

Heritage Report



Planning Appeal APP/R3705/W/24/3349391

Land 800 metres south of Park House Farm,
Meriden Road, Fillongley, Warwickshire, CV7 8BP

November 2024

Keystone Heritage



Keystone Heritage



Keystone Heritage

Tel: +44(0)78 3456 1626

Email: mail@KeystoneHeritage.co.uk

Web: www.KeystoneHeritage.co.uk

Cover image: Grade II listed early-17th century threshing barn at Park House Farm.

All rights in this work are reserved. No part of this work may be reproduced, stored or transmitted in any form or by any means (including without limitation by photocopying or placing on a website) without the prior permission in writing of Keystone Heritage except in accordance with the provisions of the Copyright, Designs and Patents Act, 1988. Applications for permission to reproduce any part of this work should be addressed to Keystone Heritage at mail@KeystoneHeritage.co.uk. Undertaking any unauthorised act in relation to this work may result in a civil claim for damages and/or criminal prosecution. Any materials used in this work that are subject to third party copyright have been reproduced under licence from the copyright owner except in the case of works of unknown authorship as defined by the Copyright, Designs and Patents Act, 1988. Any person wishing to assert rights in relation to works that have been reproduced as works of unknown authorship should contact Keystone Heritage at mail@KeystoneHeritage.co.uk.

Keystone Heritage asserts its moral rights to be identified as the author of this work under the Copyright, Designs and Patents Act, 1988.

© Keystone Heritage 2024

Executive Summary

This heritage report has been commissioned by Fillongley Parish Council in response to planning appeal APP/R3705/W/24/3349391. It is submitted following the recent refusal by North Warwickshire Borough Council of planning permission for the proposed development of the appeal site referred to as Land 800 Metres South of Park House Farm, Meriden Road, Fillongley, Warwickshire, CV7 8BP.

The proposal, by Enviromena Project Management UK Ltd., is for the development of a solar farm including the installation of ground-mounted solar panels together with associated works, equipment and necessary infrastructure on a site comprising approximately 61 hectares of arable farmland.

This document examines the heritage values, setting and significance of the heritage assets potentially affected by development and offers an assessment of the potential impact from the proposed solar farm on those heritage assets. A professional appraisal is also provided of the Heritage and Archaeology Assessment submitted in support of the development.

It has been found that impact from the solar farm on the historic environment will be universally adverse, in degrees ranging from slight to large adverse. Development will result in harm to the settings of a number of highly designated heritage assets, including the scheduled monument of Castle Yard and grade II* listed Church of St Mary and All Saints.

No evidence has been put forward that the same public benefits cannot be achieved in a location of lower historic sensitivity that does not incur the same degree of harm to the historic environment. As such, the proposal is not deemed to comply with paragraphs 205, 208 or 209 of the NPPF, or with Policy LP15 of the North Warwickshire Local Plan and Policy FNP06 of the Fillongley Neighbourhood Plan.

Contents

| | |
|---|-----|
| Executive Summary | 3 |
| 1 Introduction | 5 |
| 2 The Site and Environs | 8 |
| 3 Proposed Development | 13 |
| 4 Methodology | 15 |
| 5 Planning Context | 21 |
| 6 Background History to the Site and Environs | 29 |
| 7 Identification of Relevant Heritage Assets | 35 |
| 8 Significance of the Relevant Heritage Assets | 47 |
| 9 Impact on Significance of the Relevant Heritage Assets | 52 |
| 10 Appraisal of Appellant’s Heritage & Archaeology Assessment | 60 |
| 11 Conclusion | 63 |
| Appendix 1: National Heritage List for England Entries | 65 |
| Appendix 2: Hamilton Hill Farm Appeal | 73 |
| Appendix 3: Land East of Pelham Substation | 88 |
| Appendix 4: Sources | 102 |

1 Introduction

Circumstances of this Report

- 1.1 This heritage report has been commissioned by Fillongley Parish Council in response to planning appeal APP/R3705/W/24/3349391. It is submitted following the recent refusal by North Warwickshire Borough Council of planning permission for the proposed development of the appeal site referred to as Land 800 Metres South of Park House Farm, Meriden Road, Fillongley, Warwickshire, CV7 8BP.¹
- 1.2 The proposal, by Enviromena Project Management UK Ltd., is for the development of a solar farm including the installation of ground-mounted solar panels together with associated works, equipment and necessary infrastructure.
- 1.3 The site comprises approximately 61 hectares of arable farmland. It does not contain any designated heritage assets, but it lies just south of a 12th century medieval ringwork designated as a scheduled monument, as well as the designated Fillongley Conservation Area. The site also lies in proximity to a number of historic properties that are included on the National Heritage List for England. Several heritage assets recorded in the Historic Environment Record both within the site itself and in its vicinity may be regarded as non-designated heritage assets (NDHAs); further additional NDHAs are identified in this report.
- 1.4 This document examines the heritage values, setting and significance of the heritage assets potentially affected by development and offers an assessment of the potential impact from the proposed solar farm on those heritage assets. A professional appraisal is also provided of the Heritage and Archaeology Assessment submitted in support of the development.²
- 1.5 This information is intended to assist the appointed Inspector to reach an informed decision regarding whether the proposed solar farm would cause harm to the historic environment, and, if so, whether that harm is acceptable in regard to relevant legislation and planning policy.

¹ Decision by North Warwickshire Borough Council 10 July 2023, application no. PAP/2023/0071.

² Heritage and Archaeology Assessment, BWB Consulting, December 2023.

Site Location

- 1.6 The site is located south-west of the village of Fillongley in Warwickshire, in an area of rural farmland currently under arable cultivation and designated as Greenbelt.



Figure 1 Approximate location of the site (red dot) to the south-west of the village of Fillongley in Warwickshire. Source: Google Earth.

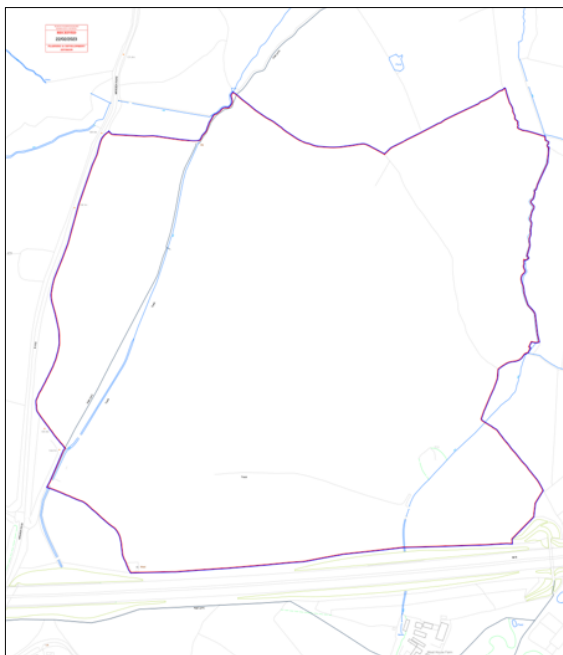


Figure 2 Red line boundary of the application site, from plan submitted by Enviromena Project Management UK Ltd. reproduced from NWBC planning website.

- 1.7 The site, centred on National Grid Reference SP 2762 8601, lies on the watershed of the Meriden Ridge. It is bounded to west by the B4102 (Meriden Road) and to the south by the M6 motorway. To the east of the site is farmland, the settlement of Corley Ash and the B4098; to the north lie the earthwork remains of a 12th century medieval ringwork and the historic village of Fillongley. The site falls within the administrative area of North Warwickshire Borough Council.

Author

- 1.8 This heritage report has been prepared by Catherine Tuck, principal heritage consultant at the *Keystone Heritage* consultancy. With over 30 years' experience gained as an historic landscape surveyor in the Royal Commission on the Historical Monuments of England (RCHME), as an Inspector of historic buildings in Historic England's planning section, and latterly as a heritage consultant, the author contributed to the drafting of government guidance on the setting of heritage assets, the second edition of which is referred to in this document. The author is an affiliate member of the Institute of Historic Building Conservation (IHBC).

2 The Site and Environs

- 2.1 The countryside south of Fillongley village, formerly part of the ancient Forest of Arden, today is predominantly farmland. Characterised by a pattern of irregular fields, field boundaries are edged with historic hedgerows and remnant mature trees indicating the former presence of hedgerows.



Figure 3 Looking south-west within the site from public footpath.



Figure 4 Grade II listed early 17th century threshing barn at Park House Farm, looking east.

- 2.2 The landscape here contains numerous components dating to the Middle Ages. A rare example of 12th century ringwork is located just south of Fillongley village; a second castle – a motte and bailey - stands a short distance to the north-east of the village. The site itself contains part of a former medieval deer park associated with the ringwork and there are fields of surviving ridge and furrow adjacent to the site boundary. These neighbouring elements, which are visible from the site, form a legible but fragile layer of remnant medieval landscape.
- 2.3 Post-medieval elements have woven organically into this landscape framework. Dispersed historic farmsteads, dating to the 16th and 17th centuries, stand in prominent locations around the site. They overlook a pattern of early fields that today are rolling fields in arable cultivation or left to pasture. These farmsteads are accessed via narrow, hedgerow-lined roads, that themselves are routes of some antiquity.

Historic Landscape Characterisation

- 2.4 The present-day historic character of the Warwickshire landscape has been digitally mapped as part of a national programme to provide better understanding of the historic landscape resource and its capacity for change and to establish an integrated approach to sustainable land management in partnership with other organisations.
- 2.5 The Warwickshire Historic Landscape Characterisation (HLC) project identifies groups of land parcels exhibiting broadly similar characteristics. The majority of the site lies within areas HWA3843 and HWA3844 described as fieldscapes formed from small irregular fields that are much older in origin.
- 2.6 A former field barn, or ‘outfarm’³ stood within the appeal site east of White House Farm; it is marked on the 1846 Tithe Map and on the Ordnance Survey 1st edition map but is no longer visible above ground.
- 2.7 A public footpath runs through the appeal site on a north-east to south-west alignment. This is likely to be a route of some antiquity connecting the historic settlements Fillongley and Chapel Green; the north end of it is shown on the Tithe Map passing to the north of the scheduled ringwork. The route south has now been severed by the M6 motorway.

³ Historic Environment Record MWA31907.

Site Topography

- 2.8 The site has an undulating topography with a prominent hump-back ridge running on a roughly north-south alignment through the site. The highest point of the ridge rises to 148m above OD with land sloping down to the east and west and at either end of the ridge. The lowest parts of the site lie at 122m above OD giving a marked height differentiation within the site of 26m (85ft). The site forms part of the larger Meriden Ridge from which water drains north-east towards Fillongley and south-west towards Meriden.

