer from an issue of camera focus, with the hedge in the foreground being sharp and the more distant landscape being relatively out of focus.
- The photograph from viewpoint 4 appears somewhat unfocussed and smoke partially obscures the site.
- Some other photography, e.g. viewpoint 8, is taken in sub-optimal conditions, resulting in landscape features appearing somewhat unclear and distant.
- Whereas the extent of the site is shown on the context photos (wider panoramas), the site location is not clearly illustrated on the 100% enlargement baseline images. Furthermore, the images would be of greater use if they showed (where relevant) the outline of the site area, rather than a floating line indicating the extent of the site.
- Although the application provides photomontages, these are not produced using the 150% enlargement factor recommended by the Landscape Institute's guidance for visualisations, recommended for expansive projects.
- The LVIA includes photomontages from VPs 1, 3, 6, 7 & 11. The inclusion of montages from VPs 2, 4 & 5 would have better illustrated the worst-case scenario and there are likely to be wider alternative viewpoints that would have better represented the maximum effects of the development.
- The rendering of the development in the photomontages is unclear, with contrast and definition being substantially below what could be achieved by the human eye in the field.
- Overall, the LVIA's contention that the landscape sensitivity of the site should be regarded as 'medium' is not well justified. Likewise, the use of the terms "relatively" or "very" localised to describe the effects of the proposal is not defined and it is therefore for those reading the assessment to determine, based on their own interpretation, what 'localised effects' are.
- The placement of the development within the upper slopes of the valley clearly results in widespread visibility of the site from the other side of the Frome Valley, an area described by the LVIA as a limited 'cone' of visibility (LVIA paragraph 5.7.14). Both parties agree that the visual influence of the development extends to a number of kilometres. Whilst recognising that visibility of the site area from the other side of the valley varies in accordance with the elevation and distance, and that the views from the affected area are commonly toward the backs and sides of the panels, it is nonetheless foreseeable that the development will be readily perceived in views, and that the effects of the development will be particularly pronounced from the more elevated vantage points.

- The LVIA contends that effects on views from the direction of Fore Hill and Hog Cliff would be, at greatest, 'low' and confined to 'localised' sections of the rights of way and open access land. More distant views from locations such as Castle Hill are regarded as experiencing a 'negligible' effect. As noted above, the quality of the images and accuracy of the visualisations in representing the impact of the development from such locations are considered unsatisfactory. The LVIA underrepresents the extent and significance of visual impacts from the other side of the valley.
- The modifications made to the scheme do not materially alter the wider visual effects, with the development continuing to be visible from the opposite slopes of the valley, across a relatively broad arc.
- In addition to the effects on a range of views across the valley, the development will clearly have a significant adverse effect on the Macmillan Way, which directly passes the site. As demonstrated by the photographs and visualisation provided by the LVIA, the development will substantially alter the character of the site and lead to the direct loss of a fine panoramic view from a section of a promoted route. The alternative permissive route would not provide a view of equivalent panoramic value to that which would be lost.
- The proposed screening of the proposal from the Macmillan Way would fail to obscure near views of the development for many years, whilst the hedgerow matures, and following this the route would be channelled through an enclosed experience, as compared to the existing situation, in which users can appreciate fine panoramic views.
- The sensitivity of the selected site and the nature of the effect on views will significantly adversely affect the appreciation of the tranquil and undeveloped character of the countryside from both the Macmillan Way and the rights of way and open access land on the opposite side of the Frome Valley, particularly in the direction of Fore Hill and Hog Cliff. There will also be lesser adverse effects on more distant locations, such as Castle Hill, which should not be entirely discounted. These effects on the character and appearance of the AONB cannot reasonably be considered very localised and of limited significance, as suggested by the LVIA. Instead the foreseeable effects would substantially inhibit the ability of the application to satisfy the major development test, described in NPPF 172, and therefore weigh heavily against the proposal.
- The methodology used in the appellant's LVIA means that only major effects have been regarded as significant. This is a high bar and, as demonstrated by the thinking applied by the Inspectorate in its Examination Report for Navitus Bay Wind Farm, is an approach that potentially under-estimates the extent of impacts. The high sensitivity of the surroundings in which the development would be located justifies recognition of there being a lower tolerance of change within an AONB, particularly where key characteristics and special qualities are affected. In reaching a view on the overall significance of effects on the AONB, regard should be paid to the perception of the proposal as a discordant feature in a relatively undeveloped area of elevated rural downland. The Guidelines for Landscape and Visual Impact Assessment (GLVIA3) highlight, at section

6.44, that whilst there is no prescribed framework for classifying effects as being 'significant', in the language of the EIA Regulations, there are three factors that increase the probability of an overall effect being classified as such, these being:

- "Effects on people who are particularly sensitive to changes in views and visual amenity..."
 - "Effects on people at recognised and important viewpoints and from recognised scenic routes..."
 - "Large-scale changes which introduce new, non-characteristic or discordant or intrusive elements into the view..."
- The 40-year duration of the permission sought is considerable. Its 'temporary' nature should not have a significant bearing on the overall weight given to the harm that would be caused.
 - The relatively high rate of approvals for solar farms outside the AONB suggests that there is no essential need for a solar farm to be located within the AONB. Recent approvals within approximately the past two years include:
 - Galton Manor Farm (Dorset) – approx. 30 MW
 - North Fossil Farm (Dorset) - approx. 40 MW
 - Blandford Hill (Dorset) - approx. 15 MW
 - Higher Stockbridge Farm (Dorset) – approx. 35 MW
 - Fern Brook Solar Farm (Dorset) – approx. 25 MW
 - Land at Beavor Grange (East Devon) – approx. 19 MW
 - Pipplepen Farm (South Somerset) - approx. 32 MW

These total nearly 200MW of recent approvals outside the AONB. Additionally, there are many other consented and operational solar farms relatively close to Dorset AONB, including numerous projects to the north of the AONB boundary in the Purbeck area and a cluster of solar farms close to the National Grid substation south of Hawkchurch. Overall, the numerous examples of approved and operational large scale solar farms outside of the AONB indicates that there are likely to be good opportunities for meeting renewable energy needs through sites that are not within the designated area.

- The scale of the appeal proposal is smaller than the above examples which suggests that its benefits would be modest.
- The appellant's consideration of alternatives focusses on an area within 3km of the preferred site but nothing elevates this choice of grid connection above simply being a preference of the developer and does little to inform discussion concerning the potential for the envisaged renewable energy production to come from developments outside of the AONB, which is the purpose of the NPPF test.

- The range and distribution of landscape and visual effects arising from this proposal is not limited. Likewise, the range of special qualities and key characteristic of the AONB that would be adversely influenced by this development is not limited. To outweigh the widespread adverse effects of this proposal, it would be necessary for disproportionate emphasis to be placed on the urgent and substantial need for this specific proposal. This imperative has not been demonstrated through the course of the Inquiry and therefore the AONB Team invites the Secretary of State to decline the case for 'exceptional circumstances' for the approval of the application.

Written Representations made to the Inspectorate

48. Nick Jones, not originally an objector, had become alarmed since the appeal was made. He writes that there is no shortage of solar farms in Dorset but they are mostly out of sight. By contrast, this highly visible site on an east-facing hillside would be seen from the A37, 2km away. He predicts that trees and hedges casting shadows would be cut back and that grass would be mown, destroying wildlife such as skylarks.
49. He considers that the collision data map submitted with the revised access arrangements is not representative of the safety of the D-road junction with the A35. The traffic study says that there are no signed height or weight restrictions on the route but there never are any on a category D road such as Greenford Lane. He suggests a more direct route from the M5 for construction traffic. He points out that an accident on the A35 on 26 May 2023 led to gridlock as HGVs tried to negotiate D roads. He points out that the D road from Kingston Russell is a road that has hedges and grass banks along its entire length offering no grass verges to allow easy manoeuvring and at no point is wide enough to allow two-way traffic.
50. Alan and Jennifer White support the proposal on the grounds that farmers need to diversify and should not be prevented, especially for renewable energy. They claim that the site cannot be seen from adjoining farms or from the A37 road.
51. Maiden Newton Parish Council, represented by Mrs Michele Harding supports the scheme, pointing out that the appellants have alleviated initial concerns and have produced a traffic plan.

Written Representations made to the Council

52. Fourteen parties (including the three above who also wrote to the Inspectorate) made representations to the Council during its consideration of the application before the appeal was made.
53. Natural England (NE) advised the Council to have regard to the statutory purpose of the AONB – conserving and enhancing natural beauty and recommended consultation with the AONB team. The site is an agricultural greenfield site prominent in views from the other side of the Frome valley which currently provide extensive views of a predominantly undeveloped rural character.
54. The three tests of NPPF paragraphs 158,176 and 177 were referred to. The conclusion was reached that the proposals would have significant adverse impacts to landscape that forms the Dorset AONB and that there were no realistic means of fully moderating those impacts.

55. The appellant's LVIA understates the impacts. It had not selected worst case viewpoints for appraisal. It had favoured lower, rather than higher, viewpoints. Additional viewpoints were suggested with a request to reconsult NE. When reconsulted, NE was "satisfied that the additional viewpoints will ensure that the best and most accurate landscape evidence is provided."
56. "It is apparent that the solar farm would be visible and prominent in views of the Dorset AONB's otherwise unspoilt landscape". The effects were not likely to be reduced over time by screening. There would be a significant effect on users of the Macmillan Way.
57. NE contrasted the proposal with the £22m Dorset Visual Impact Provision project for replacing 8.8km of National Grid power lines by an underground connection, removing 22 pylons between Winterbourne Abbas and Weymouth, the primary purpose of which is enhancement of the protected landscape of the AONB.
58. NE referred to a technical information note on solar panels for maximising their environmental benefits. It pointed out that the Dorset Biodiversity Protocol requires submission of a Biodiversity Mitigation and Enhancement Plan but it regarded the hedgerow planting alongside the Macmillan Way to be wholly inappropriate as it would remove the long distance panoramic views that this right of way currently enjoys.
59. Linda Andrew reports that she had not been notified of the application.
60. Mr and Mrs Attwood are concerned about the effects of construction traffic on their listed building.
61. Charles and Jo Dunnett regard the site as not appropriate. They refer to AONB guidance on solar farms. The site would be very visible from the A37, exacerbated by the 29m fall in land across the site. The open view from the Macmillan Way would be blocked for fifteen minutes of the walk. They list the wildlife seen nearby.
62. Margaret Goddard notes harm to the landscape and to the setting of listed buildings. Screening would be impossible. She notes the use of prime agricultural land. There would be surface water run-off. Sporadic intrusive development is harmful to the AONB.
63. Nick Jones (who also wrote to the Inspectorate) objects to the access route proposed. Greenford Lane is a single track road with no passing places. The junction with the A35 is poor. When Bredy Hut reservoir was built, the junction opposite was improved. He suggests an alternative route.
64. Long Bredy and Kingston Russell Parish Council objects to the use of Greenford Lane as a construction access (and suggests an alternative).
65. Felicity and David Quick comment on the negative impact of the proposal on the landscape and wildlife of the AONB. The development would ruin the enjoyment of the Macmillan Way.
66. Rod Smith foresees that there would be rainwater run-off from the access road.
67. Professor David and Magda Stupples report that they were not notified of the application. They foresee that there would be overland flooding. They note

that the site is widely visible from the north-east, east and south-east. They comment that the use of chemicals in cleaning the photovoltaic panels would not be acceptable and that rotational power inverters cause noise pollution. They assert that the connection location to the grid is not stated and observe that an overhead cable to make the connection would not be acceptable. They also comment that the access roads are all single track with few passing points for large vehicles.

68. Tony Warren also reports that he was not notified of the application. He asserts that environmental and recreational qualities would be lost by the noise of 53 fan-cooled inverters and that the remains of an ancient drove road between the site and his land would be damaged by the security fencing proposed. The Millenium (Macmillan) Way would be ruined. He regrets that the storage of excess energy generated has not been considered and comments that the assessment ignores the grandstand view of the proposal site along a stretch of the A37 at Hog Cliff.
69. Alan and Jennifer White (who also wrote to the Inspectorate) support the proposal as farmers need to diversify. They argue that the site cannot be seen from nearby or from the A37.
70. Frome Vauchurch Parish Council refers to the highways plan and comments that the lane is not suitable. They also anticipate that there would be flooding.
71. Maiden Newton Parish Council (which also wrote to the Inspectorate) was initially concerned about the impact of construction traffic on small, narrow lanes but, following the scheme revisions, supports the proposal which considers access and traffic management.

Conditions and Obligations

72. As noted previously, there is a s106 agreement which provides for the creation of a permissive path in parallel with the Macmillan Way along the west side of the site on land immediately outside the site boundary to the west of the hedgerow which currently borders the Macmillan Way and bounds the site. The need for the obligation and its compliance with the CIL regulations is considered in my conclusions below.
73. In the event of the Secretary of State allowing the appeal, the parties submitted a list of sixteen suggested conditions attached as an Appendix to the signed Statement of Common Ground dated 10 May 2023. By the time of the Inquiry, this list was superseded by a Planning Conditions Schedule dated 11 July 2023, containing fifteen suggested conditions. The following discussion is based on the latter list.
74. Suggested condition 1 would require commencement within three years of the date of any permission. It is required in compliance with s91 of the Town and Country Planning Act 1990 (as amended) and so is included in my recommended Schedule of Conditions, attached to this report.
75. Suggested condition 2 would set a limit of 40 years for the duration of the permission following which it would terminate. The reason given by the parties is that the proposed scheme has a 40-year lifespan and is considered unsuitable for permanent development given the visual impacts, impacts on the Dorset AONB and location of the site on grade 3a agricultural land. The latter part of

these reasons go to the heart of whether the appeal should be allowed at all. Putting that aside for a moment, the condition is necessary anyway in order to comply with the terms of the application and so it is included in my recommended Schedule of Conditions, attached to this report.

76. Suggested condition 3 would establish a requirement for a Decommissioning Method Statement to be produced twelve months before the permission terminates and for it to be implemented within six months of the termination of the permission. It would be enforceable by a Breach of Condition Notice, served on the landowner in the event that the operator of the solar farm had gone out of business or was otherwise unable to bring about the discontinuance of the use and the restoration of the site. The condition is necessary to ensure that the site is restored once the period of development is ended and so it is included in my recommended Schedule of Conditions, attached to this report.
77. Suggested condition 4 sets out the plans which the implementation of the development must follow. This is necessary to create certainty because revised plans have been submitted during the consideration of the application and in the submission of the appeal. It is also necessary in order to hold open the availability of s73 of the Act for a "minor material amendment" to the permission in the event that one is required.
78. Suggested condition 5 would require the submission of a Construction Environmental Management Plan to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and then followed during the construction period. It is to be based on the recommendations of the appellant's Ecological Assessment Report dated 23 February 2022. But, there is no need for the submission of a further document for approval; the recommendations of the Ecological Assessment Report are clear in themselves; other than a comment by the Council's landscape witness (contested by the appellant's landscape witness) that the specification of seed mix¹⁶⁶ was not particularly special and her criticism of the density of hedgerow planting¹⁶⁷ there was no evidence provided during the Inquiry that its recommendations were inadequate; I therefore recommend that condition 5 simply requires the development to be carried out in accordance with the relevant parts of the Ecological Assessment Report.
79. Suggested condition 6 would require details of tree, shrub and hedge planting to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and then to be followed in carrying out the development. But, there is no need for the submission of a further document for approval; the details of tree, shrub and hedge planting are adequately specified in the four Landscape Strategy drawings and appendix 4 of the Ecological Assessment Report required by conditions (4) and (5) to be followed in carrying out the development. Other than the criticism by the Council's landscape witness of the density of hedgerow planting (contested by the

¹⁶⁶ Paragraphs 4.1.18 and 4.1.19 of Appendix 4 (Biodiversity Management Plan) of the appellant's Ecological Assessment Report (CD2.2a).

¹⁶⁷ Paragraph 4.1.11 of Appendix 4 (Biodiversity Management Plan) of the appellant's Ecological Assessment Report (CD2.2a).

appellant's landscape witness) there was no evidence provided during the Inquiry that its these provisions would be inadequate. My recommended Schedule of Conditions therefore does not include this suggested condition.

80. Suggested condition 7 would require details of a hard landscaping scheme to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development and then to be followed in carrying out the development. In response to my questioning what hard landscaping there would be, I was told that there would be very limited hardstanding, some lighting and the provision of a deer fence. The submitted Landscape Strategy (which is required to be followed in implementation by virtue of condition (4)) shows a minimal area for a DNO substation enclosure at the northern corner of the site. It is such a small area that it would matter very little with what material it would be surfaced. The planting and landscaping of all other parts of the site are adequately specified in the four Landscape Strategy drawings and appendix 4 of the Ecological Assessment Report required by conditions (4) and (5) to be followed in carrying out the development. The deer fence is shown in detail in drawing ref: 007005_04_SectionViews required by condition (4) to be followed in carrying out the development. Lighting is the subject of a separate condition in any event. I therefore take the view that the wide scope of suggested condition 7 would be unnecessary. All that is necessary is a condition requiring details of the hard surfacing of the DNO substation enclosure. My recommended Schedule of Conditions therefore includes this suggested condition as condition (6).
81. Suggested condition 8 would require details of the location and surfacing of the temporary construction access from Greenford Lane to be submitted to and approved in writing by the Local Planning Authority prior to the commencement of development. These details are not shown on any of the submitted plans or reports which are to be followed as required by conditions (4) and (5) in the implementation of the development and so it is a necessary condition. But, as drafted, it omits to require the removal of the temporary construction access and the reinstatement of the land affected after the construction access is no longer needed. Recommended condition (7) makes good this deficiency.
82. Suggested condition 9 would require the construction of the development to take place in accordance with the submitted Revised Construction Traffic Management Plan (CTMP). This condition is necessary to satisfy public concerns about the effects of construction traffic on country lanes around the site. In particular, paragraphs 3.18-3.20 of the CTMP put in place a "just in time" arrangement to avoid the largest vehicles meeting face to face on roads too narrow to allow them to pass with ease, thus meeting the concerns of Nick Jones, Maiden Newton Parish Council, Long Bredy and Kingston Russell Parish Council, Professor David and Magda Stupples and Frome Vauchurch Parish Council. My recommended Schedule of Conditions therefore includes this suggested condition as condition (8) but omitting the tailpiece to the suggested condition as the courts have held that such a tailpiece clause makes the scope of the permission and the condition uncertain¹⁶⁸.

¹⁶⁸ Midcounties Co-operative Ltd v Wyre Forest DC [2009] EWHC 964 and Hubert v Carmarthenshire CC [2015] EWHC 2327 (Admin).

83. Suggested condition 10 would require a detailed surface water management scheme to be submitted to and approved by the Local Planning Authority prior to the commencement of development and then to be followed in carrying out the development. The details are to accord with the submitted Flood Risk Assessment. Examination of the Flood Risk Assessment shows that paragraphs 3.62 to 3.78 including table D and appendices 3 (drawing E206/01), 5 and 6 of that document provide much of the detail which would be sought by the condition.
84. Although the Dorset Council Flood Risk Management Team has sought the imposition of the condition, there is no evidence in their consultation response dated 12 July 2021 to show that these submitted details would be unsatisfactory; rather, their comment that is that there is "some discussion with respect to maintaining grass cover and managing SW during construction is offered, although this will require further detail at Discharge of Conditions (DoC) stage," which seems to imply not that the submitted details are unacceptable but that they are incomplete.
85. The Dorset Council Flood Risk Management Team's response concludes by commenting that "We therefore do not consider the proposals are likely to result in any offsite worsening. Any swales constructed may offer some limited betterment by providing on site storage". Consequently, I am not convinced of the need for the submission of a further document for approval. Accordingly, my recommended Schedule of Conditions includes as condition (9) simply a requirement that the details provided in the Flood Risk Assessment be followed in carrying out the development. However, it would be open to the Secretary of State to impose the condition as requested by The Dorset Council Flood Risk Management Team, if thought necessary.
86. Suggested condition 11 would require details of the colour of all external facing materials for the walls and roofs of buildings and structures to be submitted to and approved by the Local Planning Authority prior to the commencement of development and then to be followed in carrying out the development. These details are not provided in the submitted drawings. The condition refers to buildings and structures, which would include the photovoltaic panels themselves, except that they would not have walls or roofs. The colour of their underside was a matter of discussion during the Inquiry as it would largely determine the appearance of the site in longer distance views from across the valley. The condition, without the limitation to walls and roofs, is therefore both necessary and significant in ensuring the acceptability of the development. I therefore include it, with that adjustment, as condition (10) in my Schedule of Recommended Conditions.
87. Suggested condition 12 would require details of any proposed external lighting to be submitted to and approved by the Local Planning Authority prior to the commencement of development and then to be followed in carrying out the development. There are no details of a lighting scheme shown on the submitted drawings although the descriptions of development envisage that some external lighting would be provided. This condition is therefore necessary and is included as condition (11) in my Schedule of Recommended Conditions.
88. Although the presence of contaminated land might be thought unlikely and so a condition requiring a full scheme of identification and remediation would not be

necessary, the Council's Environmental Health Officers have identified the risk to construction personnel from areas of unknown filled land and so a contingent contamination condition is necessary. Suggested condition 13 is therefore included as recommended condition (12) in my Schedule of Recommended Conditions.

89. Suggested condition 14 would require details of an Arboricultural Method Statement in relation to trees which have the potential to be affected by the development to be submitted to and approved by the Local Planning Authority prior to the commencement of development and then to be followed in carrying out the development. Yet paragraph 6.1 of the appellant's submitted Arboricultural Impact Assessment (AIA) confirms that "No trees or sections of hedgerow are proposed to be removed. No facilitation pruning of trees, ground-level changes or hard surfacing is required within the RPAs of retained trees." Paragraph 6.2 notes that ploughing and tilling means that field boundary trees will have limited root development in the surface soil layer. Paragraph 6.4 notes that infrastructure locations have been kept largely outside of trees' Root Protection Areas; the one noted exception is likely to succumb to Ash Dieback Disease in the coming years and any impact on the tree would have a negligible overall impact for the site.
90. Paragraph 6.5 of the AIA speculates on the route of cable connections and the possibility of hedgerow section removal and replanting. It says that this would be detailed in an Arboricultural Method Statement but, this comment predates the submission of the revised Landscape Strategy and the Ecological Assessment Report which detail hedgerow removal, retention and replanting plans and which are required to be followed in the implementation of the development by conditions 4 and 5. The statement in AIA paragraph 6.5 is therefore superseded.
91. Paragraph 6.8 of the AIA notes that the new perimeter site security fencing can adequately serve as physical protection for the trees. Paragraph 6.9 advises that to achieve the required tree protection, the site security fencing will be installed first and rolled out ahead of the cable and solar table installation. This is a provision of paragraphs 3.1.1 and 3.1.3 of the Biodiversity Management Plan, compliance with which is required by recommended condition 5. For all these reasons, there is no need for a separate Arboricultural Method Statement and suggested condition 14 is unnecessary. My recommended Schedule of Conditions therefore does not include this suggested condition.
92. Suggested condition 15 would require compliance with the submitted Landscape Ecological Management Plan (LEMP) in order to achieve the intended Biodiversity Net Gain. However, that document has been superseded in its delivery of the Biodiversity Net Gain by the Landscape Strategy and the Ecological Assessment Report (in particular Appendix 4, the Biodiversity Management Plan) submitted in February 2023. Compliance with both those in the implementation of the development would be required by recommended conditions 4 and 5. Suggested condition 15 is therefore unnecessary. My recommended Schedule of Conditions therefore does not include this suggested condition.

Conclusions

93. In this part of my report, references in square brackets [thus] are to earlier paragraphs or footnotes of this report.
94. Substantial parts of the appellant's case are not challenged. There is a climate crisis, recognised internationally, nationally and locally [footnote33]. The response to the climate crisis depends on renewable energy [footnote34]. Energy security reinforces dependency on renewable energy [footnote 35]. Solar power is expected to make a major contribution to renewable energy supplies [footnote 36]. The rate at which solar power is delivered needs to be accelerated [footnote 37].
95. Other parts of the appellant's case are more contentious. Dispute during the Inquiry focussed on the issues identified during the Rosewell Case Management Conference held on 25 May 2023, with the exception of the question of how the proposed reinstatement at the end of forty years is to be secured. All parties agree that this could be achieved by the implementation of a Decommissioning Method Statement, secured by a condition (3) [76 and footnotes 108, 153]. The remainder of this report is therefore structured in accordance with the remaining identified issues, namely:
- i. The effects of the proposal on the character, appearance and special qualities of the Dorset Area of Outstanding Natural Beauty.
 - ii. The effects of the proposal on the recreational benefit of the Macmillan Way.
 - iii. The contribution which the development proposed would make to the accepted national need for renewable energy and the cost of, and scope for meeting the need for it in some other way.
 - iv. Any other benefits or disbenefits to be weighed in the planning balance.

The effects of the proposal on the character, appearance and special qualities of the Dorset Area of Outstanding Natural Beauty

The expert witnesses and the evidence

96. I concur with the view of the appellant's advocate that the Council's landscape witness tended to conflate the impact on the individual physical landscape features of the site with the visual impacts arising [footnote 116]. Although there will be physical changes to the site in that a crop of photovoltaic panels will be superimposed on continued sheep grazing and will not rotate with arable farming; there will be security fences; there will be inverters hung on the strings of solar arrays; and there will be a small DNO substation enclosure, a small Customer Switchgear/T Boot enclosure and three small low voltage Switch/Transformers replacing the game bird 'pens' which occasionally spread across part of the slope [footnotes 118 and 130], nevertheless, this physical change to the landscape is confined to just the site itself [footnotes 87 and 88]. It represents a tiny fraction of the AONB and of the Landscape Character Area in which it lies [footnotes 74 and 75].

97. Much of the physical character of the site would remain unaltered; the topography would remain unchanged [footnote 88]; the size of each field would remain unchanged; their boundary hedgerows would remain [footnote 100] and would be supplemented by new planting where gaps have arisen [footnote 101]; the presence of public rights of way on the two fields would remain, on unaltered alignments [footnotes 80, 81, 87 and 88].
98. The vast majority of the impact on the character, appearance and special qualities of the Dorset AONB would be visual. In considering these effects, I concur with the view of the Council and of objectors to the scheme that the appellant's LVIA has tended to underestimate the impacts of the proposal [47 (bullets 14 and 16-20), 55, footnote 116] for reasons which are explained in the following paragraphs.
99. The LVIA forms part of the appellant's Environmental Statement. Chapter 5 of the Supplementary Environmental Information (SEI) provides an LVIA to replace that of chapter 5 of the original ES. Paragraphs 5.2.2 and 5.2.3 of the SEI confirm that a detailed LVIA methodology is presented in Appendix 5.1 of the ES and that the assessment of significance is based on the methodology described at ES Chapter 2: Assessment Methodology and criteria specific to landscape and visual assessment as presented in Appendix 5.1 of the ES.
100. Chapter 2 of the appellant's Environmental Statement explains its assessment methodology. Paragraph 2.6.1 of the SEI confirms that the terminology for determining significance remains the same in the SEI as in the 2021 ES. Paragraph 2.6.3 of the 2021 ES explains that significance reflects the relationship between two factors; the magnitude or severity of an effect and the sensitivity, importance or value of the receptor (the object or person experiencing the effect). Table 2.4 tabulates this relationship in a 4 x 4 matrix of 16 cells, with paragraph 2.6.6 explaining that effects assigned a rating of Major or Moderate (6 out of 16 cells highlighted in the table) would be considered as "significant."
101. Paragraph 5.2.4 of the SEI confirms that "the scale of effects is derived from the interaction of the receptor sensitivity and magnitude of change as detailed in the matrix set out in Table 5.1 and in the ES at Appendix 5.1". Table 5.1 of the SEI repeats the 16-cell matrix of Table 2.4 of the original ES, highlighting 6 out of 16 cells (those labelled as major or moderate) as "significant" but the ES at Appendix 5.1 which, as noted above, is supposed to be based on the methodology of ES chapter 2, shows something different, as the following paragraph explains.
102. Appendix 5.1 to the Environmental Statement sets out the methodology of the LVIA. Paragraph 1.11 of the Appendix explains that the sensitivity of the landscape and visual receptor and the magnitude of change arising from the proposals are cross referenced in Table 11 to determine the overall degree of landscape and visual effects. Table 11 is a 3 x 4 matrix of 12 cells; by comparison with tables 2.4 of chapter 2 and 5.1 of the SEI, it omits a column related to negligible sensitivity. Table 11 highlights as significant only those effects assigned a rating of Major (3 cells out of 12), not those rated as Moderate. To follow this methodology would mean that the LVIA downgrades and underplays the significance of moderate impacts on the landscape, in contradiction of the assessment methodology of the ES overall [47 (bullet25)].

103. In practice it appears that the LVIA has followed the methodology of appendix 5.1 and table 11 to the ES, not that of tables 2.4 of chapter 2 and 5.1 of the SEI. Thus, paragraph 5.4.41 of the LVIA in the SEI records that “effects of moderate, but not significant, have been identified during construction works for seven of the representative viewpoints from OAL or PRoW.”¹⁶⁹ In cross-examination, the appellant’s landscape witness stoutly defended his judgement that only major effects were significant and that moderate effects were not. Nevertheless, I conclude that the inconsistency between the LVIA methodology and the overall ES (and SEI) methodology means that the appellant’s evidence has tended to underestimate the impacts of the proposal.
104. It needs to be remembered firstly, that a defect in the LVIA is not the same as a harm to the landscape which would be caused by the development itself; the LVIA is only meant to be an aid to forming a judgement of whether there would be harm and secondly, that an LVIA is not a scientific measurement. It is a systematic method of coordinating a number of judgements (of susceptibility to change, of value of landscape element, of magnitude of change) into a single overall judgement of significance of impact but, in the final analysis, it remains a judgement.
105. To assess the reliability of that judgement, and the criticisms of that judgement made by the Council and by objectors to the appeal scheme, I undertook a ten-hour site visit, during which I walked approximately thirteen miles of footpaths to view a representative sample of viewpoints from which an overall assessment could be made of the impact of the proposal on the character, appearance and special qualities of the Dorset Area of Outstanding Natural Beauty. In this report, I use the word significant to mean “sufficiently great or important to be worthy of attention; noteworthy.”

At close quarters

106. There can be no doubt (and all parties agree), that the effects of the proposal on the site itself would be transformative [47, bullet 10.2, footnote 118]. But it is only two fields within a very large AONB and Landscape Character Area, so the overall effect of that immediate impact (as opposed to longer distance views from across the valley) would be tiny – a big event on a small site [footnotes 74 and 75]. It is also fair to say that, within the close vicinity of the site, topography and surrounding hedgerows mean that the site cannot be seen until one is right upon it (eg, from viewpoint 9, which is very close to the site, there is no view of it) [footnote 78]. It is also the case that the appellant’s proposed hedgerow planting would, after a period of time, hide the solar arrays from view at close quarters (but not from sight in longer-distant views).
107. From the slopes below the site (viewpoint 9) and from the lower parts of the site itself (up as far as approximately viewpoint 25) there are extensive panoramic views eastwards down the Frome valley as far as the Purbeck Hills. Although these would remain for walkers to experience from the slopes below the site, and notwithstanding the fact that tall crops could have the same effect from time to time, they would be lost from most of the site itself (between

¹⁶⁹ But the revised LVIA in the SEI (CD2.2a) is not consistent; at paragraph 5.4.66 it refers to an effect which would be “moderate significant to negligible (not significant)”

viewpoints 10 and 25) for forty years because of the height of the photovoltaic panels themselves and of the hedges to be planted to screen them [47 (bullets 22 and 23), 58, footnote 132]. In my opinion, this would be a sad loss. Both main parties identify this as major and significant at year one. It would remain so thereafter.

108. From the uppermost part of the site (between viewpoints 11 and 25), internal topography and boundary hedgerows prevent views either down into the valley bottom or along the valley to the east. Boundary hedgerows channel the view along the length of the site towards the hillsides on the opposite side of the valley but it's still a big view. From the top of the site, with development in place, the photomontage of viewpoint 11 shows that it might be possible to see over the photovoltaic panels to the tops of the hills on the opposite side of the valley but most of the big view would be lost. Passing down the side of the site, as shown in the photomontage of viewpoint 25, with the development in place, a narrow view northward would remain, channelled between hedgerows, to a part of the hillside opposite the site [footnote 131]. Both parties identify this restriction of view as major and significant at year one. I agree. It would remain so at year fifteen and beyond.

109. The Council argues that the screening hedgerow planting would itself damage the character of the site as an example of downland countryside because the green lane which would be formed between the new hedgerow and the existing hedgerow would be more typical of the combes and valley bottoms than of the hilltop plateaux [footnote 138]. That may be so but, only an expert would notice.

Hog Cliff Bottom

110. From the opposite side of the valley, Hog Cliff Bottom is the area of ProW and OAL closest to the site. Views from the footpath at the bottom of the combe which is Hog Cliff Bottom are constrained by the sides of the combe (eg viewpoint 6). In these, the site is right in front of the viewer, comprising about 50% of the width and about 25-30% of the height of what can be seen of the opposite (southern) side of the Frome Valley between the sides of the combe which is Hog Cliff Bottom. The development would therefore comprise quite a high proportion of what is in sight when walking down Hog Cliff Bottom. Because of the slope of the site, the surface of the field would be visible; the appellant's hedgerow screening would not obscure from view what was happening on the site itself [47 (bullet 21), footnotes 115, 136].

111. From the higher sides of the combe (eg viewpoints 18 and 19 on its south side and viewpoint 17 on its north side, the extent of the view becomes much wider (about 60° from viewpoint 17, about 180° from viewpoint 19) as it is less constrained by the sides of the combe and so the site forms a much smaller and therefore less significant proportion of what is in sight.

112. From this distance (1-2km), the appellant's photomontages suggest that individual strings of panels forming the arrays would not be discernible and would merge into a mass of dark colouration representing the undersides of the panels and thus the development would be indistinguishable from any other dark-coloured crop grown on the site. The Council's witnesses were sceptical of this assertion and argued that the site would be recognisable as a solar farm, even from this distance.

113. I lean towards the Council's opinion because the appellant's photomontages from viewpoints 7 and 23, at a greater distance (3km and 2km respectively), albeit from a different angle, indicate that the rows of panels would be individually distinct. Although one supposes that there would be a point of distance at which the individual panels of the development would merge into a single undistinguishable mass of colour to the naked eye, I suspect that from Hog Cliff Bottom the development would be recognisable for what it would be; a solar farm, not an agricultural crop. In any event, the colouration of the site as developed would be unchanging through the years and seasons, whereas the colour of a purely agricultural use would change as the crop varies and from season to season as the crop grows and is harvested [footnote 117].

114. The parties are agreed that the effects of the proposal from viewpoints 6 and 18 would be moderate. They differ in relation to viewpoints 17; the appellant saying moderate, the Council saying major from viewpoints 17 and 19, even though the latter is immediately adjacent to viewpoint 18. In either case, the effect would be significant. I concur because the development would comprise quite a high proportion of what is in sight when walking down Hog Cliff Bottom.

Fore Hill

115. The viewpoints from the public rights of way on Fore Hill (immediately above the village of Maiden Newton) are a little more distant (at least 2km) from the site than those at Hog Cliff Bottom and so the site is more likely to appear as a mass of dark colour without the components of the solar farm being distinguishable. The viewpoints are also more elevated. In consequence, the views are much more panoramic and the site occupies a much smaller proportion of the panorama.

116. Viewpoints 3, 15 and 24 offer very extensive panoramas in which the site occupies a tiny part. From viewpoint 16, there are only glimpses of the site through breaks in a hedgerow, peripheral to the main view to the west from that viewpoint. I did not visit viewpoint 4 and there is no photomontage but the context photograph suggests an effect similar to that from viewpoints 3, 15 and 24. Both parties suggest that the effects from viewpoint 3, 4 and 16 would be moderate; from 15 and 24, they disagree, the appellant saying moderate, the Council major. I tend to agree with the appellant because the wider context diminishes the significance of the site but either counts as significant. I would exclude viewpoint 16 from that conclusion.

Away to the north

117. Viewpoint 2 on Norden Lane is much further away; 3.5km from the site. The main view from viewpoint 2 is down Combe Bottom towards Maiden Newton. On the left-hand side of the view is a spur of land (Fore Hill) above which the site is visible but not prominent. The parties agree that the effect of the development would be negligible. I agree.

118. Because access was across private land, I did not visit viewpoint 21 but the description of the view in the photographs included in ES Appendix 5.4b is that it is located about 540m south-west of viewpoint 2 and so is very similar in location, aspect and content. I consider that the effect of the development on the view would be negligible because of the distance involved and because the site would form a very minor component of the wide panorama.

119. I did not visit viewpoint 1 (Castle Hill), 4.5 km from the site, but the description of the view in the photographs included in ES Appendix 5.4b was not disputed; “the site is barely perceptible to the naked eye”. For that reason, I concur with the appellant’s assessment that there would be a negligible visual effect as a result of the development.
120. Viewpoint A, where the Wessex Ridgeway long distance footpath crosses the A37 road offers a very wide (90-100°) view which extends well beyond the site. The site subtends about 10° in the view which at a distance of about 3.5km would make the impact of the development moderate, according to the Council. I agree that the effect on the view would be noticeable but its acceptability would very much depend on whether it is recognised as a solar farm or whether its colouration allows it to merge with the woodland above it in the view.¹⁷⁰
121. Southwards from viewpoint A, along the A37 there are occasional views of the site in the distance through breaks in the roadside hedges [61, 68]. On foot, the effects of the development would be similar to its effect on viewpoint A but, in a car, the sightings are momentary and so, barely noticeable.