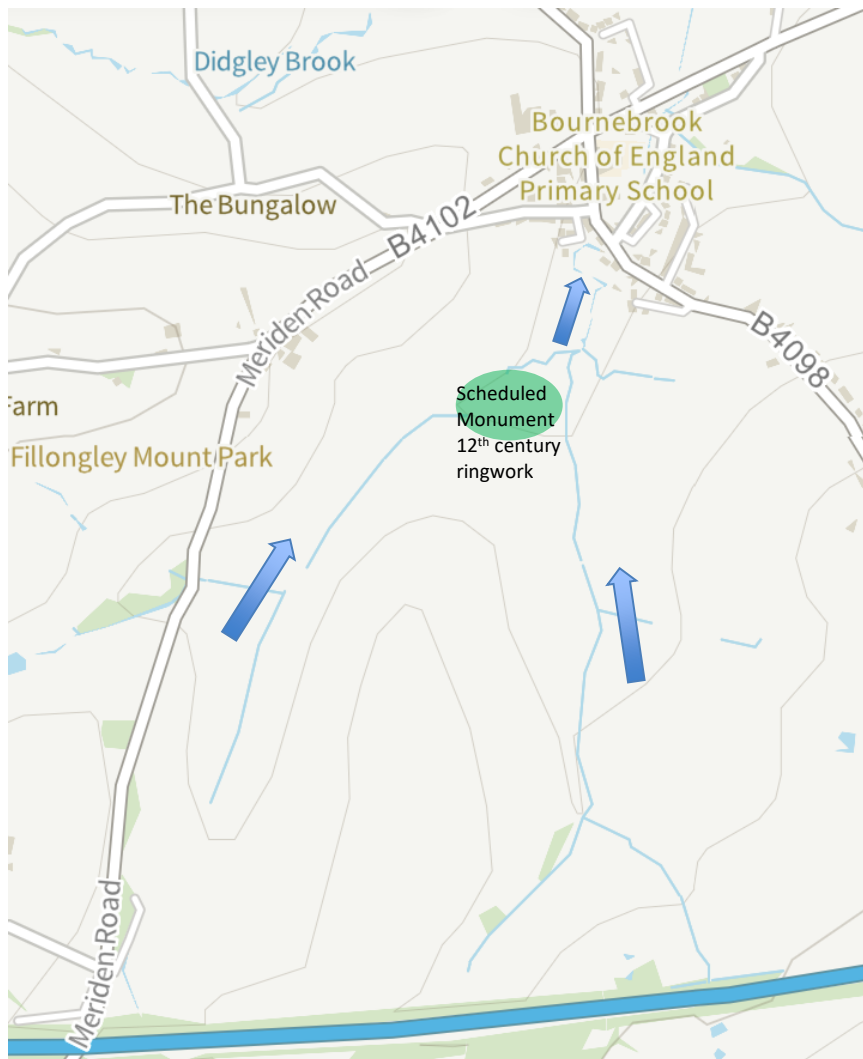


Figure 5 Two streams flow along the base of the ridge within the site into the ditch of the medieval ringwork (indicated by green dot).

- 2.9 The west side of the hump-back ridge within the site itself is flanked by a stream, largely canalised as a drainage ditch, that flows north towards a scheduled monument known as Castle Yard - a rare example of a 12th century type of defensive ringwork. A second stream runs in the same direction along the east side of the ridge; together these two streams flow into the ditch of the medieval ringwork.

2.10 From the ringwork, the stream flows north through the centre of Fillongley village as the Bourne Brook. The low-lying historic core of the village, which includes numerous listed buildings, is historically prone to flooding by the Bourne Brook.

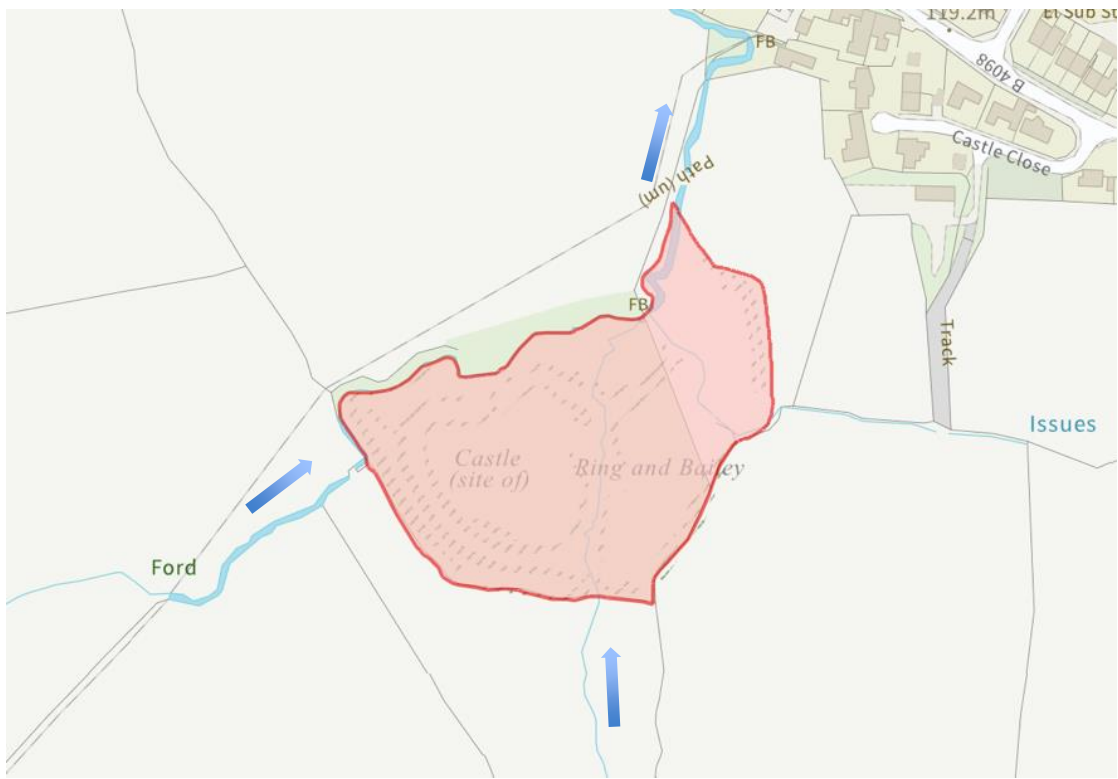


Figure 6 From the medieval ringwork ditch water flows north into the centre of Fillongley village as the Bourne Brook.



Figure 7 View across the site looking east from Meriden Road.

2.11 Meriden Road (the B4102) defines the western extent of the appeal site. The line of the road has been altered as its south end, presumably to accommodate the M6 motorway and embankment, but the northern section survives as an historic route linking farmsteads west of the ridge with Fillongley village to the north and Chapel Green to the south. This route is a relatively busy one that provides users with dynamic views east across the neighbouring countryside and the appeal site.

Geology and Soils

2.12 The site has a bedrock geology of sedimentary sandstone (Keresley Member) interbedded towards the north-east with Argillaceous rocks and conglomerate. The central ridge running through the site is formed of a sedimentary superficial deposit of Thrussington Member diamicton.⁴ The distinctively rich red soil of the area is reflected in the predominant use of local red bricks in the construction of vernacular buildings.

⁴ <https://geologyviewer.bgs.ac.uk/>

3 Proposed Development

3.1 The proposed development that is the subject of appeal APP/R3705/W/24/3349391 involves the construction of a solar farm of ground-mounted panels covering the 61 hectare site together with associated works, equipment and necessary infrastructure. The development is detailed in plans and documents submitted in support of planning application PAP/2023/0071 and planning appeal APP/R3705/W/24/3349391 and is summarised here.

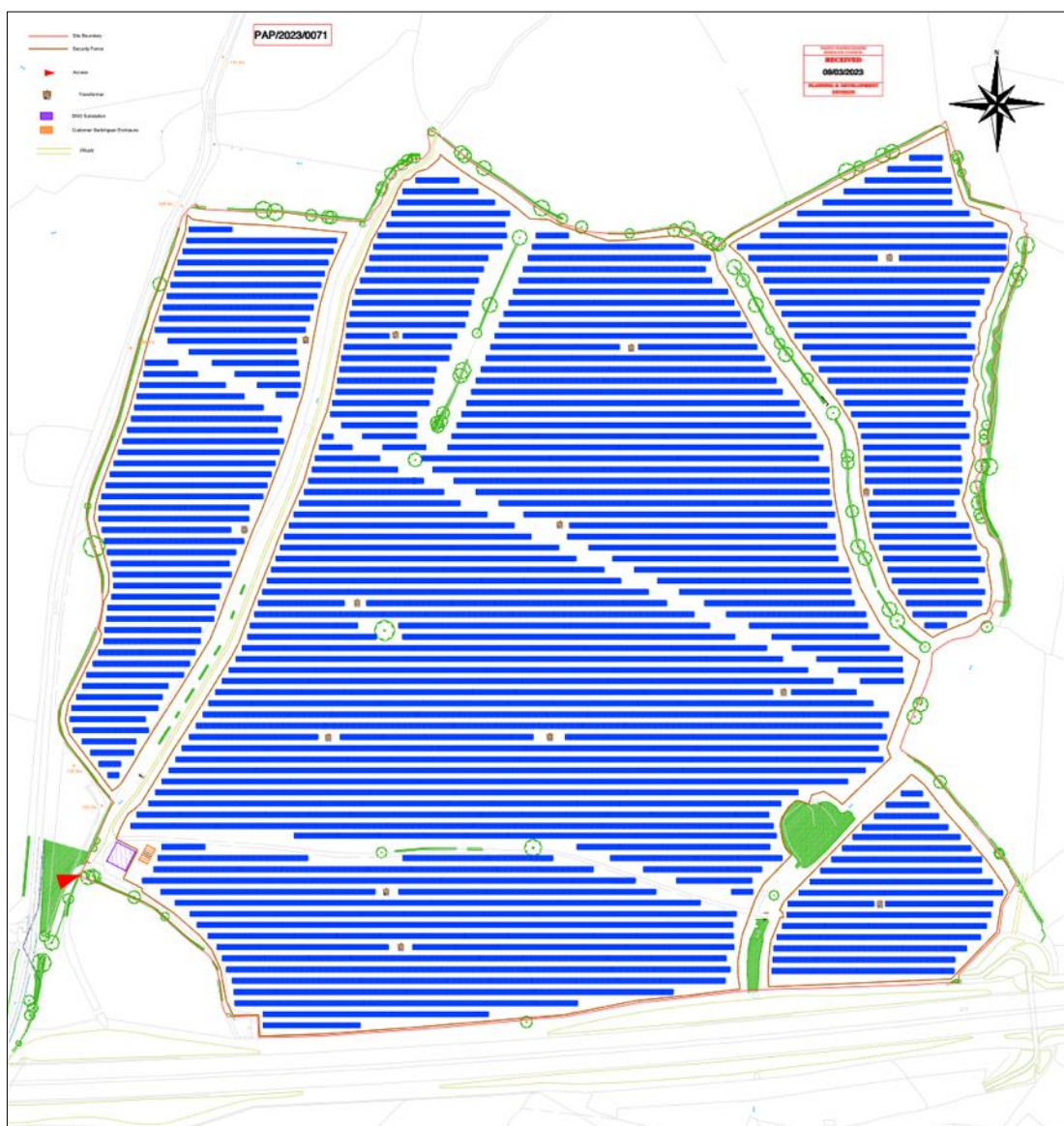


Figure 8 Proposed solar farm south-west of Fillongley village, Warwickshire. Plan submitted by Enviromena Project Management Ltd. reproduced from NWBC planning website.

3.2 The solar panels, which stand to a height of c.2.3m, will extend to the edges of the site in all directions, oriented facing towards the south. Linear gaps will provide access to areas of panels and additional hedging and trees will be introduced to the site.

3.3 The proposed planting scheme was submitted as part of the application. Existing trees and hedgerows are shaded dark green and additional planting is shown in lighter green. The scheme includes overall grassland cover, clumps of new trees and new lines of hedging flanking new fences running north-south and east-west through the site.



Figure 9 Proposed solar farm planting. Plan submitted by Enviromena Project Management Ltd. reproduced from NWBC planning website.

4 Methodology

- 4.1 The general methodology used in the production of this Heritage Statement follows an approach to the assessment of the historic built environment that is widely adopted as heritage industry standard. The process follows that set out by Historic England⁵, by the Chartered Institute for Archaeologists⁶ and in guidance contained within the NPPF on conserving and enhancing the historic environment.⁷ The levels and tables used to quantify significance and impact are taken from the ICOMOS 'Guidance on Heritage Impact Assessments for Cultural World Heritage properties' (2011).
- 4.2 The starting point for assessing capacity for change in the built environment is an understanding of heritage assets in terms of their heritage, or cultural, significance. This concept was first established by English Heritage in the 2008 guidance '*Conservation Principles: Policies and Guidance for the Sustainable Management of the Historic Environment*'. This significance of heritage assets is described using a combination of four 'heritage values': evidential, historical, aesthetic and communal.
- 4.3 A similar approach to understanding significance is still advocated today, although the NPPF uses a slightly a different set of heritage values: historic, archaeological, architectural and artistic. Current Historic England advice and guidance has been updated to align with the definition of heritage values used in the NPPF; *Conservation Principles* is also being revised by Historic England in line with this.

Heritage Values defined in the NPPF

- 4.4 **Historic value** derives from the ways in which past people, events and aspects of life can be connected through a place to the present. This broadly equates with *Conservation Principle's*

⁵ Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12, Historic England, 2019.

⁶ Chartered Institute for Archaeologists: '*Standard and Guidance: Historic Environment Desk-based Assessments*' 2017.

⁷ National Planning Policy Framework, Planning Practice Guidance, Department of Communities and Local Government, Paragraph: 009 Reference ID: 18a-009-20190723 and Paragraph: 013 Reference ID: 18a-013-20190723.

‘Historical value’. It tends to be illustrative (i.e. illustrating aspects of history or prehistory) or associative (i.e. having association with a notable family, person, event or movement).

4.5 **Archaeological value** is derived from physical remains embodied in the asset and their potential to yield evidence about past human activity. These can be above ground (i.e. standing structures) or below (i.e. buried archaeological remains). The ability to interpret and understand evidence tends to be diminished in proportion to the extent of its removal or replacement. This equates with the previously used ‘Evidential value’.

4.6 **Architectural value** is defined by the NPPF as how an asset demonstrates building type, form or style including traditional, innovative or unusual techniques or materials. It has no direct correlation in *Conservation Principles* but most closely equates to Historical Illustrative value.

4.7 **Artistic value** is derived from the ways in which people draw sensory and intellectual stimulation from a place. This can be the result of conscious design or can be seemingly fortuitous. This equates with ‘Aesthetic value’ in *Conservation Principles*.

| Level of Significance | Description of Criteria |
|-----------------------|--|
| Very High | <ul style="list-style-type: none"> Heritage Assets identified as having Outstanding Universal Value, such as World Heritage Sites Other structures or sites of recognised international importance |
| High | <ul style="list-style-type: none"> Scheduled Monuments with standing remains Grade I and II* Listed Buildings Grade I and II* Registered Parks and Gardens Other listed buildings that can be shown to have exceptional qualities in their fabric or historical associations not adequately reflected in the grade of listing. Conservation Areas containing high grade or very important listed buildings/historic parks and gardens Non-designated structures of clear national importance |
| Medium | <ul style="list-style-type: none"> Grade II Listed Buildings Grade II Registered Parks and Gardens Non-designated heritage assets that can be shown to have exceptional qualities in their fabric or important historical associations Conservation Areas Non-designated historic townscapes or built-up areas with important historic integrity in their buildings, or in their settings (including surviving street furniture or other structures) |
| Low | <ul style="list-style-type: none"> Non-designated heritage assets such as Locally Listed Buildings, with modest quality in their historic fabric or historical associations Historic townscapes or built up areas of limited historic integrity in their structures or setting |
| Neutral | <ul style="list-style-type: none"> A building, feature, or area which has no cultural significance but is also not considered intrusive to heritage value |
| Unknown | <ul style="list-style-type: none"> Structures or features with some hidden or inaccessible potential for heritage significance |
| Intrusive | <ul style="list-style-type: none"> A building, structure or area which detracts from heritage significance |

Figure 10 Overall level of significance attributed to a heritage asset.

4.8 Taking into account individual heritage values, the overall significance of a heritage asset can be assessed using a scale from intrusive to very high (figure 10).

4.9 The second stage in assessing change affecting the historic environment is to understand the magnitude of impact, taking into account how a proposal would change an asset or its setting. While some level of visual change is usually inevitable, the nature and magnitude of that change can be evaluated using a scale ranging from neutral to major adverse/beneficial:

| Magnitude of Impact | Description |
|----------------------------|--|
| Major Beneficial | The proposed changes will significantly improve the overall setting and character of heritage assets, revealing and/or enhancing important characteristics which were previously unknown or inaccessible. There would be a substantial improvement to important elements of the asset. |
| Moderate Beneficial | The proposed changes will considerably improve the setting or overall character of the heritage asset. There may be an improvement in key uses and beneficial change (e.g. the creation of coherency) to the characteristics of the asset. |
| Minor Beneficial | The proposed changes may cause a minor improvement to the setting or overall character of a heritage asset. |
| Negligible | The proposed changes will have a minimal positive or negative impact on the heritage asset or its setting. |
| Neutral | The proposed changes will have no impact on the heritage asset or its setting. |
| Minor Adverse | The proposed changes will have minor impact on the setting or overall character of a heritage asset. Change of this magnitude may be acceptable if suitable mitigation is carried out. |
| Moderate Adverse | The proposed changes will negatively alter the setting or overall character of the heritage asset. It will likely disturb key features and detract from the overall heritage significance. Change of this magnitude should be avoided where possible, but can be minimised or neutralised through positive mitigation. |
| Major Adverse | The proposed changes will significantly damage the overall setting and/or character of heritage assets. They will cause a notable disruption to, or in some cases, complete destruction of, important features. Change of this magnitude should be avoided. |

Figure 11 Overall magnitude of impact arising from proposed change.

4.10 The final step in evaluating impact on the historic environment is to quantify how much that magnitude of impact matters, given the particular significance of the affected asset. This is the ‘significance of effect’ which determines the weight that should be attributed to change.

4.11 It recognises that a minor adverse change, for example, may be more acceptable in relation to a non-designated heritage asset of local interest than it might be in relation to a grade I listed building or scheduled monument.

4.12 The resulting outcome, or ‘significance of effect’, can be evaluated using a matrix:

| Criteria | | Sensitivity/ Value | | | | |
|---------------------|---------------------|--------------------|-------------------|------------------|--------------------|-----------------|
| | | Neutral | Low | Medium | High | Very High |
| Magnitude of Impact | Major Beneficial | Slight | Slight / Moderate | Moderate / Large | Large / Very Large | Very Large |
| | Moderate Beneficial | Neutral / Slight | Slight | Moderate | Moderate / Large | Large |
| | Minor Beneficial | Neutral / Slight | Neutral / Slight | Slight | Slight / Moderate | Moderate |
| | Negligible | Neutral | Neutral / Slight | Neutral / Slight | Slight | Slight/Moderate |
| | Neutral | Neutral | Neutral | Neutral | Neutral | Neutral |
| | Negligible | Neutral | Neutral / Slight | Neutral / Slight | Slight | Slight/Moderate |
| | Minor Adverse | Neutral / Slight | Neutral / Slight | Slight | Slight / Moderate | Moderate |
| | Moderate Adverse | Neutral / Slight | Slight | Moderate | Moderate / Large | Large |
| | Major Adverse | Slight | Slight / Moderate | Moderate / Large | Large / Very Large | Very Large |

Figure 12 Matrix of resulting ‘significance of effect’.

4.13 In addition to individual heritage values, a further aspect – that of an asset’s context, or **setting** - should also be taken into account when assessing significance.

4.14 The NPPF Glossary explains that ‘Significance derives not only from a heritage asset’s physical presence, but also from its setting.’ This states that ‘the setting of a heritage asset is the surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve’.⁸

4.15 This confirms the way in which an asset is experienced in its setting is 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. Historic England notes that the setting of a heritage asset may be considered to include only the area immediately surrounding the asset or it may be extensive.⁹

⁸ NPPF Annex 2: Glossary, Department of Communities and Local Government, 2023.

⁹ The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning: 3, 2017 p2.

- 4.16 This importance of setting is underlined in legislation on listed buildings and conservation areas¹⁰ as well as guidance on scheduled monuments.¹¹
- 4.17 Historic England guidance states that **views** can also play an important part in contributing to heritage significance. These can be intentionally designed or serendipitous and can comprise views towards, or out from, an asset, as well as vistas taking in a particular heritage asset. The way in which an asset is experienced in its setting is influenced by an understanding of the historic relationship between places and does not rely on intervisibility.¹²
- 4.18 Collectively, the heritage values, setting and associated views all contribute to the overall significance of a heritage asset.
- 4.19 A visit to the application site was made on 3rd November 2024 under dry but very dull conditions. The visit was undertaken in order to verify details of the proposal, to assess the likely impact of the proposed redevelopment on the historic environment and to record the site and its surroundings photographically.
- 4.20 A desk-top search of relevant background information has been made using publicly available online resources. A list of published, unpublished and online sources is included as Appendix 4. The principal relevant entries on the National Heritage List for England in terms of relevance are included as Appendix 1. Details of two similar cases involving applications for solar farms in the vicinity of scheduled monument are included in section 5. For convenience, the decision notices for these cases are provide as Appendix 2 and Appendix 3 of this report.
- 4.21 Relevant guidance consulted in the production of this document includes:-
- Commercial Renewable Energy Development and the Historic Environment, Advice Note 15, Historic England, 2021;

¹⁰ Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act, 1990.