Hog Cliff National Nature Reserve [footnote 135]

122. Viewpoint 5 offers a 180° panoramic view, of which the site comprises about 5-10°, so not a very large proportion of the view but it would be central. At a distance of about 3km from the site, I suspect that the components of the development would not be individually distinguishable to the naked eye and that its appearance would merge into an undifferentiated mass of colour. The parties disagree on whether the effect would be moderate or major. Because of the extent of the view of which the site would form a relatively small part, I tend towards the former but, either way, the impact would be significant.
123. I did not visit viewpoint 20, for which there is no photomontage but the photograph contained within ES Appendix 5.4b suggests that it is a more distant version of the view obtained from viewpoint 6 at Hog Cliff Bottom. The appellant suggests that the effect of the development would be negligible. I disagree because of the centrality and therefore prominence of the site within the narrow view restricted by the sides of the combe but the site is somewhat distant and so, I agree with the Council that the effects would be no more than moderate.

From the east

124. From viewpoint 7, the view of the site is largely obscured by the trees in the immediate foreground. The appellant’s photomontage suggests that, even at this distance (3km) the individual strings of the array would be clearly discernible, marking the site out as a solar farm, rather than an agricultural crop. However, the proportion of the expansive view which would be occupied by the site is small. The Council does not contest the appellant’s judgement that the effects would be minor and not significant. Even though the photomontages suggest that the development would be identifiable, I do not disagree with the judgement.

¹⁷⁰ A photograph of which may be found appended to the evidence of Sarah Barber (CD8.21).

125. Viewpoints 22 and 23 are on a little-used¹⁷¹ footpath leading from the A356 to the A37 at Hyde Crook. They illustrate the dynamic experience of walking along the footpath in which the site is located on the hillside directly in front of the viewer when walking towards it. Although central to the view and on the skyline, the site is only a very small part of a wide-ranging vista in which there are several powerlines visible. The appellant's photomontages of viewpoint 23 suggests that the site would be clearly identifiable as a solar farm as opposed to an agricultural crop. For that reason, I concur with both parties' assessment that the impact would be moderate, technically qualifying as significant.
126. At over 4km from the site, viewpoint B at Grimstone Down provides a 360° panorama. The site would be an incident in a very wide vista, not a point of focus, except that one's eye might be drawn to it by the Long Ash service station and wind turbine which are visible on the lower intervening ridge line, in the middle ground immediately in line with the site on the further hillside in the background. Electricity pylons can be seen on the horizon in the far distance beyond the site. The Council's revised assessment judges the impact on this viewpoint to be moderate. I concur.

Conclusions on the effects of the proposal on the character, appearance and special qualities of the Dorset Area of Outstanding Natural Beauty

127. There is no evidence that the site would be artificially lit at night other than on an exceptional basis should an emergency require access [footnote 82]. A condition would require any lighting proposal to be vetted by the Council. Consequently, I take the view that there would effectively be no loss of dark night skies as a result of the development proposed [footnote 114].
128. I do not accept that the proposal would have only a limited and localised visual effect [53, 56, 65, 67, footnotes 84, 92]. The site would be visible from a number of locations in a wide-ranging arc of about 100° to the north-east of the site at distances of up to 4km or so. Every one of these locations has a distinctly rural character [footnotes 119, 120]. In many of these locations, the site would figure as a minor or peripheral incident in an extensive view containing many incidents [footnote 93] but in some, it would appear at the centre of a view or as the focal point of a direction of route along a footpath. From locations closer to the site, such as Hog Cliff Bottom, it would be more prominent.
129. From the site itself, the proposed development would obstruct views outward and so would undoubtedly cause harm [footnote 132]. It would therefore be contrary to Development Plan policy ENV1 which, amongst other matters, prescribes that development which would harm the AONB including its uninterrupted panoramic views will not be permitted.
130. In views inward towards the site, the development would obstruct no views; the views would remain as extensive as they are now. The site would be present in views [47 (bullets 11 and 24)]and, from Hog Cliff Bottom, prominently so, but presence in a view, even significant presence, is not necessarily harmful. Although the views are of countryside within the AONB [47 (bullet12)], it is not countryside which is so tranquil that it is completely devoid

¹⁷¹ There was no prior disturbance to the crop evident on my site visit

of any human intervention; it is crossed by roads and railways; in some of the views from higher ground, pylons are visible on the far horizon beyond the site; there are also occasional sewage works, wind turbines and agricultural barns, sheds and silos. Civilization, compromising visual tranquillity, is always present to a degree. So, the harm lies in how the development would be perceived; either as a quasi-industrial facility inimical to the countryside, or simply as a field of a different colour with a man-made crop.

131. Unlike, say, Monsal Vale viaduct, the (now demolished) Fylingdales early warning radar station, or the (now demolished) power stations at Didcot or Coalbrookdale, all criticised in their time as scars on the landscape but subsequently accepted as sculptural monuments complementing the sublime nature of their landscape context, the Cruxton solar farm would be a banal, utilitarian feature. Sometimes, when seen from higher ground, the massed panels of solar farms take on the illusion of a sheet of water, not inappropriate within the countryside. That would not happen in this case, sited on the summit of a hill, where the matt undersides of the panels would determine its appearance in the wider landscape. The best that can be hoped is that, as argued by the appellant, in distant views, the individual components of the site, which make it recognisable as a solar farm, would merge into an indistinguishable dark mass and be accepted as just another, different coloured, field in a wide landscape of different coloured fields.
132. In some of the longer distant views of the Cruxton solar farm, the effect would be an indistinguishable dark mass accepted as just another, different coloured field. But in nearer views, as indicated in the appellant's photomontages of views 7 and 23, the solar farm would be identifiable for what it is. In those cases, people who are predisposed to regard solar farms as inimical to the countryside would be offended and see harm [47 (bullet13)], footnote 134]. Other people, who would be differently predisposed would not be offended and would see no harm [footnote 89]. My own reaction is that however significant the development would be in the view, there would be little or no harm except perhaps from Hog Cliff Bottom where it would be hard to avoid seeing the site and recognising it for what it is.
133. I therefore conclude that the effects of the proposal on longer distant views towards the site would not present a clear breach of Development Plan policies COM11, ENV1 or ENV10, or the planning guidelines for the Landscape Character Area, contrary to the Council's view [footnotes 126, 137] and the view of the Dorset AONB Partnership [47 (bullet 10)]; indeed, it would clearly comply with subsection (ii) of ENV10, which requires development to provide for the future retention and protection of trees (amongst other matters) that contribute to an area's distinctive character.
134. In any event however, it is government policy that within Areas of Outstanding Natural Beauty permission should be refused for major development such as that proposed in this appeal other than in exceptional circumstances and where it can be demonstrated that the development is in the public interest. I now turn to examine some of the other considerations set out in NPPF paragraph 177.

The effects of the proposal on the recreational benefit of the Macmillan Way.

135. As the appellant points out, the part of the Macmillan Way which passes through the site is only a very tiny part of this 290-mile long-distance footpath [footnote 80]. The section in question can be walked in fifteen minutes [61]. There are currently no existing solar developments that directly impact on the experience of walking this part of the trail [footnote 129]. The guide to the Macmillan Way¹⁷² makes no comment on any of the views visible from the site, which is dealt with in two perfunctory sentences and part of a third; "At top of hill do not go through fenced opening (single wire) ahead, but turn left and after few yards turn right through opening in hedge. Continue across long field with hedge on immediate right and at corner, where there is a wooden sign, turn left still keeping hedge on right. Over stile in corner of field and bear right,.... (continues)."
136. My impression is that the Macmillan Way is not well used. It is poorly signposted. On my site visit, I met two parties of walkers who were trying to follow its route; both were lost and one party had strayed from the track. There was little evidence of crop damage by trampling where its route followed the edge of the fields through which it passed and which had been sown right up to their edges. Nevertheless, the presence of the walkers seeking to follow its route indicates its potential as a recreational resource.
137. As the appellant points out, it would remain intact as a walking route [footnote 81]. As one approaches the site from the south, having walked up the hill from Norton Hill Barn, halfway across the field before reaching the site there is a "wow" view looking down the valley of Norton Bottom. That would be unaffected by the development.
138. On entering the site from the south, there is a big view, as captured by viewpoint 11, described above, which would be lost to the development. Passing through the site, walkers would be constrained within new hedgerows and so would lose the experience of the increasingly wide panoramic view which opens up to the east as one descends the hill (described above in my commentary on viewpoints 10 and 25). But the experience would not be lost entirely as the long view towards the Purbeck Hills along the Frome Valley would still be experienced on leaving the site at its northern extremity (described above, in relation to viewpoint 9).
139. The above paragraph describes the extent of harm to the recreational benefit of the Macmillan Way. In the context of the Macmillan Way as a whole, it would be very small. Moreover, the appellant proposes mitigation in the form of a permissive footpath to the western side of the hedgerow which bounds the footpath route at present. This alternative permissive route would provide a panoramic view up the Frome Valley towards Maiden Newton [footnote 85].
140. Whilst I agree with opponents' opinions [47 (bullet22), footnote 133] that this is not such a fine vista as that down the valley which would be compromised by the development, it is still a good view and a benefit which would result from the proposal. The planning obligation which would secure this

¹⁷² Core Document 8.58, page 120

permissive footpath and its panoramic view is therefore necessary to make the development acceptable in planning terms, directly related to the development and fairly and reasonably related to it in scale and kind. It would therefore meet the CIL regulations and I recommend that the Secretary of State takes it into account in making his decision.

141. With this obligation in place, I conclude that the harm to the recreational benefit of the Macmillan Way would be adequately mitigated, contrary to the Council's view that it would be unacceptable [footnote 128]. Others disagree [65, 68]. The proposal would comply with Development Plan policy COM7(v) which requires that where development degrades the attractiveness of a route, compensatory enhancements will be sought such that there is a net improvement to the public right of way network.

The contribution which the development proposed would make to the accepted national need for renewable energy and the cost of, and scope for meeting the need for it in some other way.

142. The proposal would have an 11.8MW capacity representing 0.02% of the government's target of a further 56GW of solar capacity by 2035 [footnotes 38, 39, 141]. It is anticipated that approximately 3,100 tonnes of CO₂ will be saved by the project each year [footnote 43]. That, baldly stated, represents its contribution to the accepted national need for renewable energy. Its benefits would be modest [47 (bullet27)]. However, there is more to it than that, because not all areas of the country are capable of making an equally proportionate contribution to meeting the national need. Dorset enjoys strong solar irradiance [footnote 58] and therefore would be expected to host large amounts of future solar photovoltaic arrays in any future net zero scenario.
143. The appellant complains, and the Council largely accepts, that despite several generalised policies in favour of renewable energy, the Council has no strategy, targets or sites for their implementation [footnotes 59-72]. In fact, paragraph 6.6.6 of the adopted Development Plan records that by 2020 locally generated renewable energy projects will need to generate 7.5% of all energy demand which, in combination with national scale projects across the country will meet the national target. However, no more up to date target is evidenced.
144. The appellant's planning witness pointed out that Dorset's Joint Annual Monitoring Report for 2020/21 records that data on solar photovoltaic development had not been collected since 2016. Its Low Carbon Energy Route Map and Evidence Base dated June 2021 (the Regen report) [footnote 145] records in the diagram on page 2 of the report ¹⁷³ that in 2019 Dorset generated 400GWh of solar photovoltaic energy, representing 5% of its total energy demand of about 14,000GWh or about 22% of its electricity demand, so the target set in the Development Plan for 2020 was unlikely to have been met.
145. Unfortunately other figures in the Regen report are not consistent with that diagram. 400 is 2.9% of 14,000, not 5%. In section 2.1 the report also records that in 2018, Dorset's electricity use totalled 3,103 GWh. 400 is 13% of

¹⁷³ which may be found at item 1.3 of folder LPA SoC within folder LPA within folder 03 statement(s)/proofs within folder 0 Inspector file of PINS horizon file).

3,103, not 22%. Elsewhere in the report, section 2.3 records that installed solar photovoltaic capacity is 480MW generating around 512 GWh of electricity per year. 512 is 3.7% of 14,000, not 5% and is 16.5% of 3,103, not 22%. Assuming that the capacity factor of solar pv is 25%, then 480MW of installed capacity would be expected to generate about 1050 GWh, not 512 ($480 \times 0.001 \times 8760 \times 0.25$). 1050 is 7.5% of 14,000 and 33.8% of 3,103. Clearly the report cannot be relied upon for the precise accuracy of its figures but it gives a general idea of the scale of what exists and what would be required to achieve net zero in Dorset.

146. At the inquiry, discussion of the roll-out of solar energy projects in Dorset centred around an inconclusive examination of SSEN's embedded capacity register of June 2023. This identifies 22 emerging solar projects within Dorset which have an accepted POC (including the appeal site). The majority are outside the AONB. They have a registered capacity of over 800MW. [footnote 148] but during cross-examination, it appeared that there was some duplication within the register and not all sites were recognised or could be related to a planning application and so their deliverability is unknown [footnote 49]. Consequently, the 800MW cannot be relied upon in full.
147. If the SSEN embedded capacity register figure were reliable, and presuming a solar capacity factor of 25%, 800MW of installed capacity might generate 1,753GWh of energy in a year, suggesting that even if all the pipeline were constructed, there would still be a large need for further solar photovoltaic capacity in Dorset [footnote 50].
148. Although the parties made reference to the Regen report, none of them noted the implications of its two alternative pathways (or scenarios) to net zero emissions for Dorset by 2050. Section 3.1.1 of the report refers to "the net zero scenario projections of 1200MW." Section 4.3.1 of the report advises that "In both net zero scenarios, the imminent advent of subsidy-free large-scale solar projects results in total solar PV capacity doubling by the mid-2030s and tripling to 1500MW by 2050." However, in reaching these figures, the Regen report presumes a near halving of total energy demand (from 14,000GWh to 7,500 GWh by 2050). Although not stated as targets, these figures set a context within which the current pipeline of 800MW and the need for the current proposal of 11.8MW capacity can be judged. The appeal proposal represents about 1% of what the Regen report considers is required for Dorset.
149. Reliance on the Regen report and SSEN's embedded capacity register is problematic for the reasons stated but, they are the best evidence presented by which to judge the need for the current appeal proposal in the context of Dorset's circumstances. On the face of it, the 800MW of the pipeline represented by the SSEN embedded capacity register (which includes the appeal site) when added to the 480MW of installed capacity recorded by Regen would meet Regen's scenario projections of 1200MW, but not those of 1500 by 2050.
150. Section 3.1.1 of the Regen report confirms that Dorset has high levels of solar irradiance compared to the rest of the UK and a large amount of developable low grade agricultural land. It claims to have identified 62,000ha of land area that could potentially be suitable for large-scale solar PV, of which "only 4% would be needed to meet the net zero scenario projections of 1200MW" (Figure 2 on page 10 of the report). Over 75% of England and nearly

half of Dorset is not subject to AONB designation, so alternative suitable locations are likely [47 (bullets 5 and 26)]. Opportunities undoubtedly exist with high levels of solar irradiation outside the AONB or within its less sensitive parts [footnote 146].

151. However, the Regen report also confirms that "Dorset currently faces almost universal electrical network constraints which need to be addressed urgently to avoid impacting both the speed of decarbonisation and associated green growth economy." Section 2.5 of the report observes that "much of the electrical infrastructure in the area is constrained, this means that new connections, generation or demand can incur high costs." [footnote 48].
152. SSEN's Distribution Future Energy Scenario Report for Southern England Area comments on grid capacity for generation. It does not cite this as a constraint for Dorset [footnote 147] but Figure 1 of the Regen report shows that substations in the centre of Dorset (one of the two areas which the report identifies as having a large area of promising solar pv resource) are often constrained for both generation and demand. By contrast, the figure shows that a primary substation in the Maiden Newton area is one of the few anywhere in Dorset outside the built-up area of Bournemouth itself identified as having unconstrained capacity to accept generation.
153. Significant upgrades to grid infrastructure will be required in any event [footnote 152] but, in the short term, I conclude that there is substance in the appellant's argument that in a constrained grid, capacity should be used wherever possible [footnotes 44, 45, 46, 47, 51, 52], contrary to the Council's view [footnote 151] and that of the OANB Partnership [47 (bullet28)].
154. Even though the appellant's search for an alternative site may have been limited [footnote 149], the Council's planning witness accepted that the megawattage available at this point of connection would not justify the cost of a connection to a site outside of the AONB [footnote 52] and so, there is no need for viability evidence to demonstrate that any site making use of this point of connection would be limited to a radius of 3km [footnote 150].
155. In summary; the appeal proposal is included in the SSEN embedded capacity register pipeline. That, together with the existing solar photovoltaic installations in Dorset would just about meet Regen's net zero scenario projections of 1200MW but would fall short of the 2050 projection of 1500MW. Furthermore, both the projections are based on some pretty heroic presumptions of a fall in total energy demand. In the short to medium term, until the capacity constraints of the grid are sorted out, there is little scope for exploiting the 62,000ha of land area that Regen claims to have identified as potentially suitable for large-scale solar PV and so I conclude, contrary to the Council's view [footnotes 142, 143, 144], that the need for renewable energy generation could not be met in other ways, that the appeal proposal would make an essential contribution both to the accepted national need for renewable energy and to Dorset's need and that the cost of, and scope for meeting the need for it in some other way would be prohibitive in the short to medium term. This contribution towards renewable energy targets may be thought to represent a benefit which would significantly outweigh any harm in compliance with Development Plan policy COM 11(i).

Other benefits or disbenefits to be weighed in the planning balance.

156. A little less than half the site is reckoned by both parties to count as Best and Most Versatile agricultural land [62, footnote 94]. The Written Ministerial Statement of 25 March 2015 (CD 8.28) makes it clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence [footnote 140]. This sentiment is reiterated in paragraphs 3.10.14 and 3.10.15 of the draft National Policy Statement for Renewable Energy Infrastructure (EN-3); "Whilst the development of ground mounted solar arrays is not prohibited on agricultural land classified 1, 2 and 3a, or sites designated for their natural beauty, ..., the impacts of such are expected to be considered."
157. However, it is false to say (as the Council's landscape witness claims in table 4 and in paragraph 5.12(b) of her evidence) that the present agricultural use of the site would be replaced by photovoltaic panels and associated structures [footnote 96]. The solar farm would be superimposed on continued (albeit restricted to pastoral) agricultural use [footnote 95]. Although it is accepted by the appellant that this would limit agricultural opportunities and thus reduce agricultural productivity [footnote 139], it is accepted by the Council that this would, over the lifetime of the development, improve the quality of the land [footnote 104]. The use of BMV agricultural land is not a reason for the Council's refusal of permission [footnote 97]. I conclude that that is a correct assessment.
158. It is also accepted that the appellant's revised Landscape Strategy would result in substantial Biodiversity Net Gain of over 71% for area-based Habitat Units and net gains of over 26% for linear -based units [footnote 98]. This would be an impressive result but should not be overlaid in the final analysis because, in the big picture, the site is only a moderate size [47(bullet7)].
159. It is accepted that the traffic and flood risk implications of the development could be met by conditions [49, 51, 60, 62, 63, 64, 66, 67, 70, 71, 82, 83-85, footnotes 54, 57, 105,]. These considerations are therefore neither benefits nor disbenefits. Other potential disbenefits can also be met and neutralised by conditions, as discussed earlier in this report. The economic benefits arising from construction activities (as opposed to the economic benefits of electricity generation) are also matters to be taken into account [50, 69, footnotes 106, 107].
160. The appellant emphasises that the proposal is for a temporary or time-limited development and so, that any disbenefits would be reversed at the end of 40 years' operation [footnote 108]. However, in due time, all things pass. The life of every citizen is temporary or time-limited. As the Council's witnesses observed, the proposed lifespan of this appeal proposal is half a human lifetime [footnote 153]. With that thought in mind, I would attach only limited weight to this consideration other than the need to ensure that reinstatement and restoration is provided when the development becomes life-expired. Condition (3) is recommended to secure this.

The planning balance

161. Section 38(6) of the Planning and Compulsory Purchase Act 2004 provides that determination of this appeal must be made in accordance with the

Development Plan unless material considerations indicate otherwise. There are three policies from the Development Plan cited in the Council's reasons for refusal, ten further policies referenced in the Council's Committee report and one further policy which both main parties agree to be relevant. I will comment on each in turn.

162. Clause (i) of ENV1 – Landscape, Seascape and Sites of Geological Interest appears to set an absolute bar on any development which would cause any harm to the AONB. Clause (ii) also suggests that development that significantly adversely affects the character or visual quality of the local landscape will not be permitted. But the Council accepted that, in practice, clause (iii) requiring appropriate measures to moderate adverse effects means that the policy read as a whole envisages a judgement to be made on a balance between harm, mitigation and benefits. So, although there will be harm to the AONB, detailed above, contrary to Development Plan policy ENV1, this would not be conclusive on its own.
163. Clause (iii) of Development Plan policy ENV10 stipulates that development should only be permitted where it provides sufficient hard and soft landscaping to successfully integrate with the character of the site and its surrounding area. My conclusions above record that although sufficient soft landscaping would be provided to hide the photovoltaic panels from close-range views, the slope of the hillside means that it would be ineffective in long-range views and so, there is only partial compliance with ENV10(iii). There would however be full compliance with ENV10(ii) in that the development proposed will provide for the future retention and protection of trees that contribute to the area's distinctive character.
164. Policy COM11 – Renewable Energy Development asserts that proposals for generating heat or electricity from renewable energy sources other than wind will be allowed wherever possible, provided that the benefits of the development, such as the contribution towards renewable energy targets significantly outweigh any harm. I have already noted [footnote 63] that this policy sets a higher bar than NPPF paragraph 177 and so may be said to be inconsistent with it; the Council itself, in subsequent policy statements has modified "significantly" to be "appropriately" [footnote 65]. Either way, the effect of the policy is to require a judgement to be made on a balance between harm, mitigation and benefits.
165. The policy goes on to prescribe that permission will only be granted provided that any adverse impacts on the local landscape can be satisfactorily assimilated. This is the same test as policy ENV10(ii). I have noted above that the proposal only partially complies with this requirement. The policy also stipulates no harm to residential amenity. This element of the policy would be complied with [footnotes 76, 77]. Finally, the policy requires satisfactory mitigation of adverse impacts upon designated wildlife sites, nature conservation interests and biodiversity. The proposal would exceed requirements in this respect [footnote 98].
166. Development Plan policy ENV 2 – Wildlife and Habitats is mainly concerned with the protection of internationally, nationally and locally designated wildlife sites. There are none relevant to this proposal [17, footnote 53]. However, clause (vi) provides that proposals that conserve or enhance biodiversity should

be supported. This proposal would earn that support by its Biodiversity Net Gain [footnote 98].

167. Development Plan policy ENV 4 – Heritage Assets is concerned with their protection. There are no designated heritage assets relevant to this proposal [19, footnote 53]. A third party claims there would be effects on a non-designated heritage asset [68] but this is said to be between the site and his land, so it is not clear how it could be affected by the security fence which would be on the site.
168. Recommended condition (9) would secure compliance with Development Plan policy ENV 5 – Flood Risk. Recommended condition (12) would secure compliance with Development Plan policy ENV 9 – Pollution and Contaminated Land
169. Other than the proposal’s claimed innate incompatibility with the AONB (considered above in relation to policy ENV1), there is no suggestion that it would not comply in other respects with Development Plan policy ENV 12 – The Design and Positioning of Buildings, which is concerned, amongst other matters, to ensure that a development complements and respects the character of the surrounding area through its siting, alignment, design, scale, mass and materials.
170. Development Plan policy ENV 15 – Efficient and Appropriate Use of Land exhorts development to optimise the potential of a site and make efficient use of land, subject to the limitations inherent in the site and impact on local character. Although the Council has criticised the efficiency with which the site is laid out, because the north-facing slope requires the arrays to be more widely-spaced in order to avoid overshadowing each other [footnotes 115, 127], this is a limitation inherent in the site and so the proposal would not be in conflict with this part of the policy. Impact on local character is considered earlier, in relation to policy ENV1.
171. Development Plan policy ENV 16 – Amenity is concerned with protecting the residential amenities of local residents through effects on privacy, daylight, noise or pollution. There are no residential properties close to the site [13 footnotes 76, 77] and so no conflict with this policy.
172. Development Plan policy SUS 2 – Distribution of Development is concerned to direct development towards larger and more sustainable settlements. Outside defined development boundaries, development will be restricted to a defined range of proposals including the generation of renewable energy. The proposal therefore complies with this policy. Development Plan policy ENV8 supplements this policy by advising that where possible, development will be steered towards areas of poorer quality land where this is available. Although criticised by the Council, the appellant’s Sequential Analysis Study demonstrates that this is not available and so the proposal is not in conflict with the policy.
173. Condition (8) would ensure that the proposal complies with Development Plan policy COM 7 – Creating a Safe and Efficient Transport Network which, amongst other matters, is concerned with ensuring that the volume of traffic likely to be generated can be accommodated on the local highway network without exacerbating community severance and with avoiding severe cumulative impacts on the efficiency of the transport network.

174. Development Plan policy COM 9 – Parking Standards in New Development stipulates that parking standards for non-residential development should be agreed through joint discussions between the Local Highway Authority and the Local Planning Authority in accordance with published local parking guidelines. There is no suggestion that the proposal would be in conflict with this policy.
175. In sum therefore, the development proposed would comply with the Development Plan read as a whole, except in so far as a judgement needs to be made on the balance between harm to landscape character, as mitigated by the appellant’s proposed hedgerow planting, and the benefits of energy production and biodiversity enhancement.
176. Other material considerations include compliance with the policies of the NPPF. These include paragraphs 158, 174(b), 176, 177. Paragraph 158 advises that it is not necessary to demonstrate the overall need for renewable or low carbon energy, that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions and that an application should be approved if it can be made acceptable. This advice favours the appeal proposal.
177. Paragraph 174(b) recommends that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside and the wider benefits from natural capital and ecosystem services- including the economic and other benefits of the best and most versatile agricultural land. The first part of this advice corresponds with the discussion set out earlier in relation to Development Plan policy ENV1. The effects of the proposal on BMV agricultural land are discussed above where I conclude that it is accepted that the proposal would, over the lifetime of the development, improve the quality of the land, that the use of BMV agricultural land is not a reason for the Council’s refusal of permission and that that is a correct assessment.
178. NPPF paragraph 176 advises that great weight should be given to conserving and enhancing landscape and scenic beauty in AONBs [47 (bullets 2, 6), footnote 125]. That emphasises one side of the balance to be struck in this case. Whilst guidance does not preclude solar farms from AONBs [footnote 121] and Dorset Council has given permission for three such [47 (bullet 8)], NPPF paragraph 177 goes on to say that applications for major development in AONBs should be refused permission other than in exceptional circumstances [47(bullet 6), footnotes 122, 123, 124] and where it can be demonstrated that the development is in the public interest. The paragraph goes on to suggest three considerations in forming that judgement; the need for the development; the cost and scope of alternatives and the detrimental effect on the environment.
179. NPPF paragraph 158 has already established that the national need for the development should not be questioned. In terms of local need, previous discussion has established that the development is integral to any hope that Dorset has of making its proportional contribution towards meeting national targets for renewable energy. In the appellant’s view, those are the exceptional circumstances which should apply. In my view, that case is made. The cost of alternatives has barely figured in this Inquiry, except that the Regen report, to which reference has been made, notes that new connections (other than those with already identified capacity) can incur high costs. The scope of alternatives

has been shown to be minimal prior to expansion in grid capacity. There has been shown to be some detrimental effect on the landscape for the forty-year life of the development but the effects on recreational opportunities (the Macmillan Way) would be adequately mitigated and there would be a net gain in biodiversity.

Recommendation

File Ref: APP/D1265/W/23/3317593

180. Taking all things into consideration, my view is that the balance between harm, mitigation and benefits favours the development proposed. Others disagree [47 (bullet29), 54, footnotes 156, 157] I recommend that the appeal be allowed and planning permission be granted subject to the twelve conditions appended in the Schedule to this report.

P. W Clark

Inspector

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Emyr Jones	Counsel instructed by Dorset Council
He called	
Sarah Barber BA(Hons) DipLA CMLI	Landscape Architect, Dorset Council
Matthew Pochin-Hawkes BA(Hons) MSc MRTPI	Lead Project Officer, Dorset Council

FOR THE APPELLANT:

Thea Osmund-Smith, assisted by Odette Chalaby	Counsel instructed by Steven Bainbridge
She called	
Andrew Cook BA(Hons) MLD CMLI MIEMA CEnv	Executive Director, Pegasus Group
Steven Bainbridge BSc(Hons) MSc MRTPI	Associate Director, Chapman Lily Planning Ltd

INTERESTED PERSONS:

Richard Brown CMLI	Landscape Officer, Dorset AONB Partnership
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SCHEDULE OF RECOMMENDED CONDITIONS

- 1) The development hereby permitted shall begin not later than 3 years from the date of this decision.
- 2) The permission hereby granted shall expire 40 years from the date when electrical power is first exported from the solar farm to the electricity grid network, excluding electricity exported during initial testing and commissioning. Written confirmation of the first export date shall be provided to the Local Planning Authority no later than one calendar month after the event.
- 3) Not less than 12 months before the expiry date specified in condition (2) or any other planned cessation of the development hereby permitted, or following a period of one year in which the development has failed to produce electricity for supply to the grid, a Decommissioning Method Statement (DMS) shall be submitted to and approved in writing by the Local Planning Authority. The DMS shall include details of the removal of the panels, supports, inverters and transformers, buildings and all associated electrical infrastructure, structures and fencing from the site, and a timetable for their removal. The DMS shall ensure the retention of the soft landscaping works implemented as part of planning conditions [6] of this permission and provide details of other soft landscaping works compatible with the agricultural use of the site. The DMS shall also include a Decommissioning Traffic Management Plan to address likely traffic impacts associated with decommissioning. Thereafter, the site shall be decommissioned in accordance with the approved DMS within 6 months of the expiry of the 40 year period from the date when electrical power is first exported from the solar farm to the electricity grid network, excluding electricity exported during initial testing and commissioning, or within 18 months of the site ceasing to produce electricity whichever is sooner.
- 4) The development hereby permitted shall be carried out in accordance with the following approved plans: Site Location Plan – ref: P20-0981_16 Rev A; Site Layout Plan – ref: 007005_01_Layout_Rev D; Building elevations and floorplans – ref: 007005_03_Building Sections; Solar panel and security fence details – ref: 007005_04_SectionViews; Landscape Strategy (Sheet No 1 of 4) – ref: P20-0981_10 Sheet No. 1 Rev E; Landscape Strategy (Sheet No 2 of 4) – ref: P20-0981_10 Sheet No. 2 Rev E; Landscape Strategy (Sheet No 3 of 4) – ref: P20-0981_10 Sheet No. 3 Rev E; Landscape Strategy (Sheet No 4 of 4) – ref: P20-0981_10 Sheet No. 4 Rev E.
- 5) The development hereby permitted shall be carried out in accordance with Appendices 3 (Reasonable Avoidance Measures Method Statement), 4 (Biodiversity Management Plan V2) and paragraphs 5.1.8, 5.1.9, 5.1.12 and 5.1.13 of Appendix 6 (Confidential Badger Survey Report V3) of the submitted Ecological Assessment Report V4 by Avian Ecology Ltd dated 23 February 2022.
- 6) Prior to commencement of development, details of the hard surfacing of the DNO substation enclosure shown on the approved Landscape Strategy drawings shall be submitted to and approved in writing by the Local

- Planning Authority. The development shall be carried out in accordance with the approved details.
- 7) Prior to commencement of development (including site set up and preliminary works) details of the location and surfacing of the temporary construction access from Greenford Lane shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the temporary access road shall be constructed as approved, used as the primary construction access for the duration of the construction works in accordance with the approved Construction Traffic Management Plan and removed and the land affected reinstated to its former condition within three months of the conclusion of the construction period.
 - 8) The submitted Revised Construction Traffic Management Plan (CTMP) by Pegasus Planning Group Limited ref: P20-0981/TR05 Revision D dated August 2022 shall be implemented in full for the duration of construction of the development hereby permitted.
 - 9) The development hereby permitted shall be carried out in accordance with paragraphs 3.62 to 3.78 including table D and appendices 3 (drawing E206/01), 5 and 6 of the submitted Flood Risk Assessment by PFA Consulting Ltd dated 28.04.2021.
 - 10) Prior to commencement of development the colour of all external facing materials of buildings and structures (including DNO substation enclosure; Customer Switchgear/T Boot enclosure, LV Switch Transformers and photovoltaic array) shall have been submitted to, and approved in writing by the Local Planning Authority. Thereafter, the development shall proceed in accordance with the approved details.
 - 11) Prior to the installation of any external lighting a lighting scheme detailing the external lighting to be provided shall be submitted to and approved in writing by the Local Planning Authority. The scheme shall include a plan showing the positioning of each light, as well as details of the appearance, orientation, intensity, shielding and angle of the head of each light. Thereafter the lighting scheme must be installed, operated and maintained in accordance with the approved details.
 - 12) In the event that contamination is found at any time when carrying out the approved development, it must be reported in writing immediately to the Local Planning Authority and an investigation and risk assessment must be undertaken in accordance with requirements of BS10175 (as amended). If any contamination is found requiring remediation, a remediation scheme, including a time scale, shall be submitted to and approved in writing by the Local Planning Authority. On completion of the approved remediation scheme a verification report shall be prepared and submitted within two weeks of completion and submitted to the Local Planning Authority.

CORE DOCUMENTS

CD1 Application Documents and Plans

Documents:

- 1.1 Planning application forms
- 1.2 Agricultural Land Classification Report, prepared by Amet Property, dated 27th April 2021;
- 1.3 Arboricultural Impact Assessment, prepared by Barton Hyett Associates Ltd, dated April 2020 but issued 23 April 2021;
- 1.4 Arboricultural Survey Report, prepared by Barton Hyett Associates Ltd, dated March 2021
- 1.5 Construction Traffic Management Plan, prepared by Pegasus Group, dated May 2021
- 1.6 Design and Access Statement, prepared by Pegasus Group, dated May 2021;
- 1.7 Ecological Assessment Report, prepared by Pegasus Group (V1), dated May 2021
Badger section redacted
- 1.8 Environmental Statement – Volume 1 (Main Report & Figures), prepared by Pegasus Group, dated May 2021;
- 1.9 Environmental Statement – Volume 2 (Appendices), prepared by Pegasus Group, dated May 2021;
- 1.10 Environmental Statement Non-Technical Summary, prepared by Pegasus Group, dated May 2021;
- 1.11 Flood Risk Assessment, prepared by PFA Consulting, dated April 2021;
- 1.12 Heritage Desk-Based Assessment, prepared by Pegasus Group, dated March 2021;
- 1.13 Landscape Strategy – drawing number P20-0981-10 dated 19/04/21
- 1.14 Planning Statement, prepared by Pegasus Group, dated May 2021;
- 1.15 Not used
- 1.16 Solar PV Glint and Glare Study, prepared by Pegasus Group (Issue 2), dated May 2021
- 1.17 Topographical Survey – drawing number 21752-1000-01

Plans:

- 1.18 Site Location Plan – drawing ref: P20-0981_16 Rev A
- 1.19 Site Layout Plan – drawing ref: 007005_01_Layout_Rev D
- 1.20 Building elevations and floorplans – drawing ref: 007005_03_Building Sections
- 1.21 Solar panel and security fence details – drawing ref: 007005_04_SectionViews

Supporting Documents

CD2 Additional/amended reports submitted after validation (1/6/2021)

- 2.1 Dorset Biodiversity Appraisal Protocol: Certificate of Approval – Landscape & Ecological Management Plan, dated 4th March 2022;
- 2.2 Ecological Assessment Report, prepared by Avian Ecology, Version 4, dated 23rd February 2022, including as appendices:
 - 2.2a - Biodiversity Management Plan, Version 2, dated 6th December 2021
 - 2.2b - Biodiversity Net Gain Calculation, Revision 3, dated 22nd February 2022

2.2c - Confidential Badger Survey Report, Version 3, dated 23rd February 2022
Badger section redacted

2.3 Landscape and Ecological Management Plan (Rev B), dated March 2022

2.4 Material Considerations Update Note, prepared by Pegasus Group, dated 30th August 2022;

2.5 NPPF Para 177 Compliance Note, prepared by Pegasus Group, dated 15th February 2022;

2.6 Planning Statement Addendum, prepared by Pegasus Group, dated December 2021;

2.7 Revised Construction Traffic Management Plan, prepared by Pegasus Group, Revision D, dated August 2022, including as an appendix:

2.10a - GG104 Risk Assessment (dated June 2022)

2.10b - GGz104 Risk Assessment Addendum (August 2022)

2.8 Sequential Analysis Study, prepared by Pegasus Group, dated November 2021

2.9 Supplementary Environmental Information Non-Technical Summary, prepared by Pegasus Group, dated December 2021.

2.10 Supplementary Environmental Information, prepared by Pegasus Group, dated December 2021 the SEI LVIA (Rev B) is dated May 2023

2.11 High Resolution Photomontages 2021

CD3 Committee/officer's report and/or decision notice

3.1 Committee report

3.2 Decision notice

3.3 EIA screening opinion dated 12th March 2021

CD4 The Development Plan

4.1 West Dorset, Weymouth & Portland Local Plan adopted in October 2015

CD5 Emerging Development Plan

5.1 Dorset Local Plan, January 2021 consultation version

5.1a. Dorset Council Local Plan Options Consultation document - Volume 1 - Strategy and Topics (January 2021)

5.1b. Dorset Council Local Plan Options Consultation document - Volume 2 - Western Dorset (January 2021)

5.1c. Dorset Council Local Plan Options Consultation document - Appendices 1-5 (January 2021)

5.1d. Dorset Council Local Plan Options Consultation document - Appendix 6 part 1 (January 2021)

5.1e. Dorset Council Local Plan Options Consultation document - Appendix 6 part 2 (January 2021)

CD6 Relevant appeal decisions and officer reports

6.1 Halloughton, Nottinghamshire APP/B3030/W/21/3279533 ("Halloughton"), solar farm and battery storage

6.2 Cleeve Hill Solar Park Order reference EN010085

6.3 Bishops Itchington, Stratford upon Avon APP/J3720/W/22/3292579

6.4 Langford, Devon APP/Y/1138/W/22/3293104

6.5 Chelmsford, Essex APP/W1525/W/22/3300222, solar farm and battery storage

- 6.6 Gillingham, Dorset APP/D1265/W/22/3300299 solar farm and battery storage
- 6.7 New Works Lane, Telford APP/C3240/W/22/3293667 solar farm
- 6.8 Bramley, Hampshire APP/H1705/W/22/3304561 ("Bramley"), solar & battery storage
- 6.9 Lepe Road, Exbury APP/B9506/W/15/3132171
- 6.10 Vaggs Lane, Lymington APP/B9506/W/15/3006387
- 6.11 Officer Report - Rampisham Down
- 6.12 Officer Report - Southern Counties Shooting Ground
- 6.13 Cawston Norfolk Appeal Decision - 3278065
- 6.14 Pelham Sub Station Maunden S62a
- 6.15 Murton 3308881 - Appeal Decision
- 6.16 Telford (2) Appeal decision 3308481
- 6.17 Decision 3315877 Land S of Leeming Substation

CD7 Not Allocated

CD8 Planning Appeal

Appeal Administration

- 8.1 Appeal Forms
- 8.2 Copies of Appellant consultation notice
- 8.3 Inspector's Note of Case Management Conference

Statements of Case

- 8.4 Appellant's Statement of Case
- 8.5 Dorset Council (DC) Statement of Case

Statement of Common Ground

- 8.6 Agreed Statement of Common Ground
- 8.7 SOCG addendum core docs list.