¹¹ Annex 1: Principles of Selection for Scheduled Monuments, Department for Culture, Media & Sport Scheduled Monuments.

¹² *Guidelines for Landscape and Visual Impact Assessment*, the Landscape Institute and the Institute of Environmental Management and Assessment (in partnership with Historic England), 3rd Edition, 2013.

- Guidelines for Landscape and Visual Impact Assessment, the Landscape Institute and the Institute of Environmental Management and Assessment (in partnership with Historic England), 3rd Edition, 2013;
- Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12, Historic England, 2019;
- Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning:2, Historic England, 2015;
- Conservation Area Appraisal, Designation and Management, Historic England Advice Note 1 (Second Edition) 2019;
- The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), Historic England, 2017.

Limitations

- 4.22 Every effort has been made to ensure that the information contained within this Heritage Impact Assessment is correct, however, the accuracy of the document is dependent upon the reliability of the information used in its compilation. The accuracy of primary sources (such as Ordnance Survey mapping and aerial photographs) is presumed to be high, however, information presented by third parties cannot be guaranteed; this should be considered when using this report.
- 4.23 Due to time constraints in producing this report, the Tithe Map has not been individually recovered or reproduced from the local Records Office. The tithe Map as included in the Heritage & Archaeology Assessment by BWB Consulting, submitted in support of the proposed development is presumed to be accurate and has been used and accredited here. Relevant information that is publicly accessible has been collated in the writing of this report. Information that may be contained within private collections has not been accessed.
- 4.24 The site and its environs have been visually inspected from the public highway and from public rights of way. Views into, out of and within the site have been assessed with particular attention paid to nearby heritage assets. The exteriors only of listed buildings have been inspected, again only from the public highway or from public rights of way.

5 Planning Context

Legislation

Planning (Listed Buildings and Conservation Areas) Act, 1990

- 5.1 In addition to the normal planning framework set out in the Town and Country Planning Act, 1990, the Planning (Listed Buildings and Conservation Areas) Act, 1990, places upon local planning authorities additional statutory duties in terms of preserving the special character of heritage assets, including their setting.
- 5.2 Section 66(1) of the 1990 Act states that in considering applications affecting designated heritage assets, Local Planning Authorities should refer to the principal act in their decisions: *'In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.'* This identifies the need to give considerable weight and importance to that duty and to the presumption in favour of the preservation of listed buildings and their settings.
- 5.3 Section 72(1) of the 1990 Act refers to designated conservation areas. It states that *'with respect to any buildings or other land in a conservation area,....special attention shall be paid to the desirability of preserving or enhancing the character or appearance of that area.'*

Ancient Monuments and Archaeological Areas Act, 1979

- 5.4 The Ancient Monuments and Areas Act, 1979, is the legal framework for the protection of scheduled monuments. It outlines the provisions for designation, control of works and enforcement measures in relation to scheduled monuments or *'any other monument which in the opinion of the Secretary of State is of public interest by reason of the historic, architectural, traditional, artistic or archaeological interest attaching to it.'*¹³

¹³ Ancient Monuments and Areas Act, 1979, s61(12).

- 5.5 Guidance accompanying this legislation advises that *'The significance of ancient monuments derives not only from their physical presence, but also from their setting'*¹⁴ and that *'The significance of Scheduled Monuments may be affected by direct physical changes or by change in their setting (the surroundings in which they are experienced).'*¹⁵

National Planning Policy

- 5.6 National policy relating to heritage protection is given in the National Planning Policy Framework (NPPF).¹⁶ Chapter 16 of the NPPF refers to 'Conserving and Enhancing the Historic Environment'.
- 5.7 The underlying premise of the NPPF in regard to the historic environment is that *'These assets are an irreplaceable resource, and should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of existing and future generations'*.¹⁷ It sets out the government's planning policies for England and how these should be applied in decision-making in relation to the historic environment. The NPPF was most recently amended in December 2023.
- 5.8 Paragraph 205 of the NPPF reminds decision makers 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.'*
- 5.9 Paragraph 206 demands that *'Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification.'*

¹⁴ Scheduled Monuments & nationally important but non-scheduled monuments, DCMS, October 2023, p.10.

¹⁵ Ibid. p.15.

¹⁶ National Planning Policy Framework, 2012 (amended December 2023).

¹⁷ National Planning Policy Framework paragraph, 2012 (updated December 2023), para 195.

- 5.10 Subsequent paragraphs 208 and 209 respectively relate to less than substantial harm to the significance of designated assets and the effect of an application on the significance of non-designated heritage assets.
- 5.11 The associated National Planning Practice Guidance on Conserving and Enhancing the Historic Environment provides additional detail on the application of the NPPF.¹⁸

Local Planning Policy

- 5.12 The North Warwickshire Local Plan, adopted in September 2021, sets out the spatial planning strategy and vision for the Borough. Policy LP15 relates to the conservation of the historic built environment.
- 5.13 The Local Plan explains that *'North Warwickshire has been shaped by human activity over many thousands of years, and the distinctiveness of its present landscapes and settlements reflects this historic character....the entire landscape has intrinsic historic interest which contributes to the local sense of place and is valued by residents and visitors.'*
- 5.14 It recognises that *'The Historic Environment is a finite and non-renewable resource.... The Borough recognises the role of the Historic Environment in shaping the distinctiveness of the Borough and in contributing to quality of life and quality of place. It is committed to protecting and where possible, enhancing its historic assets including identification of areas where development might need to be limited in order to conserve heritage assets or would be inappropriate due to its impact upon the historic environment'*¹⁹[author's emphasis].
- Policy LP15 undertakes that *'The quality, character, diversity and local distinctiveness of the historic environment will be conserved or enhanced'* and that *'Within identified historic landscape character areas development will conserve...landscape character'*. To this end, *'development, including site allocations, should consider all relevant heritage assets that may be affected, including those outside the relevant site'*.²⁰

¹⁸ Ministry of Housing, Communities & Local Government, Historic Environment PPG, April 2014, updated July 2019.

¹⁹ North Warwickshire Local Plan, 2021, paras 10.7-10.10, p.48-49.

²⁰ North Warwickshire Local Plan, 2021, LP15, p.50.

- 5.15 Policy LP15 closely reflects the NPPF in its approach to designated and non-designated heritage assets.

Supplementary Planning Documents and Guidance

- 5.16 There are no supplementary planning documents or guidance associated with the North Warwickshire Local Plan in relation to the historic environment.

Fillongley Neighbourhood Plan

- 5.17 The Fillongley Neighbourhood Plan (2018-2034) was adopted in August 2019. The Neighbourhood Plan Vision Statement outlines the importance of preserving Fillongley's historic setting and character and aims that *'Rural setting and character will be preserved and enhanced for residents and visitors alike.'*
- 5.18 The Neighbourhood Plan acknowledges that *'The Green Belt has the purposes of safeguarding the countryside from encroachment and also protecting the setting of historic towns. It is an important planning policy designation and has huge impact on Fillongley.'*²¹
- 5.19 Policy FNP06 of the Neighbourhood Plan relates to heritage. In recognising the importance of Fillongley's local distinctiveness, character, and historic context to the local community,²² the aim of this policy is to ensure that any development will *'enhance and respect the local built, historic and natural heritage assets'* and states that *'Applications for development that will harm designated and non-designated heritage assets will be refused'*.
- 5.20 Public consultation found that protection of the historic environment, including the castle remains and areas of ridge and furrow, was a high priority for residents.

Fillongley Conservation Area

- 5.21 The historic core of Fillongley village, designated in February 1970, was among the earliest places to be formally recognised under the Civic Amenities Act (1967). The designated area

²¹ Fillongley Neighbourhood Plan 2019, p.14.

²² Fillongley Neighbourhood Plan 2019, Heritage Objectives, p.20.

includes the scheduled earthwork remains of the 12th century ringwork castle, known as Castle Yard, to the south of the village.

5.22 The 1967 Act was intended to identify areas of ‘*special architectural or historic interest, the character and appearance of which it is desirable to preserve or enhance*’. Policies contained within the very early Fillongley Conservation Area Appraisal (1970) are limited in referring specifically to development within the designated area. However, current national policy and guidance recognises the important contribution that setting makes to the special interest (or significance) of designated areas, and how that significance can be appreciated.

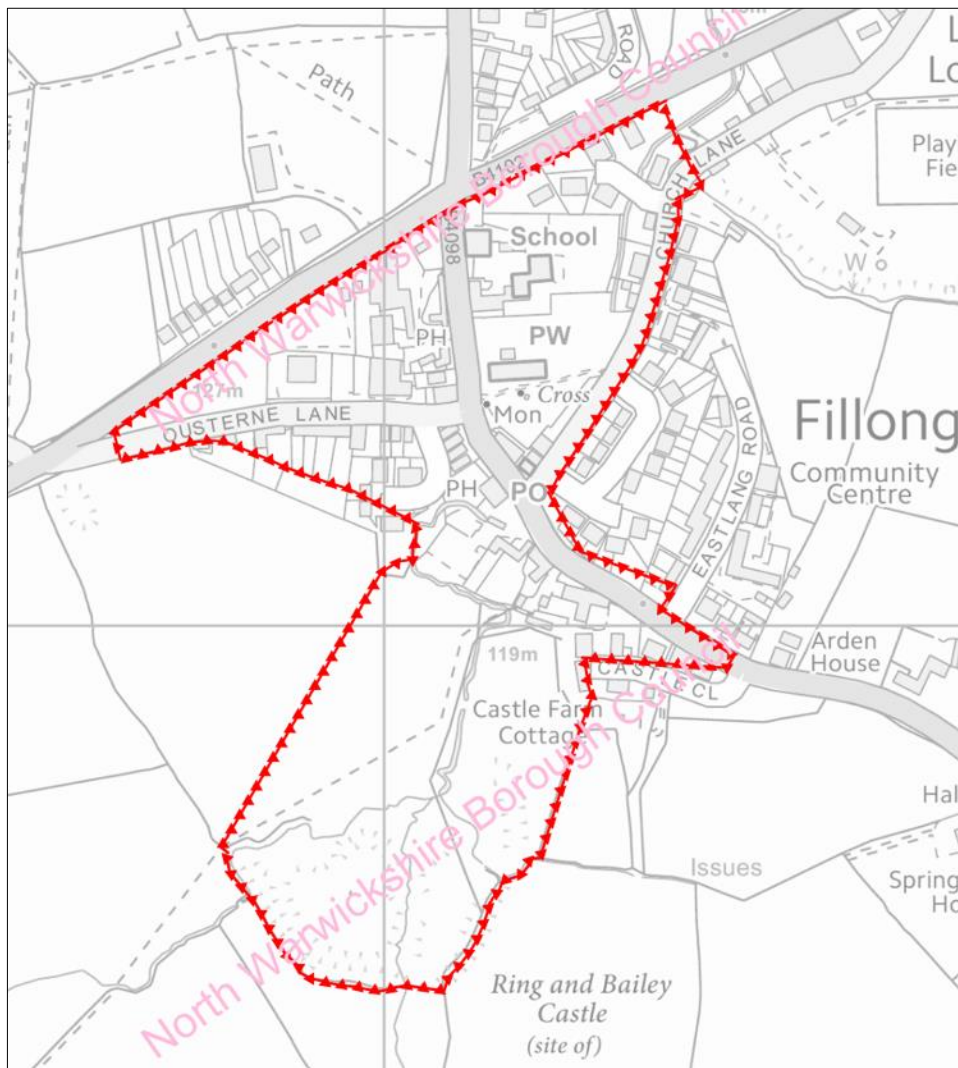


Figure 13 Boundary of the Fillongley Conservation Area. Source: North Warwickshire Borough Council.

Recent Planning History

- 5.23 The proposed development (Application number PAP/2023/0071) was refused planning permission in July 2024 as it was not considered to preserve the openness of the Green Belt as required by Policy LP3 of the North Warwickshire Local Plan 2021 and the National Planning Policy Framework (NPPF) 2023.
- 5.24 The proposal was also refused because it would cause landscape and visual harm contrary to Policies LP1, LP14 and LP30 of the North Warwickshire Local Plan (2021), or Policies FNP01 and FNP02 of the Fillongley Neighbourhood Plan (2019).
- 5.25 The Decision Notice stated that *'The Local and Neighbourhood Plan policies require new development to conserve and enhance the landscape; to integrate appropriately into the natural environment, harmonise with its immediate and wider settings, as well as to protect the rural landscape of the Parish, the scenic aspects of the village and the setting of the Church. The cumulative harms caused are considered to be substantial because of the development's proposed size, its siting on higher land, there being no surrounding higher land and its public visibility over a wide area. It is not considered that this substantial harm is clearly outweighed by any benefits that the proposal might give rise to'*.²³

Other Relevant Appeal Decisions

- 5.26 Recent precedents have also been set elsewhere by the Planning Inspectorate, the outcomes of which are relevant to this appeal, one at appeal and one as a s62(A) application.

1. Appeal Ref: APP/W3005/W/23/3323952

- 5.27 The recent appeal, at Hamilton Hill Farm, Cauldwell Road, Sutton in Ashfield relates to the proposed 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.
- 5.28 The appeal site is next to Hamilton Hill on which is located the scheduled monument referred to as 'Mound on Hamilton Hill'. The Inspector's findings in relation to the scheduled monument and proposed solar farm development are summarised as:-

²³ North Warwickshire Borough Council Decision Notice, 10 July 2024.

- The list entry suggests that moot mounds are comparatively rare, which underlines the national importance of the Mound on Hamilton Hill. In the context of paragraphs 206 and 205 of the Framework, it is a designated heritage asset of the highest significance and the greatest of weight should be given to its conservation.
- The definition of setting contained in the Framework refers to the surroundings in which a heritage asset is experienced and Historic England guidance states views of or from an asset will play an important part in this. This also confirms the way in which an asset is experienced in its setting is 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.
- The hill, and the Mound atop it, are experienced as being separated from Sutton-in-Ashfield by undeveloped agricultural land...this physical separation is important to understanding its likely origins as a moot. The open and undeveloped nature of the appeal site makes an important positive contribution to the setting and, thereby, the understanding of the overall significance of the Mound.
- The proposal would bring development closer to the Mound away from Sutton-in-Ashfield and erode the open and undeveloped qualities of the agricultural land within the site. Where the Mound would be visible across the site, this would unacceptably harm the contribution made by the land to its setting. Similarly, given the expansive views available from the edge of the scheduled area, the development would be a significant detractor and distraction within the views out over land within its setting to the west.
- The proposed development would be harmful to the understanding and, thereby, significance of the Mound as a designated heritage asset, through development within its setting; and through development in the countryside, having regard to the effect on its landscape character and appearance, including its openness. These harms bring conflict with the Local Plan.
- The appeal scheme would not accord with the development plan and the material considerations, including the provisions of the Framework. The stated benefits do not indicate the proposal should be determined other than in accordance with the development plan. Accordingly, the appeal was dismissed.

2. Section 62A Planning Application s62A/2022/0011

5.29 The second case relates to a planning application made directly to the Secretary of State under section 62(A) of the Town and Country Planning Act, 1990, in relation to a site at Land East of Pelham Substation, Maggots End, Manude.

5.30 This site was also in proximity to a scheduled monument. The outcome of the application is summarised as follows:-

- The earthwork comprised a rare example of a fortification dating to Anglo-Saxon and Norman times which, together with other scheduled monuments, was located within a strongly defined rural context which contributed positively to their significance.
- The inspector decided that the scheme would involve highly contrasting industrial infrastructure that would be present for an extended period of around 40 years, over an 80ha site. This extended chronological span, together with the scale and size of the proposal, would be perceived as permanent rather than temporary features within the landscape.
- The introduction of rows of solar panels and associated infrastructure would drastically alter this relationship and the experience of those seeking to appreciate it. Instead of open agricultural fields the proposal would form an expansive industrial 'tech-scape', severing the monuments from the rural context in which they were experienced.
- In addition, the applicant had not fully investigated underground archaeology and imposing a planning condition would not provide adequate mitigation. Nor had the applicant adequately investigated whether land of lower agricultural value could accommodate the scheme.
- The inspector held that the benefits did not outweigh the harm to the landscape and setting of the heritage assets.
- The case was subsequently dismissed at the High Court (reference AC-2023-LON-001889).

6 Background History to the Site and Environs

Prehistory

- 6.1 Prehistoric activity in Warwickshire is evidenced by scattered finds of polished stone axes, flint arrowheads and flint flaked tools throughout the county. A small bronze socketed spearhead dating to the Bronze Age was recovered from just outside the medieval ringwork of Castle Yard in Fillongley, suggesting the presence here of early travellers or settlers.²⁴

Roman Period

- 6.2 Activity here in the Roman period is evidenced by two finds²⁵ recovered from within the site itself - Roman coins and a vessel, both of which were found during metal detecting.

Medieval



Figure 14 Remains of medieval ringwork, known as Castle Yard, at Fillongley (now a scheduled monument). The manor was the seat of the de Hastings family.

- 6.3 That settlement in the area continued into the medieval period is clear from the large number of earthwork sites locally dating from this period. The medieval ringwork of Castle Yard at Fillongley (the former fortified house of the de Hastings family²⁶) is a rare example of Anglo-

²⁴ Historic Environment Record ref.MWA6002.

²⁵ Historic Environment Record ref.MWA20874 and MWA21158.

²⁶ <https://www.british-history.ac.uk/vch/warks/vol4>

Saxon and Norman fortification. Castle Yard survives well and is one of only two known examples of this class of monument in Warwickshire.

- 6.4 Castle Yard lies towards the north end of an associated medieval deer park, the boundary of which has been traced extending south and east to include part of the appeal site. A motte and bailey castle a short distance north-east of the village, along with nearby moated enclosures, ridge and furrow cultivation and the remains of deserted, or shrunken, medieval villages attest to the extent of settlement in this area in the Middle Ages.
- 6.5 The Priory of St. Mary in Coventry, held ½ hide in Fillongley in 1086, confirmed to them by the pope in 1221. They still held a manor of this name in 1527.²⁷
- 6.6 The early origins of Fillongley as a settlement are indicated by the parish Church of St Mary and All Saints (now a grade II* listed building), which includes a 12th century chancel (the lower part) and 13th century tower (the lower two stages). Numerous medieval finds, including a stirrup, ingot, coins and a buckle, have been recovered by metal detectorists from the vicinity of the appeal site.
- 6.7 Fillongley once lay within the Forest of Arden and the countryside on the west side of the parish is still thickly wooded. The best agricultural land, well watered by streams, historically lay in the east of the parish. Agricultural activity in the Middle Ages is evidenced by areas of remnant ridge and furrow cultivation to the east and west of the site.

Post Medieval

- 6.8 Houses principally lay along two roads in Fillongley – a major route running north-west from Coventry towards Tamworth, the other leading out of the village westwards. Several houses within the village contain 16th- and 17th century timber framing.
- 6.9 Numerous dispersed farmsteads, with origins dating from the 16th century, were also established around Fillongley. These included Park House and White House, just north and west of the site respectively. Situated in prominent positions overlooking associated farmland,

²⁷ <https://www.british-history.ac.uk/vch/warks/vol4>

these farmhouses bordered on being minor country houses, linked to nearby villages via a network of lanes. The high-status White House is shown on John Cary's 1794 map.



Figure 15 Excerpt from John Cary's Map of England dated 1794, indicating the approximate location of the site (blue dot). White House is shown west of the site.

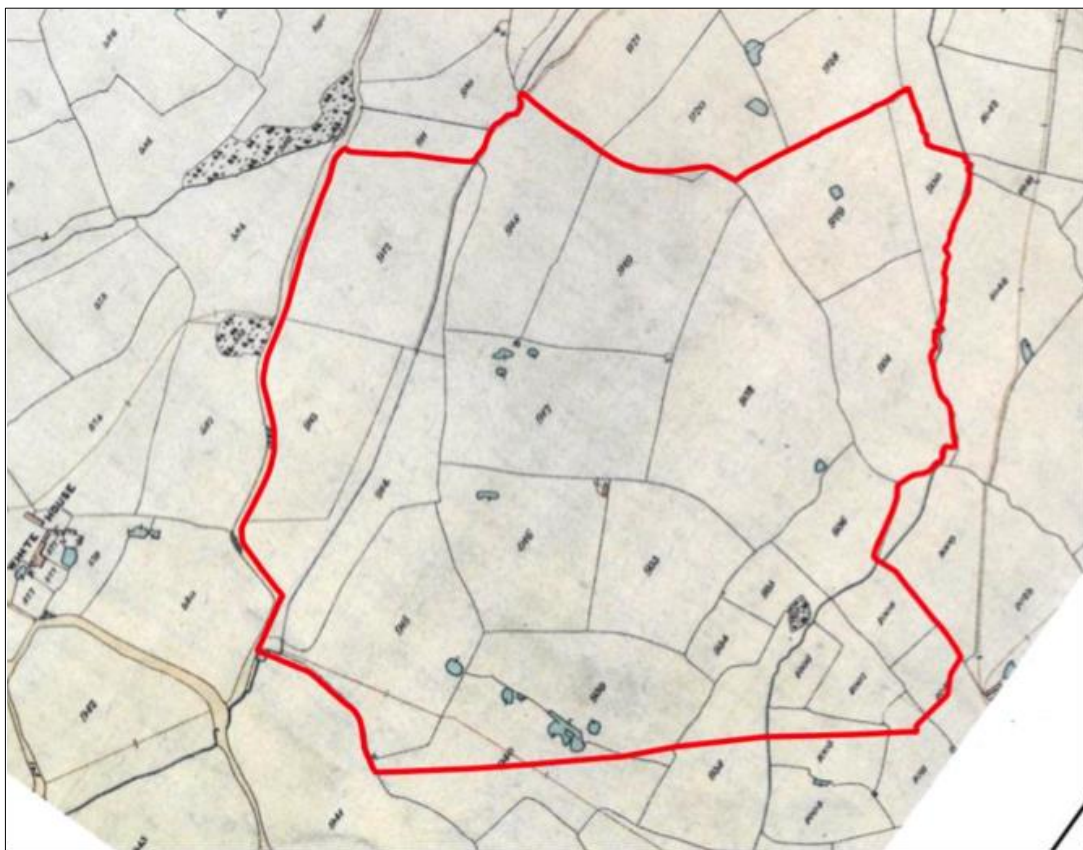


Figure 16 Excerpt of 1846 Tithe Map of Fillongley with site boundary shown in red from Heritage & Archaeology Assessment by BWB Consulting, reproduced from NWBC planning website.