Revised documents and plans submitted at appeal stage

- 8.8 Footpath – drawing ref: P007005_09_Footpath Rev B
- 8.9 Landscape Strategy (Sheet 1 of 4) – drawing ref: P20-0981_10 Sheet No 1 Rev E
- 8.10 Landscape Strategy (Sheet 2 of 4) – drawing ref: P20-0981_10 Sheet No 2 Rev E
- 8.11 Landscape Strategy (Sheet 3 of 4) – drawing ref: P20-0981_10 Sheet No 3 Rev E
- 8.12 Landscape Strategy (Sheet 4 of 4) – drawing ref: P20-0981_10 Sheet No 4 Rev E
- 8.13 ES Chapter 5: Landscape and Visual Impact (Rev B), dated May 2023
- 8.14 ES Appendix 5.1 LVIA Methodology, dated May 2023
- 8.15 ES Appendix 5.4b Photoviews Parts 1-3, dated May 2023
- 8.16 ES Appendix 5.5b Landscape Effects Summary Table, dated May 2023
- 8.17 ES Appendix 5.6b Visual Effects Summary Table, dated May 2023

Proofs of Evidence

- 8.18 a. Appellant Planning Proof of Evidence
- b. Appellant Summary Planning Proof of Evidence
- 8.19 Appellant Landscape Proof of Evidence
- 8.20 a. Dorset Council Planning Proof of Evidence
- b. Dorset Council Summary Planning Proof of Evidence
- 8.21 a. Dorset Council Landscape Proof of Evidence (see also Inquiry Document 1)
- b. Dorset Council Summary Landscape Proof of Evidence

Conditions and S106 Agreements

- 8.22 Planning Conditions Schedule dated 5 July 2023
- 8.23 s106 agreement

National Planning Policy, Guidance and Legislation

- 8.24 Climate Change Act 2008
- 8.25 Overarching National Policy Statement for Energy (EN-1) (July 2011)
- 8.26 National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)
- 8.27 UK Government Solar Strategy 2014
- 8.28 Written Ministerial Statement on Solar Energy: protecting the local and global environment (25 March 2015)
- 8.29 Clean Growth Strategy published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017
- 8.30 UK Parliament declaration of an Environmental and Climate Change Emergency (May 2019)
- 8.31 Climate Change Act (2050 target amendment) Order 2019
- 8.32 UK Energy Statistics Press Release published by the Department for Business, Energy & Industrial Strategy (June 2020)
- 8.33 Energy White Paper 2020
- 8.34 Achieving Net Zero' published by the National Audit Office (December 2020)
- 8.35 Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021)
- 8.36 UK Government press release of acceleration of carbon reduction to 2035, (April 2021)
- 8.37 National Planning Policy Framework (July 2021)
- 8.38 National Planning Practice Guidance (Electronic Version only)
- 8.39 Net Zero Strategy: Build Back Greener, dated October 2021.
- 8.40 British Energy Security Strategy 2022
- 8.41 Draft National Policy Statement for Energy (EN-1) (March 2023)
- 8.42 Draft National Policy Statement for Renewable Energy Infrastructure (EN-3) (March 2023)
- 8.43 Government's Renewable Energy Planning Database (REPD) - LPA and Appellant extracts from latest April 2023 version
 - a) Dorset Wide (LPA)
 - b) West Dorset (Appellant)
- 8.44 Government's Renewable Energy Planning Database (REPD) Mapping (online only) - Extract of +10MW Solar Farms
- 8.45 Powering Up Britain (March 2023)
- 8.46 Powering Up Britain Energy Security Plan (March 2023)

8.47 Powering Up Britain Net Zero Growth Plan (March 2023)

8.48 The latest version of the 'Digest' of United Kingdom Energy Statistics (DUKES)

Local Planning Guidance and Documents

8.49 Dorset AONB Management Plan 2019 -2024

8.50 Dorset AONB Landscape Character Assessment 2009

8.51 Natural Environment, Climate and Ecology Strategy (July 2021)

8.52 Natural Environment, Climate and Ecology Strategy 2023-25 Refresh (March 2023)

8.53 Planning for Climate Change: Interim Guidance and Position Statement, Consultation Version April 2023

8.54 Climate and Ecological Emergency Strategy Progress Report - Autumn 2022

Other Documents and Guidance

8.55 Landscape Institute TGN 06/19 Visual Representation of Development Proposals (Sept 2019)

8.56 Guidelines for Landscape & Visual Impact Assessment Third Edition (GLVIA3) Landscape Institute & Institute of Environmental Management & Assessment.

8.57 World Bank Group Solar Resource Maps showing UK Irradiation

8.58 The Macmillan Way, The Macmillan Way Association (2022)

8.59 Natural England South West region BMV map

8.60 SSEN embedded-capacity-register-june_2023_v5.1 - Extract

Additional DOCUMENTS submitted at the Inquiry

- 1 Sarah Barber's Amendments to Proof of Evidence
- 2 Photograph of panels of the type likely to be installed in appeal proposal



Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

APPENDIX 26

**Appeal APP/L3815/W/23/3329831 – Land at Lavant Pumping Station, Down
Road, Chichester**



Appeal Decision

Site visit made on 12 February 2024

by J Hobbs MRTPI MCD BSc (hons)

an Inspector appointed by the Secretary of State

Decision date: 8th April 2024

Appeal Ref: APP/L3815/W/23/3329831

Land at Lavant Pumping station, Down Road, Chichester

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Portsmouth Water against the decision of South Downs National Park Authority.
 - The application Ref is SDNP/22/03021/FUL.
 - The development proposed is installation of solar panels.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Both the Council and the appellant identified that the proposed development would be in proximity to 'The Trundle', a scheduled ancient monument (SAM). Neither party explicitly considered the effect of the proposal on the setting of the SAM. Given paragraph 206 of the National Planning Policy Framework (the Framework) identifies that SAMs are assets of the highest significance, I sought views from both parties on whether the proposal would affect the setting of the SAM. The Council has indicated that the proposal would have a harmful effect on the SAM, whereas the appellant has indicated that the proposal would not. As it is a matter of dispute between the parties, I will consider this further as part of the main issues of the appeal below.
3. The planning application was for full permission for the installation of solar panels. There was no indication on the application form that the appellant was seeking temporary permission. Nonetheless, the appellant has indicated throughout their evidence that they would decommission the panels and return the site to its current state after 25 years. The temporary installation of solar panels and reinstatement of the site could be secured by condition. As such, I have assessed the proposal as a temporary development that would be removed after 25 years.

Main Issues

4. The main issues are the effect of the proposal on:
 - the character and appearance of the area, with particular regard to the South Downs National Park (SDNP); and
 - the significance of the Trundle, a SAM.

Reasons

Character and appearance

5. The proposed solar panels would be sited in a field between Lavant Pumping Station and residential development in Mid Lavant. The field is largely free from development and provides an important break between the pumping station and houses. Whilst influenced by the nearby development, the site forms part of the wider tranquil setting of the river Lavant. It accommodates hedgerows around the site's boundary, which partially screen views to and from the centre of the field. The site is also in proximity to two public rights of way (PROWs), West Sussex Literary Trail and New Lipchis Way. Both of which are sited uphill of the appeal site. Also, the appeal site is in Lavant Valley with rolling chalk downland surrounding the site. Therefore, there are views over and through the hedgerows, across the site. These factors combine to create an open and verdant character.
6. The appeal site is located within the SDNP. I have a statutory duty to seek to further the purposes of the National Park, which are conserving and enhancing the natural beauty, wildlife and cultural heritage of it; and promoting opportunities for the understanding and enjoyment of its special qualities.
7. Although the proposed solar panels would be sited in a small section of the field, close to the buildings that they would serve, they would be on the other side of an established boundary. The siting of additional built development, on the other side of the hedgerow would visually reduce the gap between the pumping station and Mid Lavant. The increase in built development and activity within the field alongside the visual reduction in this gap would harm the openness of the area and the tranquil setting of the river.
8. The improved management of the hedgerows and additional complimentary planting would further screen the proposed development; particularly once the new planting has matured. Nonetheless, given the height and scale of the proposed solar panels, they would be prominent in views from both PROWs. Moreover, due to their industrial and utilitarian appearance they would appear incongruous within the verdant area.
9. The South Downs National Park Landscape Character Assessment, 2020, identifies that one of the key characteristics of the area is "... small permanent pastures divided by hedgerows, wet woodland, water meadows and open water ...". This is representative of the appeal site which represents a small pasture divided from neighbouring land by hedgerows with open water nearby. The proposed landscaping scheme includes new trees and woodland planting of native species in the southern section of the site. Although there are small pockets of woodland in the area, these are further away and tend to be in hill side locations. The proposed woodland planting would further harm the openness of the site and would appear at odds with the prevailing character.
10. As you travel further away from the appeal site, the proposed development would be less prominent. When viewed from the Trundle the appeal proposal would represent a minor change to the existing landscape. Regardless, the proposal would have a harmful effect on the character and appearance of the area, for the reasons given above. As such, it would fail to conserve the natural beauty of the SDNP.

11. The proposed installation would be temporary, but the appellant indicates it would be in situ for 25 years. Once the proposed development is removed, vegetation would need to mature before the site is restored to its existing state. Therefore, the effect of the proposal on the site would be experienced for more than 25 years. Given the significant period before the site is restored to its existing state, the temporary nature of the proposal does not overcome the identified harm.
12. The solar panels would be orientated to face southwards so they would be less visible in views from highly trafficked areas to the north, including from the Trundle, and have been designed to minimise glare. Nevertheless, these factors do not mitigate the harm I have identified.
13. I conclude that the proposal would have a harmful effect on the character and appearance of the SDNP. It would be contrary to Policies SD1, SD2, SD4, SD5, SD6, SD7 and SD17 of the South Downs Local Plan (2014-2033), July 2019 (LP). These policies indicate that planning permission will be refused where a proposal fails to conserve the landscape and the character and appearance of watercourse corridors, and that proposals will be permitted where they adopt a landscape-led approach and preserve the visual integrity of the SDNP, amongst other things. Furthermore, it would be contrary to paragraphs 180 and 182 of the Framework, which advise that planning decisions should protect valued landscapes and great weight should be given to conserving and enhancing landscape and scenic beauty in National Parks.

Scheduled ancient monument

14. The significance of 'The Trundle hillfort, causewayed enclosure and associated remains at St Roche's Hill'¹ includes its historic use dating back to being a neolithic causewayed enclosure, an iron age hilltop fort, and a defensive structure during World War II. The panoramic views offered from atop the Trundle and its prominence in views from the south/south-west also contribute to its significance.
15. The proposal would not directly affect the SAM. In some views from atop the Trundle the proposal would lead to an increase in visible built development. Nonetheless, the appeal site is a significant distance away and the proposal would represent a very modest change to the panoramic views that include a significant amount of built development. However, in some views from the New Lipchis Way, toward the SAM, the proposal would be prominent. These views are largely free from development and the proposal, through the introduction of tall built development, would compete with the visual prominence of the SAM and, therefore, harm its setting and, consequently, its significance.
16. Given the scale of the development and the limited extent of the views affected by the proposal, I ascribe less than substantial weight to the harm caused to the significance of the SAM. Paragraph 205 of the Framework indicates that irrespective of the level of harm to the significance of a designated heritage asset, great weight should be given to the asset's conservation. Paragraph 208 of the Framework indicates that when a proposal will lead to less than substantial harm to the significance of a designated heritage asset, the harm should be weighed against the public benefits of the proposal.

¹ List entry number: 1018034

17. The proposed solar panels would power Lavant Pumping Station, this would reduce carbon emissions in line with the Framework and local development plan aspirations and the Climate Change Strategy and Action Plan adopted by the National Park Authority in March 2020. It would also, to a very limited extent, assist the Secretary of State with ensuring that the net UK carbon account for the year 2050 is at least 100% lower than the 1990 baseline as set out in the Climate Change Act 2008. There would also be economic associated benefits with the installation and ongoing operation of the solar panels. Nevertheless, I ascribe moderate weight to the public benefits, as the solar panels would only serve Lavant Pumping Station and not the wider area. Accordingly, the public benefits do not outweigh the harm.
18. Overall, I conclude that the proposal would have a harmful effect on the significance of the Trundle. The proposal would be contrary to LP Policy SD51 which indicates that small-scale renewable energy proposals should not have an unacceptable adverse impact on local amenity.

Other Matters

19. The appeal site is in proximity to Singleton and Cocking Special Area of Conservation. The Conservation of Habitats and Species Regulations 2017 (as amended) require that, where a project is likely to have a significant effect on a European site, either alone or in combination with other plans or projects, the competent authority must, before any grant of planning permission, make an appropriate assessment of the project's implications in view of the relevant conservation objectives. However, as I have found the appeal proposal to be unacceptable for other reasons, it is not necessary for me to undertake an appropriate assessment, or to consider this matter further.
20. Within the evidence the appellant has made specific reference to the Framework and development plan policies, in relation to matters that are not in dispute. I acknowledge that the appeal proposal complies with some sections of the Framework and various local policies including those relating to dark night skies and protection of vegetation. Regardless, this does not alter my assessment on the main issues of this appeal.

Conclusion

21. The proposal conflicts with the development plan and the material considerations do not indicate that the appeal should be decided other than in accordance with it. Therefore, the appeal should be dismissed.

J Hobbs

INSPECTOR

APPENDIX 27

**Appeal APP/P1615/W/23/3331416 – Land North of Stream Lane, Upleadon,
Gloucestershire**



Appeal Decision

Site visit made on 15 May 2024

by **J Woolcock BNatRes MURP DipLaw MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 03 June 2024

Appeal Ref: APP/P1615/W/23/3331416

Land North of Stream Lane, Upleadon, Gloucestershire, GL18 1EL

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
 - The appeal is made by Pathfinder Clean Energy (PACE) UK Dev Ltd against the decision of Forest of Dean District Council (FoDDC).
 - The application, Reference Number P1350/22/FUL, dated 26 September 2022, was refused by notice dated 12 July 2023.
 - The development proposed is a temporary ground mounted solar photovoltaic (PV) farm along with continued agricultural use, ancillary infrastructure, security fencing, landscaping provision, ecological enhancements and associated works.
-

Decision

1. The appeal is dismissed.

Preliminary matters

2. In addition to my site visit on 15 May I also visited May Hill, Eden's Hill and Footpath 102 during an unaccompanied visit on 20 May. The Written Ministerial Statement (WMS) entitled *Solar and protecting our Food Security and Best and Most Versatile (BMV) Land* was made on 15 May 2024. The parties were given time to make written submissions about the WMS. I have had regard to the WMS and the submissions by the parties in determining this appeal.
3. The 13.70 ha appeal site comprises four fields annotated G, I, J and N in the appeal documentation. The scheme would have a capacity of 6.2 megawatt (MW), which would generate some 8.2 GWh per year and power in excess of 2,600 homes. The point of connection to the local distribution network would be an 11 kV pole located towards the centre of the appeal site. The top of the proposed solar panels would be a maximum of 3 m above ground level and their lowest edge would be around 0.8 m above the ground to allow grazing of livestock. The scheme includes inverter cabins, a substation and a storage building. Wire mesh deer fencing approximately 2 m high is proposed along with infra-red and/or thermal imaging CCTV cameras. Access would be via two existing accesses off Stream Lane that would be made suitable for large vehicles. The scheme would operate for 40 years with an additional one year for construction and another year for decommissioning.
4. During the course of the application the scheme was amended for arboricultural, ecological and flooding reasons. The amended application was

refused by FoDDC against officer recommendation for approval.¹ The reason for refusal states that the scale and siting of the proposed solar farm would have a long term detrimental impact on the intrinsic character of the rural landscape and fail to conserve and enhance the local landscape character of the Severn Vale.

5. The development plan includes the Forest of Dean District Council Core Strategy Adopted Version 2012 (CSP) and the Allocations Plan (AP) adopted in 2018. Policy AP.2 supports renewable energy installations where environmental, economic and social impacts can be addressed satisfactorily in accordance with Policy CSP.1. It adds that separation distances from residential dwellings in order to protect residential amenity is a topic area to be appropriately assessed. Policy CSP.1 provides that new development must take into account important characteristics of the environment and conserve, preserve or otherwise respect them in a manner that maintains or enhances their contribution to the environment, including their wider context. To achieve this objective consideration will be given to the effects on the landscape and any necessary or desirable mitigation/enhancement.
6. I have had regard to the National Planning Policy Framework (NPPF) and the National Planning Practice Guidance (NPPG). Paragraph 180 b) of the NPPF provides that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, recognising the intrinsic character and beauty of the countryside. The NPPG includes guidance about renewable and low carbon energy.² Factors to consider include encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land.
7. I was referred to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3). The capacity of the proposed solar farm in this appeal would fall well below the threshold for a nationally significant infrastructure project. Given the extent to which relevant matters here are covered by applicable planning policy, I consider that EN-1 and EN-3 have limited applicability in determining this appeal.³
8. The appeal site lies some 470 m south-west of Upleadon and about 1.3 km to the north-east of Newent. Footpath 102, which is at its closest some 170 m to the north of the site, extends between Stream Lane and Upleadon. Eden's Hill Farmhouse is a grade II listed building. The barn and stable at Eden's Hill Farm are also listed grade II. Carswalls Manor includes a grade II listed barn and engine house. I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building. Great weight should be given to the conservation of these designated heritage assets.⁴

¹ It was recommended that delegated authority be given to the development manager to approve the application subject to receiving the NaturSpace report about Great Crested Newts from the applicant.

² The NPPG includes reference to a speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013 and written ministerial statement on solar energy: protecting the local and global environment made on 25 March 2015.

³ EN-1 paragraphs 1.2.1 and 1.2.2.

⁴ NPPF paragraph 205.

Main issues

9. The main issues in this appeal are:

The effects of the proposed development on the character and appearance of the area. I have also considered the effects on the residential amenity of nearby occupiers, which was not a reason for refusal but was raised by local residents. I have had regard to relevant policy and whether the benefits of the proposal would be sufficient to outweigh any harm.

Reasons

Character and appearance

10. The western part of fields N and J are covered by National Character Area (NCA) 104 South Herefordshire and Over Severn, an undulating landscape with large-to-medium sized fields with dominating intensive arable farming. The eastern part of the site, specifically parts of fields N and J, and all of fields I and G are within NCA 106 Severn and Avon Vales, with a diverse range of flat and gently undulating landscape. The appeal site comprises gently undulating agricultural land with a shallow valley in the centre of the site and so is consistent with the characteristics of NCA104 and NCA106. The NPPG states that deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes.
11. In the *Forest of Dean District Landscape Character Assessment* (2002) the site is located within Landscape Character Type (LCT) 6: Unwooded Vale. Key characteristics within this LCT include a soft rolling landscape. It is well maintained, and often ancient hedgerows form an extensive network. There are numerous mature field and hedgerow oaks, small copses and shelter belts. Quiet winding lanes link numerous isolated farms and hamlets.
12. Within LCT6 the site is part of Landscape Character Area (LCA) 6b: The Severn Vale. This is an extensive landscape with a complex mix of arable and pasture farming where hedgerow trees and field trees are an important landscape feature and prominent when located on the many small hillocks that rise from the vale. LCA6b is deeply rural with isolated farm houses, hamlets and small villages linked by narrow lanes. Old barns are a particular feature.
13. The appeal site is visually separated from hamlets and small villages in the wider area by distance, topography, and trees/woodland. I consider that the appellant understates the sensitivity of the landscape receptor in this deeply rural environment.
14. The metal and glass panels, along with their regular arrangement in long rows, would be out of keeping with the character of the area. The colour and texture of the panels would not be typical of its agricultural context, and so the proposed development would introduce a utilitarian element into this deeply rural landscape. Mitigation planting would not overcome this harm. I find that the proposal would have a significant adverse effect on the landscape character of the area.
15. Turning to visual effects, the NPPG advises that in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero. It was evident at my site visit that this is not the case here. There are views into the

appeal site from Stream Lane and the undulating topography limits opportunities for effective screening. The solar panels and ancillary infrastructure would be prominent from public vantage points.⁵ In this agricultural context the proposed development would appear as a discordant feature that resulted in significant harm to the visual amenity of the area. The NPPG states that the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively. In this case the landscape is undulating and the development, even with maturing mitigation planting, would not be well screened.

16. In addition, proposed highway improvements to facilitate access to the appeal site by large vehicles would adversely affect the appearance of the wide grass verge in Stream Lane. Activity and noise during construction and decommissioning would, albeit for a short duration, also have an adverse impact on the character and appearance of the area. The harm to the character and appearance of the area I have identified would not be permanent, but would endure for 42 years, far exceeding what is regarded as long term.⁶
17. In response to the WMS FoDDC submitted a plan showing existing and proposed solar farms in the wider area. These are located to the south of the B4215 or much further to the east of the appeal site. There is no evidence of any significant intervisibility between the appeal scheme and these other schemes that would be likely to result in combined cumulative visual effects. Any sequential cumulative visual effects, as people travelled through the area, would be occasional with long time lapses between appearances because of the separation distances. Likely cumulative impact would not add to the harm I have identified.
18. Overall, I find that the proposal would have a significant adverse effect on the landscape resource. It would also have a significant adverse visual impact. This harm to the character and appearance of the area weighs against the proposal in the planning balance.

Residential amenity

19. One of Upleadon Parish Council's objections to the proposal is inadequate screening for nearby residents. The appellant's Landscape and Visual Appraisal notes that the closest residential properties to the site boundary are Little Carswalls (located on Stream Lane) and properties along Hook Lane. The appraisal states that there is some intervisibility with the site and discrete parts of the proposed development would be visible from these dwellings. Given the separation distance and likely effects of the proposed mitigation planting, I consider that the appeal scheme would not have an unacceptable adverse effect on the outlook from the Hook Lane properties.
20. At the application stage the occupier of Little Carswalls stated that this was the closest dwelling to the appeal site, with just the width of the lane between the dwelling and the proposed development, and that the solar farm would have a negative visual impact. The FoDDC officer's committee report noted that Little

⁵ Concern was expressed about views from May Hill, but intervening trees and vegetation on the upper slopes of the hill would screen views towards the appeal site. If at times the site was apparent it would form a small part of a wide panorama.

⁶ The Landscape Institute's Guidelines for Landscape and Visual Impact Assessment paragraph 5.51 refers to long term as ten to twenty-five years.

Carswalls is directly opposite the site at some 20 m away from the site boundary and that views would be obtainable from the first floor/room in roof window. However, the officer's report considered that the agricultural nature of the field formation would be retained, reducing the visual impact, but accepted that a degree of visual impact would still exist. In views from Little Carswalls it seems to me that the solar panels would be a striking visual feature and that 'the agricultural nature of the field formation' would do little to ameliorate this impact.

21. It was apparent from my site visit that the proposed panels, extending from close to Stream Lane up to the top of field N, would be a dominating feature in views from Little Carswalls. The land rises up from this part of Stream Lane to the north-western corner of field N, so that tree planting or raising the height of the existing hedgerow along the lane would be unlikely to effectively screen the panels from Little Carswalls. Mature garden trees when in leaf would obscure some of this view. Nevertheless, I consider that the nature, scale and proximity of the proposed development on this sloping field would have a dominating and oppressive impact on the outlook from Little Carswalls and its amenity space. In my judgement, the proposal would, by reason of deprivation of outlook, unacceptably affect local amenities and the use of land and buildings that ought to be protected in the public interest. This is a consideration that weighs against the proposal.

Heritage assets

22. Eden's Hill Farmhouse is located about 750 m north-east of the appeal site. The agricultural land sloping down to the south-west towards the appeal site forms part of the setting of the farmhouse and contributes to the significance of the listed building. Glimpsed views across parts of the proposed solar farm might be possible from the listed building, especially when intervening trees were not in leaf. But the separation distance would mean that any adverse effect on the setting of the listed building would be slight. The proposal would result in less than substantial harm to the significance of this designated heritage asset, but towards the lower end of the scale. The setting for the listed barn and stable at Eden's Hill Farm does not extend much beyond the farmhouse and farmyard. The proposed development would not harm the setting of these listed buildings.
23. The listed barn and engine house at Carswalls Manor is located about 520 m north-west of the appeal site. Carswalls Wood is located on higher ground between the appeal site and Carswalls Manor. The separation distance, along with the intervening topography and woodland, mean that the proposed development would not fall within the setting of these designated heritage assets. Other heritage assets in the wider area would not be affected by the proposal. Archaeology is a matter that could be addressed by planning conditions.

Renewable energy

24. FoDDC declared a climate emergency in 2018. The planning system should support the transition to a low carbon future in a changing climate.⁷ The appellant describes the appeal scheme as a relatively small project for 6 MW. The NPPF states that even small-scale projects provide a valuable contribution

⁷ NPPF paragraph 157.

to significant cutting greenhouse gas emissions.⁸ The proposal would make a cumulative contribution to meeting the target set out in the Climate Change Act 2008, and gains support from the Net Zero Strategy, British Energy Security Strategy 2022 and the Energy White Paper 2020.

25. FoDDC acknowledges that there is a need for renewable energy and that the proposal could contribute towards economic and social benefits as well as energy security, but argues that these public benefits could equally be applied at potential alternative sites across the District without the harm to LCA6b. However, this is not a case where a potential alternative site is a material consideration that I should have regard to in exercising my planning judgement. A proposal for renewable energy development should be approved if its impacts are (or can be made) acceptable.⁹
26. The generation of renewable energy and resultant contribution to cutting greenhouse gas emissions weighs heavily in favour of the proposal.

Other matters

27. The appeal scheme proposes ecological enhancements, including new native hedgerows, new wildflower grassland and log piles for refugia. This would result in a 58% increase in habitats and a 46% increase in hedgerows on the site. These improvements would benefit biodiversity during the lifetime of the proposed development. However, there is no guarantee that they would continue to do so after decommissioning, when the site would return to a solely agricultural use. I consider that biodiversity would be a minor benefit in the circumstances that apply in this case. Protection of Great Crested Newts is a matter that could be achieved by the imposition of planning conditions. Given that I am dismissing the appeal it is not necessary for me to undertake an Appropriate Assessment with regard to the interest features and conservation objectives of the Wye Valley and Forest of Dean Bat Special Area of Conservation.
28. There is local concern about the loss of food production capacity and exacerbating food insecurity. Newent Town Council considers that the appeal site, according to its historic usage, is of better quality than the appellant's assessment of grade 3b agricultural land. However, there is no convincing evidence to indicate that the proposal would utilise any land classified as best and most versatile agricultural land.¹⁰ I am satisfied that the site search in this case reasonably demonstrates that the proposed use of agricultural land has been shown to be necessary and that poorer quality land has been used in preference to higher quality land. Some agricultural activity is proposed to be continued on the land during the lifetime of the scheme by grazing between the panels, and the proposal would contribute to farm diversification. I have taken the recent WMS into account, and considered the NPPG, but find that the loss of agricultural productivity in this case would not weigh much against the proposed solar farm.
29. Access to the appeal site is via narrow lanes but there is no technical evidence to indicate that the proposed development would have an unacceptable impact on highway safety. Subject to the imposition of appropriate planning

⁸ NPPF paragraph 163 a).

⁹ NPPF paragraph 163 b).

¹⁰ Defined in the Glossary to the NPPF as land in grades 1, 2 and 3a of the Agricultural Land Classification.

conditions I am satisfied that residual cumulative impacts on the road network would not be severe.¹¹ The local lanes are used for exercising horses by equestrian establishments in the area. Potential conflict between equestrians and construction traffic could be minimised by the implementation of an approved construction traffic management plan. Highway safety is a matter that could be addressed by the imposition of appropriate planning conditions.

30. The western part of the appeal site is an old landfill. Any construction within this area could be controlled by planning conditions. Flooding and drainage are also matters that could be dealt with by the imposition of appropriate conditions.

Planning balance and policy

31. I have given considerable importance and weight to the harm to the listed Eden's Hill Farmhouse. In the NPPF paragraph 208 balancing exercise, I consider that the less than substantial harm I have identified to the significance of the designated heritage asset here is outweighed by the public benefits that would be attributable to the renewable energy generated by the proposal.
32. The harm to the character and appearance of the area would endure for the lifetime of the proposed development and weighs significantly against the proposal. So too, would the harm I have identified to the residential amenity of the dwelling at Little Carswalls. FoDDC did not include this as a reason for refusal, but in my judgement, it is a consideration that should be given significant weight in the planning balance. The minor benefits of the scheme to biodiversity warrant slight weight. Economic benefits, including to farm diversification, should be given limited weight. The benefits of renewable energy generation and contribution to climate change mitigation attract substantial weight. Nevertheless, in my judgement, these benefits are insufficient to outweigh the overall harm I have identified. The planning balance here falls against the proposal.
33. The appeal scheme, by reason of the harm to the character and appearance of the area, would not conserve, preserve, or otherwise respect important characteristics of the environment in a manner that maintains or enhances their contribution to the environment, and so conflicts with Policy CSP.1. The proposal does not achieve support from Policy AP.2. I find that the appeal scheme conflicts with the development plan taken as a whole.
34. I am not satisfied that the impacts of the proposed development could be made acceptable. Furthermore, due to the harm to the living conditions of the occupiers of Little Carswalls, the scheme would be at odds with provisions in the NPPF to ensure that development created places with a high standard of amenity for existing and future users.¹² The proposal would not comply with the NPPF taken as a whole.

Conditions

35. The appellant would accept conditions to limit panel height to 2.8 m and would accept additional planting adjacent to the closest residential properties. However, there is no evidence to demonstrate that the imposition of such conditions would be likely to overcome the harm I have identified.

¹¹ NPPF paragraph 115.

¹² NPPF paragraph 135 f).

Conclusion

36. The planning balance falls against the proposal. The appeal scheme conflicts with the development plan and is at odds with the NPPF. There are no material considerations to indicate that the appeal should be determined other than in accordance with the development plan. I have taken into account all other matters raised in evidence, but I have found nothing of sufficient weight to alter my conclusions. For the reasons given above the appeal should be dismissed.

J Woolcock

INSPECTOR

APPENDIX 28

**Appeal APP/P0119/W/22/3294810 – Land at Elm Farm, Bristol Road, Iron
Acton, Bristol**



Appeal Decision

Site visit made on 27 September 2022

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/P0119/W/22/3294810

Land At Elm Farm, Bristol Road, Iron Acton, Bristol BS37 9TF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Enso Green Holdings M Limited against the decision of South Gloucestershire Council.
 - The application Ref P21/04721/F, dated 28 June 2021, was refused by notice dated 28 January 2022.
 - The development proposed is installation of a solar farm and battery storage facility with associated infrastructure.
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. Following the determination of the planning application, in correspondence to the appellant, the Council confirmed the last sentence of the Decision Notice should have referred to Acton Lodge rather than Acton Court and landscape plans listed on the notice of 20 August 2021 were superseded by those dated 12 November 2021. The appellant has also referred to the effect of the proposed development on the 'Walls to the South Court'¹, a Grade II listed building, and identified harm to its setting. As such I have had regard to these matters in the determination of the appeal.
3. The Decision Notice also refers to Sections 16(2) and 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). However, the appeal does not relate to works to alter a listed building. I have therefore confined my findings to the duty under Section 66(1), which requires the decision maker, in considering whether to grant planning permission for development which affects the setting of a listed building to have special regard to the desirability of preserving its setting. There is no such duty to the setting of scheduled monuments or conservation areas.
4. In making a reasoned conclusion on my decision, I have taken into account the Environmental Statement (ES) produced by the appellant, in accordance with the EIA Regulations²; comments from statutory consultation bodies and any representations duly made by any particular person or organisation about the ES and the likely environmental effects of the proposal; and any other information. Furthermore, all other environmental information submitted in connection with the appeal including that received following the site visit (see

¹ List Entry Number: 1413110.

² Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

below) has also been taken into account, as such material contributes to the totality of the environmental information before me.

5. Following a request of the appellant, I accepted late evidence relating to the context for the proposal in terms of national guidance, planning policy and other appeal decisions. The Council has had an opportunity to comment upon the relevance of the information and I have had regard to any responses received in the determination of this appeal.
6. On 5 September 2023 the Government published a revised National Planning Policy Framework (the Framework). This was accompanied by a written ministerial statement, and the only substantive revisions to it relate to national policy for onshore wind development in England. As such, I have not engaged further with the main parties regarding this revision. The Framework sets out the Government's planning policies for England and is an important material consideration in all planning decisions.

Background and Main Issues

7. The appeal site is situated within the Green Belt. Framework Paragraph 151 makes it clear that elements of many renewable energy projects will comprise inappropriate development, which the appellant accepts. I have therefore determined the appeal on this basis that the proposal constitutes inappropriate development in the Green Belt, and dealt solely with the matters that remain in contention, including the purposes of including land within the Green Belt as referred to by the appellant.
8. Accordingly, the main issues are:
 - the effect of the proposal on the openness of the Green Belt and purposes of including land within it;
 - whether the proposal would preserve the setting of a Grade I listed building, known as 'Acton Court, and Gateway and Flank Walls 40m East'; Grade II listed buildings, known as 'Walls to the South Court' and 'Acton Lodge'; a scheduled monument, known as 'Moated site and associated features'; the Iron Action Conservation Area; and a Non-Designated Heritage Asset, known as 'Level Crossing Cottage'; and
 - whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. If so, would this amount to the very special circumstances required to justify the proposal.

Reasons

Openness and the Purposes of Including Land within the Green Belt

9. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics thereof are their openness and permanence. The openness of the Green Belt has a spatial aspect as well as a visual aspect. The Framework also clarifies that the Green Belt serves five purposes, including to assist in safeguarding the countryside from encroachment.
10. The appeal site covers an area of 38ha, comprising several large agricultural fields south of the B4059 and west of the B4058, as well as land within nearby roads for cabling to export energy to the National Grid at the Iron Acton

Substation. To the east and west boundaries, respectively, are a minerals railway line and Ladden Brook.

11. The external and internal field boundaries within the site are generally enclosed by mature hedgerow and tree planting, which provide verdant surroundings to much of the site that contain much of it from external views from public rights of way and surrounding roads. However, near to the railway line, the B4059 is partly elevated above the site and the boundary alongside it is more open.
12. The appeal scheme primary consists of separate parcels containing various concentrations of photovoltaic (PV) panels, amongst the electricity transmission lines and field boundaries marked by hedgerows and ditches. There would also be numerous other structures within the site for their operation, including a battery storage facility, auxiliary transformer, substation, control room, storage containers and inverter / transformer stations. The proposal also consists of posts for CCTV, galvanised steel wire fences around each separate element of arrays, and internal access tracks to each of the areas. It would operate for a temporary period of 35 years.
13. The appeal is supported by a Landscape and Visual Impact Assessment and a Green Belt Assessment. A scheme of landscaping for the site and its long-term future management, identified in the Landscape and Ecological Management Plan, would likely be integral to the layout of the appeal scheme and generally reflect planting found in the immediate environment. The PV panels would be spaced out and incorporate vegetation beneath and between, but the quantity of panels and the infrastructure and associated enclosures and access tracks proposed within the site would equate to a significant area of built form. In the short- to medium-term, the landscaping is likely to have a limited effect in mitigating the visual prominence of the increase in built form and the physical presence of the proposal, particularly during winter months and where it is more discernible to users of the B4059 and the nearby Level Crossing Cottage. The proposal would also alter the appearance of a significant area of land incorporating open and undeveloped agricultural fields, so would constitute encroachment, in contradiction of a Green Belt purpose.
14. For these reasons, the proposed development would result in harm to the Green Belt through loss of openness in both visual and spatial terms. This would also constitute encroachment into the countryside, in conflict with the purposes of including land within the Green Belt.
15. The Planning Practice Guidance³ (PPG) advises what should be considered when assessing the effects of development to Green Belt openness. It likely draws on the Judgment in *Europa Oil and Gas Ltd*⁴ and refers to *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness*. In the context of solar farms, the PPG⁵ also states *these are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use*.