- 6.10 The Tithes Map of 1846 shows the north end of two historic footpaths that entered Fillongley village from the south past the medieval ringwork; the westernmost of these paths runs through the west of the appeal site adjacent to the stream.

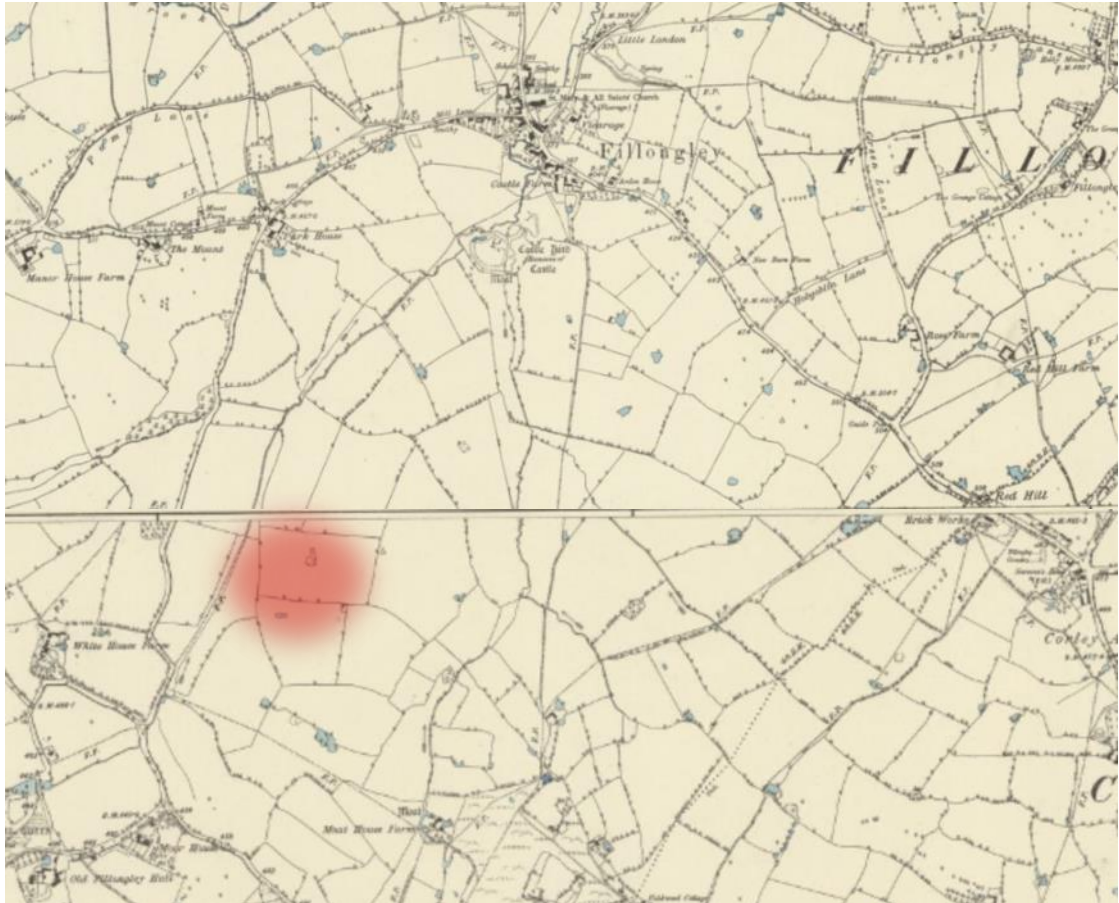


Figure 17 Excerpt from Ordnance Survey six inch map of 1887, sheets XVI.NW and XVI.SW, not to scale. Approximate centre of site shown as red dot.



Figure 18 Excerpt from Ordnance Survey six inch map of 1887, sheet XVI.NW, not to scale.

6.11 The 1887 Ordnance Survey map also shows this footpath passing through fields to the south of the village and around the remains of Castle Yard. The map shows the original line of Meriden Road, unchanged to the west of the appeal site. It also shows the historic field system in this area essentially unaltered in the 19th century.

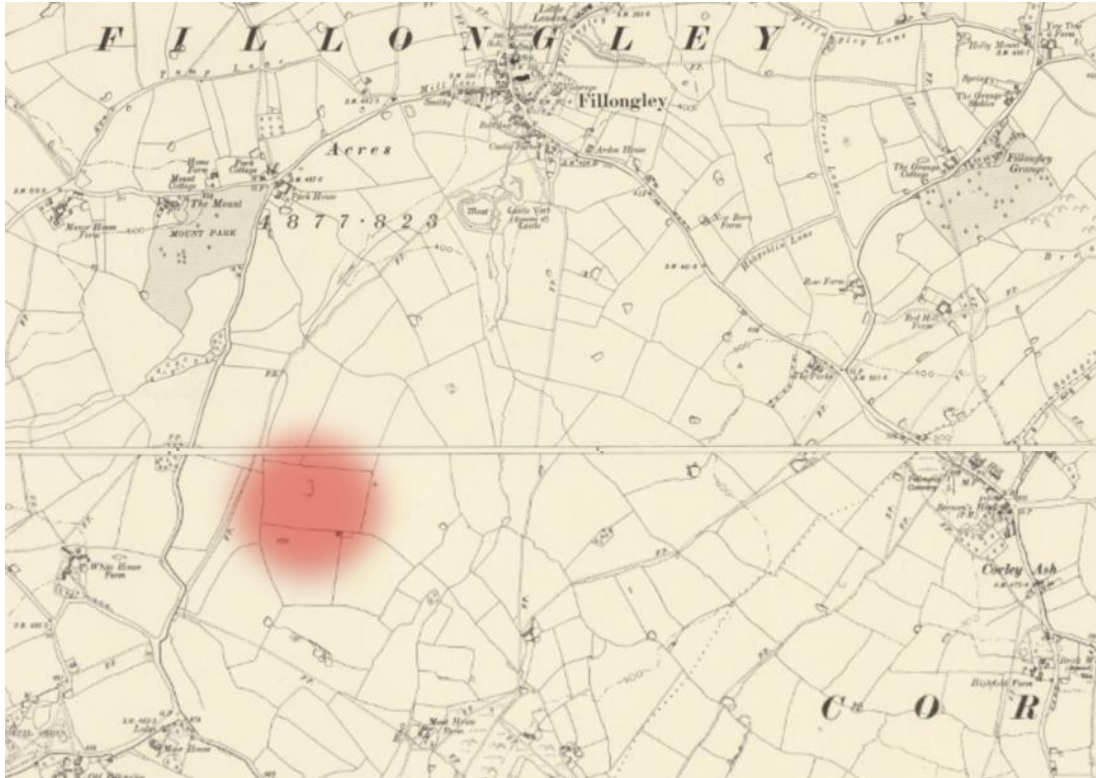


Figure 19 Excerpt from Ordnance Survey six inch map of 1905, sheets XVI.NW and XVI.SW, not to scale. Approximate centre of site shown as red dot.



Figure 20 The Bell public house in Fillongley in the early 1900s flooded by waters from the Bourne Brook.

- 6.12 The Tithe Map and later Ordnance Survey maps show the Bourne Brook running through the historic core of Fillongley village. The stream was historically, and still is, prone to flooding.
- 6.13 The landscape in the vicinity of the site remained unchanged in the early 20th century, prior to the addition of the M6 motorway in the 1950s.
- 6.14 The 12th century ringwork of Castle Yard was designated as a scheduled ancient monument in 1951. Shortly afterwards, in 1952, Park House was the subject of an early listing when the farmhouse was protected along with the threshing barn visible from Meriden Road.
- 6.15 It was not until 1961 that the Church of St Mary and All Saints was listed at grade II*. A subsequent phase of listing in 1988 saw the Park House granary and White House added to the National Heritage List along with other buildings in the village of Fillongley including The Bell former public house.

7 Identification of Relevant Heritage Assets

7.1 The appeal site and its vicinity contain numerous heritage assets of varying levels of significance. The proposed solar farm development would inevitably bring a degree of change to the site. In order to evaluate whether or not that change is acceptable in terms of impact on the historic built environment, it is important to assess which, if any, heritage assets would potentially be affected by the scheme.

7.2 This has been done through a combination of desk-based research and site visit, using Historic England's 'zone of theoretical visibility' methodology, as set out in their advice on assessing the setting of heritage assets.²⁸ It takes into account the nature of individual assets, key areas of heritage significance and setting, as well as the nature of the proposed development (including level of permanence) and any anticipated impact on the asset (visual or otherwise) as a result of the proposed development.

Nationally Designated Heritage Assets

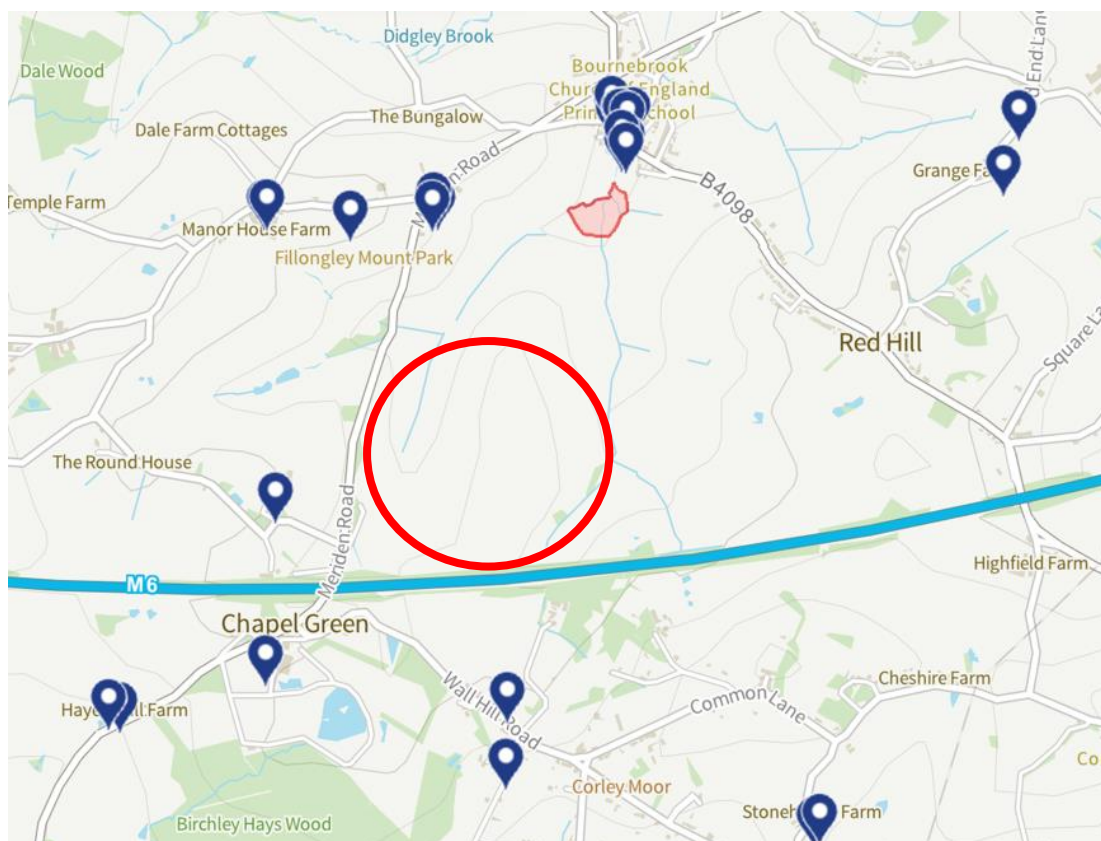


Figure 21 Designated heritage assets in the vicinity of the appeal site (approximately circled).

²⁸ The Setting of Heritage Assets, Historic Environment Good Practice Advice in Planning Note 3 (Second Edition), Historic England, 2017.

- 7.3 The site (the approximate location of which is indicated in figure 21 by a red circle) does not contain any nationally designated heritage assets. Consequently, there will be no potential for *direct* impact on any designated assets as a result of the proposed solar farm development.
- 7.4 A number of nationally designated assets do lie in the vicinity of the site, however, and there is potential for *indirect* impact on the settings of some of these as a result of the scheme.
- 7.5 A scheduled monument²⁹ (shaded red in figure 21) lies roughly 280 metres to the north-east of the appeal site. The northern part of the appeal site is visible from the ringwork.
- 7.6 Due, in part to the undulating nature of the landscape, the northern part of the site forms part of the landscape context of the ringwork and contributes to the understanding and experience of the archaeological site. Development within the site therefore has potential to impact upon the setting and significance of the scheduled monument and the capacity of the ringwork to be appreciated.



Figure 22 Appeal site (ploughed field in centre) and scheduled monument (in trees to right), looking south from the public right of way.

- 7.7 The village of Fillongley lies a short distance north-east of the appeal site. The historic settlement contains a number of listed buildings (indicated in figure 21 by blue markers);

²⁹ National Heritage List for England Entry Number: 1013152.

these include the grade II* listed Church of St Mary and All Saints³⁰. The low-lying position and slightly introspective nature of much of the historic core of the village mean that, for the most part, these individual buildings are unlikely to be appreciably affected by development within the appeal site.

- 7.8 The exception to this is the highly listed Church of St Mary and All Saints occupies a prominent position on Coventry Road towards the north of Fillongley village. The chancel, dating to the 12th century, is the earliest part of the church; the lower two stages of the tower date to the 13th century.



Figure 23 Grade II listed Church of St Mary and All Saints, Fillongley.*

- 7.9 The tower houses the bell-ringing stage and views from the top can be accessed from inside the church. The tower itself can be seen from outside the village and is visible in key views towards Fillongley from the surrounding countryside to the south-west, including from points within and around the appeal site.

³⁰ National Heritage List for England List Entry Number: 1034830.

7.10 Given the intervisibility of the parish church and the surrounding countryside (including the appeal site), it must be concluded that the proposed development has the potential to impact on the setting, and thereby the significance, of the grade II* listed church.



Figure 24 Elevated position of grade II* listed Church of St Mary and All Saints, viewed from the south-west. Source: Google Earth.



Figure 25 View looking north-east across the appeal site (ploughed fields) towards Fillongley and grade II* listed St Mary's and All Saints Church from Meriden Road, taken on a very dull day with poor visibility; the church is highly visible on brighter days.

- 7.11 There is potential for impact on the experience of arrival at the rural village through open countryside with the contrast experienced between developed and undeveloped areas; this aspect is addressed in relation to the Fillongley Conservation Area rather than in regard to individual listed buildings within the village.
- 7.12 Grade II listed White House Farmhouse³¹ is located just west of Meriden Road. This elegant brick property stands in a prominent, elevated position facing east towards the site. The Listing describes an early-19th century house, possibly *with earlier origins*; this is clarified by the fact that White House is clearly shown on John Cary's map of 1794.



Figure 26 Looking east from grade II listed White House farmhouse towards the appeal site. Source: Google Earth.

- 7.13 The site does not form part of the immediate setting of the group of buildings and garden at White House farm but, as the appellant's Heritage and Archaeology Assessment acknowledges,³² the site forms part of the rural context of White House Farmhouse with intervisibility between the two. As part of the farmed landscape that lends meaning and understanding to the presence of the listed farmhouse, the site is considered to form part of the wider setting of the grade II listed building.

³¹ National Heritage List for England Entry Number: 1034868.

³² Heritage and Archaeology Assessment, BWB, 2023, 5.34.

7.14 North of the site is the historic farmstead of Park House. Set at the junction of Meriden Road and Green End Road, Park House stands in an elevated position overlooking farmland to the south and east. Park House Farm includes a farmhouse dating to the early-mid 1600s³³, an early 17th century timber framed threshing barn³⁴, and a slightly later cartshed/granary,³⁵ all of which area individually listed at grade II.



Figure 27 Grade II listed Park House farmhouse, threshing barn and granary.



Figure 28 Looking south-east towards the appeal site from the elevated position of grade II listed Park House farm. Source: Google Earth.

³³ National Heritage List for England Entry Number: 1186219.

³⁴ National Heritage List for England Entry Number: 1034838.

³⁵ National Heritage List for England Entry Number: 1034837.

- 7.15 Access has not been gained to assess views from the individual buildings on the ground, but part of the site is understood to be visible from the listed house, which will have been designed with windows positioned to make the most of the extensive views from this elevated location. The barn and granary, in contrast, are grouped inwardly around a farmyard and do not obviously face towards the appeal site.
- 7.16 The site forms part of the farmed landscape surrounding the listed farmstead and lends meaning and understanding to the presence of all three historic buildings. For these reasons, the site is considered to form part of the wider setting of Park House farm. Due to the visual connectivity between Park House and the appeal site, the potential impact on the listed house is considered to be greatest.
- 7.17 Further listed structures stand to the west of Park House Farm on Green End Road. Fillongley Mount³⁶ is a country house with 16th century origins. Manor House Farm has gate piers³⁷ dating to c.1700; the house here appears to be considerably later, but may have been rebuilt or remodelled. Fillongley Mount and the gate piers at Manor House Farm are all listed at grade II.
- 7.18 There are glimpsed views of the site from this section of Green End Road and from the public footpath next to Manor House Farm, but the site is a considerable distance from these properties therefore any impact on them is unlikely to be appreciable.
- 7.19 Listed buildings to the south of the M6 motorway are also unlikely to be appreciably affected by the solar farm, principally due the relatively distant location of the assets, the topography of the landscape, the presence of the M6 motorway and embankment, the low-lying nature of the proposed development, and the lack of intervisibility with the appeal site.

Fillongley Conservation Area

- 7.20 Notwithstanding any potential for exacerbating issues of flooding (which is not the subject of this report), there will be no potential for direct impact on the Fillongley Conservation Area as a result of the proposed solar farm development. It is also unlikely there will be any tangible

³⁶ National Heritage List for England Entry Number: 1299309.

³⁷ National Heritage List for England Entry Numbers: 1186205 and 1034836.

indirect impact on much of the northernmost part of the designated area as a result of the scheme.

- 7.21 The south part of the conservation area includes the 12th century ringwork; the scheduled monument provides a strong connection with the chronology of settlement at Fillongley. There are glimpsed views here between the outskirts of the village and the surrounding countryside, and between the medieval ringwork and surrounding countryside. Any effect on these views will be seasonally dependent, with increased harmful impact during winter months.
- 7.22 The farmed landscape, particularly south of the village, contributes to the feel of Fillongley as a rural settlement not only in terms of views: the geology of the strikingly rich red soil of the ploughed fields is directly reflected in the locally distinctive red bricks of vernacular buildings in the village.

Non-designated Heritage Assets

- 7.23 A number of non-designated Heritage Assets (NDHAs) have been identified in the context of the proposed solar farm development that will potentially be affected by the proposed development.
- 7.24 Within the site itself, the presence of a former field barn³⁸ (or 'outfarm') is identified in the Historic Environment Record. While there are no above-ground remains of this agricultural structure (shown on the Ordnance Survey first edition map as an L-shaped range with a yard to the east), below-ground traces may be visible as parch marks on aerial views of the site. The structure formed part of the post-medieval agricultural landscape of the area.
- 7.25 A substantial medieval deer park,³⁹ occupying the north-east part of the site and the farmland east and north of the site as far as Fillongley village, is recorded as being associated with Castle Yard. The likely boundary of the deer park is shown in figure 3 of the Heritage and Archaeology Assessment submitted in support of the development. This forms part of the wider remnant

³⁸ Historic Environment Record ref.MWA31907.

³⁹ Historic Environment Record ref.MWA13254.

medieval landscape of the area that includes moated enclosures, ridge and furrow cultivation and a possible fishpond.

7.26 A footpath survives along the west site of the development area. This feature is shown on the early 19th century Tithe Map and on the Ordnance Survey First Edition map. As such, this pedestrian route is regarded as a NDHA.