³ Paragraph: 001, Reference ID: 64-001-20190722, Revision date: 22 07 2019.

⁴ *Europa Oil and Gas Ltd v Secretary of State for Communities and Local Government* [2013] EWHC 2643 (Admin) at [67]; (upheld at [2014] EWCA Civ 825)

⁵ Paragraph: 013, Reference ID: 5-013-20150327, Revision date: 27 03 2015.

16. Having regard to the timeframe of the proposal, it would keep Green Belt land permanently open and its impact upon its purpose of assisting in safeguarding the countryside from encroachment would be temporary, as the site would be reinstated to its former open character. Accordingly, in combination with the overall visibility of the development, this would reduce the extent of harm to a moderate level. Nevertheless, the proposal would be contrary to the main aims of Green Belt policy outlined in the Framework. This brings the proposal into conflict with CS⁶ Policy CS5, which requires Green Belt development to comply with the Framework.
17. Policy PSP7 of the PSPP⁷ refers to three categories of development in the Framework and seeks to provide clarification of how these are applied in South Gloucestershire. However, there would not be conflict with the policy in respect of this main issue, as the nature of the proposal is not covered under those categories. Similarly, the Council's Green Belt SPD⁸ is targeted at residential development and refers to the purposes of the Green Belt as they were written in PPG2. While these have not changed they are stated in the Framework, so I have not found in relation to the SPD and CS Policy CS34 also only refers to inappropriate development so it is not relevant to this main issue.

Special Interest, Significance and Setting

18. To the east of the site, beyond the railway line and fields is 'Acton Court, and Gateway and Flank Walls 40m East', a Grade I listed building⁹, the Grade II listed 'Walls to the South Court' and the scheduled monument 'Moated site and associated features'¹⁰ surrounding them. Some distance further to the east, is 'Acton Lodge', a Grade II listed building¹¹. These are all situated within the Iron Action Conservation Area (CA). Outside of the CA but adjacent to the northeast corner of the site is 'Level Crossing Cottage', a Non-Designated Heritage Asset.

Designated Heritage Assets

19. The listing description for Acton Court relates to the surviving mid-16th Century court-style house; and the later gateway and flanking walls, east of the house. The scheduled monument includes the medieval moated site and its features, including the remains of the garden created by Robert Poyntz and parts of its water management system, which included a culvert from the reservoir north of Acton Lodge. It also includes buried remains of the demolished 13th Century manor house and demolished parts of the current house. The gardens are also locally listed and form a further Non-Designated Heritage Asset (NDHA) asset and are important to the significance and setting of the listed building.
20. The list entries for Acton Court set out a thorough history of the building, including demolition of parts of the building and others in its courts, its occupation as a farmhouse, and its later abandonment. However, its most notable period was during its status as a Tudor royal courtier's house for the Gloucestershire branch of the Poyntz family between 1364-1680. The family were noted for contributions in the Battle of Bosworth and the Irish rebellion of

⁶ South Gloucestershire Local Plan Core Strategy 2006-2027 (Adopted December 2013).

⁷ South Gloucestershire Local Plan Policies, Site and Places Plan (Adopted November 2017).

⁸ Development in the Green Belt Supplementary Planning Document (June 2007).

⁹ List Entry Number: 1320155.

¹⁰ List Entry Number: 1004532.

¹¹ List Entry Number: 1320158.

- 1534-5, which ensured the family remained in favour with Henry VII and VIII. The visit of the latter and Anne Boleyn involved constructing the east range.
21. In so far as it relates to this appeal, the special interest of Acton Court is derived from its architectural and historic interest as one of the best-preserved mid-16th Century houses in the country. Moreover, expansion and alteration of the house and grounds by the Poyntz's, and Acton's before them, were carried out with higher status and wealth. This also evidences a highly-significant point in the evolution of Tudor domestic building and influence upon Elizabethan and Jacobean houses. In particular, the listing explains that the house and gateway make use of some of the earlier examples of classical design and detailing in the country, part of an innovative and influential development in style among courtiers in the period. These characteristics are important to its understanding and, thereby, significance.
 22. The significance of the later 16th Century Walls to the South Court lies in their survival as an almost nearly complete built element of the postmedieval landscape at Acton Court, including changing the position of the gateway from the south to the east court and the inclusion of a barn in the mid-19th Century, as part of its use as a farmhouse. They are also important due their association with Acton Court and the moated site. In particular, the castellation of the walls was an opulent means to enclose the house and provide privacy to occupants.
 23. The significance of the scheduled monument is found in the archaeological remains of the manor house and moat and their importance to development of the site as a higher-status residence, including understanding of their layout, form, and function; and the historic association with the Poyntz family.
 24. The special interest of Acton Lodge lies in its architectural and historic interest as a 17th Century house with elements of earlier origin and later alterations, the tower being much earlier and forming a key part of the east deer park to Acton Court (see below). Together with its distinctive appearance, this makes an important contribution to its understanding and, thereby, significance.
 25. Acton Court, the south court, the scheduled monument, and Acton Lodge all also draw significance from their settings. To a certain extent, these are shared, as outlined below.
 26. I note the definition of setting contained in the Framework as being the surroundings in which a heritage asset is experienced. Historic England provide further guidance¹² which states that views of or from an asset will play an important part in this. However, their guidance also confirms the way in which we experience an asset in its setting is also influenced by understanding of the historic relationship between places and does not rely on visibility between them, as they may have a historic connection important to experiencing their significance. This does not depend on public rights of access.
 27. Under the Acton family, the change of arable land to form the western deer park, in favour of the provision of venison and sporting pursuits demonstrates the growth of the estate's wealth and notoriety. There is disagreement between the parties as to the origin of the ridge and furrow therein, with the appellant relying on lidar evidence and the Council archaeological investigations undertaken on the estate in the 1980s. Even if it was post-medieval instead of

¹² The Setting of Heritage Assets (Good Practice Advice in Planning Note 3), Second Edition, 2017.

medieval, it demonstrates its importance to the changing nature of Acton Court and the provision of food either for the estate or agricultural sales for the farm. The main parties also point to the possible remaining evidence of a park pale within the site.

28. The evidence before me indicates the western park extended south along the western edge of Iron Acton towards Algars Manor and almost certainly took in the northern part of the appeal site. The parcel of land within the site referred to as 'the Ride' and 'the Walk' may also have formed a grand starting point for hunting in the park. Although it is not treelined to either side, what remains still retains its proportions.
29. A further deer park was established east of Acton Court in the 15th and 16th Century. At the same time, a tower was built at its centre that overlooked the park and probably served as a hunting lodge. This now forms a stair tower to Acton Lodge. There is also a clear and likely intentional visual link between the two buildings. The Council also suggests 'the Avenue'¹³, aligned between the Church and tower, may have provided a similarly grand entrance for hunting. Together with their historical association, these features are important to the significance and, thereby, understanding of both buildings as heritage assets.
30. The post-enclosure field system now in place means the physical arrangement of the parks is no longer evident. The western park was probably in use until the late 17th Century, but the land continued to be integral to the function, design, and use of Acton Court and the moated site throughout this timeframe. Moreover, its return to an agrarian landscape primarily relates to Acton Court's use as a farmhouse. In contrast, use of the east park was probably shorter due to its higher quality agricultural land. Despite these changes, land east and west remained part of the estate until the 20th Century, but its landholding is now largely contained to its immediate surroundings.
31. Accordingly, the surrounding rural landscape changed with the requirements and fortunes of the estate and either contributed to its prosperity or illustrated its notoriety. This historic and functional relationship between Acton Court, the moated site, Acton Lodge and surrounding land, including the appeal site, therefore contributes to their understanding and significance as heritage assets. This includes their continued open and undeveloped status and the presence of ridge and furrow.
32. Windows in Acton Court facing south and west, most notably in the privy chamber, were likely designed to frame views over the western part of the estate, including the deer park. Remains of a turret in the southwest corner of the south court and several embrasures in its east and west walls all point to intentional views east and west of the estate to take in the hunt. This would also likely have been seen from the moated site, including the north court.
33. Despite the presence of pylons, and visibility of the land west having been truncated by the railway line and filtered by planting, there remains a strong visual link and historic and functional relationship between them. Acton Court also retains a dominant presence over the land and its close association with the surrounding rural landscape.

¹³ Referenced as such in the Tithe Apportionments.

34. In terms of Acton Lodge, in the context of this appeal, given its relevance to the eastern deer park, it is the intervisibility between its tower and Acton Court, the designed Avenue, and the historical association with land in that park that is of significance to it, not the relationship with the west deer park.
35. The Iron Acton Conservation Area (CA) is essentially formed of three parts, the northern part takes in land beyond the extremities of the village across Yate Road, including the farmland east and west of Acton Lodge and the moated site of Acton Court to its northwest; the central area focusses on High Street and roads leading from it; and the southern part follows Station Road and includes Algars Manor. These are fundamentally different contexts given the extent of development, the presence of natural features, topography, and land uses. As far as it is relevant to this appeal, I find its significance to be derived from the contribution made by and relationship between the different parts and the overall character and appearance therein. This includes the contribution made by Acton Court, its south court, Acton Lodge, and the scheduled monument.
36. Given the location of the appeal site and the historic and visual relationship referred to above, this and the open and undeveloped qualities of the site contribute positively to the setting of the CA and, thereby, its understanding and significance.

Level Crossing Cottage

37. Level Crossing Cottage was originally built for the keeper of the level crossing of the B4059 and the line between Yate and Thornbury. This opened in 1872 and carried passengers until the mid-20th Century and was used intermittently thereafter for freight, including minerals. As a locally listed building it qualifies as an NDHA.
38. The floor plan of the property is curiously arranged with staggered gables parallel to the road and a gabled porch projection facing the road on the eastern side. A lower perpendicular gable, with sled dormers set halfway on the eaves on the western side, projects northwards. The cottage is constructed of rough textured local limestone with Bath Stone dressings, including detailed coursing at eaves level. The taller gable ends include elaborately carved overhanging timber verge boards, topped by timber finials. The main parties agree it is like the Station Masters' houses at Tytherington and Iron Acton. As far as it is relevant to this appeal, its significance lies in its architectural and historic interest as an attractive Victorian former level crossing keeper's cottage, similar in detail to other nearby Station Masters' houses.
39. Given the nature of the original use of the cottage, it also draws significance from its rural setting around the level crossing and its functional relationship with the railway line. When operational, it would have been primarily experienced from the railway line, but now principally from close by due to mature planting of the northern side of the road. More extensive views are available southwest from the cottage and its frontage, over low hedging to fields within the site and this land is also visible in the closer views eastward.
40. The existing commercial premises present to the west of the cottage are evident from the east closer to the cottage, and there are houses to the east and southeast. The presence of these built forms and uses have no doubt altered the rural setting of the cottage, but the roadside planting and the open and undeveloped nature of the fields southwest still contribute positively to it.

Effect of the Proposal

Designated Heritage Assets

41. The evidence provided by the appellant indicates the proposal would only be visible to a limited extent from the privy chamber in Acton Court, its south court and from the moated site. This is primarily based on mature planting to the eastern boundary of the site and the railway line reducing visibility between them. However, I am mindful vegetation is subject to seasonal change and, where there would be visibility through the planting, the PV panels would occupy a significant area of land in a discordant and sprawling manner.
42. The industrial appearance of the development would add to the pylons and railway line as detracting elements in the historic context of the heritage assets at Acton Court and it would jar with the verdant surroundings of its former agricultural land and deer parks to the west. Accordingly, it would erode the open and undeveloped character of the former estate and significantly distract and detract from its domineering presence therein. Furthermore, the presence of the development within the site would undermine and unacceptably harm the contribution made by the site to the historic rural landscape that forms part of the setting of the heritage assets. Moreover, although 'the Ride/the Walk' would be retained, it would be subsumed within the configuration of PV panels.
43. The proposed scheme of planting within the site would also be unlikely to mature for some time and, in any event, should not be relied upon to hide development from view that would otherwise be harmful, particularly in a sensitive heritage context such as the site. It would also add to the effect of severance caused by the railway.
44. Given the relationship of the appeal site with Acton Court, the south court and moated site, and the harmful effects that would result to their setting, it follows that there would be similarly harmful effects to the setting of the CA, as the listed buildings and scheduled monument form prominent parts of the CA.
45. Noise generated from the site during construction and decommissioning would undoubtedly affect the tranquillity of the site, but is likely to be similar to traffic noise from nearby roads and would be temporary in nature. As such, it would not harm experience of the heritage assets within their context.
46. I outlined above that Acton Lodge, principally its tower, has a greater historical relationship with Acton Court and land between. While the proposal may be visible to some extent, in the background of the latter, it would be so distant it would not harm the setting of Acton Lodge, which would be preserved.

Archaeology

47. The proposal would result in some localised impacts to the ridge and furrow, which the appellant notes to be in a poor state of preservation, and a park pale within the site. Although the majority of these would be preserved beneath the development and remain legible following the development, it would disrupt historic features within a sensitive environment. This in turn would be harmful to the significance of the heritage assets to which it has a historical associative relationship. Furthermore, despite existing harm caused to ridge and furrow, further destruction of such archaeology could not be undone, however limited the impact of the development may be, a point that appears to be accepted in the ES. The use of conditions to deal with this matter would therefore not be

appropriate unless the outcome of the balancing exercises leads to the appeal being allowed.

48. I have been referred to the effect of the proposal upon potential archaeological remains of the water management system that served the moated site but there is no substantive evidence before me to demonstrate, with any real certainty this crossed through the site to connect to Laddon Brook. This does not change my conclusion regarding the potential effect of the proposal to the ridge and furrow within the site.

Level Crossing Cottage

49. While there is no historic association between the site and cottage and it would still be appreciated within its immediate context, the presence of PV panels and other elements of the proposal would erode the contribution made by the open and undeveloped nature of the site to the setting of the cottage. This would be harmful to its significance as a NDHA, albeit the harm would be limited given primary association is with the railway line and crossing that are unaffected.

Conclusion on the Second Main Issue

50. For the above reasons, I cannot agree with the findings of the ES that no significant effects would be caused directly to archaeological remains or indirectly because of changes to setting. Moreover, despite my findings in relation to the Grade II listed 'Acton Lodge', the proposal would fail to preserve the shared setting of the Grade I listed 'Acton Court, and Gateway and Flank Walls 40m East', the Grade II listed 'Walls to the South Court' and the scheduled monument, part of which is also a NDHA. By virtue of their location within the CA, there would also be harm to the setting of the CA. Furthermore, the works within the site would harm archaeological remains which contribute to the historical associative relationship that informs the setting. It would also have a harmful effect on the setting of the NDHA 'Level Crossing Cottage'. Hence, the appeal proposal would fail to satisfy the requirements of the Act (in respect of the settings of the listed buildings), and the heritage aims of PSPP Policy PSP17 and CS Policy CS9 and Framework paragraphs 197 and 199. I will return to the heritage balance required by PSP17 and the Framework below.

Other Considerations

51. In assessing and ascribing weight to the stated benefits of the appeal scheme, I have had regard to the appeal decisions to which I have been referred¹⁴.

Climate Change and Energy

52. The UK Government declared a Climate Emergency in May 2019 and the Council followed suit in July 2019. In doing so, it adopted a Climate Emergency Strategy that seeks to achieve net zero greenhouse gas emissions by 2045, before the amended Climate Change Act 2008¹⁵ target of 2050, from a 1990 baseline. I have been referred to numerous documents that support these aims, not least the UK Net Zero Strategy: Build Back Greener¹⁶ which sets a

¹⁴ Appeal References: APP/Y1138/W/22/3293104 (Langford, Devon); APP/J3720/W/22/3292579 (Bishop's Itchington, Warwickshire); APP/C3240/W/22/3293667 (Telford, Shropshire); APP/W1525/W/22/3300222 (Chelmsford, Essex); APP/D1265/W/22/3300299 (Gillingham, Dorset); APP/V1505/W/22/3301454 (Herongate, Essex); and APP/H1705/W/22/3304561 (Bramley, Hampshire).

¹⁵ The (2050 Target Amendment) Order 2019.

¹⁶ October 2021.

78% reduction by 2035 and the Government's latest approach to energy contained in the *Powering Up Britain Strategy*¹⁷, which builds on the targeted reduction by committing to a fivefold increase in solar energy generation by 2035 of 70,GW, enough to power 20 million homes. This is reiterated in the latest draft of the National Policy Statement EN-3¹⁸. The latest draft of National Policy Statement EN-1¹⁹ and Climate Change Committee Report to Parliament²⁰ restate how urgent energy development deployment is to support this commitment.

53. The proposal has capacity to generate up to 24MW, enough to power approximately 6300 family homes. It has been designed to maximise energy produced by the nature of the PV panels and the use of a battery storage facility to harness excess energy and release this to the grid during times of increased demand. It would reduce the potential implications of CO₂ pollutants generated by equivalent electricity produced from fossil fuels by 5490 Tonnes each year it is operational. Due to the scale of the proposed development, these would each amount to substantial environmental, economic, social benefits on a national and local basis, including local energy generation. Moreover, the Council's Climate Emergency Annual Progress Report 2021 demonstrated it was not meeting its target to maximise renewable energy generated from installations in South Gloucestershire. The proposal would therefore assist the Council in meeting its target for local renewable energy generation. This would accord with the first and fourth criterion of CS Policy CS3 regarding benefits of energy production. There would also be a significant benefit through national energy security.

Biodiversity, Green Infrastructure and Soil Health

54. Biodiversity net gain (BNG) is not mandatory for this development, but the Framework is supportive of measurable attempts to secure such benefits. The appellant's Landscape and Ecology Management Plan sets out there would be habitat biodiversity enhancement through implementation of a 19.46% increase in habitat units and 2.29% hedgerow units. This would be based on enhanced landscape structure to improve green infrastructure corridors and connectivity across the site, most notably along the railway.
55. Other onsite enhancement and mitigation measures would include a nature area, strengthening of field boundaries and relaxation of their management, enhanced grassland habitat along margins with Ladden Brook and waterbodies in site and relaxation of management of field margins, and enhanced grassland elsewhere in site. Most of these benefits would be at least throughout the lifetime of the development, as there is a commitment to monitor biodiversity. Environmental benefits associated with these aspects of the proposal would accord with the Council's Green Infrastructure Strategy (2021) and would be of significant weight.
56. Although fallow periods can improve soil health, there is no substantive evidence before me to suggest this would be the case for the specific soil types prevalent within the site in the context of the fallow period associated with the

¹⁷ March 2023.

¹⁸ March 2023.

¹⁹ March 2023.

²⁰ Progress in adapting to climate change, March 2023.

proposal. In this context, I am only able to afford this limited weight as long term environmental and economic benefits of agricultural production.

Site Selection and Timeframe of the Development

57. I have been referred to the Emerging South Gloucestershire Local Plan that acknowledges the need to increase renewable energy generation and includes an overarching assessment of South Gloucestershire. The latter concludes that large areas are potentially suitable for solar development, but the appellant acknowledges these areas are subject to further refinement through the Plan. Furthermore, the appellant's Alternative Site Assessment of the associated study area is the starting point in determining the suitability of a site for a scheme of this nature and a site further from designated heritage assets than the appeal site was discounted on grounds including heritage. There will therefore evidently be various reasons a site may not be appropriate.
58. In the context of Green Belt policy, its permanence is important and occupancy of the land by the proposed solar farm for a period of 35 years would not prejudice that outcome. However, in the context of the heritage assets, this would be more meaningful and exceed a generation of change and harm would endure for a considerable amount of time.
59. Accordingly, I am only able to afford these principles limited weight as benefits of the scheme.

Economy

60. The proposal would enable the farm holding to diversify its income and help to secure the viability of the farming business in the long term, which would amount to an economic benefit of moderate weight, in accordance with CS Policy CS34, PSPP Policy PSP28 and the Framework.
61. The construction and decommissioning phases of the development would generate jobs, albeit over a relatively short period, but there are likely to be some benefits to the economy from the labour market and the procurement of materials and equipment, and some long-term employment through, amongst other things, management, and maintenance of the site. Given the scale of the development proposed these would be social and economic benefits of limited significance, in accordance with the fourth criterion of CS Policy CS3.

Climate Change and Heritage

62. There would also no doubt be wider benefits to the historic environment associated with addressing climate change. While the direct impact of the proposal is likely to be limited, it would amount to a heritage and environmental benefit of moderate weight.

Other Matters

63. The Officer Report refers to the Church of St James the Less, a Grade I listed building²¹, which I have referred to above in the context of its location near to 'the Avenue' aligned with the tower at Acton Lodge. The appellant has also referred to the Walls to East Court²². Like the Walls to the South Court, it is Grade II listed and was developed later in the 16th Century and is largely intact.

²¹ List Entry Number: 1320130.

²² List Entry Number: 1413221.

The walls are between Acton Court and the road and adjoin the gateway and flank walls included in the listing of the house. I have therefore had regard to the statutory duty referred to in the Act. However, given the visibility of these designated assets from the site and vice versa and their proximity and physical relationship with the proposal, their settings would be preserved and the proposal would not detract from them.

Planning Balance and Conclusion

Heritage Balance

64. The statutory duty in Section 66(1) of the Act is a matter of considerable importance and weight, as are the aims of Framework paragraphs 197, 199 and 200. Moreover, Paragraph 199 states 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). Paragraph 200 then identifies the assets of the highest significance, which include scheduled monuments and Grade I listed buildings.
65. The Framework identifies harm as 'substantial' or 'less than substantial', it does not introduce a further spectrum in relation to either category for decision makers to place any identified harms to the significance of a heritage asset, including the contribution made by its setting. I therefore consider the Framework's division of harm to be sufficient to undertake the balancing exercise to determine whether the appeal proposal is acceptable.
66. The proposed development would be harmful to the setting of the Grade I listed 'Acton Court, and Gateway and Flank Walls 40m East', the Grade II listed 'Walls to the South Court', the scheduled monument surrounding them, and the CA. This would have a negative effect on their understanding and, thereby, significance as designated heritage assets. The harm I have identified to the setting of each of these assets would constitute less than substantial harm. However, in the context of the above, harm to the Grade I listed building and scheduled monument would be afforded the greatest of weight. Framework paragraph 202 and PSPP Policy PSP17 identify this harm should be weighed against public benefits of proposals.
67. I have already identified the stated benefits of the appeal scheme in 'Other Considerations' and, taking these together, while there would be substantial and significant public benefits associated with climate change and energy production and security; significant biodiversity benefits; and other moderate and limited benefits, the harm that would be caused to the setting of these designated heritage assets by allowing the proposal would be of greater significance. In accordance with Framework paragraphs 199 and 202 and PSPP Policy PSP17, considered together, I am not persuaded there would be wider public benefits of sufficient magnitude to outweigh the great and greatest of weight to the assets' conservation and considerable importance and weight to the less than substantial harm identified to their significance.

Whether Very Special Circumstances Exist in the Context of the Green Belt

68. The appeal scheme is inappropriate development in the Green Belt in conflict with the Framework, PSPP Policy PSP7, and CS Policies CS5 and CS34. This is harmful by definition. The proposed development would reduce the Green

Belt's openness and its effectiveness at safeguarding the countryside from encroachment. This gives rise to additional harms in conflict with the Framework's aims in respect of the Green Belt, albeit I consider this to be moderate in the context of the timeframe and visibility of the development. Nevertheless, Framework Paragraph 148 advises that substantial weight should be given to any harm to the Green Belt and that 'very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations. This aim is also repeated in PSP7.

69. As I have outlined in the second main issue and above in the heritage balance, there would be harm to the setting of designated and non-designated heritage assets, which would also conflict with the development plan and Framework.
70. Against these identified harms, while other considerations that have been advanced include a wide range of benefits afford substantial and significant weight to moderate and limited weight, they are not sufficient to clearly outweigh the harm to the Green Belt and the other harms I have identified. Consequently, the very special circumstances necessary to justify the development do not exist.
71. While the CS and PSPP predate the current Framework, I am satisfied policies I have referred to in the determination of the appeal are in accordance with the aims of the Framework regarding the Green Belt and consideration of heritage assets. The conflict of the proposal with these relevant development plan policies is therefore a significant concern.
72. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan, when considered as a whole, and there are no other material considerations, including the provisions of the Framework, that indicate the proposal should be determined other than in accordance with the development plan. Accordingly, for the reasons given, I conclude that the appeal should be dismissed.

Paul Thompson

INSPECTOR

APPENDIX 29

**Appeal APP/L3245/W/23/3329815 – Land to the South of Hall Lane,
Kemberton, Telford**



Appeal Decision

Inquiry held on 9 – 12 January 2024

Site visit made on 12 January 2024

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd February 2024

Appeal Ref: APP/L3245/W/23/3329815

Land to the South of Hall Lane, Kemberton, Telford, TF11 9LB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr K Philpott (Vattenfall) against the decision of Shropshire Council.
 - The application Ref 22/02441/FUL, dated 13 May 2022, was refused by notice dated 20 March 2023.
 - The development proposed is the installation of a solar farm and associated infrastructure.
-

Decision

1. The appeal is allowed and planning permission is granted for the installation of a solar farm and associated infrastructure at land to the south of Hall Lane, Kemberton, Telford, TF11 9LB in accordance with the terms of the application, Ref 22/02441/FUL, dated 13 May 2022, subject to the conditions set out in Annex A.

Procedural Matters

2. The Council confirmed (25 April 2022) that an Environmental Impact Assessment was not required. There is no reason to disagree.
3. One of the reasons for refusal related to the impact on landscape character. However, the Council confirmed at the Case Management Conference and in the Statement of Common Ground that they would not be contesting that reason for refusal.
4. A revised Landscape Mitigation Plan was submitted with the appeal. This shows additional biodiversity enhancements in the south-east corner of the site and additional hedgerow planting to the east of the substation enclosures. The council expressed no concern with the use of this revised plan. I consider the changes are relatively minor and I am satisfied that no party would be prejudiced by my taking the amended plan into account. Accordingly, the Inquiry proceeded on this basis.

Main Issues

5. The parties are agreed that the proposal is inappropriate development in the Green Belt in terms of local and national policy.
6. Given this, the main issues in the appeal are:

- The effect of the proposed development on the openness of the Green Belt and the purposes of including land within it;
- The effect of the proposal on, and the potential loss of, agricultural land and an agricultural enterprise; and
- Whether the harm to Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the proposed development.

Reasons

The site, the surrounding area and the proposal

7. The appeal site comprises 2 fields that form a L-shape and which total approximately 20 ha. External and internal field boundaries are mainly defined by mixed hedgerows and mature trees, the exception being the eastern boundary of the southern field that is marked by a post and wire fence. A public right of way, which forms part of the Monarch's Way long distance path, traverses the south-east corner of the site.
8. The site is located between the village of Kemberton to the east and the built edge of Telford to the west, both of which occupy higher ground. It is also within the West Midlands Green Belt. Immediately adjacent to the northern and western boundaries lie Hall Lane and the B4379 respectively. Beyond these roads and adjacent to the other boundaries is a mix of arable and pastoral agricultural land with a rolling topography.
9. The proposal would consist of ground mounted solar arrays arranged in rows across the majority of the two fields along with essential electricity generation infrastructure, internal access tracks, security fencing, pole mounted CCTV cameras and boundary landscaping.

Planning policy context

10. The development plan comprises the *Shropshire Core Strategy 2006 – 2026 (adopted February 2011)* (CS) and the *Site Allocations and Management of Development Plan (adopted December 2015)* (SAMDev).
11. Leaving aside the third reason for refusal on landscape character which is not being contested, the reasons for refusal reference Policy CS5 which deals with development in the Green Belt and the countryside, CS13 which addresses economic development, enterprise and employment, and CS15 on Town and Rural Centres. At the Inquiry the Council could not identify how the proposal was contrary to any part of CS15. I would agree with that conclusion and so will not consider it further.
12. Although not mentioned in the reasons for refusal, the need to make effective use of land and safeguard natural resources, including high quality agricultural land, is set out in CS Policy CS6. In addition, Policy CS8 of the CS supports low carbon and renewable energy generation proposals where they would not have significant adverse impacts on recognised environmental assets.
13. The Council are currently in the process of producing a new Local Plan (LP). This was submitted for examination in 2022. But it was confirmed at the Inquiry that a further hearing session is expected in the summer with

consultation on the main modifications in late 2024. The Council made reference to Policies DP18 and DP26 within the LP but in the absence of any indication of the level of unresolved objections on these policies and whether modifications may be needed to make them sound, I give minimal weight to them.

14. The *National Planning Policy Framework* (the Framework), the *Planning Practice Guidance* (PPG), the *National Policy Statement on Energy* (EN-1) and the *National Policy Statement on Renewable Energy Infrastructure* (EN-3) are all material considerations.
15. Kemberton produced a Parish Plan in 2017 which sets out a framework for the future of Kemberton. Whilst this was subject to consultation with the community, it underwent no independent examination to ascertain whether it aligns with development plan and is not a Neighbourhood Plan. As such, whilst I take note of the factual information it contains, I give minimal weight to any of its aspirations in relation to planning and development.

Green Belt openness

16. Policy CS5 of the CS indicates that development in the Green Belt will be controlled in accordance with national policy which is currently set out in the Framework.
17. The Government attaches great importance to the Green Belt. The fundamental aim is to prevent urban sprawl by keeping land permanently open; the essential characteristics of the Green Belt are their openness and their permanence. Openness has both a visual and spatial element.
18. The appeal site currently comprises 2 open fields. The proposal would introduce development across the majority of these fields. Although the footprint of the posts holding the arrays would be small, the panels themselves are larger. They would have the effect of covering more of the ground area, albeit that their mass would be broken up by the grass in between each row and the fact that there would be 'airspace' and functioning soil beneath the panels. In addition, there would be access tracks, fencing, substations and transformers as part of the proposal. As a result, I consider that the proposal would slightly diminish the openness of the Green Belt spatially.
19. In visual terms, the appellant's landscape witness considered the effects to be very limited and localised due to the existing and proposed vegetation around the site and the local topography. This is supported by the findings of the Landscape and Visual Impact Assessment (LVIA) which found that the only publicly accessible viewpoints which would have more than 'negligible' visual effects were a section of the Monarch's Way footpath (viewpoints 1-4), sections of footpaths to the north and west of Kemberton (viewpoint 7) and the roads adjacent to the site (viewpoint 5). In all cases the visual effect from these would be reduced as the new planting is established with only Monarch's Way remaining more than 'negligible' at 'slight adverse'.
20. The Council highlighted that the Zone of Theoretical Visibility (ZTV) shows there to be visibility of 100% of the site from the ridge of the Halesfield Industrial Estate. However, the only publicly accessible point on this ridge is the road. Road users would primarily be paying due care and attention to other road users and hazards, so would only take in limited glimpses of the site,

resulting in only a negligible adverse visual effect. Even for passengers, views would only be fleeting. Whilst the views would be less fleeting for pedestrians, the absence of any footway on the road at this point, suggests this route is unlikely to be heavily utilised by pedestrians.

21. The other point on the ZTV where there is 100% visibility, was indicated to be a field with no public accessibility. Views of the site are also possible from the car park and outside seating areas to the rear of the Mason's Arms Public House in Kemberton. What views of the site that are possible from these areas are similar to that from viewpoint 1 and are at present heavily screened by the existing boundary vegetation. As this existing hedging would relatively quickly mature to its new height, views of the proposal would be minimal.
22. The Council did not provide any technical evidence to counter the findings of the LVIA and from my own observations I would agree with the conclusions it reached on the likely visual effects of the proposal.
23. The appellant's landscape witness considered that the proposed planting would take slightly longer to establish than suggested in the LVIA – 5-10 years rather than 3-5 years. I consider that the proposed increase in height of the existing hedges to 3m could be achieved in 3 years, bringing the mitigation benefits to the majority of the viewpoints highlighted above within a relatively short timeframe. Whilst the full screening effect of the new mitigation planting is more likely to take between 5 and 10 years to achieve, I am not persuaded this slightly longer timeframe significantly alters the visual impact of the proposal.
24. All in all, initially, I consider the proposal would cause moderate harm to the visual openness of the Green Belt, but this would reduce to slight as the mitigation planting matures. Given the very localised nature of this visual impact overall, I consider it would only have a slight impact on the visual openness of the Green Belt.
25. The LVIA acknowledges that there would be some views of the proposal from various residential properties in the vicinity, although, when the mitigation planting is fully established, at worst the visual effect would be "slight adverse". Moreover, these are private not public views and the Council accepted that the proposal would not cause any unacceptable harm to the living conditions of the occupiers of these dwellings. There are no other existing or proposed solar farms in the LVIA study area, so there would be no cumulative landscape or visual effects.
26. The PPG indicates that when assessing the impact of a development on the openness of the Green Belt, the duration of the development and its remediability, and the degree of activity it would be likely to generate, are matters to take into consideration. The proposal would occupy the site for 40 years which although a significant period of time is not permanent. At the end of this period the site could be restored to agricultural land. In addition, apart from during the construction phase and during de-commissioning, the development would generate minimal activity.
27. Taking all of the above together, both visually and spatially, the proposal would result in slight harm to the openness of the Green Belt. This adds to the harm caused by reason of inappropriateness.

Green Belt purposes

28. As defined by paragraph 143 of the Framework, the Green Belt serves 5 purposes (a) to check the unrestricted sprawl of large built-up areas; (b) to prevent neighbouring towns merging into one another; (c) to assist in safeguarding the countryside from encroachment; (d) to preserve the setting and spatial character of historic towns; and (e) to assist in urban regeneration by encouraging the recycling of derelict and other urban land.
29. It is agreed that the fourth purpose, relating to historic towns, is not relevant in this instance. In addition, the Council indicated that all parts of the Green Belt contribute equally to the fifth purpose.
30. As part of the evidence base for the emerging LP an assessment of how land within the Green Belt contributed to the five Green Belt purposes has been undertaken. In this the appeal site lies within area BA2. The assessment concludes that this area makes no contribution to purpose 1, a moderate contribution to the second purpose and a strong contribution to purpose 3. The land on the other side of the B4379 lies in area P22, which the assessment concludes makes a strong contribution to purpose 1, a weak contribution to purpose 2 and a moderate contribution to purpose 3.
31. The Framework does not provide a definition of what constitutes "sprawl", but it is a matter considered by the Council's Green Belt Assessment. This notes that definitions of 'sprawl' vary but concludes that "land immediately adjacent to the large built up area is likely to contribute to this purpose as it provides the boundary and zone of constraint to urban expansion."
32. Although the appeal site is situated in what is a relatively narrow gap between Telford and Kemberton, it is not immediately adjacent to either the built edge of Telford, or Kemberton (although the latter is not a large built up area), as intervening fields lie between the site and both settlements. As a result, the proposed development would be visually discrete from both settlements.
33. Moreover, the solar panels and associated infrastructure would be relatively low-lying features, that would have a completely different character and form to either the industrial units on the edge of Telford or buildings in Kemberton. As such, the proposal would not be seen as the spreading out of either settlement. Thus, even if 'sprawl' encompasses 'leapfrog development' as suggested by the Council, the proposed development would not be contrary to this purpose.
34. With regard to the second purpose of including land in the Green Belt, the Council's Green Belt assessment highlights that the Framework specifically refers to preventing the merging of towns, not the merging of towns with smaller settlements, or the merging of smaller settlements with each other. Whilst Kemberton was referred to as either a village or a hamlet, it is agreed that it is not a town.
35. The Green Belt in the area has a role to play in preventing the coalescence of Telford with the town of Shifnal. However, the appeal site does not lie directly between these 2 settlements and so the proposal would not contribute to any narrowing of the gap between Telford and Shifnal. In addition, should it be considered that the site lies between Telford and Albrighton, the considerable

distance between these two towns means the proposal would not reduce this gap to any significant degree.

36. The proposed development would result in the partial infilling of the gap between Kemberton and Telford and so physically would lead to a narrowing of this gap. Nonetheless, open fields would remain between the site and both settlements. Additionally, the LVIA shows that there would be very little visibility of the proposal from the public realm and so visually the impact the proposal would have on the perceived openness of this gap would be very limited. Consequently, even if it is considered that the second purpose relates to the gap between Telford and Kemberton, the proposal would not, in my view, be contrary to this purpose.
37. It is not disputed that the proposal would represent development in the countryside. However, the busy nature of the 'B' road adjacent to the site does detract from the rural character of the area. The appeal scheme would introduce man-made structures into the fields and would change their character. Nonetheless, the solar arrays would be located within the existing field pattern and the scheme would retain and enhance the existing field boundaries which would result in minimal visibility of the scheme from outside the site. Furthermore, the solar arrays would be low-lying, open sided features, that would be temporary in nature, limiting the overall effect on the countryside.
38. Therefore, the proposal would cause encroachment into the countryside, contrary to this purpose. However, the degree of harm it would cause would be limited.

Green Belt conclusion

39. The parties agree that the proposal is inappropriate development in the Green Belt. This is, by definition, harmful to the Green Belt. The development would also cause some slight harm to the openness of the Green Belt and by causing some degree of encroachment into the countryside would conflict with one of the purposes of including land in the Green Belt. In line with paragraph 153 of the Framework, the harm to the Green Belt from these matters results in substantial weight against the proposal. The proposal would not accord with Policy CS5 or the Framework.
40. The Council highlighted other recent solar farm developments that had been approved in the Green Belt in the Albrighton area. It was suggested they were more acceptable because they did not conflict with any of the purposes of including land in the Green Belt and were not as close to urban areas. Be that as it may, I have considered the appeal scheme on its own merits.

Effect on, and potential loss of, agricultural land

41. Amongst other things, CS Policy CS6 seeks to make efficient use of land and safeguard natural resources including high quality agricultural land. Whilst paragraph 180b of the Framework states that planning decisions should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land, it does not prevent the use of such land for non-agricultural uses. Further guidance regarding the use of BMV land is provided in footnote 62 of the Framework. This footnote is linked to paragraph 181 not 180b, and the former relates to plan making not decision taking. However even

if it is considered to be relevant to decision taking it simply indicates that the availability of land for food production is a consideration to be taken into account, rather than preventing the use of such land.

42. The Written Ministerial Statement on solar energy (25 March 2015) indicates that the use of BMV for solar farms has to be justified by the most compelling evidence.
43. In addition, The *Planning Practice Guidance* (PPG) on renewable and low carbon energy, which also dates from 2015, provides a list of planning considerations that relate to large scale ground mounted solar photovoltaic farms¹. These include: encouraging the effective use of land by focussing such developments on previously developed and non-agricultural land provided it is not of high environmental value; and where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
44. It is agreed that the majority of the appeal site (71%) comprises Grade 3b agricultural land with the rest being Grade 3a. Whilst the latter constitutes BMV land, it is not a discrete element that could be farmed separately. The wider area comprises overwhelmingly of Grade 2 and 3 land, with no grade 5 land and only small amounts of Grade 4. In this context, the use of a site that is predominantly Grade 3b would constitute using poorer quality agricultural land as required in the PPG.
45. In addition, the appellant's Site Selection Process report (SSP), identified all potentially suitable land within an area that would be able to connect to either the Halesfield or Shifnal substations, where there was connection capacity. The Council suggested that there are other substations with capacity in the region. However, this failed to recognise the difference between transformer capacity and export capacity. As the appellant's evidence is based on detailed discussions with the local electricity distribution network operator, I have no reason to doubt that Halesfield and Shifnal are the only two substations with viable connection capacity. As such, the search area used in the SSP is reasonable.
46. The SSP found that within the search area there was no urban or brownfield land that would be large enough for the proposal. 36 greenfield sites were identified, but many of these were ruled out due to being too small or because they were Grade 2 agricultural land. Two of the sites were outside the Green Belt but both of these were being actively developed for housing. Whilst a detailed assessment of the other sites classified as Grade 3 land has not been undertaken to clarify if any of them contain less Grade 3a land than the appeal site, appendix 2 of the SSP gives good reasons as to why all of them were discounted. I therefore consider that the SSP represents a robust analysis of other potential sites. In this respect this appeal differs from the appeal referred to by the Council.²
47. In the absence of any evidence to the contrary regarding the availability and suitability of alternative sites, I see no reason to disagree with the conclusions

¹ Paragraph ID:5-013-20150327

² Appeal Decision APP/F1040/W/22/3313316

of this report, which shows there is no poorer quality agricultural land or urban/brownfield land available that would be able to use the available grid connections. Therefore, in accordance with the PPG, it has been demonstrated that the use of agricultural land would be necessary, and that poorer quality land would be used in preference to higher quality agricultural land.

48. It was highlighted that the SSP was not submitted when the planning application was lodged but later in the determination period. However, there is no national or local policy requirement to carry out an assessment of alternative sites for solar farm developments and to submit this as part of an application. From the evidence before me I am satisfied that the SSP explains adequately the process the appellant went through in identifying potential sites. Moreover, whilst the land on the other side of the B4379 may be closer to the sub-station the evidence shows it is not available for such developments.
49. The proposal would change the use of the land for a period of 40 years which, although a significant period of time, is not permanent. Furthermore, during the operational period it is indicated that the land around the solar panels would be used for the grazing of sheep. As a result, apart from the small areas used for the fixed infrastructure, the majority of the land would still be used for some agricultural purposes during the 40 year period the solar farm operated. It is the intention that it would be returned fully to agricultural land at the end.
50. I note the concerns that the productivity and versatility of the land would be reduced and that grazing by sheep during the operational period is not guaranteed. Nevertheless, the specific way agricultural land is farmed is not a matter that is subject to planning controls. As such, there would be nothing in planning terms to prevent the owners using the fields that form the appeal site for the grazing of sheep at present or even leaving them fallow.
51. Given this, the fact that the proposal would limit the ability to carry out any arable farming does not, in my opinion, mean that it results in the loss of agricultural land when it can still be used for other agricultural uses and can be returned to agricultural use in the future. Nor is there any substantive evidence to show that cumulatively solar farm developments are having an unacceptable impact on the amount of agricultural land available in the county.
52. The appellant has indicated that the footings for the solar panels would be piled. As such this would cause minimal disturbance to the soil and the quality of the land. This conclusion is supported by the findings of post-construction surveys of other solar farms provided by the appellant. Nor is there any evidence to show that the proposal would cause the release of the carbon stored in the soil as a result of the organic farming practices that the land has been subject to in recent years.
53. Whilst the land currently has organic status, this relates to how the land is managed rather than the land quality. This status could be lost if it was rented out differently and could also be regained at the end of the lifetime of the development.
54. Overall, I am satisfied that the proposal would not result in the temporary or permanent loss of agricultural land as the land could continue to be used for some agricultural purposes whilst also being used to produce solar energy. Nor would the proposal be detrimental to the quality of the land, so a return to agricultural use at a later date would still be possible.

Effect on, and potential loss of, an agricultural enterprise

55. Policy CS13 of the CS seeks to develop and diversify the economy and deliver sustainable economic growth. It indicates that in rural areas particular emphasis will be placed on recognising the continued importance of farming for food production and to supporting rural enterprise and diversification of the economy. As part of supporting a prosperous rural economy, paragraph 88b of the Framework also supports the development and diversification of agricultural and other land based rural businesses.
56. Until recently the fields that form the appeal site were used as pasture by the adjacent organic dairy farm and so were only indirectly used for food production. However, Policy CS6 does not state that any proposal that leads to a loss of area used for food production is unacceptable. Moreover, at the inquiry, the Council acknowledged that the use of agricultural land for solar energy is an example of economic activity associated with agricultural and farm diversification even if not listed as such in this policy.
57. Whilst the adjacent dairy farm had been using the land for around 20 years, it was rented by them on an annual basis with no security of tenure. As such, irrespective of the appeal proposal, there was no guarantee that the land would have necessarily continued to be available to rent by the dairy farm. Given the nature of this tenancy arrangement with the dairy farm, the Council accepted that it was incorrect for the second reason for refusal to allege the proposal would adversely affect this tenancy for 40 years. They also accepted that the rest of this second reason for refusal was based on the misunderstanding of the tenancy.
58. Moreover, there is no evidence that the loss of the two fields to the dairy farm would adversely impact on milk production or the viability of the business albeit that, as a consequence of the inability to continue renting this land, the business may incur costs in finding new land. In fact, the evidence of the owner of the dairy at the inquiry was that despite the loss of this land the business continued to be thriving. As such, the proposal would not cause any harm to food production.
59. Consequently, I consider that the proposed development would not be detrimental to, or lead to the loss of, an agricultural enterprise.

Conclusion on Agricultural Considerations

60. Overall, I consider that the proposal would not result in the loss of either agricultural land or an agricultural enterprise. Nor would it have an unacceptable impact on either agricultural land or an agricultural enterprise. The land could continue to be used for agricultural purposes alongside the production of renewable energy and could return fully to agricultural use at the end of the lifetime of the development. Accordingly, there would be no conflict with Policies CS13 and CS6 of the CS or with the Framework outlined above.

Benefit arising from the provision of renewable energy

61. The proposal would have an installed capacity of approximately 22MW, estimated to provide sufficient electricity to power around 6,000 homes a year and saving approximately 5,280 tonnes of CO₂ per annum. The site benefits from an immediate connection to the grid at the Halesfield substation which is clearly beneficial in enabling the energy produced to be exported without delay.

62. In recent years both the Government and the Council have declared an Environmental and Climate Change Emergency. Various recent government publications have highlighted the need to significantly increase generation from onshore wind and solar energy production, as it seeks to ensure that by 2035 all our electricity will come from low carbon sources and that it achieves net-zero emissions by 2050. In addition, the Shropshire Climate Action Partnership, of which the Council is one of the founders, has set the objective of achieving a net-zero carbon county by 2030.
63. Documents such as the British Energy Security Strategy reinforce the need for electricity to come from low carbon sources for energy security and economic stability. This is also reflected in various local documents such as the Energy Strategy for The Marches Local Enterprise Partnership.
64. To achieve these ambitious targets, it is clear that considerable growth in large scale solar farms will be necessary and this cannot be achieved solely by the use of brownfield land or roof top installations.
65. The support in both national and local policy for renewable energy is caveated by the need for the impacts to be acceptable, or capable of being made so. Nevertheless, the renewable energy benefit of the proposal, both in terms of its contribution towards energy security and resilience and the reduction in greenhouse gas emissions, must be accorded substantial weight.

Other considerations

66. The proposal would include a variety of landscape and biodiversity measures including new and improved hedging, wildflower grass strips, new tree planting, a new pond and the provision of bird and bat boxes. The biodiversity metric shows that it would deliver biodiversity net gain both in terms of primary and linear habitats. Whilst the net gain may not be as high as achieved on other solar farm schemes in the area, it is still a permanent benefit of the scheme, that, along with the landscape benefits, attract moderate weight.
67. There would be some economic benefit during the construction period albeit this would reduce significantly once the development was operational. It would also result in additional business rates and would support the rural economy through the diversification of the farm business that owns the land. I give moderate weight to these economic benefits. It has been suggested that the proposal could lead to job losses. However, there was no evidence to support this claim and the owner of the dairy did not indicate that the loss of these two fields had had any impact on the number of people they employed. This unsubstantiated claim therefore does not weigh against the proposal.

Other Matters

68. Kemberton Conservation Area lies approximately 150m to the east of the site and 5 Hall Lane, St Andrew's Church and Brockton Hall Farm are all Grade II Listed Buildings in the vicinity of the site. The appellant's Heritage Impact Assessment considered the changes the proposal would cause to the setting of these heritage assets and the impact this would have on their significance. Given the distance to the site and the intervening vegetation that already exists, it is agreed that the proposal would not result in harm to Brockton Hall Farm. From the evidence before me, and what I saw at my site visits, I agree that there would be no harm to the significance of this heritage asset.

69. The undeveloped agricultural fields currently make a positive contribution to the setting of the south-western part of the Conservation Area and the Listed Buildings within it (5 Hall Lane and St Andrew's Church). The topography, existing and proposed vegetation and limited height of the panels means that the majority of the development would not impact on the setting and significance of the heritage assets. However, the introduction of security fencing and security cameras along the north-eastern boundary would cause some limited visual harm to the setting of the Conservation Area and the Listed Buildings and thereby to their significance. However, employing the terminology of the Framework, I consider this would result in 'less than substantial harm', at the lower end of the scale, to these heritage assets. Nonetheless, in accordance with the Framework and the statutory obligations imposed I give great weight to this harm. I shall weigh this against the public benefits later in my decision.
70. The appeal site is in Flood Zone 1 but due to its size a Flood Risk Assessment was produced. This considered all types of Flood Risk and concluded that there was a negligible flood risk, and no specific mitigation was required. Local residents produce photographic evidence showing flooding that already occurs on the adjacent roads and raised concerns that the proposal would exacerbate this further. However, subject to conditions, which includes a condition requiring a surface water run-off mitigation strategy, the Lead Local Flood Authority had no objection to the proposal. In the absence of any substantive evidence to the contrary I see no reason to come to a different conclusion in this regard.
71. The application was accompanied by a Glint and Glare Assessment which considered the impacts on a wide range of different local receptors and concluded that, after taking account of mitigation measures, the impact on all receptors would be low or none and therefore not significant.
72. As well as the houses on Hall Lane there are a small number of other isolated dwellings in the vicinity. The distance between these various properties and the closest panels, together with the existing and proposed intervening vegetation, means that the proposal would not unacceptably harm the living conditions of occupiers, in terms of noise and disturbance or glint and glare.
73. The Parish Plan indicates that the local footpath network attracts tourists and visitors. Whilst tourism can rely considerably on the quality of the countryside, the LVIA specifically considered the impact of the proposal both on the users of the local footpath network and on the wider landscape and found it to be acceptable. This concurs with what I observed on my site visit and the conclusions of the LVIA were not disputed by the Council. I am not persuaded that the changes to the landscape in this case would be detrimental to users of the public footpath network or would lead to the loss of viability of any existing tourism related business.
74. It has been suggested that the appeal scheme would set a precedent for further similar developments. However, no directly comparable sites to which this might apply were put forward. Each application and appeal must be considered on its merits and a generalised concern of this nature does not justify withholding permission in this case.
75. The Parish Council have stated that the Council made some errors on the appeal questionnaire. However, it is not disputed that the appeal site is in the

Green Belt and from the maps provided showing the boundary of Kemberton Conservation Area, the site is not adjacent to the boundary.

Planning Balance and Conclusion

76. It is agreed that the proposal is inappropriate development in the Green Belt. This, by definition, is harmful to the Green Belt. In addition, the proposal would result in slight harm to the openness of the Green Belt and would be contrary to one of the purposes of including land in the Green Belt. In line with the Framework, I give substantial weight to the harm the proposal would cause to the Green Belt. In addition, the proposal would cause less than substantial harm to the setting of nearby designated heritage assets.
77. On the other side of the planning balance, the Framework sets out a presumption in favour of sustainable development, and renewable energy development is central to achieving a sustainable low carbon future. The appeal scheme would make a significant contribution to this, and I give substantial weight both to the contribution the proposal makes to cutting greenhouse gas emissions and to improving energy resilience and security.
78. In addition, I give moderate weight to both the landscape and biodiversity enhancements that would be achieved, and to the economic benefits.
79. The Framework requires that where a proposal causes less than substantial harm to the significance of designated heritage assets, this harm should be weighed against the public benefits of the proposal. I attribute significant weight to this harm but the contribution the scheme would make to the generation of clean and secure energy is a substantial public benefit and together with the other benefits outlined above, outweigh the less than substantial harm to the designated heritage assets.
80. The determination of whether very special circumstances exist is a matter of planning judgement based on a consideration of all relevant matters. In this case I consider that the public benefits of the proposal are of a magnitude that they would clearly outweigh the combined weight of the harm to the Green Belt and to the heritage assets. Therefore, the very special circumstances needed to justify the development exist, and the proposal would not conflict with the policies in the development plan outlined above or the Framework. Consequently, I conclude that the appeal should be allowed.

Conditions

81. The Council and the appellant agreed a set of conditions that were discussed at the Inquiry. I have considered these in the light of paragraph 56 of the Framework and have revised a number of them as discussed at the Inquiry.
82. In addition to the standard implementation condition (condition 1), to provide certainty it is necessary to define the plans with which the scheme should accord (condition 2). Conditions 3 and 4 are reasonable and necessary to limit the period of the permission and to ensure the site is decommissioned either at the end of the permission or when energy generation ceases.
83. In the interest of the character and appearance of the area conditions 5, 9, 10 and 11 are necessary. Conditions 9 and 10 both need to be pre-commencement conditions. The former to ensure adequate protection is given

to the existing trees before any construction works start and the other as it relates to works that need to be undertaken during the construction period.

84. Conditions 6, 7, 8 and 16 are necessary for highway safety. Both conditions 6 and 8 need to be pre-commencement conditions. The former to ensure that a safe access is provided for construction traffic before construction work begins and the latter as it relates to works that need to be undertaken during the construction period.
85. In the interest of biodiversity conditions 12, 13, 14 and 15 are necessary.
86. In accordance with Section 100ZA of the Town and Country Planning Act 1990, the appellant has provided written agreement to the pre-commencement conditions.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Gwion Lewis KC instructed by Mr Barry Butchart on behalf of Vattenfall

He called:

Mr Alastair Field BA (Hons), MSc, FBIAC, PIEMA, MI Soil Sci, FRGS	Director & Company Secretary – Reading Agricultural Consultants Ltd
Mr John Ingham BA (Hons), Dip LA, CMLI	Director of Landscape Planning, Stephenson Haliday
Mr Barry Butchart BSc (Hons), MRTPI	Director, Mallory Land

FOR THE LOCAL PLANNING AUTHORITY:

Sioned Davies Counsel instructed by Ms Kim Brown, Solicitor on behalf of the Council

She called:

Cllr Edward Potter	Member of Southern Planning Committee
Ms Lynn Parker BA (Hons), MA	Senior Planning Officer – Shropshire Council
Cllr Tony Parsons	Member of Southern Planning Committee

INTERESTED PARTIES:

Philip Jones	Chair Kemberton Parish Council
Alan Chatham	Chatham Dairy

INQUIRY DOCUMENTS

INQ1	Opening statement by Appellant
INQ2	Opening statement by Council
INQ3	Statement by Mr P Jones on behalf of Kemberton Parish Council
INQ4	Emerging Local Plan position – email from Council
INQ5	Letter from Farms for Farming
INQ6	Closing statement by Council
INQ7	Closing statement by Appellant
INQ8	Map showing Conservation Area boundary on Hall Lane

CORE DOCUMENTS

Can be accessed using the following link:

[Hall Lane, Kemberton, Telford, TF11 9LB - public enquiry docs | Shropshire Council](#)

Annex A

Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision. Such date shall be referred to hereinafter as 'the Commencement Date'.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: Location Plan Ref SA39827-01; Initial Layout Ref Figure 2a; Landscape Mitigation Plan Drawing No 3109-001 Rev D; Panel and Access Details Ref Figure 3; Security Ref Figure 4; Customer Substation Ref Figure 6; Containerised DNO Substation Ref Figure 7b; and Site Access and Construction Layout Drawing No SA42435-BRY-ST-PL-A-0002.
- 3) The permission hereby permitted shall be limited to a period of 40 years from the date when electricity is first exported from the solar panels to the electricity network (the First Export Date). Written notification of the First Export Date shall be given to the local planning authority within 14 days of the event.
- 4) Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the First Export Date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to the local planning authority for its written approval. The solar farm and its ancillary equipment shall be dismantled and removed from the site and the land restored in accordance with the approved scheme and timescales.
- 5) Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and shall be maintained as such for the lifetime of the development hereby permitted.
- 6) No development shall take place until the proposed site access, as shown on Drawing No SA42435-BRY-ST-PL-A-0002, has been constructed, and the first 15m of the proposed access has been surfaced with a bound material. The access shall be retained as such for the lifetime of the development hereby permitted.
- 7) Before the new site access is brought into use all obstructions exceeding 0.6 metres high shall be cleared from the land within the visibility splays as shown on Drawing No SA42435-BRY-ST-PL-A-0002. Thereafter, the visibility splays shall be kept free of obstructions exceeding 0.6 metres in height for the lifetime of the development hereby permitted.
- 8) No development shall take place until a mitigation strategy to prevent exceedance flows from the development contributing to flooding outside of the development site has been submitted to, and approved in writing by, the local planning authority. The approved scheme shall be fully implemented before the First Export Date.

- 9) No development shall take place until the pre-commencement tree works and tree protection measures as detailed in Section 2 (Arboricultural Impact Assessment), Section 3 (Arboricultural Method Statement), Schedule 1 (Tree Schedule), Appendix 5 (Tree Protective Barrier), Appendix 6 (Ground Protection) and Plan 2 (Tree Protection Plan) of the approved Arboricultural Appraisal (SC: 596AA, Salopian Consultancy Ltd, 17.05.2022) have been implemented and have been approved as such, in writing, by the local planning authority. The approved tree protection measures shall be maintained in a satisfactory condition throughout the duration of the construction phase of the development and until all equipment, machinery and surplus materials have been removed from the site.
- 10) No development shall take place until a scheme providing full details of the soft landscaping to be implemented on the site (the 'Landscaping Scheme') has been submitted to, and approved in writing by, the local planning authority. The scheme submitted shall be in accordance with the details illustrated on approved Landscape Mitigation Plan (Drawing 3109-001 Rev D). The scheme shall include a planting plan and specification (including cultivation and other operations associated with plant and grassland establishment) providing schedules for all new planting and seeding noting species, mixes, planting sizes and proposed numbers/densities where appropriate and a timetable for implementation. All new planting shall be implemented in accordance with the approved details and implementation programme. If within a period of 5 years from the date of planting, any tree, shrub or hedgerow or any replacement planting is removed, uprooted or dies or becomes seriously damaged or diseased replacement planting of the same species and size shall be planted in the same location in the next planting season.
- 11) Prior to the First Export Date, a Landscape Management Plan including long term design objectives, maintenance schedules and a programme of management activities for landscape areas identified in the Landscaping Scheme, including the establishment and thereafter maintenance of hedgerows of a minimum of 3m high, shall be submitted to, and approved in writing by, the local planning authority. The landscape management plan shall cover all existing vegetation within the site as well as any new planting and grassland implemented as part of the development. All vegetation within the site shall be managed in accordance with the approved Landscape Management Plan for the full duration of the development hereby permitted.
- 12) Prior to the First Export Date, the makes, models and locations of bat and bird boxes shall be submitted to, and approved in writing by, the local planning authority. This should make provision for: a) A minimum of 4 external woodcrete bat boxes suitable for nursery or summer roosting for small crevice dwelling bat species; b) A minimum of 4 external bird boxes, suitable for Starlings (42mm hole, starling specific), Sparrows (32mm hole, terrace design), House Martins (House Martin nesting cups) and/or small birds (32mm hole, standard design). The boxes shall be erected on the site prior to the First Export Date in accordance with the approved details and shall thereafter be retained for the lifetime of the development.

- 13) No external lighting shall be installed other than in complete accordance with a scheme that has previously been submitted to, and approved in writing by, the local planning authority. Any external lighting so installed shall thereafter be maintained in accordance with the approved details for the lifetime of the development.
- 14) No works to trees and shrubs, or vegetation clearance, shall occur between 1st March and 31st August in any year unless, immediately prior to any clearance/works, a detailed bird nest survey, undertaken by a suitably experienced ecologist has been carried out and has been submitted to, and approved in writing by, the local planning authority demonstrating that no active bird nests are present.
- 15) Prior to the First Export Date, an appropriately qualified and experienced ecologist shall provide a report to the local planning authority demonstrating implementation of the recommendations made in Section 4 of the Biodiversity Net Gain Assessment by Salopian Consultancy dated 17th June 2022.
- 16) All works to the site shall occur strictly in accordance with the Construction Traffic Management Plan set out in Section 4 of the Transport Statement (Doc Ref: SA42435_TS1 dated March 2022).

APPENDIX 30

**Appeal APP/F1040/W/22/3313316 – Land North of Lullington, Swadlincote,
Derbyshire**



Appeal Decision

Hearing held on 18 April 2023

Site visit made on 19 April 2023

by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 July 2023

Appeal Ref: APP/F1040/W/22/3313316

Land North of Lullington, Swadlincote, Derbyshire, DE12 8EW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Lullington Solar Park Ltd against the decision of South Derbyshire District Council.
 - The application Ref DMPA/2021/1014, dated 22 June 2021, was refused by notice dated 8 August 2022.
 - The development proposed is for the installation of ground mounted solar photovoltaic panels with associated infrastructure and works, including substations, converters, inverters, access tracks, security fencing, boundary treatment and CCTV on land to the north of Lullington, Swadlincote DE12 8EW.
-

Decision

1. The appeal is dismissed.

Main Issues

2. The main issues in this appeal are:
 - the effect of the proposed development on the use of best and most versatile agricultural land, including consideration of site selection processes;
 - the landscape and visual impacts arising from the appeal scheme; and
 - whether there would be unacceptable impacts on the significance of identified heritage assets.

Reasons

Policy Background

3. A material consideration in the determination of planning proposals for renewable energy are the National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. In September 2021, draft updates to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) were published. Both the existing and proposed NPSs state that the NPSs can be a material consideration in decision making on applications that both exceed or sit under the thresholds for nationally significant projects.

4. The UK Government has set a statutory target of achieving net zero emissions by 2050, and this is a significant material consideration. It has also declared a climate emergency. Since the declaration, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change has indicated that it is more likely than not that global temperature increases will exceed 1.5 degrees Celsius above pre-industrial levels. The report indicated that delay in global action to address climate change will miss a brief and rapidly closing window to secure a liveable future. The UK Energy White Paper, Powering our Net Zero Future (2020), describes the costs of inaction as follows:

"We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79 per cent, compared to a five per cent chance now. Many regions of the world would see what is now considered a 1-in-100-year drought happening every two to five years.

At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that. A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia."

5. The draft NSPs recognise that to meet the Government's objectives and targets for net zero by 2050, significant large and small scale energy infrastructure is required. This includes the need to 'dramatically increase the volume of energy supplied from low carbon sources' to ensure a reduction in the reliance of fossil fuels (which accounted for 79% of energy supply in 2019). Solar (together with wind) is recognised specifically in Draft EN-1 (para 3.3.21) as being the lowest cost way of generating electricity and that by 2050, secure, reliable, affordable, net zero energy systems are 'likely to be composed predominantly of wind and solar'.
6. At a national level, in combination with the drive to reinforce provision of renewable energy sources, the Government also acknowledges the need to ensure that projects come forward in appropriate locations. PPG guidance on renewable and low carbon energy states that 'there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and critically, the potential impacts on the local environment, including from cumulative impacts.' (Paragraph: 005 Reference ID: 5-005-20150618).
7. Paragraph 152 of the National Planning Policy Framework (the Framework) confirms that the planning system 'should support the transition to a low carbon future in a changing climate', should 'contribute to radical reductions in greenhouse gas emissions' and 'support renewable and low carbon energy and associated infrastructure'. This recognises the responsibility placed on all communities to contribute towards renewable energy production. Therefore,

there is a strong strategic policy framework which supports renewable and low carbon development proposals. The Framework also confirms that applicants are not required 'to demonstrate the overall need for renewable or low carbon energy' (para 158).

Best and Most Versatile Agricultural Land

8. The parties agreed that the Written Ministerial Statement (WPS) dated 25 March 2015 relating to the unjustified use of agricultural land remains extant. It states therein that any proposal for a solar farm involving the best and most versatile agricultural land (BMV) would require to be justified by the most *compelling evidence* (my emphasis).
9. The WMS is linked to updated National Planning Policy Guidance¹ (NPPG), which explains that where a proposal involves greenfield land, consideration should be given as to whether the proposed use of any agricultural land has shown to be necessary, whether poorer quality land has been used in preference to higher quality land and to whether the proposed development would allow for continued agricultural use where applicable and/or where biodiversity improvements around arrays would be provided. This is reflected in the National Planning Policy Framework (the Framework)² which suggests that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of higher quality.
10. Policy BNE4 of the South Derbyshire Local Plan Part 2 (SDLP) states that the local planning authority will seek to protect soils that are 'Best and Most Versatile', (Grades 1, 2 and 3a in the Agricultural Land Classification) and wherever possible direct development to areas with lower quality soils while Policy BNE5 of the SDLP states that otherwise acceptable development outside of settlement boundaries in rural areas will be granted where it will not unduly impact on BMV agricultural land.
11. Paragraph 174(b) of the Framework states that planning decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
12. The Glossary to the Framework explains that BMV comprises land that falls within grades 1, 2 and 3a of the Agricultural Land Classification. It is not disputed that the appeal proposal would result in the loss of almost 34 Ha of BMV land consisting of 15% grade 2, 34% grade 3a and 48% grade 3b with the remaining 3% defined as other land (blocks of woodland or water bodies), which would lead to a temporary loss of 49% of BMV land at the appeal site.
13. The appellant's Site Selection Assessment (SSA) fixed the study area for the appeal proposal by a requirement to connect to a viable local electricity network that was agreed with the local distribution network operator at the application stage. The agreed point of connection would be into the 132kv network that crosses the western end of the appeal site and which connects into the major substation at Drakelow, some 6km from the connection point. A 2km offset around the 132kv line was therefore drawn at a distance of no more

¹ Paragraph 013, Reference ID: 5-013-20150327, Revision date: 27 March 2015

² Paragraph 175 Footnote

- than 8km from the Drakelow facility, which coincides with the maximum cabling connection that would be economically viable.
14. The SSA found that there were no suitable brownfield sites within the study area whilst there are only very few areas of lower grade agricultural land. These areas were grade 4 land but considered unsuitable for the siting of solar arrays due either to their being either too small or had physical or environmental constraints that limited their inclusion. The SSA was also informed by a number of other constraints, including levels of irradiance, sensitive landscape, ecological or heritage designations, sensitive human receptors and access/highway considerations, amongst others. The Council offered no evidence that would contradict these findings. The SSA confirmed that there were no sites of suitable size for a 50MW solar farm within a suitable distance from the grid connection point that lie wholly outside BMV land although on grounds of costs and practical feasibility, no soil survey work was completed other than within the appeal site. This factor is a significant omission.
 15. **The appellant provided an assessment of alternative sites to demonstrate why agricultural land is to be used for the appeal development.** This included assessing the opportunities that might be available on previously developed land (PDL)/brownfield land, commercial rooftops and lower grade agricultural land (grades 3b, 4 and 5).
 16. It is clear that a robust assessment has not been made of the grading of agricultural land within the remainder of the study area, which from the data held by Natural England has significant areas of Grade 3 agricultural land. While I accept the argument that it would not be practicable to undertake extensive investigation of the entire study area, I agree with the Council who pointed out that the explanatory note³ to the Agricultural Land Classification maps sets out that Grade B reflects 'areas where 20-60% of the land is likely to be 'best and most versatile' agricultural land'. This to my mind adds to the criticism that the evidence has failed to demonstrate that there is no land available for this development within the study area of a lesser agricultural quality, contrary to national and local policy. It also does not stand up to scrutiny as the 'compelling evidence', which is sought in the WMS.
 17. My attention was also drawn to the Oaklands Farm Solar Limited (BayWa r.e. UK Ltd) Preliminary Environmental Information Report⁴ submission to the National Infrastructure Planning Unit of the Planning Inspectorate for the purposes of a Development Consent Order for a 163MW solar farm and onsite storage facility at a site also within the appellant's study area to the north-west of the present appeal site and within South Derbyshire District. From the appellant's evidence, it is clear that this site would also include extensive areas of Grade 3 land, which has not been assessed. It must be assumed that lower quality grade 3 agricultural land might well be available as an alternative to the appeal site.
 18. To complete the assessment, the appellant considered the availability of previously developed land (PDL) and the possibility of utilising commercial

³ Explanatory note for Likelihood of Best and Most Versatile (BMV) Agricultural Land – Strategic scale maps – ALC021 (naturalengland.org.uk)

⁴ Oaklands Solar Farm About the Project BayWa r.e. <https://www.baywa-re.co.uk/en/solar/oaklands-solar-farm#about-solar-energy> viewed 12/5/23

rooftop sites. Data from the Council's brownfield land register together with the adjoining Lichfield and East Staffordshire District Councils were used to assess PDL sites. The most recent databases held by the three local authorities contain 8 PDL sites all of which are very considerably smaller than the 70.18 Ha. These sites would not be capable of generating a comparable megawatt output and would therefore not be economically viable in terms of factors such as the cost of connecting into the electricity distribution network. Moreover, they are either allocated for housing or have planning permission for such purposes. In terms of utilising rooftops, there is only one suitable building within the study area in nearby Burton-on-Trent. However, this site is allocated for residential development with a pending outline application to be determined and can be discounted. I am satisfied that the identified sites are either allocated for alternative uses or are more constrained than the appeal site in terms of their suitability for solar development.

19. The appellant explained that the appeal site land will remain available for agricultural use with the land below the solar arrays possibly utilised for sheep grazing purposes. It was explained at the hearing that the 40 years of fallow would enable the quality of the soils to be repaired. Moreover, biodiversity improvements proposed include new planting of trees and hedgerows with wildlife friendly species and enhancement of existing habitat corridors throughout the site. New planting and landscaping would leave a lasting environmental legacy beyond the lifetime of the solar farm.
20. While recognising that it may not be reasonable to expect developers to fully investigate every possible location for a solar farm within a wide study area and neither is it incumbent on appellants to demonstrate that there is no possible alternatives to an application site, nevertheless, the wider study area is expansive and sufficiently so that it is being earmarked as a potential national infrastructure project. In acknowledging that the main issues for food security as identified by DEFRA⁵ are climate change and soil degradation, this only serves to emphasise the importance of maintaining higher quality agricultural land where this is found in food production.
21. The hearing heard that the land hereabouts is a valued resource with tenant farmers under contract to a national potato crisps manufacturer who demand the highest quality of outputs. It was pointed out that there are only 80 such farms in the country producing the required grade of potato crop. Moreover, no calculation had been made of the existing bioenergy plant that is being generated each year and which contribute to renewable energy targets that may also close should the proposed solar farm goes ahead. The evidence presented at the hearing on this was scant however and has not featured highly in my consideration.
22. **There is no definition of what might constitute 'compelling evidence' but I accept the Council's arguments that the evidence fails to demonstrate that there are no suitable poorer quality areas of land in the study area that could be used or accommodate the appeal development save for a broad brush map-based review. In this regard, the appeal proposal contravenes relevant provisions of BNE4 of the SDLP, the NPPG and the WMS. The loss of just under 50% of BMV is a significant negative aspect of the appeal proposal which weighs heavily against the development.**

⁵ United Kingdom Food Security Assessment 2009 – Department of Environment, Food and Rural Affairs

Landscape and Visual Impact

23. There is little question that the nature and scale of large-scale solar farms may result in landscape harm. Both national and development plan policy adopts a positive approach towards this form of renewable energy development where harms are outweighed by the benefits of solar schemes. There is a distinction to be made between impact on landscape, which should be treated as a resource, and impact on visual amenity, which is the effect on people observing the development in places where the development can be viewed, such as villages, roads, public rights of way and individual dwellings and I have assessed the appeal development on this basis.

Landscape character

24. Paragraph 174 of the Framework indicates that the intrinsic character and beauty of the countryside should be recognised. It does not seek to protect, for its own sake, all countryside from development; but rather, places emphasis on protecting 'valued landscapes'. The concept of a valued landscape is not defined in the Framework, but the principal parties agreed that the landscape of the appeal site and immediately beyond should not be described as such. The site does not form part of any designated landscape but from the perspective of some interested parties, the value of a given area within a particular landscape may depend on the value attributed to it by an individual or groups of people.

25. Given that landscapes will be valued by someone at some time, the term valued landscape must mean that they are valued for their demonstrable physical attributes, which elevate them above just open countryside but below those areas that are formally designated, such as National Parks, AONBs etc. There was consensus at the hearing that impacts on the wider landscape was not of significant concern and that it is the likely effects on the more local landscape where opinions differed. From my comprehensive accompanied site visit, there is nothing that I saw and nothing that I have read that would elevate the appeal site or its surroundings to that of a Framework valued landscape. The heavily ploughed or grazed nature of the site and its comparatively slight undulating form, despite being crossed by public rights of way that help give it a degree of popularity by virtue of it being accessible, does not to my mind elevate it above an area of modestly attractive countryside. In other words, there are no attributes that take it out of the ordinary to a level below that associated with designated landscapes.

26. In terms of landscape studies, both parties have relied on the Derbyshire County Council's 'The Landscape Character of Derbyshire' (published in 2003 and updated in 2014) (The LCD), which identifies the site as falling within the National Character Area 72 (Mease/Sence Lowlands) as defined by Natural England and of the 'Village Estate Farmlands type, which broadly constitutes a gently rolling agricultural landscape, intensively farmed with scattered villages, including Lullington and Cotton-in-the-Elms with prominent tall church spires that punctuate the agricultural landscape along with plantation woods and well-maintained low shaped hedgerows. The LCD describes the area as a well-ordered landscape of open views and quiet rural character. Beyond, woodland is becoming more visually prominent due to the National Forest initiative.

27. The appeal site itself comprises a series of agricultural field parcels that form an elongated shape running east to west and contain the occasional isolated

sparse woodland remnants following intensification by arable agriculture and hedgerows on field boundaries with few trees. A backcloth of woodland copses and woodland belts frame the wider landscape to the north. These features contribute to the appeal site generally having a contained character despite being dissected in half by Lullington Road. The LCD's Planting and Management Guidelines seeks amongst other things to promote linked extensions to ancient woodland by natural regeneration and planting while re-establishing and enhancing the physical links between isolated woodland and hedgerows. I agree with the appellant's assessment that with the presence of so few incongruous elements (other than the existing pylons within the western section of the site), the site makes a positive contribution to the local landscape on the basis that it contains many of the attributes associated with the 'Village Estate Farmlands' character type identified in the LCD.

28. From my extensive site visit, I would concur with the findings of the appellant's Zone of Theoretical Visibility (ZTV) study in relation to the likely impacts within close proximity (1km) of the site and the potential visibility of the solar arrays, particularly from higher ground within the search area of 2km from the site. Due to the presence of existing vegetation, including woodland belts and hedgerows, existing undulations, there would be limited relationship and little intervisibility from Lullington itself and, at the very worst, there would only be glimpsed views of the development from the norther section of the village.
29. I would also concur that, notwithstanding paragraph 174 of the Framework, the site and its immediate surroundings have a medium landscape value and a medium susceptibility or sensitivity to change. This means that despite the nature of the appeal development, the landscape hereabouts has the ability to absorb the proposed development without loss of key characteristics or features or specific aesthetic or overall landscape character. I find that the proposed development would have a moderate adverse effect on the landscape character of the site leading to minor adverse impact on the wider landscape. That is not to say that the initial magnitude of impact, particularly on the public right of way that leads through the site from the north towards Lullington and from public highways would indeed be substantial adverse upon first commissioning but given the standoff, the reinforcement of hedgerows and new planting that is intended to also link the existing isolated woodland areas, I do not consider that the development would be unduly harmful in landscape terms.
30. Overall, despite the impacts arising from the initial commissioning phase, which will undoubtedly lead to substantial adverse impacts, as the planting matures, the proposed landscaping scheme will cause the development to become less prominent in the landscape and lessen the degree of impact when viewed from outside. It is concluded that by Year 15 as envisaged by the appellant, I would agree that the appeal proposal would have a moderate adverse effect on landscape character from within the site leading to a minor adverse effect on the landscape character of the wider area. These are within acceptable tolerances.

Visual effects

31. Visual amenity relates to the direct visual impacts on receptors (people) rather than on the landscape. The appellant's assessment of visual effects is based upon an assessment of views from 26 representative viewpoints, including

- views from residential properties, footpaths and public highways in the immediate vicinity of the site and from the wider landscape with an assessment of likely effects upon receptors at construction, year 1 and year 15.
32. The hearing spent some time exploring the likely impacts on the 'Coffin Trail' (Lullington FP1/Coton-in-the-Elms), a much valued and well-used local rights of way; I was able to walk this route and appreciate the significance of its association with Lullington Church and acknowledged the strong emotional and historical ties felt by the local community. Direct views of the appeal development would be seen along this route and users will experience an immediate landscape that is dominated by the solar farm, its paraphernalia and associated infrastructure. Planting would be unlikely to diminish this impact and the effects on receptors will be significant. It is difficult to envisage that users of the footpath will have the same sense of enjoyment of the wider landscape for much of its length as they do now. Furthermore, hedgerows designed to reach a height of 4m although providing good screening would appear discordant by comparison with the existing style and shape of existing hedges in the area.
33. That said, the appellant's landscaping scheme has sought to respect the need to offset the arrays along much of the route such that the impression of a once slow procession towards Lullington with its historic church spire always acting as a focal point drawing the eye ever closer would be retained. Given that the users of this footpath not only enjoy the vista of the church spire for much of its length, which would be adequately mitigated by the offsetting of the arrays, but also the wider rolling landscape, I would agree with the Council's assessment that the effect at year 1 would be major adverse leading to moderate adverse by year 15; I find this would not be significant.
34. During my extensive site visit, I was able to take in most of the selected viewpoints either at the specified locations or as close to those locations that was possible without encroaching on private properties and land. In each case I found that the assessment undertaken by the appellant to underscore to a limited extent the effects on some receptors, most notably, the review viewpoints (2, 3, 4 and 5) along Lullington FP1 and Coton-in-the-Elms FP7 at year 15. The change from the existing views of a wide expanse of gently rolling landscape to that of high hedgerow screening would have a moderate adverse effect. The effects would not however be significant.
35. Similarly, the landscaping proposals incorporate provision to strengthen existing isolated woodland as noted above while the introduction of new grass mix below the array together with substantial tree, hedgerow and new woodland planting in accordance with recommendations of the National Forest would provide adequate screening for the appeal proposal and lead to landscape and biodiversity enhancement. It would nevertheless change the nature of views from other footpaths and transport routes. I do not agree with the Council that the effects would be moderate adverse. Rather, the landscape change as a consequence of the landscaping proposals would amount to slight adverse effect at year 15, which would be acceptable.
36. There would be no appreciable views from residential properties within Lullington, particularly given the nature and extent of proposed planting. I find that the appellant's assessment is generally accurate, which is a view supported by officers during consideration of the planning application and

supported by the Council's landscape consultant who surprisingly was not present at the hearing. During my site visit, I was able to assess the likely effects on Lady Lees, Home Farm and Grafton House, which were the properties identified for greatest scrutiny at the hearing. There is little difference in the conclusions drawn by the parties with respect to these properties although I accept that due to the proximity of Grafton House and the elevated nature of Lady Lees and thus both being of high sensitivity, the Council's assessment of the development having a moderate adverse effect at year 15 is more accurate. That said, although at an acceptable level in planning terms, the effects would be keenly felt by occupiers of these properties.

37. Bringing all the above together, I would acknowledge that a large-scale solar farm located in an otherwise largely unspoilt countryside would have an adverse effect on landscape character and lead to visual impact. The appeal site is accessible by the public from the local public footpath network and includes a historic route which is still used extensively and enjoyed as a recreational resource. It is accepted that the landscape is not a valued landscape in terms of the Framework and no prominent landmarks would be affected. Due to the combination of factors, including the gentle rolling nature of the landscape, existing field patterns, the heavy arable practices and the opportunity to strengthen existing woodland tracts and hedgerows through mitigation, the long-term moderate adverse effects that have been identified would be within acceptable tolerances. There would be no residual impacts following decommissioning. There would also be benefits from better management of hedgerows and woodland blocks, in line with National Forest management objectives.
38. Consequently, I would conclude that the proposed development would comply with South Derbyshire District Council Local Plan Part 1 (LP Part 1) Policies SD6 and BNE4 and Local Plan Part 2 Policy BNE5 (LP Part 2). Collectively, these policies amongst other things, seek to encourage renewable energy developments provided they do not give rise to unacceptable landscape and visual impacts, are well-designed and lead to protection, enhancement, management and restoration of biodiversity and the landscape with particular reference to the objectives of the National Forest and where adequate mitigation to overcome adverse impact to the character of the receiving landscape would be provided.

Heritage Impacts

39. The Statement of Common Ground identified two areas of concern for the Council in relation to the impacts of the development on the settings of The Church of All Saints Grade II* Listed Building and the Lullington Conservation Area (the CA). These assets are some distance from the southern edge of the appeal site. During the course of the application, officers believed that there would be some harm to the settings of Lady Leys Farm and Grafton House both Grade II Listed Buildings; however, following consideration by the Council's Planning Committee, members resolved to oppose the development but altered its position to that contained in the officer report to Committee.
40. The parish church dates from the 14th century and contains an impressive three-stage spire. Its significance is derived from its architectural and historic interest together with its association with prominent local families and its role

and function in the religious and community life of the village. Along with its associated churchyard, churchyard walling and graves and monuments, the church has a close physical relationships with village roads, the former village school, village green and buildings fronting Main Street. Its spire moreover by virtue of its height and position within the landscape forms a distinctive and discernible point of reference although this diminishes over distance. The importance of the spire as a landmark cannot be understated; however, the remainder of the church is closely associated with the main body of the village and cannot readily be viewed from outwith.

41. Discussions relating to heritage assets at the hearing focussed primarily on the alleged harm to the setting of the church arising from the potential degradation of how it is appreciated by users of the 'Coffin Trail' Lullington FP1. However, from this distance, the spire continues to pierce the skyline above existing trees and continues to act as a landmark when approaching the village from the north. It is quite inconceivable that the appeal proposal would harm this feature, which only forms an element of the overall architectural and historic significance of the church itself. The church spire will not be directly and physically affected by the solar arrays. Due to the topographical nature of the development and the land, there will be no severance of views of the spire and certainly no interrelationship with the church itself.
42. For these reasons, I find that no harm to the setting of the church would arise as a consequence of the development. The setting of the church would be unaffected. For the purposes of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), the appeal scheme would preserve the listed building along with its features of special architectural or historic interest, which would remain wholly unchanged.
43. I would agree with the Council's assessment that due to the distance from the proposed development, the landscape topography and existing and proposed tree and hedgerow cover, the proposal would not be harmful to the special interest or setting of Grade II Listed Buildings, namely Lady Leys Farmhouse, Woodfields Farm, Raddle Farm, Manor Farm and the Old School House or the locally listed Grafton House, which were identified in the officer's report.
44. With the exception of the church spire, I am satisfied that the proposed development would not be visible in views from or towards any part of the CA. The proposed development would not have any meaningful effect on the setting and therefore the significance of the CA and thus both the character and appearance would be preserved in line with s72(1) of the 1990 Act.
45. In my assessment, the proposal would not cause any harm to historic assets and this matter would not weigh against the appeal development. Consequently, there would be no conflict with LP Part 1 Policies SD6 and BNE2 or LP Part 2 Policy BNE5, which together seek to support renewable energy developments provided there are no unacceptable impacts on the historic environment and that proposals for development protect, conserve and enhance heritage assets.

Planning balance and conclusion

46. There is little doubt that we are close to a point where climate change is a reality and that if left unchecked will have very serious consequences for large parts of our planet. The development would clearly make a significant

contribution to providing energy from a renewable source. The proposal would produce 53,627 MWh/year which the appellant states is the equivalent to the electricity demand from approximately 17,300 homes or 17% of the population of the South Derbyshire District Council area. UK electricity demand is expected to double by 2050 and the decommissioning of existing carbon generating assets will require new low-carbon generation facilities as well as wider transitions outside of the power sector in order to meet national and international targets to reduce carbon emissions and mitigate the effects of climate change.

47. The Framework at paragraphs 153, 155 and 158 encourage the development of renewable and low carbon developments whilst Government wants to accelerate the development of renewable and low carbon technologies through the deployment of wind, nuclear, solar and hydrogen. The ambition for solar is to increase capacity by 14GW and by 5 times by 2035. Whilst national policy is to encourage large scale projects to be located on previously developed, or lower quality value land where possible and to avoid, mitigate and compensate for impacts of using greenfield sites, there is no question that energy from solar will form a critical element of the plan to decarbonise the UK electricity sector. These factors coupled by the timeliness of delivery and relatively easy connection to the national grid in this instance weighs significantly in favour of the appeal proposal.
48. I recognise the time limited nature of the appeal scheme and that agriculture may well continue during the scheme's lifetime although no guarantees were offered at the hearing. Whilst the 40-year period may allow for the restoration of the soil structure and reduce the problems associated with nitrates usage, it appears to me, as it has done to other Inspectors at appeals cited by the Council, that 40 years would indeed constitute a generational change. I accept the appellant's arguments that where sites are made up of a patchwork of agricultural gradings, it is not feasible or practical to separate small areas of BMV land from development, particularly as this would result in that land having little commercial agricultural utility. However, this proposal would harm the BMV resource, which amounts to just under half the total available hectareage and would make an unacceptable indent on the contribution that a large proportion of the site makes towards food security for a significant period of time.
49. There was little dissension that the appeal scheme would provide substantial ecological enhancements with the landscaping proposals providing a 270% gain in habitat units and 46% net gain in hedgerow units as detailed in the appellant's Biodiversity Net Gain Assessment, which is well above policy requirements. The appellant's Landscaping Strategy Plan is well thought through and would in time provide a mature landscaped setting to the appeal scheme, as well as improving ecological connectivity in support of the National Forest objectives. The impact on biodiversity arising from the proposed development would be positive and moderate with no unacceptable adverse impact on internationally or nationally designated sites, habitats or species. This carries positive weight in favour of the appeal proposal.
50. The early implementation of a substantial renewable energy scheme that would provide clean electricity for some 17,300 homes should rightly carry significant positive weight. The biodiversity net gain and long-term landscape benefit

would also carry moderate weight. The parties agreed that the job creation would similarly carry moderate weight.

51. While collectively the benefits arising from the appeal scheme are significant, the harm that would be caused by allowing the development of just below 50% of the site's hectareage over a period of 40 years would be of greater significance.
52. Taking all this into account, the appeal proposal would be conflict with the development plan and the Framework and would not constitute sustainable development.
53. Accordingly, for the reasons stated I conclude that the appeal be dismissed.

Gareth W Thomas

INSPECTOR

Appearances:

For the Appellant:

Gareth Phillips	Partner, Pinsent Masons
Graham Robinson	Associate Director, Hodges Land Pro
Christopher Jackson	Regional Director, Land Pro
Andrew Rudge	Fuller Long
Matthew Carpenter	Senior Associate, Pinsent Masons
Lesley Giles	Project Manager, Island Green Power
David Elvin	Head of Projects, Island Green Power
Daniel Baird	Daniel Baird Consultancy

For the Council:

Bob Woollard	Director, Planning & Design Group
Stuart Hammond,	Planning Officer, South Derbyshire District Council

Interested Parties:

Cllr Amy Wheelton	South Derbyshire District Councillor
Cllr Helen Bailey	Chair of Lullington Parish Council
Jason Bailey	Local tenant farmer
Denise Walsh	Local resident
Valerie Shaw	Local resident, Chair of Lullington Village Hall Committee
Steven Mills	Local resident
Emma Hooper-Smith	Local resident
Stuart Whitby	Local resident

Documents presented to the Hearing:

Document 1:	Core Documents List
Document 2:	Appeal decisions not included in evidence
Document 3:	Suggested site visit route map
Document 4:	Liz Lake Associates Photo Location Plan

APPENDIX 31

**Appeal APP/J1535/W/23/3334690 – Land adjacent to Harlow Road, near
Roydon, Essex**



Appeal Decision

Inquiry Held on 3-5 and 10-11 April 2024

Site visit made on 9 April 2024

by M Shrigley BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3rd May 2024

Appeal Ref: APP/J1535/W/23/3334690

Land Adjacent to Harlow Road, Near Roydon, Essex

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Low Carbon Solar Park 18 Limited against the decision of Epping Forest District Council.
 - The application Ref EPF/1974/22, dated 24 August 2022, was refused by notice dated 29 June 2023.
 - The development is for the construction and operation of a solar photovoltaic ('PV') farm and associated infrastructure, including inverters, DNO substation, customer switchgear, security cameras, fencing, access tracks and landscaping.
-

Decision

1. The appeal is allowed and planning permission is granted for the construction and operation of a solar photovoltaic ('PV') farm and associated infrastructure, including inverters, DNO substation, customer switchgear, security cameras, fencing, access tracks and landscaping on land adjacent to Harlow Road, Near Roydon, Essex in accordance with the terms of the application, reference EPF/1974/22, dated 29 June 2023, subject to the 'Schedule of Conditions' set out at the end of this decision.

Procedural Matters

2. Additional indicative landscaping and layout plan information to supplement the flexibility principles agreed with Epping Forest District Council (EFDC) at application stage were submitted by the Appellant during the appeal process. The plans provide further information than would otherwise be the case, as an aid to all parties, alongside usual scope for conventional planning condition use and EFDC have not contented their inclusion. Therefore, I have taken them into account in my findings.
3. I have dealt with local policy implications largely within the main issues. But various elements of the dispute require wider consideration of national policy, and strategy. Some concluding aspects of the main issue arguments subject to the appeal also extend to the overall planning balance applied, as indicated in my reasoning.

Main Issues

4. The main issues are the effects of the development: i) on the Green Belt having regard to its openness and purpose; ii) the loss of farmland for food production; and iii) the overall scheme merits applicable including whether the

harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify it, as well as recognition of all harms and benefits in the planning balance.

Reasons

Green Belt openness and purpose effects

5. The main parties both agree that the appeal scheme should be treated as 'inappropriate development' when applying national and local planning policy terminology linked to protecting the Green Belt. Whilst some Green Belt harm is accepted by the Appellant, the level of resultant harm and the specific reasons such harm arises are matters in dispute.
6. From a local policy perspective Epping Forest District Local Plan 2011-2033 Part One, March 2023 (EFDLP) Policy SP5 seeks that the openness of the Green Belt will be protected from inappropriate development. EFDLP Policy DM4 sets out Green Belt purposes and the very special circumstances test. Additionally, Policy DM20 states that renewable energy development will not be supported where it has any adverse impact on the openness of the Green Belt.
7. As per paragraph 142 of the National Planning Policy Framework (the Framework), the government attaches great importance to Green Belts. The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and their permanence.
8. The wording of the reason for refusal given in the Decision Notice contested describes the development as being contrary to development plan policies that refer to both 'openness' and 'purpose' aims. As part of their case EFDC allege specific conflict with paragraph 138 (b) of the Framework and repeated in (EFDLP) Policy DM4 which is to 'prevent neighbouring towns merging into one another'.
9. At the Inquiry EFDC also cited harm related to Framework paragraph 138 purpose (a): '*to check the unrestricted sprawl of large built-up areas*'; and (c): '*to assist in safeguarding the countryside from encroachment*'. It otherwise being broad common ground that conflict with purposes (d) and (e) do not arise.
10. The Supreme Court judgement in *R (Samuel Smith Old Brewery) v North Yorkshire County Council 2020* was referred to during proceedings, and I recognise that assessing openness involves spatial concepts. Whilst any visual impact on openness is still important, spatial factors and the presence or otherwise of built or urban development is a notable element of the disagreement for this appeal.
11. In gauging the overall Green Belt openness effects, at my site visit I could see the appeal site comprises a series of open undulating agricultural fields approximately 0.5km east of Roydon and 1.5km west of Harlow. Nearby surrounding features include the river Stort and railway line located roughly to the north of the site. An industrial estate and agricultural fields are located adjacent to the eastern boundary. Further afield are other open fields, trees, and residential properties.

12. In spatial terms, some 48.4ha of the total approximate 70ha appeal site area would be occupied by the solar farm, for up to 40 years. The introduction of engineered structures associated to it would be a significant spatial change which would markedly reduce Green Belt openness levels of the appeal site.
13. That said, the panels would be low-lying, set on posts, and restricted to about 3 metres in maximum height. Grassland would otherwise remain on the surface of the ground with almost no hardstanding elsewhere covering the land.
14. Aside from spatial openness changes the visual openness implications involved relate to a site with largely contained characteristics. There is a noticeable degree of enclosure created by existing hedgerows and treeline screening the site from Roydon, and the industrial buildings of the business park screening it from residential Harlow. Owing to topography, surrounding vegetation, and existing built form, vantages of the entire site are restricted.
15. In tandem, the Appellant proposes an extensive package of landscape mitigation, comprising of native hedgerow and tree planting, which would further screen and filter views of the development, for walkers using the Public Right of Way (PRoW) networks. Once that mitigation has reached full maturity, only sparse and occasional glimpsed views of the panels would remain.
16. Contrary to the Council's views the impact on openness arising from new tree and hedge plantings would not erode or be harmful to Green Belt openness or permanence, either during operation of the scheme or following any decommissioning work if left in place. Indeed, it would become legacy planting which enhances the character and biodiversity of the area as a welcomed scheme benefit.
17. The design parameters of the proposed solar farm arrays enables the retention of open agricultural land beneath and surrounding them. Although there would be a clear reduction in spatial and visual openness of the Green Belt from the presence of the solar arrays and associated equipment, the level of openness reduction would otherwise be tempered by substantial swathes of undeveloped greenery remaining in situ.
18. Bringing the spatial and visual aspects of the resultant openness reduction together, when having regard to purpose 138 (a) functionally and characteristically, I accept that the solar farm would be different to other forms of development which would be usually characterised as 'urban'.
19. I have also had regard to the reversibility arguments made and decommissioning conditions would ensure that any aspect of openness intrusion is reversible. I agree ease of reversibility plays an important role, and that the groundworks involved are not unduly intrusive.
20. Moreover, whilst Harlow is a town with a population of approximately 90,000, Roydon is a small village with a population of approximately 1,500 and is not a 'town' by definition, as confirmed by the development plan. Therefore, the scheme would not result in two towns merging if applying Framework policy wording in the strictest sense. But even if considering both settlements as towns, the resultant effect would not lead to coalescence because of the clear differences in characteristics between the settlements and that of the solar

- farm, the low-lying stature of the arrays, and because of the substantial intervening natural greenery remaining.
21. In making their arguments, EFDC place much emphasis on the 'Stage 2 Green Belt Review' they conducted. But tellingly that document is silent on solar development. Subsequently, it has little bearing in the dispute before me.
 22. Having regard to all arguments made toward Framework paragraph 138 purpose (a) and (b), I agree the solar farm would have a completely different character to existing 'built-up' areas either side of it also acknowledging it has substantial landscaping greenery as part of its overall composition.
 23. In the absence of any shared characteristics to nearby built-up areas, the solar farm would be read and experienced in the local landscape as being entirely distinct from the urbanised and built-up qualities of Roydon or Harlow.
 24. Consequently, although the solar panels and associated development are no doubt engineered built features, recognition of that point does not suggest to me it would result in urban sprawl of an existing built-up area.
 25. Thus, I disagree that the scheme would contribute to sprawl from either Harlow or Roydon because distinctions in character would remain reinforced by natural landscaping. This is consistent with the principles contained within the Kemberton appeal decision¹.
 26. Nonetheless, there would be inevitable conflict with Framework paragraph 138 purpose (c). That is because of the significant encroachment into the countryside with engineered structures covering an extensive land area which would otherwise entail prevalent open naturalistic qualities.
 27. Aside from material openness reduction and encroachment into countryside forming the Green Belt giving rise to harm, I acknowledge definitional harm associated to inappropriate development set by policy arises by default.
 28. All in all, the resultant effect of the development would give rise to a moderate level of overall harm to the Green Belt accounting for: openness impacts; the specific purposes the development would conflict with; and relative to the scheme's magnitude. Aligned with the content of Paragraph 153 of the Framework I give substantial weight to the demonstrable harm arising.
 29. Accordingly, I find there would be conflict with the collective aims of SP5, DM4 and DM20 of the EFDLP which combined seek to protect and conserve the openness and purpose of the Green Belt. Apart from definitional harm arising linked to policy, there would be a marked reduction in openness through encroachment into undeveloped countryside. The resultant effect would conflict with paragraph 138 (c) of the Framework, but not parts (a) or (b).

Loss of farmland for food production

30. EFDC's second reason for refusal focuses on the loss of farmland for food production and is linked to the content of EFDLP Policy DM5 for Green and Blue Infrastructure provision. I note the references to the 2021 Framework it also comprises were superseded by the December 2023 changes.

¹ Reference APP/L3245/W/23/3329815

31. As part of their argument EFDC alleges failure to demonstrate compelling evidence of a lack of less harmful alternative sites, and the subsequent 'loss' of BMV land as being unacceptable.
32. In that context, the main parties broadly accept that the policy term 'Green Infrastructure' can relate to farmland for food production. And that Policy DM5 seeks to ensure that development proposals are designed and located in a way that retains and enhances such assets taking into a range of criteria.
33. In tandem with local policy provision, the Framework identifies farmland falling into Grades 1, 2 and Subgrade 3a would constitute 'best and most versatile' (BMV) land. Yet notably, none of the detailed criteria listed within Policy DM5 directly refers to BMV or such grading for assessing policy compliance with it.
34. However, the Framework advises me, at paragraph 180 (b), that the economic benefits of BMV land should be recognised. Footnote 62, in the context of plan making in paragraph 181, advises that where significant development of agricultural land is involved, poorer quality land should be used in preference.
35. Footnote 62 includes that the availability of agricultural land used for food production should be considered, alongside other policies in the Framework, when deciding what sites are most appropriate for development. Accordingly, I have borne in mind such advice.
36. The Appellant's submitted Agricultural Land Classification (ALC) assessment (July 2022) confirms to me that the appeal site is primarily Grade 3b (at some 73%) with smaller areas of Grade 3a (some 23%) and Grade 2 (2%) in addition to 'other land' (of 2%). The survey is identified as being in accordance with the guidelines endorsed by Natural England², and therefore carries substantial weight.
37. The ALC evidence taken as a whole, highlights that the site does comprise a mixture of Grades 2, 3a and 3b. But it is shown to mostly comprise of subgrade 3b moderate agricultural quality overall. With only approximately 25% falling as BMV, distributed in a complex uneven pattern.
38. Factoring the Appellant's quantitative assessments, I note that in practical terms the BMV land referred to could notionally produce up to around 25 tonnes of wheat more than poorer quality land. Were the panels to be moved from the appeal site to poorer quality land elsewhere. That notional figure is comparative to the overall UK production of circa 22 million tonnes evidenced.
39. I also recognise that irregular patches of BMV land in the areas south of Harlow Road would not be able to be utilised separately for food production purposes. As this would be impractical for commercial farming management requiring full site availability and access.
40. Moreover, based on the Appellant's assessment, the appeal site represents in the order of 0.3% of the overall farmland within the District. Consequently, I accept it is extremely probable that greater proportions of higher graded agricultural land would be present elsewhere locally.

² Agricultural Land Classification of England and Wales (Ministry of Agriculture, Fisheries and Food), 1998.

41. Notional sheep grazing would be possible with the development in place. But there are no binding landowner guarantees any grazing use would ensue. Furthermore, scope for a planning condition would not meet the test of necessity in this case, owing to it having no strong policy basis behind it.
42. Even if some sheep grazing use did ensue with the development, which I accept notionally it could, it would not be comparable to the more intensive farming practices possible without the development. Therefore, I find potential grazing uses referred to as a continuation of food production to carry little substance.
43. Furthermore, I appreciate that the wording of the reason for refusal given by EFDC is based on food production and Policy DM5 does not require agricultural land nor BMV land to be farmed.
44. As to wider alternative site arguments posed and the presence of the extant March 2015 Written Ministerial Statement (WMS). I realise that adopted local and national policy as well as underlying energy need circumstances have evolved since the WMS was issued. Plus, there is no policy requirement for the Appellant to have assessed alternative sites, nor any other compelling reasons for them to. The ACL evidence is comprehensive and sufficient in meeting what current prevailing policy requires.
45. Likewise, it is credible resting fields from agricultural activity during the scheme's life span would allow soil health to improve, up to decommissioning stage. I have also had regard to the favourable embedded landscaping possible in gauging overall Green Infrastructure impact arguments.
46. That said, there would be some inevitable conflict with Policy DM5 through the solar farm occupying green infrastructure otherwise capable of producing food, for its full lifespan. I have considered the economic arguments of retaining BMV land for food production. Whilst there would be uptake of a modest area of high quality grade land the Appellant otherwise demonstrates lower graded land would in the main be utilised. It would be impractical to cordon out quality variations site wide for commercial food production purposes.
47. Given all those factors, I find when applying the terms of the Framework relating to economic and environmental considerations involved, the degree of conflict with EFDLP Policy DM5 should only carry limited negative weight.

Other planning merit considerations

48. Beyond Green Belt considerations, separate landscape and visual harm arguments do not feature in EFDC's reasons for refusal. Nor do they make any case there is any alleged breach of development plan policy directly related to those matters. That position is consistent with the content of the officer report evidenced and the associated landscape advice feeding into it.
49. Nonetheless, national policy does recognise that a degree of landscape and visual harm is inevitable for renewable energy schemes of this nature which necessitate a countryside location. The Appellant acknowledges this in its submissions accepting there would be some landscape and visual harm. There would be moderate landscape and visual harm which would be largely contained within the appeal site boundary, which I attribute significant weight to.

50. Whilst heritage impacts are not in dispute, they do form part of the overall planning balance triggered. The statutory duties contained within the Planning (Listed Buildings and Conservation Areas) Act 1990 require me to have special regard to the desirability of preserving designated heritage assets or their setting, or any features of special architectural or historic interest which they possess.
51. 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. 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.
52. The Appellant's heritage impact assessment identifies there would be less than substantial harm at the lower end of the spectrum to the setting of Roydon Village Conservation Area (CA) and East End Farmhouse (Grade II Listed).
53. East End Farmhouse which has distinctive 17th century architectural features lies about 75 metres away to the north-east. The fields of the northernmost area of the appeal site are evidenced to have an association to it, from historic working of local land. But no panels are proposed in that part. Plus, there would only be glimpsed and filtered views to panels to the north-east of the asset and from the public road close to it.
54. Within the core of Roydon Village CA are a wide range of buildings of special architectural and historic interest dating from the 13th to the 19th century. Glimpsed views into part of the northern area of the site are possible from the northern edge of the CA and on the wider approach. But there is substantial separation to the historic core, with intervening fields and natural landscape features.
55. As a result, EFDC do not object to any heritage impact referenced nor did they raise any additional impacts during the Inquiry. Accordingly, taking into account all aspects I have no reason to disagree with the heritage impact conclusions forming the case.
56. In relation to the Appellant's overarching need arguments, the Framework supports the increased use and supply of renewable energy. It is estimated that the solar panels would generate approximately 49.9 MW of renewable energy, which is enough to power around 16,581 homes and deliver an anticipated carbon dioxide displacement of around 11,210 tonnes per annum.
57. The energy production evidenced is equivalent of supplying renewable energy to around 30% of homes in EFDC's administrative area. Furthermore, the appeal site area represents only around 0.21% of the total area of Green Belt land encompassing approximately 90% of the entire District.
58. Recognition of those points is important because the Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. Recently, the

- Government committed to reduce emissions by 78% compared with 1990 levels by 2035.
59. The National Policy Statements (NPSs) for the delivery of major energy infrastructure are also material considerations in my decision. The NPSs recognise that large scale energy generating projects such as this will inevitably have impacts, particularly if sited in rural areas.
 60. NPSs EN-1 and 3 identify that, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farms provide a clean, low cost and secure source of electricity.
 61. Connected to NPS considerations, I have had regard to Government's Net Zero Strategy: Build Back Greener (2021) which also has relevance. It explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable energy generation such as solar.
 62. I am also aware the Government's British Energy Security Strategy (April 2022) does not set a firm target for solar but expects a five-fold increase in deployment by 2035. This aligns to the strategy's aim that by 2030, 95% of British electricity could be low carbon; and by 2035 that the electricity system will be able to be decarbonised, subject to security of supply.
 63. Locally, I note that EFDC declared a climate emergency in September 2019 and in July 2023 published a Climate Change Action Plan which supports the Council's ambition to "*do everything within its power to become carbon neutral by 2030*". In the context of that commitment there are no other large scale solar farm proposals cited as coming forward within the District.
 64. As referenced in Government's 'Powering Up Britain' (March 2023) Plan, solar is one of the cheapest forms of electricity generation. I recognise that with more locally derived renewable energy the UK would become less reliant on price volatility from imports.
 65. Based on the Climate Change Act, NPSs, wider government strategy, EFDC's own declaration and subsequent Climate Change Action Plan I accept there is an urgent need for renewable energy electricity projects to be brought forward.
 66. Importantly, the site benefits from a grid connection nearby, and the Appellant references a connection offer as being in place. As such, I agree the scheme would make an early and significant contribution to the objective of achieving Net Zero and the commitment to reducing emissions by 78% compared with 1990 levels by 2035. Accordingly, the clean and secure energy benefits on offer attract substantial overarching weight in my decision.
 67. The Biodiversity Net Gain (BNG) anticipated would involve planting new native species hedgerows and new trees enhancing the natural as well as the visual features of the existing landscape. The evidence alongside planning condition use agreement suggests ecological enhancement for a minimum of a 70% increase for 'habitat units' and around 150% uplift for 'hedgerow units' can be achieved. This would be consistent with development plan strategy supporting ecological and landscape enhancements, which carry significant weight.

68. The Flood Risk Assessment information evidenced confirms that the risk of fluvial flooding to the site is low and the development would not increase the risk of flooding off site. Even so, the design of the scheme through condition use would incorporate SuDS drainage features, offering some further increased flood risk resilience and overall natural habitat betterments integrated with other expected landscaping provision.
69. There would be some economic benefit attributed to allowing construction work. There is no clear indication existing agricultural jobs would be lost. But even if that was the case, maintenance of the wider site is likely to require opportunities in landscape and ecological management. Consequently, I give the overall economic betterment from all job opportunities modest weight accepting that the overall betterment is more favourable in relation to construction phases.
70. Additionally, there would be short lived harm to local amenity arising from construction traffic movements and site-work. Such construction period activity is likely to result in unavoidable impacts to residents, drivers, and pedestrians. However, all the evidence suggests that there would be no significant highway safety detriment if the appeal was allowed. That is because construction period impacts would be able to be mitigated by management arrangements achieved through planning condition use.
71. Outside of the main issues I have carefully considered other interested party objections. The local PRow network can be maintained during construction and operation with landscaping along these routes, including infilling of existing and new hedgerows. A condition for a detailed CTMP would enable this for the construction phases with PRow management to be submitted and approved.
72. Beyond aesthetic considerations of some people disliking the appearance of the solar farm, once completed, there is no convincing basis to conclude it would prevent the enjoyment of the countryside for recreation or using the public routes within it.
73. I have considered potential for glint and glare problems to arise but the distances and buffers involved to surrounding roads and property are adequate. At operational stages there is nothing convincing demonstrating that the scheme would result in harm to amenity by virtue of noise or the solar farm's positioning.
74. There are no other public safety issues arising that are incapable of being addressed by planning condition. Furthermore, I am satisfied protected species, other ecological interests coupled with decommissioning requirements could be properly safeguarded, controlled, and enforced through planning condition use.
75. In relation to most aspects of the appeal I have been referred to a long list of appeal decisions and judgements. Considering those, I do not find any conflict with the broad principles of decision making triggered by this case. Collectively, the other cases also involve a combination of different sites and sets of circumstances which do not lead me to alter my findings.

Conditions

76. Without prejudice, the main parties compiled a list of conditions in the event the appeal were to be allowed, which was also subject to refinement discussion

at the Inquiry itself. In the main, the majority of the conditions detailed are appropriate and meet the statutory tests.

77. Standard conditions would be needed to specify the time limit and plans in line with statutory provision and to provide a formal mechanism for amendment. I agree separating out the 'indicative' plan information tabled, is necessary as there are some inconsistencies influencing the overall layout owing to the internal access track position to be formalised which other agreed conditions are reliant upon. Due flexibility is required on related aspects of the layout dependant on the type of solar array to be eventually agreed on by the site operator.
78. I also note that the existing access provision from the public highway which runs a good way into the site would still be utilised as a fixed entrance and exit point irrespective of allowing such condition flexibility.
79. A range of conditions are necessary and appropriate securing: landscape and ecological enhancement measures, including BNG provision; protection measures for existing trees; mitigation for breeding birds as well as a Skylark Mitigation Strategy. This is to ensure an acceptable level of visual amenity and that biodiversity is respected along with an appropriate level of future ecological management.
80. The approval of precise details for the layout and appearance of the development including the solar panels, inverters, substation, access tracks, CCTV, fencing, and related infrastructure is warranted in the interests of safeguarding visual amenity and owing to indicative elements of the scheme.
81. Decommissioning conditions would ensure site restoration is properly undertaken in the interests of protecting the character and appearance of the area. The removal of permitted development rights is necessary to ensure the visual appearance of the area is respected. It is necessary to limit the export capacity of the scheme to a maximum of 49.9MW given the description of the development is broad.
82. Additionally, further detailed conditions would be required to ensure: suitable drainage and flood risk management; overall construction management and future repair work is respectful to the area; any land contamination is properly dealt with; noise from plant and machinery is controlled; highway safety is maintained during construction and operation; and that any new lighting does not give rise to ecological or other wider amenity harm.
83. There are no clear commitments or specific policy requirements for sheep grazing. To allow such activity would be a prerogative of the landowner. Thus, a grazing plan secured by way of condition would not meet the test of necessity nor would it be enforceable in this case.

Planning Balance and Conclusion

84. Planning law requires that applications for planning permission be determined in accordance with the development plan unless material considerations indicate otherwise.

85. There would be conflict with the Council's development plan arising from the main issues disputed related to Green Belt impacts as well as the uptake of farmland, recognised as green infrastructure provision locally.
86. Having regard to the Framework, inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The Framework advises me at paragraph 153 that substantial weight is given to any harm to the Green Belt. 'Very special circumstances' will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.
87. I note Framework paragraph 153, is holistic in nature in assessing harm. In this case the level of overall harm to the Green Belt arising from the solar farm would be moderate, also bearing in mind the site would eventually be decommissioned. Albeit a generational time span is involved.
88. The Appellant's overall very special circumstances case is reliant on the level of Green Belt harm that would result as well as the need for solar renewable energy development at a national scale, in tandem with the range of other scheme benefits which would be delivered.
89. I agree the Appellant's justification case is compelling and that the combined scheme benefits on offer, in particular, the clean and secure renewable energy generation which would result constitute very special circumstances. Such justifications clearly outweigh the moderate Green Belt detriment arising.
90. The development would prevent land from being farmed for food production during its lifespan. There is some conflict with EFDLP Policy DM5. But I find only limited negative weight should apply to the loss of farmland given most of the land in question is not BMV, in tandem with the other economic and environmental considerations referred to.
91. In addition, as directed by paragraph 202 of the Framework I am required to assess designated asset harm in relation to any public benefits on offer. I have attributed significant weight to the less than substantial harm arising to two nearby designated assets. However, there would be significant benefits from the appeal scheme encouraged by other elements of the Council's development plan and the content of the Framework.
92. This includes benefits from legacy planting provision for ecological and visual enhancements long term. Overall, the public benefits, in this case, outweigh the 'less than substantial harm' to the settings of designated heritage assets, bearing in mind the overall intervening landscape evident in concluding on such harm.
93. From a wider decision-making perspective, recognising all the harms I have identified and referenced in my above reasoning including that to: the Green Belt (linked to definitional harm, openness reduction, and its purpose); the limited uptake of land of higher grade best and most versatile agricultural land and farmland attributed to green infrastructure locally; the setting and significance of two designated heritage assets; landscape and the visual appearance of the area; and the disruption to local roads and amenity levels probable during construction periods, taken collectively. Combined all those

considerations attract significant negative weight within the planning balance. Nevertheless, the level of overall scheme benefits on offer still exceeds all of those harms combined.

94. Overall, my decision is made on the total level of harms arising against any overall benefits attributed to this appeal scheme. Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 I have identified there is some conflict with EFDC's development plan. However, benefits of the proposal are material considerations which outweigh the conflict with the development plan and all harms that I have identified. Subsequently the direct benefits arising from the development give me sufficient reasons to allow the development to proceed.
95. Taking all matters raised in the round I find that the overall benefits of the development would far exceed the harms it would cause. For the reasons set out above the appeal succeeds.

M Shrigley

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Thea Osmund-Smith Counsel

WHO CALLED:

Charles Mylchreest Landscape Witness

Tony Kernon Agricultural Land Witness

Nick Bowen Planning Witness

FOR THE LOCAL PLANNING AUTHORITY:

Olivia Davies Counsel

WHO CALLED:

Ian Lanchbury Landscape Witness

Liz Fitzgerald Planning Witness

INTERESTED PARTIES (WHO SPOKE AT THE INQUIRY):

Roberto Lagna-Fietta Cllr Rodon Parish Council

Michael Berendt Local Resident

DOCUMENTS SUBMITTED DURING THE INQUIRY:

INQ1 – Appellant’s Opening

INQ2 – Council’s Opening

INQ3 – Written closings of the Council

INQ5 – Written closings of the Appellant

DOCUMENTS SUBMITTED AFTER THE INQUIRY:

None.

Schedule of Planning Conditions

1. The development hereby permitted shall begin no later than three years from the date of this decision.
2. The development hereby permitted shall be carried out and retained in accordance with the following approved plans: SP-01 Rev 1 and DZ-01 Rev 3, unless written consent is given to any variation by the Local Planning Authority.
3. The development hereby permitted shall be carried out in accordance with the details shown on the approved Indicative Site Layout Plan ref. PLE-01 Rev 10, except as controlled or modified by conditions of this permission, or otherwise varied by the written agreement of the Planning Authority.
4. Prior to the commencement of the development, full details of the layout and appearance of the development, including the solar arrays, inverters, DNO substation, access tracks, CCTV cameras, fencing, and other associated infrastructure must be submitted to and approved in writing by the local planning authority. The details must not exceed the maximum dimensions shown on plan refs. SD-01 Rev 02, (DNO Substation Elevations and Dimensions Plan), SD-02 Rev 02 (Customer Substation Elevations and Dimensions Plan), SD-03 Rev 01 (Indicative CCTV Post- Standard Detail), SD-04 Rev 02 (Security Fence and CCTV Standard Detail), SD-07 Rev 02 (Indicative Deer Fence- Standard Detail), SD-08 Rev 02 (Inverter Elevations and Dimensions Plan), SD-17 Rev 01 (Panel Arrangement 4 29.5 Degree Tilt). The development must be constructed and operated fully in accordance with the approved details.
5. All ecological mitigation and enhancement measures and/or works shall be carried out in accordance with the details contained in the Ecological Appraisal (EDP, August 2022), Winter Bird Survey Report (Dominic Mitchell, April 2022) and the Breeding Bird Survey Report (Dominic Mitchell, August 2022) as submitted and hereby approved.
6. Prior to the commencement of the development, a Skylark Mitigation Strategy must be submitted to and approved in writing by the local planning authority to compensate the loss of any Skylark territories at the site.

The Skylark Mitigation Strategy must include provision of the evidenced number of Skylark nest plots, prior to commencement of the development. The content of the Skylark Mitigation Strategy must include the following details:

- i. the purpose and conservation objectives for the proposed Skylark nest plots;
- ii. a detailed methodology for the Skylark nest plots following Agri-Environment Scheme option: 'AB4 Skylark Plots';
- iii. locations of the Skylark nest plots shown on appropriate maps and/or plans; and
- iv. the persons or body responsible for implementing the Skylark Mitigation Scheme;
- v. the timescale for retention and any long term management.

The development shall thereafter be carried out and retained in accordance with the approved strategy.

7. Prior to the commencement of development a detailed surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme should include but not be limited to:
 - Verification of the suitability of infiltration of surface water for the development. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753.
 - Limiting discharge rates to 1.28l/s for all storm events up to and including the 1 in 100 year rate plus 40% allowance for climate change subject to agreement with the relevant third party.
 - Final modelling and calculations for all areas of the drainage system.
 - The appropriate level of treatment for all runoff leaving the site, in line with the Simple Index Approach in chapter 26 of the CIRIA SuDS Manual C753.
 - Detailed engineering drawings of each component of the drainage scheme.
 - A final drainage plan which details exceedance and conveyance routes, FFL and ground levels, and location and sizing of any drainage features.
 - A written report summarising the final strategy and highlighting any minor changes to the approved strategy.
 - A maintenance plan detailing the maintenance arrangements, including who is responsible for different elements of the surface water drainage scheme and the maintenance activities/frequencies. Should any part be maintainable by a maintenance company, details of the long-term funding arrangement should be provided.

The scheme shall be implemented in accordance with the approved details and shall be provided on site prior to the First Export Date and shall be retained for the lifetime of the development.

8. Prior to the commencement of development a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
9. Prior to the commencement of the development, a Construction Traffic Management Plan (CTMP) must be submitted to and approved in writing by the local planning authority. The plan must include details of the following:
 - i. construction traffic access routing to the site to ensure all construction traffic accesses and exits the site to the East to ensure that no construction traffic shall travel through Roydon village;
 - ii. site access arrangements;
 - iii. swept paths and visibility splays at the site accesses;
 - iv. the types of construction vehicles accessing the site and vehicle frequency;
 - v. investigations of the feasibility to utilise existing hedgerow gaps within the site to accommodate temporary construction access routes;
 - vi. temporary construction access routes within the site;
 - vii. arrangements for site operative and visitor parking;
 - viii. traffic management measures;
 - ix. temporary highway signage;
 - x. Loading and unloading of plant and materials;
 - xi. Storage of plant and materials used in constructing the development;
 - xii. The erection and maintenance of site hoarding;
 - xiii. Measures to control the emission of dust and dirt during construction, including wheel washing; and
 - xiv. measures for protection and management of the public rights of way (PRoW) network during construction, including a plan showing the position and widths of PRoW, proposed crossing points, use of banksmen, signage, fencing, gates and how surfaces will be protected and maintained at crossing points to ensure the safety and convenience of users of the PRoW network.

With regards to dust control measures and wheel washing, reference shall be made to the Institute of Air Quality Management (IAQM) best practice Guidance on air quality monitoring in the vicinity of demolition and construction sites and Guidance on the assessment of dust from demolition and construction.

The approved CTMP shall be adhered to throughout the construction phase of the development hereby approved.

10. Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) is submitted to and approved in writing by the local planning authority. The CEMP (Biodiversity) shall include the following:
- a) Risk assessment of potentially damaging construction activities;
 - b) Identification of "biodiversity protection zones";
 - c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);
 - d) The location and timing of sensitive works to avoid harm to biodiversity features;
 - e) The times during construction when specialist ecologists need to be present on site to oversee works;
 - f) Responsible persons and lines of communication;
 - g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person;
 - h) Use of protective fences, exclusion barriers and warning signs;
 - i) Containment, control and removal of any Invasive non-native species present on site.

The approved CEMP (Biodiversity) shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

11. A Landscape, Ecology and Arboricultural Management Plan (LEAMP) shall be prepared in accordance with the principles set out in the approved Landscape, Ecology and Arboricultural Management Framework (LEAMF). The LEAMP shall be submitted to, and be approved in writing by, the Local Planning Authority prior to commencement of the development. The content of the LEMP shall include the following:
- a) Description and evaluation of features to be managed;
 - b) Ecological trends and constraints on site that might influence management;
 - c) Aims and objectives of management;
 - d) Appropriate management options for achieving aims and objectives;
 - e) Prescriptions for management actions;
 - f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);
 - g) Details of the body or organisation responsible for implementation of the plan;

h) Ongoing monitoring and remedial measures.

The LEAMP shall also include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEAMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The approved LEAMP will be implemented in accordance with the approved details.

12. No development or preliminary groundworks of any kind shall take place until:-

- i. A programme of archaeological investigation has been secured in accordance with a written scheme of investigation which has been submitted by the applicant and subsequently approved in writing by the Local Planning Authority.
- ii. The completion of the programme of archaeological evaluation identified in the WSI defined in Part 1 and confirmed by the Local Planning Authority.
- iii. A mitigation strategy detailing the excavation / preservation strategy shall then be submitted to the Local Planning Authority following the completion of the archaeological evaluation. No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, and which has been approved in writing by the Local Planning Authority.
- iv. The applicant will submit to the Local Planning Authority a post excavation assessment (to be submitted within six months of the completion of the fieldwork, unless otherwise agreed in advance with the Local Planning Authority). This will result in the completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

13. No development, including works of demolition or site clearance, shall take place until a Tree Protection Plan, Arboricultural Method Statement and site monitoring schedule in accordance with BS:5837:2012 (Trees in relation to design, demolition and construction - Recommendations) has been submitted to the Local Planning Authority and approved in writing. The development shall be carried out only in accordance with the approved documents.

14. Prior to any above ground works, full details of both hard and soft landscape works (including tree planting) shown on the Indicative Landscape Strategy ref. edp7471_d011 rev J and implementation programme (linked to the development schedule) except as controlled or modified by conditions of this permission shall be submitted to and approved in writing by the Local Planning

Authority. All hard and soft landscaping shall be carried out in accordance with the implementation programme approved.

The hard landscaping details shall include: means of enclosure; lighting, signs, services above and below ground and access roads. For the avoidance of doubt no unbound material shall be used in the surface treatment of the vehicular access hereby permitted within 6 metres of the highway boundary.

The details of soft landscape works shall include plans for planting or establishment by any means and full written specifications and schedules of plants, including species, plant sizes and proposed numbers /densities where appropriate. If within a period of five years from the date of the planting or establishment of any tree, or shrub or plant, that tree, shrub, or plant or any replacement is removed, uprooted, or destroyed or dies or becomes seriously damaged or defective another tree or shrub, or plant of the same species and size as that originally planted shall be planted at the same place.

15. No external lighting, including lighting required for construction and decommissioning, shall be installed at the site until such time as a lighting strategy for biodiversity has been submitted to and approved in writing by the Local Planning Authority. All external lighting shall be installed in accordance with the details agreed in the strategy and shall be maintained thereafter in accordance with the agreed details, subject to any such variation that may be agreed with the Local Planning Authority. No additional external lighting shall be installed without prior written consent from the local planning authority.
16. Prior to any above ground works, details of the precise location and external finishes to all solar panels and all other on site infrastructure shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details. Any replacement of obsolete or damaged structures shall be replaced on a like for like basis, unless otherwise agreed by the Local Planning Authority through an appropriate application.
17. Prior to commencement of development a scheme for the safe removal and disposal of waste material detailed in Section 8 of the Phase 1 Contaminated Land Report and an associated remediation strategy shall be submitted to and approved in writing by the Local Planning Authority.

The removal and disposal of waste shall thereafter be removed from the site and the land remediated in accordance with the approved details. A verification report of the removal by a suitably qualified contaminated land practitioner shall then be submitted to and approved in writing by the Local Planning Authority prior to operation of the development.
18. During construction, no deliveries, external running of plant and equipment or demolition and construction works, other than internal works not audible outside the site boundary, shall take place on the site other than between the hours of 08:00 to 18:00 on Monday to Friday and 08:00 to 13:00 on Saturday and not at all on Sundays, Public or Bank Holidays.
19. Should any previously unidentified discoloured or odorous soils be encountered during development works or should any hazardous materials or significant quantities of non-soil forming materials be found, then all development works

- should be stopped and an assessment of the risks posed by any contamination, carried out in accordance with British Standard BS 10175: Investigation of potentially contaminated sites - Code of Practice and the Environment Agency's Model Procedures for the Management of Land Contamination (CLR 11) (or equivalent British Standard and Model Procedures if replaced) shall be undertaken. If any contamination is found then the site shall be remediated. The remediation scheme shall be sufficiently detailed and thorough to ensure that upon completion the site will not qualify as contaminated land under Part IIA of the Environmental Protection Act 1990 in relation to its intended use.
20. Prior to their construction, details of the construction of the site accesses, visibility sight splays, dropped kerb vehicular crossings of the footway and details of measures to prevent surface water discharge onto the highway, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the access points shall be constructed ready for use prior to the First Export Date in accordance with the approved details. The accesses shall be permanently retained in accordance with the agreed form at all times.
 21. All plant and machinery shall be operated and maintained to ensure that noise does not exceed the background noise level of 40dB LA90 (as identified within the LF Acoustics Noise Assessment dated September 2022) when measured 1m from the closest noise sensitive premises.
 22. Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order 2015, or any amending Order, the erection, construction, improvement or alteration of a gate, fence, wall or other means of enclosure, as described in Schedule 2 Part 2, Class A of the Order shall not be undertaken without the prior written permission, obtained through the submission of an application, of the Local Planning Authority.
 23. Other than in an emergency, all planned repairs, planned maintenance and servicing shall take place between 8am and 7pm Mondays to Saturdays and at no times on Sundays, Bank or Public Holidays.
 24. Not less than one month prior to the first export of energy to the National Grid, the developer/operator shall notify the Local Planning Authority in writing of their intent to commence the export and state the date of anticipated first export.
 25. The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity generated by the solar panels is first exported to the electricity grid, excluding testing and commissioning. This date is referred to hereinafter as 'the First Export Date'. Written notification of the First Export Date shall be given to the local planning authority within 10 working days of the event.
 26. No later than six months prior to the expiry of the planning permission, or within six months of the cessation of electricity generation at the site, whichever is the sooner, a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the Local Planning Authority. The scheme of works shall include the following:
 - a) a programme of works;

- b) a method statement for the decommissioning and dismantling of all equipment and surfacing on site;
- c) details of any items to be retained on site;
- d) a method statement for restoring the land to agriculture;
- e) timescale for the decommissioning, removal and reinstatement of the land;
- f) a method statement for the disposal/recycling of redundant equipment/structures.

The scheme of works shall be undertaken in accordance with the approved details and timescales. The operator shall notify the Local Planning Authority in writing within three months following the cessation of electricity generation.

27. If the solar farm ceases to export electricity to the grid for a continuous period of more than twelve months, a scheme shall be submitted to the Local Planning Authority for its written approval within three months from the end of the twelve-month period for the removal of the solar farm and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall then be fully implemented within nine months of the written approval being given.
28. Prior to any site clearance, or the commencement of the development, a Soil Management Plan (SMP) must be submitted to and approved in writing by the local planning authority. The SMP shall be prepared by a suitably qualified soils and agriculture expert. All development and site clearance shall be carried out in accordance with the approved SMP. Before decommissioning commences, the expert should review the SMP and make recommendations as to measures necessary to ensure the land is restored to its original condition at decommissioning, taking into account any updates in statutory or policy requirements. The following details must be included in the SMP:
- soil resource survey;
 - site preparation;
 - details of the handling and storage of soils during the construction, operational and decommissioning phases;
 - import of construction materials, plant and equipment to Site;
 - establishment of Site construction compounds and welfare facilities;
 - cable installation;
 - temporary construction compounds;
 - trenching in sections;
 - upgrading existing tracks and construction of new access tracks and roads within the Site;
 - the upgrade or construction of crossing points (bridges /culverts) at drainage ditches within the Site;
 - appropriate storage, capping and management of soil;

- appropriate construction drainage;
- sectionalised approach of duct installation;
- excavation and installation of jointing pits;
- cable pulling;
- testing and commissioning;

The SMP must be implemented as approved.

29. Prior to the implementation of the soft landscape scheme and biodiversity mitigation and enhancement measures, commencement of any above ground works, a Biodiversity Enhancement Strategy shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following:
- a) an updated Biodiversity Metric (version 4.0), based upon the detailed soft landscape proposals, demonstrating a net gain of at least 70% in habitat units, and at least 150% in hedgerow units;
 - b) locations of proposed enhancement measures by appropriate maps and plans;
 - c) persons responsible for implementing the enhancement measures;
 - d) details of initial aftercare and long-term maintenance (where relevant) for a minimum of 30 years;
- The works shall be implemented in accordance with the approved details prior to first use of the development and shall be retained in that manner thereafter.
30. Prior to the First Export Date an Educational Strategy shall be submitted for the written approval of the Local Planning Authority. The Strategy shall detail the measures which the developer will take to ensure that appropriate access is given to the site for educational purposes in accordance with the approved benefits statement.
31. Once operational, the development hereby permitted shall have an export capacity of not more than 49.9MW (AC).

End of Schedule

APPENDIX 32

**Appeal APP/W1525/W/22/3300222 – Land East and West of A130 and North
and South of Canon Barns Road, East Hanningfield, Chelmsford, Essex**



Appeal Decision

Hearing held on 6 December 2022

Site visit made on 5 December 2022

by Ben Plenty BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 February 2023

Appeal Ref: APP/W1525/W/22/3300222

**Land east & west of A130 and north & south Of Canon Barns Road,
East Hanningfield, Chelmsford, Essex CM3 8BD**

Easting:575325, Northing:198892

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Low Carbon Solar Park 5 Limited against the decision of Chelmsford City Council.
 - The application Ref 21/00394/FUL, dated 22 February 2021, was refused by notice dated 9 December 2021.
 - The development proposed is the construction and operation of a solar farm and battery storage system together with all associated works, equipment and necessary infrastructure.
-

Decision

1. The appeal is allowed and planning permission is granted for the Installation of a solar photovoltaic (PV) park generating up to 49.9 MW of electricity spread over three sites (sited either side of the A130/Canon Barns Road), comprising of ground-mounted photovoltaic solar arrays, battery-based electricity storage containers, together with inverters/transformer stations, Distribution Network Operator (DNO) Substation, customer substation/switchgear and meter kiosk, batteries, internal buried cabling and grid connection cables, internal access tracks, security fencing and gates and CCTV cameras, other ancillary infrastructure, landscaping and biodiversity enhancements at Land east & west of A130 and north & south Of Canon Barns Road, Chelmsford CM3 8BD, in accordance with the terms of the application, Ref 21/00394/FUL, dated 22 February 2021, and the plans submitted with it, subject to the schedule of attached conditions.

Preliminary Matters

2. Since the Council's refusal of the proposal, two nearby solar farms have received planning permission. The 'Canon Barns site'¹ is southeast of the appeal site, would generate 8 MW of electricity, and is within the Green Belt. The 'Hill Farm site'² is northeast of the appeal site. This will generate 36.7 MW of electricity and is adjacent to the Green Belt. These decisions are material considerations that I will take into account within this decision.

¹ Planning Application Reference: 21/00502/FUL

² Planning Application Reference: 21/00555/FUL

3. A site visit was undertaken the day before the Hearing. During my visit I walked the site and its surroundings with a representative from the Council and the Appellant using a walking route agreed between main parties (Doc B). I therefore have a good awareness of the site and its surroundings.
4. A screening opinion, undertaken by the Council in accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 concluded that the proposal was not deemed to be EIA development. I see no reason, within the evidence, to disagree with this view.
5. At the Hearing I was handed three letters of objection from the Parish Councils of West Hanningfield and East Hanningfield and from Mr Malcolm Thomas, a local resident (Docs D, E and F). These raised a range of points, the majority of which were already matters discussed in previously submitted objections. Nevertheless, I decided to accept these and am satisfied that no party would be prejudiced by my taking these into consideration as part of the appeal evidence.
6. The description of development, found on both the Council's Decision Notice and the appeal form, includes a more detailed description to that on the application form. The Appellant explains, at Section E of the appeal form, that the description was changed. As this has been agreed between main parties, and more accurately describes the scheme, I shall use the revised version in the permission.
7. Furthermore, since the refusal of the scheme the Appellant has continued discussions with UK Power Networks. As a result, the proposed 35 metre One Point of Connection Mast is no longer necessary. I understand that instead the development would be connected into the network at the point of an existing pylon. This has resulted in the submission of an amended plan, removing the mast. This alteration was discussed at the Hearing and has reduced the overall visual effect of the proposal, albeit to a small extent. Consequently, I have taken the revised plan into account without causing prejudice to any party.

Background and Main Issues

8. The proposed development is located within the metropolitan Green Belt. Section 13 of the National Planning Policy Framework (the Framework) establishes the national policy objective to protect the Green Belt. Paragraphs 149 and 150 define different types of development that would not be inappropriate development in the Green Belt. It is uncontested by main parties that the proposed solar farm would not comply with any such provisions. I see no reason, within the evidence or in matters discussed at the Hearing, to disagree with this assertion. The proposal would therefore be deemed to be inappropriate development in the Green Belt.
9. Paragraph 147 and 148 of the Framework state that inappropriate development in the Green Belt is, by definition, harmful and carries substantial weight. Such development should not be approved except in very special circumstances. It continues that very special circumstances will only exist if the harm to the Green Belt by its inappropriateness, and any other harm, would be clearly outweighed by other considerations.
10. Turning to a separate matter, during the course of the planning application consideration, the Council undertook an Appropriate Assessment to consider

the effect of the proposed development on the Crouch and Roach Estuaries (Mid Essex Coast Phase 3) Special Protection Area (SPA). Following consultation with Natural England, the Council was content the impacts could be suitably addressed with mitigation secured by condition. Nevertheless, it is incumbent upon me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA. It is therefore still necessary to consider this matter as a main issue.

11. Accordingly, in consideration of the evidence, the main issues are:

- The effect of the proposal on the openness of, and purposes of including land within, the Green Belt;
- The effects of the development on the settings of the Grade II* listed building Church of St Mary and St Edward, and the Grade II listed building Church House and other non-designated heritage assets;
- The effects of the proposed development on the landscape character and appearance of the area;
- The effect of the proposal on agricultural land;
- The effect of the development on the integrity of the SPA; and
- Whether the harm caused by the proposal, by virtue of being inappropriate development in the Green Belt, and any other identified harm, would be clearly outweighed by other considerations to result in 'Very Special Circumstances'

Reasons

Green Belt - openness and purposes

12. The fundamental aim of the Green Belt is to prevent urban sprawl and keep land permanently open³. Openness has both visual and spatial qualities. The site consists of six fields. These are enclosed by tree and hedge boundaries, including some woodland areas, especially to the south of the main site. In terms of topography, the site is within gently undulating land with higher land to the south, north and centre of the site. The landform, and extent of field boundary screening, would reduce the overall visual effect of the proposal from wider views.
13. The site is currently farmland. From a spatial perspective, the proposed solar arrays would introduce substantial development into the area in terms of ground cover due to the quantity of arrays within the scheme. Furthermore, the associated access track, substation, inverter stations, fencing and CCTV facilities would result in additional built form that would further diminish the openness of the Green Belt spatially.
14. Nevertheless, the proposed solar arrays would be relatively modest in mass and footprint and would be spaced out at regular intervals reducing the overall scale of the development. Furthermore, the scheme would be in place for a temporary 40-year period. It would then be fully demounted, and land returned to its former condition, at the end of its use. As such, whilst 40 years is a long period of time, it is not permanent. Therefore, the impact on the openness of the Green Belt would be reduced with the site ultimately reinstated to its

³ Paragraph 137 of the National Planning Policy Framework

former open character. Consequently, both visually and spatially, the proposed development would result in moderate harm to the openness of the Green Belt.

15. Paragraph 138 of the Framework defines the five key purposes of the Green Belt. These are to check unrestricted sprawl of large built-up areas, prevent neighbouring towns merging, safeguard the countryside from encroachment, preserve the setting of historic towns and assist in urban regeneration (by encouraging the reuse of urban land). It was agreed between main parties at the Hearing that historic towns would be unaffected. Furthermore, despite the comments of the Council I am unconvinced that the proposal would contribute towards urban sprawl or towns merging as the site is not close to a built-up area. Nevertheless, the proposal could result in encroachment and would not contribute to the reuse of urban land.
16. In terms of encroachment, the proposed scheme would place a large number of solar arrays across six fields. Their operation would be supported by consumer units and a main compound. Although maintaining some space between them, the arrays and associated equipment would fundamentally alter the appearance of the fields. These would alter from a sequence of open green spaces to accommodating solar equipment that would be interspersed with retained field boundaries. Such an effect would result in encroachment, in contradiction of a Green Belt purpose.
17. A further purpose of the Green Belt is to deflect new development towards previously developed land (PDL) to assist in urban regeneration. At the Hearing the Appellants stated that it would not be cost effective to locate such a use on PDL due to land values and rates of return. Accepting this I am also unconvinced that the reuse of PDL for such a scheme would secure the most efficient or optimum reuse of such land for a temporary period of time. Accordingly, the proposal would not be in conflict with this purpose of the Green Belt.
18. The proposal, as inappropriate development, would by definition harm the Green Belt. It would result in encroachment and moderate harm to the openness of the Green Belt in both visual and spatial terms. Accordingly, the proposed development would conflict with policies DM6 and DM10 of the Chelmsford Local Plan (LP) and the Framework. These seek to resist inappropriate development and only allow engineering operations that would preserve openness and not conflict with the purposes of including land within the Green Belt. All harm to the Green Belt carries substantial weight.

Heritage Assets

19. S66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires that, when considering whether to grant planning permission for development which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or setting or any features of special architectural interest which it possesses. The Framework defines the setting of a heritage asset as the surroundings in which the asset is experienced.
20. The proposal has the capability to affect a range of designated and non-designated heritage assets found around the site. These are identified within

the Appellant's Heritage Assessment⁴ as including eight listed buildings and forty non-designated Heritage Assets (NDHAs). Four of these are identified as having an adverse effect on their settings. The setting of a heritage asset is not fixed and may change as the asset and its surroundings evolve. Guidance from Historic England explains that the extent and importance of setting is often expressed in visual terms but may also include other matters including our understanding of the historic relationship between places⁵.

21. The Church of St Mary and St Edward, a Grade II* listed building, is on the north side of Church Road set away from the highway, within West Hanningfield. It originates from the 12th century with 14th century additions including a timber frame belfry. It was also extended in the 18th and 19th centuries. The church consists of various facing materials providing an interesting if slightly eclectic appearance. Its significance derives from its intact historic fabric and the architectural interest of its unusual medieval belfry, and its spatial relationship with the surrounding village. It's setting includes the surrounding agricultural land to the north and south and include it's approach from Church Road.
22. However, due to the recessed nature of the building from Church Road and the site's relationship with surrounding built form, intervisibility between the listed building and its grounds and site would be highly restricted. Furthermore, whilst having a social and functional relationship with the surrounding countryside, there is nothing before me to indicate that the appeal site makes a specific or important contribution to its setting. As a result, the proposal would preserve the setting of this listed building and would not harm its significance.
23. Church House, a Grade II listed building, is a timber framed, plastered house that originates from the 18th century. It is a large two-storey dwelling with white rendered walls, clay roof tiles and brick stacks. Its significance appears to derive from its relationship with the adjacent church, its use of traditional materials located within a rural setting. Views from the front of the dwelling, over Church Road, take in fields and parts of the appeal site. Field boundaries and rising topography screen most of the site. Therefore, the site makes a limited contribution to the setting of the listed building. The proposal would also be largely screened from this vantage offering only distant views of the eastern part of the solar farm and boundary related features. The surrounding farmland contributes to its setting, but I am unconvinced that the appeal site itself makes a significant contribution to this. Due to the substantial separation distance, field boundary screening and topographical features, I am unconvinced that the proposal would result in any harm to the setting of Church House, which would accordingly preserve its significance.
24. The proposal would preserve the significance of the two identified listed buildings and would therefore accord with S66 of the Act. It would therefore comply with LP policy DM13, which requires proposed development within the setting of a listed building to not adversely affect its significance, including views to and from the building.
25. Cobb Cottage, a NDHA, was initially constructed as a pair of cottages in the C19 and has since been combined into one dwelling. It's significance appears to derive from its former use as a pair of agricultural worker's dwellings and being

⁴ Historic Environment Desk-Based Assessment, by AECOM, dated February 2021

⁵ Historic England – The Setting of Heritage Assets 2015

of a traditional agrarian style of farmstead. Its surrounding fields make a contribution to its setting as its rear elevation overlooks the surrounding open countryside. Views from this dwelling would be similar to those from Church House affording distant views of a small part of the proposal. Although nearer to the appeal site, than Church House, its significance is reduced. Accordingly, the setting of Cobb Cottage would only experience limited change, that would not affect the significance of this NDHA.

26. Hophedges, a NDHA, is a cottage adjacent to the north boundary of the site. It appears on the village map in 1840. It is a white render cottage with weatherboarding, decorative dormers and a central brick stack. Its significance appears to derive from its historic interest and traditional agrarian character within a countryside setting. The rear elevation of the dwelling is adjacent to a field with the appeal site including the adjacent field beyond. An access track is proposed beyond the boundary hedge, with solar arrays proposed in the far corner of this adjacent field, around 750 metres from the NDHA. The closest part of the appeal site therefore makes a small contribution to the setting of the NDHA being within its local context. Furthermore, occupiers of this dwelling would be likely to experience some views of the proposal from first floor windows, albeit over a significant distance. Due to the close proximity of the scheme to the NDHA, and its intervisibility, the proposal would result in harm to its setting during the construction and operation of the proposal, albeit limited. Accordingly, this change to the setting of the building would amount to harm at the lower end of such harm.
27. The Framework states that when considering harm to NDHAs a balanced judgement will be required having regard to the scale of any harm and the significance of the asset. The impact of the proposal would cause limited harm to the significance of a non-designated asset, being an asset of lower importance. The negligible harm conveyed to the NDHA would be offset by the separation distance to the track and operational site beyond, existing screening and the merits conveyed through the generation of renewable energy. Accordingly, the proposal would also comply with LP policy DM14, where harm to the significance of a non-designated heritage asset, must be justified following a balanced judgement.

Landscape and Visual Impact

28. Both main parties acknowledge that the proposal would result in harm to the character and appearance of the area. However, there is a distinction to be made between impact on landscape, which should be treated as a resource, and impact on visual amenity, which is the effect on people observing the development in places where it can be viewed, such as from roads, public rights of way and individual dwellings.

Landscape character

29. The appeal site consists of six fields, the site and surrounding fields are used for a range of arable and pastoral purposes. The fields within the site are arranged in a cluster around the A130 and Canon Barns Road. Purely for convenience I shall refer to the various fields using the numbering convention found in the Appellant's Zoning Layout Plan⁶ that refers to Development Zones (DZs).

⁶ drawing number LCS039-DZ-01 revision 10

30. The site includes one field to the east of the A130 (DZs 4 and 6) with the remainder of the site being to the west of this highway, in two similar sized parcels. These are to the north (DZs 1, 2, 3, and 5) and south (DZ 7) of Canon Barns Road. The site is bound partly along its western boundary by a row of electricity pylons, that generally follow a ridge line, and the Essex and Suffolk Waters Hanningfield Water Treatment Works. Also, the A130 follows a shallow valley floor alongside and through the site. Consequently, the site's undulating landform includes a number of relatively substantial man-made interventions.
31. The site is within Natural England's National Character Area 111: Northern Thames Basin, including woodlands, mixed farming and arable land. The site is also within the South Essex Farmlands area E1, within the County Council's character assessment. This is defined as consisting of small to medium sized arable and pastoral fields where tall thick boundary hedges contribute to an enclosed character. It is notable that this also recognises that overhead pylons and major roads visually interrupt the landscape.
32. At a district level, the site is within the South Hanningfield Wooded Farmland: F11⁷ in the Council's Landscape Character Assessment. This area is described as consisting of undulating farmland of medium to large arable fields that include hedged field boundaries and wooded horizons. The site is also adjacent to the East Hanningfield Woodland Farmland character area: F12. This is defined as having large arable fields, pockets of pony and pasture paddocks and mature treed field boundaries. The appeal site appears to generally align with these character assessments, especially F11, and therefore makes a positive contribution towards the landscape character.
33. The pattern and arrangement of character area F11 form low-lying land with elevated ridges. This area is largely to the north and east of the site on gradually climbing land. The A130 passes through the landscape along embankments and cuttings, with the adjacent reservoir and its associated buildings and pylons adding to the features evident within the area. The proposed development would locate solar arrays within the existing field pattern. It would retain and enhance field boundaries, leaving most wooded areas. It would retain the structure of field boundaries and keep field patterns intact. As such, the proposal would have a largely non-invasive impact on the landscape features defined as important to the character areas.
34. The appeal site, whilst relatively extensive, represents only a small proportion of the national and county character areas. At a district level, the impact on the landscape would be greater, but as the existing natural features of the site would be largely retained and enhanced, the overall landscape effect would be limited. Furthermore, the solar arrays would be low-lying, open sided features that would be temporary in nature, limiting the overall effect on the wider landscape. However, the proposed development would alter the landscape with the introduction of industrial development and equipment across a relatively broad area. Therefore, this would result in some localised landscape harm. As a consequence, the scheme would result in a moderate adverse impact on the area's landscape character.

⁷ Braintree, Brentwood, Chelmsford, Maldon and Uttlesford Landscape Character Assessment

Visual Impact

35. Visual amenity relates to the direct visual impacts on receptors (people) rather than on the landscape. The Appellant's visual assessment was undertaken in December when leaves from deciduous trees would have fallen, offering a 'worst case scenario' of views through the site, when the site would be at its most exposed. Equally, my visit was undertaken at a similar time of the year enabling a similar useful assessment of the visual effects of the proposal to be most appreciated. The Appellant's Landscape and Visual Impact Assessment⁸ (LVIA) and its Addendum⁹ identify 33 viewpoints which assess the effect of the scheme on Visual Receptors (VRs). The viewpoints have been accepted by the council as being the most significant in understanding the visual effects of the proposal. These selected viewpoints provide only a snapshot of the site and would not necessarily reflect the experience of receptors walking through or around the site.
36. Figure 4 of the LVIA, shows the theoretical visibility of the scheme demonstrating that the majority of views outside the site would be from an arc from the northwest through to the east. In a southern arc around the site, from the west to the southeast, woodland and topography obscure most views. The LVIA considers the visual effects of the proposal both at year one and at year ten, the second assessment taking into account the growth of proposed landscape screening as it approaches maturity.
37. The general topography of the site, and its surroundings, provide screening from many wider views forming a degree of enclosure. Furthermore, man-made features also obscure some views of the site, such as by the embankments of Canon Barns Road and Church Road. The combination of these features would disaggregate and limit some views of the site.
38. The local roads and the A130 provide visual receptors from motorists that have a low sensitivity to change. Road users would primarily be paying due care and attention to other road users and hazards, taking in only limited glimpses of the site, resulting in only negligible adverse visual effect. Motorists of Southend Road (VR6a), Pan Lane (VR5) and Church Road (VR19 and VR21) would be travelling closer to the site and would have the opportunity to take in more of the area affected by development. Nevertheless, such views would result in only a 'minor adverse' effect in the first year, leading to 'negligible adverse' effects (for VR6a, VR19 and VR21) and 'neutral' effects (VR5) at year ten. The view of the scheme from motorists would be largely fleeting and offer only partially glimpsed views of constrained sections of the arrays and equipment. As such, the visual impact on motorists would be of low magnitude, resulting in only 'minor adverse' and 'neutral' effects.
39. Views of the proposal, from the northwest of the site and West Hanningfield, would be limited. Viewpoint VR18, for users of the Public Right of Way (PRoW) 236_26 and for residents of West Hanningfield (VR18a), southeast views take in fields and hedgerow planting and a ridgeline to the east. These features would limit most views of the solar arrays and their associated equipment. These viewpoints would experience only a small portion of the solar arrays, the fencing and CCTV columns that would enclose, and be within, area DZ2. Once

⁸ Landscape and Visual Impact Assessment, by AECOM, February 2021

⁹ Landscape and Visual Impact Assessment, by AECOM, September 2021

- the proposed hedgerow screening has developed, after 10 years, the effect of such views would move from 'minor adverse' to 'negligible adverse'.
40. Views from VR26, on PRoW 236_36 looking southeast towards the site, would be similar to VR18 and VR18a, albeit closer to the site. These would also provide views of the edge of the solar array farm, only seeing those elements within area DZ2. This viewpoint would initially result in a 'moderate adverse' effect but would lessen over time. I am unconvinced that after 10 years this effect would remain 'moderate adverse'. The substation would be discreet beyond the ridgeline, with only boundary fencing and CCTV columns being evident in the distance behind the established landscape screening. Consequently, the visual effect after this period would be 'minor adverse' only after 10 years.
 41. VR20a considers the rear view for occupiers of Hophedges. The SoCG identified that this VR point was in dispute, but the Council withdrew its dispute at the Hearing, but raised concerns due to the visual effect of the use of the access track. Vehicles using the access track would be infrequent based on the use of the site and as such the overall effect of the development on occupiers would be negligible. Accordingly, given the proximity and scale of existing tree and hedgerow screening views of the proposal from this vantage would be neutral.
 42. Views from VR23 and VR24 look south towards the northern edge of the site, towards area DZ1. These take in viewpoints from walkers using PRoW 236_47. The addendum shows that these views would remain largely unchanged. The visual effect from these views would change from 'minor adverse' initially to 'minor adverse' and 'negligible adverse' effects respectively after 10 years.
 43. The views from VR3 and VR3a, by users of PRoW 218_7 and occupiers of Hill Farm and Dunnock Cottage, are elevated and look down towards the site to the southwest. These take in the eastern and northern parts of the site in a wide context with the fields of Hill Farm and the A130 forming the fore ground and middle views respectively. Much of the development zones would be screened by field boundary landscaping and the bridge and road embankments of Church Road and Cano Barns Road where these cross the A130. The effect on the view to VRs would initially be 'minor adverse'. With landscaping developing over future years this effect would reduce to 'negligible adverse' after ten years. Even if parts of the solar farm remained visible these would be likely to be seen as small parcels of development, interspersed by field boundaries and the established new landscaping, within distant views. The impact on these would therefore be 'negligible' after 10 years.
 44. Walkers, cyclists and horse riders, among other slow moving road users, using local roads would be highly sensitive to change. However, such views would only experience small pockets of the proposal and would not provide a broad perception of most of the scheme. These views would also be partially obscured by topography and natural screening that would limit the overall visual effect of the scheme from 'minor adverse' in year one to 'negligible' in year ten.
 45. The site is crossed by a number of public rights of way (PRoW). PRoW 218_12 runs through the north and south parcels of the site either side of Canon Barns Road. The PRoW of 236_36 comes into the site from the northwest and runs between DZ2. Also, PRoW 218_15 connects to 236_36 and runs through the middle and side of the north parcels (DZs 1, 3 and 5). The PRoWs that cross the site cut through several fields and follow the perimeter of others within the

site. Users of these routes through the site currently enjoy an open aspect over the countryside. However, PRow 218_12 exits the site to the west runs alongside the waterworks between tall hedges. This is within a relatively narrow walkway in an enclosed route.

46. VR27, on PRow 218_15, assesses the typical effect of the proposed development on walkers from inside the site. These would be highly sensitive to visual change. Views of the scheme, from the routes that cross through the site, would fundamentally change from the current outlook over open arable land. The effect on users would be 'major adverse' in the first year. However, the sense of enclosure would partially replicate the effect of other sections of this route. Therefore, whilst views from the PRows through the site would become more enclosed, the visual impact on users of the PRows would be reduced to 'moderately adverse' by year ten.
47. A fence up to 5 metres high alongside the A130, has been offered by the Appellant to remove the Council's concerns with respect to glint and glare. In some viewpoints this would result in initial visual effects being diminished. The fence would screen the arrays, especially from views VR6 and VR7 from Southend Road. Accordingly, the proposed fence if deemed necessary, would moderate visual benefits of the proposal in screening some views.
48. Taking the above visual affects into account, most views of the proposal would be 'minor' or 'negligible' by year 10. Whilst the visual impacts of the proposal would be 'major adverse' from the PRow from Visual Receptors through the site, these effects would be diminished to 'minor adverse' once the landscape screening has become established. Consequently, due to the arrangement of local topography the most adverse visual effects would be largely confined to localised effects only. Accordingly, taking all of the above impacts into consideration the visual impact of the proposal would result in moderate harm.

Cumulative visual and landscape effects

49. The proposal would be close to the two recently approved solar farms at Canon Barns Road and Hill Farm. Table 4-A, of the addendum LVIA, considers the cumulative visual effects from these viewpoints. The addendum shows how the visual effect from two viewpoints, VR9 and VR29, would change in cumulative terms. Viewpoint VR9, from Canon Barns Road, shows the eastern part of the scheme with the Hill Farm and Canon Barns sites having a 'moderate adverse' visual effect on this view. Viewpoint VR29, from Pans Lane, shows parts of the Hill Farm and Canon Barns sites but also illustrates that the proposed scheme itself would not be visible.
50. Accordingly, the LVIA demonstrates that the cumulative visual effects of all three sites would increase the visual effects of most views from 'negligible' impact to 'minor adverse'. Consequently, in most wider views, the proposal would not materially contribute to a cumulative visual effect of these sites. Accordingly, the overall visual effects of all three sites would be limited and would not substantially increase the visual effect of the scheme from moderately harmful.
51. As has been found above, the proposal itself would only result in localised and a 'moderate adverse' effect on the landscape, for the 40-year duration of the proposed development. The cumulative effect of the development on the landscape, in combination with the two approved schemes, would be greater.

Nevertheless, the combined effect, would only have a further limited adverse impact on the landscape character. Accordingly, the overall effect on the landscape character would remain as a 'moderate adverse' effect in this geographic context.

52. Consequently, despite its overall scale, the proposal would result in a 'moderate adverse' effect on the landscape character and moderate harm to the visual appearance of the area. In identifying harm, the proposal would conflict with LP policies DM6, DM10 and DM19, the Council's Solar Farm SPD and the Framework. These seek, among other matters, for development to not result in an unacceptable visual impact which would be harmful to the character of the area and to protect valued landscapes, to which I attribute moderate weight in the planning balance.

Effect on arable land

53. Paragraph 174(b), of the Framework, places value on recognising the intrinsic character and beauty of the countryside including the best and most versatile agricultural land. The Framework's Glossary defines Best and Most versatile (BMV) agricultural land as being land in grades 1, 2 and 3a. Most of the site would not qualify as BMV by this categorisation. Nevertheless, it is recognised that the site provides arable value. It would no longer be capable of providing such a function. Also, I recognise that the Appellant suggests that the site could be used for sheep grazing, but such an activity would be unlikely to fully offset the sites current capability for agricultural use.
54. The Appellant's Agricultural Land Assessment has considered the range of crops that can be grown, the type and consistency of yield and the cost of producing the crop. This has found that the appeal site mainly consists of grade 3b agricultural land. Only a small parcel (of two hectares) was identified as being 3a agricultural land. The methodology and findings of the Assessment has not been disputed by the Council.
55. The PPG¹⁰ requires local planning authorities to aim to protect BMV agricultural land from significant, inappropriate or unsustainable development proposals. The Council's Solar Farm SPD also advises that such development should first favour the use of previously developed land and arable land graded as 3b, 4 or 5. Nevertheless, as the significant majority of the site does not meet a BMV classification, the loss of the small parcel of 3a graded arable land is attributed minor harm in the planning balance.

Integrity of the SPA

56. Natural England identifies that the proposal could have potential significant effects on Crouch and Roach Estuaries (Mid Essex Phase 3) Special Protection Area (SPA) and Ramsar, Crouch and Roach Estuaries Site of Special Scientific Interest (SSSI) and Hanningfield Reservoir SSSI.
57. The site is around 4.7km from the SPA. This is a European Designated Site afforded protection under the Conservation of Habitats and Species Regulations 2017 as amended (the Habitats Regulations) and is a wetland of international importance. The Habitats Regulations impose a duty on me, as the competent authority, to consider whether the proposal would be likely to have a significant effect on the integrity of the SPA, either alone or in combination with other

¹⁰ Guide to assessing development proposals on agricultural land, 2021

- plans and projects. In 2018, the Court of Justice of the European Union held that the decision maker, when considering the effect that a proposal may have on a European Site, must consider mitigation within the Framework of an Appropriate Assessment (AA), rather than at the screening stage¹¹.
58. Evidence shows that the SPA is used by a large number of skylark and corn bunting birds. Wintering dark-bellied brent geese, black-tailed godwit, shelduck and shoveler birds also regularly visit the SPA in nationally important numbers. In addition, the mud along the Crouch and Roach is used by redshank and dunlin for feeding and as a roosting site for lapwing and golden plover.
59. The site is also around 250 metres from the Hanningfield Reservoir SSSI. Its main scientific interest derives from its breeding and wintering wildfowl including Gadwall, Pochard, Shoveler, Teal, Tufted Duck and Shelduck.
60. The Appellant's Ornithological Survey¹² Report demonstrates that 46 species of wintering birds and 51 species of breeding birds visit the site. This includes small numbers of little egret, skylark and black-headed gull which are waterbird species found within the SPA. The Ornithological Report has concluded that the distance between the SPA and the Site, the absence of wetland habitat on site and the abundance of similar farmland habitat between the sites indicates that the site is not especially important to the populations of these birds occurring within the SPA. These seem to be reasonable conclusions and although the proposal would affect the integrity of the SPA, this effect would be limited.
61. The Appellant's Skylark Mitigation Strategy¹³ seeks to deliver long term habitats for the territories of skylark found on site, both during breeding and non-breeding seasons. These would include tightly mown plots, unmanaged grassland areas and cover-crops within the mitigation areas. This approach would ensure that the site would maintain a succession of occupation and productivity of the population of skylark as identified on site. The proposal would therefore minimise any direct impact on skylarks.
62. In assessment of the Council's AA, Natural England has concluded that the integrity of the SPA¹⁴ would not be adversely affected subject to the proposed mitigation within the Ornithological survey and Skylark Mitigation Strategy. I see no reason to disagree with this conclusion. Therefore, I am satisfied, based on the specific evidence before me, that a condition requiring the mitigation measures detailed in the surveys would prevent an adverse effect on the integrity of the SPA.
63. I therefore conclude through my AA that, with the provided mitigation, the proposal would not harm the integrity of the SPA and accord with the Habitat Regulations. I am also satisfied that the mitigation offered to address the adverse effects on the SPA and Ramsar site would mitigate the effects of development on the identified SSSIs.

¹¹ People over Wind and Sweetman v Coillte Teoranta ECLI:EU:C:2018:244

¹² AECOM Ornithological Survey Report, June 2021

¹³ Skylark Mitigation - Technical note, by AECOM, date 20 October 2021

¹⁴ Natural England letter dated 7 October 2021

Other matters

Flooding

64. The Appellant's Flood Risk Assessment¹⁵ identifies that most of the site is within flood zone 1. A small section is in flood zone 3a, alongside Sandon Brook, although no work is proposed within it. The Assessment finds that rainfall falling on solar panels would runoff at an angle and result in a small increase in post development run-off rates. To account for the extra volume a sustainable drainage system (SUDs) would be installed. The proposed drainage system would reduce current run-off rates from the site resulting in betterment over the existing drainage arrangements.
65. The County's SUDs team raised no objection to the proposal subject to the provision of a sustainable urban drainage strategy. As such, despite the concerns raised by interested parties that the development would increase off-site flooding especially onto Church Road, I see no compelling evidence that any off-site flooding would be exacerbated by the proposal. Consequently, the scheme would accord with the requirements of LP policy DM18.

Wildlife impacts

66. The fields within the appeal site are enclosed by hedgerows that include trees within the field boundaries. The hedgerows provide habitats for a diverse range of avian wildlife including hobby and barn owls and 12 priority bird species including skylark, thrush and yellow hammers. Whilst the hedgerows are considered to be a high value resource, the fields are of limited ecological interest being used as a combination of arable farmland and pastoral. The Appellant's desk based Ecological Assessment¹⁶ and associated surveys conclude that the effects on wildlife would be limited, and these could be mitigated through the preparation of a landscape and ecological management plan and a construction environmental management plan, both of which could be secured by condition.
67. In terms of bats, a bat survey identified that certain trees on site could offer suitable habitat. As these trees are proposed for retention, bats species would not be affected by the proposal. In terms of badgers, the submitted survey has been considered by the Council's ecologist and the required mitigation measures can be incorporated into an ecological management plan. A pond near Link House Farm has been found to include Great Crested Newts, a low impact class license would be required to be obtained from Natural England due to the proximity of this to the site.
68. The proposal includes new planting in the form of enhanced hedgerows both around the perimeter of the site, especially along the A130 corridor, and adjacent to the PRoWs that cross the site. The tree and species rich hedgerow planting, including reinforcement of existing hedging, would enhance the existing planting within the site and its wildlife value. Wild green grassland and new planting corridors would also be provided around the margins of the fenced area enhancing foraging routes.

¹⁵ Flood Risk Assessment and Drainage Strategy, by AECOM, dated February 2021

¹⁶ By Aecom, dated February 2021

69. The Bio-diversity Assessment¹⁷ concludes that the proposal would exceed the 10% bio-diversity net gain objective of upcoming legislation. The proposal would result in a loss of 33% river unit habitat, due to the encroachment of the access route into the 10m riparian zone of the Sandon Brook. Nevertheless, the access route could be partially adjusted when the final layout of the site is agreed by condition and the effect further reduced by habitat enhancement that could be secured by condition. Overall, the proposal would result in a net bio-diversity gain of around 82% habitat units and 29% hedgerow units which would be of significant benefit to the wildlife within the area. A condition for a landscape scheme could be used to determine compliance with the biodiversity net gain metric to ensure it would deliver and manage the calculated gains in perpetuity.
70. Interested parties have identified that the proposal would reduce routes through the site used by large mammals, such as deer. Large mammals, traversing the site, have not been identified as using the site through the ecological assessment and surveys undertaken. However, whether present or not, I am unconvinced that the site offers a particularly important route through the area. Furthermore, the proposal would retain the ability to accommodate some routes through the site for wildlife where within the landscape scheme that could be secured by planning condition.

Highway safety

71. The proposal includes six access points, four of which would be from Canon Barns Road. These would be used for construction access and then post construction occasionally used for maintenance purposes. The access into the site from Church Road would be for emergencies and to access the substation. Church Road is a single carriageway road with a 60mph speed restriction and is unlit. It also has limited passing points but has no recorded collisions within the prescribed study period. Speed analysis data has shown that actual recorded speeds are around 48mph and the proposed visibility splays, at the access, would enable safe egress and access in this context.
72. The Appellant's Transport Statement¹⁸ demonstrates that the proposal would generate a relatively low level of vehicular activity, with a nominal number of movements of four two-way vehicle trips a week. As such, due to the nature of the use, traffic associated with the operation of the facility would be light and infrequent. I am therefore satisfied that the use would operate without detriment to highway safety, a point supported by the County's Highway Authority.

Security matters

73. Essex Police has identified that solar farms, within other parts of the country, have been the target of theft¹⁹. The proposal would include security fencing and CCTV to attempt to protect the site and combat criminal activity. Interested parties have raised concerns that the proposal security measures would be ineffective to deter crime. Although recognising these concerns, there is no compelling evidence that the proposal would be especially vulnerable to theft, that the Appellants security measures would be ineffective or that the proposed

¹⁷ By Aecom, dated September 2021

¹⁸ Transport Statement, Low Carbon, February 2021

¹⁹ Essex Police – Design out Crime Team, Mr Stephen Armson-Smith, 22/03/21

scheme would raise criminal activity in the area. Furthermore, this could be suitably addressed through agreement of the specification of robust boundary treatment and CCTV coverage by planning condition.

74. The CCTV cameras would be a significant distance from the nearest residential properties. Consequently, I am unconvinced that these would be capable of substantive overlooking into private spaces. Furthermore, this matter could be further mitigated through a planning condition, with respect to camera views, if deemed necessary by the Council.
75. Other concerns raised by interested parties, such as the health effects of the production of solar panels and operation of solar farms, and its impact on local property values are noted but do not have a material bearing on the main issues associated with this appeal.

Other Considerations

Renewable energy

76. A material consideration in the determination of planning proposals for renewable energy are the National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. In September 2021, draft updates to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) were published.
77. The draft NPS EN-3 states that:
- "solar farms are one of the most established renewable energy technologies in the UK and the cheapest form of electricity generation worldwide. Solar farms can be built quickly and, coupled with consistent reductions in the cost of materials and improvements in the efficiency of panels, large scale solar is now viable in some cases to deploy subsidy free and little to no extra cost to the consumer."*
78. Both the existing and proposed NPSs state that the NPSs can be a material consideration in decision making on applications that both exceed or sit under the thresholds for nationally significant projects.
79. The UK Government has declared a climate emergency and set a statutory target of achieving net zero emissions by 2050, and this is also a material consideration. Since the declaration, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change has indicated that there is a greater than 50% chance that global temperature increases will exceed 1.5 degrees Celsius above pre-industrial levels. The report indicates that delay in global action to address climate change will miss a rapidly narrowing window of opportunity to secure a liveable and sustainable future for all²⁰.
80. The UK Energy White Paper, Powering our Net Zero Future (2020), describes the costs of inaction as follows:
- "We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79%, compared to a 5% chance now. Many regions of the world would*

²⁰ IPCC Sixth Assessment Report - Summary for Policymakers, paragraph D.5.3

see what is now considered a 1-in-100-year drought happening every two to five years.

At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that. A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia.”

81. The draft NSPs recognise that to meet the Government’s objectives and targets for net zero by 2050, significant large and small scale energy infrastructure is required. This includes the need to ‘dramatically increase the volume of energy supplied from low carbon sources’ and reduce the amount provided by fossil fuels. Solar and wind are recognised specifically in Draft EN-1 (para 3.3.21) as being the lowest cost way of generating electricity and that by 2050, secure, reliable, affordable, net zero energy systems are ‘likely to be composed predominantly of wind and solar’. The Government aims by 2030 to quadruple offshore wind capacity so as to generate more power than all homes use today. This would therefore be delivered in collaboration with solar energy, and other measures, to provide a robust supply.
82. Planning Practice Guidance (PPG), on renewable and low carbon energy, states that ‘there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and critically, the potential impacts on the local environment, including from cumulative impacts.’²¹
83. The Framework explains that when dealing with planning applications, planning authorities should not require a developer to demonstrate a need for low carbon or renewable energy projects, and should recognise that even small-scale projects can help reduce greenhouse gas emissions. Paragraph 158(b) also explains that such schemes should be approved if any impacts are, or can be made, acceptable. Furthermore, it identifies once areas have been identified for such projects, by local authorities in local plans, any subsequent applications should demonstrate how they would meet the criteria used in identifying suitable locations.
84. The Council has not allocated any sites for renewable energy schemes in the district. However, it’s Solar Farm Development – Supplementary Planning Document-2021 (SPD) includes locational principles that guide its consideration of suitable sites. Paragraph 8.2 requires solar farms in the Green Belt to demonstrate very special circumstances and, among other matters, to not adversely impact on the identified character and beauty of the Rural Area. Paragraph 5.5 reiterates guidance of the Framework in identifying that Very Special Circumstances may include wider environmental benefits associated with the production of energy from renewable sources.

²¹ PPG, Paragraph: 005 Reference ID: 5-005-20150618

85. The approved Cannon Barns site was allowed in the Green Belt. The Council found that the benefits of renewable energy would outweigh the harm to the openness of the Green Belt, the low level of 'less than substantial' harm to heritage assets and the modest harm to landscape character. Whilst each case must be considered on its own merits, this recent decision provides a useful insight into the weight the Council has applied in the past to renewable energy projects in the Green Belt.
86. The proposed solar farm is substantially larger than the Canon Barns site, with clear contextual differences. Nevertheless, it is plainly evident that a larger site, such as the current proposal that may have a greater impact, would also deliver a greater level of power output thus making a greater contribution towards the production of renewable energy. This benefit weighs strongly in favour of the scheme.

Planning balance

87. I have concluded that the appeal scheme would result in harm to the Green Belt from inappropriateness and loss of openness, to which I afford substantial weight. Furthermore, the proposal would also result in moderate harm to the landscape character and convey moderate visual harm to the area. The proposal would also convey limited harm to the loss of a small proportion of BMV arable land, attracting limited adverse weight. The limited harm identified to the NDHA would be outweighed by the public benefits of the proposal. Nevertheless, for the purpose of my overall planning balance this harm contributes to the adverse effects of the proposal.
88. The proposed scheme would not harm the integrity of the SPA, weighing neither for nor against the proposal. Furthermore, the other matters identified raise issues that either result in no harm or raise technical matters that could be adequately addressed through the imposition of appropriate conditions to negate the harm.
89. Conversely, the proposal would deliver a renewable energy facility that would create up to 49.9MW of power. This would provide power for around 16,581 households, result in a carbon dioxide displacement of around 11,210 tonnes per annum and therefore help combat climate change. The appeal site, whilst large is relatively unobtrusive, within a depression of land that prevents most wide views of the site to be experienced. The surrounding landscape also includes a range of man-made interventions. These features enable the area to accommodate a degree of change where other locally approved solar farms would contribute to the visual evolution of the appearance of the area.
90. The Framework identifies that many renewable energy projects in the Green Belt will comprise inappropriate development. In such cases, developers will need to demonstrate very special circumstances which could include the wider environmental benefits associated with the increased production of energy from renewable sources. Whilst this lends support for renewable projects in the Green Belt it does not confer an automatic approval of such schemes, where the effects of such development must take into account a broad range of issues in mind of the general presumption against inappropriate development and the resultant substantial harm conveyed to the Green Belt by this.

91. The benefits of renewable energy raise substantial benefits in favour of the proposal. These benefits are recognised in the Council's local policies and guidance and national policy in accordance with the Climate Change Act of 2008. It is also clearly identified, in Section 14 of the Framework, where it seeks to increase the use and supply of renewable and low-cost energy and to maximise the potential for suitable such development. The delivery of suitable renewable energy projects is fundamental to facilitate the country's transition to a low carbon future in a changing climate.
92. Also, a solar farm requires grid capacity and a viable connection to operate. As such, this requirement places a locational restriction on site selection that limits the number of appropriate sites for such a facility. The Appellant explains that the national grid suffers capacity difficulties and limits suitable points of connection. The Appellant proposes to connect to the adjacent electrical pylons placing the site in an advantageous location satisfying the connection constraints that exist. The Appellant has therefore demonstrated that a rational approach was taken to site selection lending support for the selected site.
93. Accordingly, the public benefits of the proposal are of sufficient magnitude to outweigh the substantial harm found to the Green Belt and all other harm identified above. These benefits identified attract very substantial weight in favour of the scheme. In this context, the harm to the Green Belt would be clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development exist. Accordingly, the proposal would satisfy the local and national Green Belt policies I have already outlined.

Conditions

94. I have considered the use of conditions in line with the guidance set out in the PPG. I shall take the conditions within the agreed SoCG into consideration and impose these with some amendments and adjustments for clarity.
95. A number of conditions are necessary that relate to the submission of details prior to the commencement of development. These seek details relating to the specific placement of equipment on site, a landscape scheme, temporary fencing, arboricultural method statement, soil management plan, archaeological investigation and definition of exclusion zones, construction ecological management plan, construction traffic management plan and a surface water drainage strategy. I consider these pre-commencement conditions to be so fundamental to the development that it would have been otherwise necessary to refuse permission. These details are required at a pre-commencement stage as they relate to matters that may influence the configuration of equipment on site and relate to its initial setting out.
96. I have imposed the standard conditions with respect to timeframe and approved plans as advised by the PPG for clarity and certainty. Conditions are also necessary to determine the precise location of the equipment, grant only a temporary consent, establish a decommissioning strategy, decommissioning in the event of early closure of the facility and to require notification as to when power provision begins. These conditions would be required to manage the overall landscape impact of the development and comply with LP policy DM19.
97. Conditions are necessary with respect to the provision of a landscape planting scheme, an ecological management plan, construction ecological plan, to

prevent the installation of external lighting, breeding bird mitigation and monitoring strategy and arboricultural method statement in the interests of the character and appearance of the area and to ensure the delivery of a net gain to Biodiversity.

98. It is necessary to require details of boundary treatment and the proposed CCTV system to ensure the proposed works integrate well with their surroundings.
99. During the Hearing the Council explained that it would also require a condition for temporary fencing to prevent glint and glare to motorists. I acknowledge that there is no clear evidence before me that clearly demonstrates that solar farms cause glint and glare that might contribute towards accidents. Nevertheless, the County Highway Engineer's evidence illustrates that some motorists have stated, in accident reports, that dazzle was a distracting component. Therefore, despite the solar panels not being especially reflective, I find that a requirement for screening would be necessary due to the site's proximity to the A130 and the extent of panels that would otherwise be visible from this vantage. Accordingly, this condition would be necessary in the interests of highway safety.
100. It is also necessary for the submission of a construction traffic management plan, site access point specifications and for hardstanding around the accesses to be hard bound, all in the interests of highway safety. Furthermore, conditions are necessary to satisfy the archaeological interests of the site and to define any localised exclusion zones in accordance with LP policy DM15.
101. It is also necessary for the provision of a surface water drainage strategy and its maintenance plan to ensure that a SUDs scheme is installed to mitigate against any flood risk. Furthermore, a condition would be required to ensure that a soil management plan is submitted to manage soil compaction, water runoff and drainage.

Conclusion

102. For the above reasons, the appeal is allowed, and planning permission is granted subject to the conditions within the attached schedule.

Ben Plenty

INSPECTOR

APPEARANCES

For the Appellant;

Thomas Smith	- Technical Director, AECOM
Richard Hammond	- Landscape architect, AECOM
Jonathan Hill	- Associate Director, AECOM
James Hartley-Bond	- Low Carbon

For the Council;

Ruth Mabbutt	- Senior Planning Officer, Chelmsford City Council
Ryan Mills	- Place, Essex County Council
Sarah Hill-Saunders	- Planning Officer, Chelmsford City Council
Richard Mackrodt	- Highway Engineer, Essex County Council

Interested parties;

Cllr Richard Poultner, for Bicknacre and East and West Hanningfield Ward
Cllr Sue Dobson, for Bicknacre and East and West Hanningfield Ward
Cllr Les Draper, East Hanningfield Parish Council
Cllr Malcolm Thomas, East Hanningfield Parish Council (and acting as resident)
Paul Galley, West Hanningfield Parish Council
John Dunton, West Hanningfield Parish Council
Mr and Mrs Hellings, residents

Additional documents

Doc A:	Statement of Common Ground (signed version)
Doc B:	Viewpoint suggestions and plan for site visit walking route from main parties
Doc C:	Plan of Public Rights of Way
Doc D:	objection from West Hanningfield Parish Councils
Doc E:	objection from East Hanningfield Parish Councils
Doc F:	objection from Mr Malcolm Thomas, a local resident
Doc G:	Attendance List

Schedule of Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the approved plans and conditions listed on this decision notice: LCS039-SP-01_rev02 (Site Location Plan), LCS039-DZ-01_rev10 (Zoning Layout Plan), LCS-SD-11_rev02 (Panel Cross Section), LCS-SD-01_rev02 (DNO Substation Elevations and Dimensions Plan), LCS-SD-02_rev02 (Customer Substation Elevations and Dimensions Plan), LCS-SD-03_rev01 (Indicative CCTV Post), LCS-SD-04_rev02 (Security Fence and CCTV Standard Detail), LCS-SD-08_rev02 (Inverter Elevations and Dimensions Plan), LCS-SD-01_rev01 (DNO Substation Floor Plan), LCS-SD-15_rev01 (Customer Substation Floor Plan), LCS-SD-16_rev01 (Inverter Floor Plan), LCS-SD-21_rev01 (53ft Battery Container (HVAC on roof) Standard Detail), LCS-SD-23_rev01 (POC Mast Compound), LCS-SD-25_rev01 (Meter Kiosk Standard Detail), LCS039-PLE-01_rev22 (Indicative Site Layout (amended post-decision)), 60644715-ACM-LCSF-SD-DR-DS-000001 Rev P02 (Sandon Brook Solar Farm Outline Drainage Strategy).
- 3) The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity generated by the solar panels is first exported to the National Grid. At the end of this 40-year period, the development shall be removed, and the land restored to its previous agricultural use in accordance with details that shall have been previously submitted to and approved in writing by the Local Planning Authority.
- 4) Prior to their installation, full details of the final location, design and materials to be used for the: (a) panel arrays, (b) transformers, (c) inverters, (d) battery storage, (e) control room, (f) substations, (g) CCTV cameras, (h) fencing and gates, and (i) Any other auxiliary buildings. These details shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall be carried out in accordance with the approved details and thereafter permanently maintained in the agreed form unless otherwise agreed in writing with the Local Planning Authority.
- 5) No later than six months prior to the expiry of the planning permission, or within six months of the cessation of electricity generation by this solar PV park, whichever is the sooner, a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the Local Planning Authority (LPA). The scheme of works shall include the following: (a) a programme of works; (b) a method statement for the decommissioning and dismantling of all equipment and surfacing on site; (c) details of any items to be retained on site; (d) a method statement for restoring the land to agriculture; (e) timescale for the decommissioning, removal and reinstatement of the land; (f) a method statement for the disposal/recycling of redundant equipment/structures. The scheme of works shall be undertaken in accordance with the approved details and timescales. The operator shall notify the Local Planning Authority in writing within five working days following the cessation of electricity generation.

- 6) The applicant/developer shall notify the Local Planning Authority in writing within 10 working days of electricity being generated from the development being first exported to the National Grid.
- 7) If the solar farm ceases to export electricity to the grid for a continuous period of twelve months, a scheme shall be submitted to the Local Planning Authority for its written approval within three months from the end of the twelve-month period for the removal of the solar farm and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall then be fully implemented within nine months of the written approval being given.
- 8) No construction or decommissioning works shall take place except between the following hours: 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 Saturday. No construction or decommissioning works shall take place at any time on Sunday or a Bank Holiday.
- 9) Prior to the commencement of development, a landscaping scheme containing details of both hard and soft landscape works shall be submitted to and approved in writing by the Local Planning Authority. Subsequently the works shall be carried out as approved prior to the first exportation to the National Grid, or in the first available planting season following such exportation and permanently retained and maintained in accordance with the agreed lifetime of the development. The details to be submitted shall include: (a) Hard surfacing including pathways and driveways, other hard landscape features and materials; (b) Existing trees, hedges or other soft features to be retained; (c) Planting plans including specifications of species, sizes, planting centres, number and percentage mix; (d) Details of planting or features to be provided to enhance the value of the development for biodiversity and wildlife; (e) compliance with the biodiversity net gain metric and (f) the continuation of unobstructed movement of species within the site.
- 10) A Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the local planning authority prior to first exportation to the National Grid. The content of the LEMP shall include the following: (a) Description and evaluation of features to be managed; (b) Ecological trends and constraints on site that might influence management; (c) Aims and objectives of management; (d) Appropriate management options for achieving aims and objectives; (e) Prescriptions for management actions; (f) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period); (g) Details of the body or organisation responsible for implementation of the plan; (h) Ongoing monitoring and remedial measures. The LEMP shall include details of the legal and funding mechanism(s) by which the long-term implementation of the plan will be secured by the developer with the management body(ies) responsible for its delivery. The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved plan will be implemented in accordance with the approved details.

- 11) Prior to their installation, details of boundary treatment and CCTV cameras shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the works shall be carried out as approved prior to first exportation to the National Grid and permanently retained and maintained in accordance with the agreed form subject to any such variation that has been previously agreed in writing with the Local Planning Authority. The details to be submitted shall include: (a) Details of the proposed treatment of all boundary fencing; and (b) Details of the CCTV cameras; (c) Whole perimeter fencing plan including provision for the ingress and egress of badgers and other small mammals.
- 12) Prior to the commencement of development, a scheme to deal with the provision of temporary boundary fencing to address glint and glare shall be submitted to and approved in writing by the Local Planning Authority. The temporary fencing should be installed to approximately 3 metres in height (or where necessary to a previously agreed greater height) and shall provide continuous unbroken screening, above the carriageway levels of the A130 and Southend Road. The fencing shall remain in place until the new planting and any additional planting to enhance the existing established planting has reached a minimum height of 3 metres (or greater), to be determined in writing with the Local Planning Authority. Prior to the removal of the temporary fencing, evidence shall be submitted to and approved in writing by the Local Planning Authority, which demonstrates the boundary landscaping has reached a height of 3 metres (or where necessary to a previously agreed greater height) and provides a continuous unbroken screen, above the carriageway levels of the A130 and Southend Road.

In the event of an extraordinary event, where the temporary screening along the perimeter of the site, as shown on the detailed site layout plan secured under Condition 4, is partially or completely removed or destroyed, an Emergency Plan shall be provided prior to the commencement of the development that identifies: i. the procedure to install temporary screening, with associated construction management plan; ii. permanent remedial actions; iii. the party or party's responsible; and iv. provision of any Traffic Management required to the A130 and Southend Road carriageways, as required by the LPA and the Highway Authority. Full details of the Emergency Plan will be agreed in writing with the Local Planning Authority and the Local Highway Authority prior to commencement.

- 13) In relation to tree protection, no works shall take place until an Arboricultural Method Statement has been submitted to and approved in writing by the Local Planning Authority. Thereafter, the development shall only be carried out in accordance with the submitted Arboricultural Method Statement subject to such minor variations as may be agreed by the Local Planning Authority. The details to be submitted shall include: (a) Details of trees and hedges to be retained and removed; (b) Details of tree surgery work to retained trees; (c) Specification for tree protection including layout and type of tree protection for construction including change that may occur during development; (d) Location and installation of services, utilities and drainage; (e) Details of construction within the root protection area of retained trees; (f) Details of site access,

temporary parking, welfare facilities, loading and unloading, storage of equipment, materials, fuels and waste; (g) Boundary treatments within the root protection areas; (h) Arboricultural supervision and inspection, including timings, reporting of inspections and supervision; (i) Boundary treatments within the root protection areas, and (j) Arboricultural supervision and inspection, including timings, reporting of inspections and supervision.

- 14) Prior to first exportation to the National Grid, a wintering and farmland breeding bird mitigation and monitoring strategy, that includes reference to skylarks, shall be submitted to and approved in writing by the Local Planning Authority prior to the completion of the development. Thereafter, the works shall only proceed in accordance with the approved mitigation and monitoring strategy, subject to any minor variation that may be agreed in writing with the Local Planning Authority. The strategy shall include details of the following: (a) Purpose and conservation objectives for the proposed measures; (b) Detailed methodology for measures to be delivered; (c) Location of the proposed measures; and (d) the Mechanism for implementation and monitoring of delivery. The farmland bird mitigation strategy shall be implemented in the first nesting season following completion of the development and in accordance with the approved details or any such variation that has been previously agreed in writing by the Local Planning Authority and shall be delivered for a minimum period of 10 years from first implementation.
- 15) No work shall take place until a soil management plan has been submitted to, and approved in writing by, the local planning authority. Thereafter, the development shall be carried out in accordance with the approved details and thereafter permanently maintained in the agreed form unless otherwise agreed in writing with the Local Planning Authority.
- 16) No unbound material shall be used in the surface treatment of the vehicular access hereby permitted within 6 metres of the highway boundary.
- 17) Prior to their construction, details of the construction of the site accesses, visibility sight splays, dropped kerb vehicular crossings of the footway and details of surface water discharge from the highway, shall be submitted to and approved in writing by the Local Planning Authority. Thereafter, the access points shall be constructed ready for use prior to first export to the National Grid in accordance with the approved details. The accesses shall be permanently retained in accordance with the agreed form at all times.
- 18) No development shall take place within the whole site until a programme of archaeological work has been secured and implemented, in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority. The scheme of investigation shall include an assessment of significance and research questions; and: (a) The programme and methodology of site investigation and recording; (b) The programme for post investigation assessment; (c) Provision to be made for analysis of the site investigation and recording; (d) Provision to be made for publication and dissemination of the analysis and records of the site investigation; (e) Provision to be made for archive deposition of the analysis and records of the site

investigation; (f) Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation; (g) The site investigation shall be completed prior to development, or in such other phased arrangement, as agreed and approved in writing by the Local Planning Authority.

The solar farm shall not be brought into operation until the site investigation and post investigation assessment has been completed, submitted to and approved in writing by the Local Planning Authority, in accordance with the programme set out in the Written Scheme of Investigation, and the provision made for analysis, publication and dissemination of results and archive deposition.

- 19) Prior to commencement of the development a detailed site plan including Archaeological Exclusion Zones will be submitted to and approved by the Local Planning Authority. Following the approval and completion of the archaeological evaluation referred to in Condition 18 and prior to the commencement of development, a final detailed site layout plan with full details of the final locations, design and materials to be used for the panel arrays, inverters, customer switchgear, substations, CCTV cameras, fencing, foundations and cabling will be submitted for approval.

Should the archaeological evaluation identify any significant archaeological deposits, the final detailed site layout plan will define Archaeological Exclusion Zones within which below and above ground development will be excluded or provide sufficient design mitigation including but not limited to the use of above ground cables, concrete shoes or other means to avoid any impact on archaeological deposits if required.

The final detailed site layout plan shall be submitted to and approved in writing by the Local Planning Authority, in consultation with the County Council's Lead Archaeologist. Subsequently the development shall be carried out in accordance with the approved details.

If there are archaeological areas to be preserved in situ, a management plan will be produced for any archaeological areas to be preserved in situ, setting out the methodology to secure the ongoing protection of these areas both during construction, operation and decommissioning of the solar farm.

- 20) No development shall take place (including demolition, ground works, vegetation clearance) until a construction environmental management plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details for the control and management of noise and dust during the construction phase, and with respect to noise shall have due consideration of the guidance within BS 5228:2009+A1:2014. The CEMP will be adhered to by the contractor throughout the construction process. The CEMP shall include the following: (a) Risk assessment of potentially damaging construction activities; (b) Identification of "biodiversity protection zones"; (c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements); (d) The location and timing of sensitive works to avoid harm to biodiversity features; (e) The times during construction when specialist ecologists need to be present on site

to oversee works; (f) Responsible persons and lines of communication; (g) The role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; (h) Use of protective fences, exclusion barriers and warning signs; (i) Details for the control and management of noise and dust during the construction phase; and (j) Shall have due consideration of noise guidance contained within BS 5228:2009+A1:2014. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details, unless otherwise agreed in writing by the local planning authority.

- 21) No development shall take place, including any ground works or demolition, until a Construction Traffic Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved Plan shall be adhered to throughout the construction period. The Statement shall provide for: (a) Suitable construction vehicle routes for all construction vehicles, to be agreed with the Highway Authority; (b) The parking of vehicles of site operatives and visitors; (c) Loading and unloading of plant and materials iv. storage of plant and materials used in constructing the development; (d) Wheel and underbody washing facilities; (e) The location of the construction compound; and (f) Construction signage and traffic management measures.
- 22) No development shall commence until details of the strategy for the disposal of surface water on the site have been submitted to and approved in writing by the local planning authority (LPA).
- 23) Prior to first use of the development hereby permitted a detailed maintenance plan detailing the maintenance arrangements including who is responsible for different elements of the surface water drainage system and the maintenance activities/frequencies, has been submitted to and agreed, in writing, by the Local Planning Authority. It should additionally show that there is a regular and strict maintenance plan in place for the outfall to reduce the risk of blockage. Should any part be maintainable by a maintenance company, details of long-term funding arrangements should be provided.
- 24) No external lighting, including lighting required for construction and decommissioning, shall be installed at the site until such time as a lighting strategy for biodiversity has been submitted to and approved in writing by the local planning authority. All external lighting shall be installed in accordance with the details agreed in the strategy and shall be maintained thereafter in accordance with the agreed details, subject to any such variation that may be agreed with the Local Planning Authority. No additional external lighting shall be installed without prior written consent from the local planning authority.

End of conditions



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