7.27 There will be a direct impact on these NDHAs as a result of the proposed solar farm development.

7.28 There is potential for indirect impact as a result of development on the setting, and therefore significance, of further NDHAs identified outside the site including:-

- Earthworks immediately north of the site⁴⁰ – possible site of fishpond, mill and settlement remains associated with medieval ringwork of Castle Yard.
- Site of a second 19th century outfarm⁴¹ immediately outside the east boundary of the appeal site.
- Two areas of surviving ridge and furrow cultivation lie just outside the site boundary – one immediately east of the site and the other a short distance to the west. These are relatively rare in areas of intensive modern arable cultivation. That to the west is unlikely to be much affected by the proposed development but some impact is likely on the setting and ability to appreciate/understand the cultivation ridge and furrow to the east.
- Upper part of Meriden Road - north of the section presumably altered to accommodate the M6 motorway, the line of Meriden Road follows the historic route shown on the First Edition OS map (below) between the villages of Chapel Green and Fillongley. The proposed solar farm is likely to affect the immediate setting of the NDHA as well as views towards, and eastward from, Meriden Road.

⁴⁰ Historic Environment Record ref.MWA13256.

⁴¹ Historic Environment Record ref.MWA29732.



Figure 29 Excerpt from Ordnance Survey six inch map of 1887, not to scale.

Archaeology

- 7.29 The Heritage and Archaeology Assessment submitted in support of the development lists all the known archaeological findspots within the site itself and within a 1km radius. These include 13 findspots relating from the Bronze Age to post-medieval periods and include two Romano-British finds⁴² recovered from within the site itself.
- 7.30 The report acknowledges that *'Intrusive ground investigations and site preparations, including temporary works, excavation and buried service installation, have the potential to impact buried archaeological remains. The impact, where it occurs is irreversible.'*⁴³
- 7.31 The report also states that *'With regard to potential impacts, Historic England guidance⁴⁴ identifies groundworks, such as those for solar panel supports, cable trenches, hardstanding and access (where needed) as well as footings for ancillary infrastructure such as substations and fencing, have the potential to impact archaeological remains. The detailed design for the type and depth of footings as well as the depth of any foundations is unknown.'*

⁴² Historic Environment Record refs.MWA21158 and MWA20874.

⁴³ Heritage and Archaeology Assessment, BWB, 2023, 7.7.

⁴⁴ Commercial Renewable Energy Development and the Historic Environment, Advice Note 15, Historic England, 2021.

- 7.32 It is agreed that the importance of any relict agricultural remains, such as ridge and furrow cultivation and field boundaries, is most likely to be low - as is likely for any post-medieval remains. Any Roman to medieval period remains, however, are likely to be of medium importance.
- 7.33 Given the presence of Romano-British finds previously recovered from within the site, the unknown depth to which footings will be required for the solar farm, and the irreversible direct impact, it is possible that the adverse impact on buried archaeological remains could be moderate and may not be mitigated by pre-commencement survey or trial trenching.

7.34 The heritage assets potentially affected by the solar farm proposal are summarised below:

| Heritage Asset | Status | Type of Impact |
|---|------------------------------|--------------------------------------|
| 12 th century ringwork known as Castle Yard | Scheduled Monument | Potential indirect impact on setting |
| Church of St Mary and All Saints | Grade II* listed | Potential indirect impact on setting |
| Fillongley Conservation Area | Designated conservation area | Potential indirect impact on setting |
| White House farmhouse | Grade II listed | Potential indirect impact on setting |
| Park House | Grade II listed | Potential indirect impact on setting |
| Remnant medieval landscape including deer park, fishpond and ridge and furrow | NDHA | Potential direct and indirect impact |
| Post-medieval landscape features including surviving field pattern and site of outfarms | NDHA | Potential direct and indirect impact |
| Historic route of footpath along west side of site | NDHA | Potential direct impact |
| Historic route of Meriden Road to west of site | NDHA | Potential indirect impact on setting |
| Potential buried archaeology within site | Unknown NDHA | Potential direct Impact |

8 Significance of the Relevant Heritage Assets

Scheduled Monument

- 8.1 The medieval ringwork south of Fillongley, known as Castle Yard, is designated as a scheduled monument. Ringworks were medieval fortifications built and occupied from the late Anglo-Saxon period to the later 12th century. Despite being overgrown, the ringwork survives well and is one of only two known examples of this class of monument in Warwickshire. Medieval ringworks are rare nationally with only 200 examples recorded and fewer than 60 with baileys.⁴⁵
- 8.2 There is a high degree of **archaeological value** in the surviving standing fabric of the castle and in the foundations of medieval structures buried within both the ringwork and the bailey. The surviving masonry - a remnant of a former rectangular building - may indicate the presence of a later 13th century keep.⁴⁶ The accumulated fill of the ringwork and bailey ditches will retain information valuable for an understanding of the environment and economy of the inhabitants. The buried land surface beneath the ringwork enclosure will retain environmental evidence relating to the landscape in which Castle Yard was constructed.
- 8.3 The ringwork has high **historic value** as one of a limited number, and very restricted range, of Anglo-Saxon and Norman fortifications - of particular significance to our understanding of this period. It is illustrative of the development of the area in the Middle Ages and is associated with the de Hatsings family from the early 12th century, becoming their chief residence in Warwickshire. The site later became part of the Bergavenny baronry with historic associations with the Beauchamp and the Neville families.
- 8.4 There is a degree of **architectural value** in the standing fabric of the monument and **artistic value** in the slightly overgrown, romantic appeal of the site.
- 8.5 The **setting** of any castle is usually key to its significance – whether located on a defensible headland or, as in this case, where a defensive ditch can be supplied with water. The topography of the wider landscape south of Fillongley and the pattern of watercourses through the appeal site lend meaning to the siting of the ringwork in this particular location.

⁴⁵ National Heritage List for England entry no. 1034830.

⁴⁶ *The Buildings of England: Warwickshire*, Chris Pickford and Nikolaus Pevsner, 2016, p.328-9.

- 8.6 Despite currently being slightly overgrown, there are **views** to and from the scheduled monument from the outskirts of the village, from nearby public footpaths, and from the wider surrounding countryside.
- 8.7 As a rare type of medieval fortification, and one that has surviving standing fabric, the scheduled monument is of particularly **high significance**.

Church of St Mary and All Saints, Grade II* listed

- 8.8 Fillongley parish Church of St Mary and All Saints is medieval in origin, containing remnants of 12th masonry in the chancel and 13th fabric in the west tower. There is surviving stained glass from the 14th century in its windows and the font may date to the 15th century.⁴⁷
- 8.9 Architecturally, the church is illustrative of Early English and Perpendicular styles. Its sandstone construction stands out amongst the vernacular red brick houses of the village. The building is associated with numerous architects responsible for later alterations, as well as craftsmen whose work contributed to the decorative interior. Notable families, including Lord Leigh, commissioned – or are commemorated – in the church memorials.⁴⁸ The building illustrates the early development and status of Fillongley as a medieval settlement.
- 8.10 The church stands in a prominent, elevated position above Fillongley village; its location at the heart of the settlement is important to the role of the building. There is a solidity and sense of permanence in the robust construction. Its tower is visible not only from within the village itself but also from the surrounding countryside that formed part of the parish administered by the church.
- 8.11 The church is of **high significance**, commensurate with its grade II* listing.

White House Farmhouse

- 8.12 The elegant brick property of White House farmhouse⁴⁹ is located west of Meriden Road. The property stands in a prominent, elevated position facing east towards the site. The Listing

⁴⁷ National Heritage List for England entry no. 1034830.

⁴⁸ *The Buildings of England: Warwickshire*, Chris Pickford and Nikolaus Pevsner, 2016, p.329.

⁴⁹ National Heritage List for England Entry Number: 1034868.

describes an early-19th century house, *possibly with earlier origins*; this is clarified by the fact that White House is clearly shown on John Cary's map of 1794.

- 8.13 White House has historic value as illustrative of the development of genteel, country house-style farmhouses in the rural landscape around Fillongley in the latter part of the 18th century. Architecturally, the building is designed to convey the status of its owner; this is reflected in the building's prominent siting commanding views east over the countryside, at least some of which will have formed part of the White House farm estate. Associated agricultural buildings add to its interest as a group.
- 8.14 Overall, the building is of **medium significance**, commensurate with its grade II listing.

Park House

- 8.15 Park House has considerably earlier origins, dating to the early-mid 1600s, as evident in the building's floor plan of a double-ended hall house with central hall. The building has a good level of historic value as illustrative of the development of such properties in the early post-medieval period in Fillongley parish. Park House was clearly designed to convey the status of its owner, with a principal elevation over-looking gardens and beyond and with extensive later alterations (or up-grades); this suggests an aspiration that elevates the house from simple functional farmhouse to minor country house status.
- 8.16 Extensive views over the farmland that would have been associated with the property in terms of ownership add to the setting of the building. Architecturally, the timber-framed construction and brick infill is made more interesting by the inclusion of stonework that may be monastic in origin.
- 8.17 Original features, such as a cheese room, dairy and beer room are of considerable historic interest, providing details of the running of what in the 1600s was essentially a small country estate. There is a high level of archaeological value in the materials and construction of the building as well in extensive later alterations. The pleasing appearance of the house in vernacular red brick with multi-pitched roofs contributes to its considerable level of artistic value.
- 8.18 Overall, the building is at the upper end of **medium significance**, reflected in its grade II listing.

Fillongley Conservation Area

- 8.19 The area designated as Fillongley Conservation Area includes the core of the historic village that has developed in linear fashion along the central road and main junctions. Roads lead downhill to a low-point in the centre of the village where historic buildings are prone to flooding.
- 8.20 The village may not have the immediate aesthetic appeal of some Warwickshire villages, but there is a strong visual quality to the uniform use of local red brick and roof tiles throughout the settlement that adds a homogenous element to the vernacular architecture in Fillongley.
- 8.21 Buildings in the centre of the village are relatively low-set and introspective, with the exception of the church which stands in a prominent position on the main street.
- 8.22 Views out of the conservation area are limited but, where glimpsed, give a strong sense of the Fillongley's rural location and setting within an agrarian landscape.
- 8.23 The conservation area includes the scheduled monument of the 12th century ringwork located on the outskirts of the village to the south-west. The presence of the medieval earthwork and standing fabric is a stark reminder of the depth of history of settlement at Fillongley.
- 8.24 Because Fillongley Conservation Area includes a scheduled monument of high importance, the overall significance level of the conservation area is deemed to be **high**.

Non-designated landscape features

- 8.25 Although perhaps unremarkable at first glance, the countryside around Fillongley north of the M6 motorway actually has a high level of survival as a palimpsest landscape, with features dating from the medieval period.
- 8.26 There is historic and archaeological value in the largely un-investigated remnants of a deer park associated with the 12th century ringwork castle, nearby shrunken settlements and fishponds. The pattern of fields that emerged from clearance of the Forest of Arden has remained relatively unchanged and areas of ridge and furrow testify to centuries of cultivation here.

- 8.27 Surviving hedgerows define early field boundaries shown on the 1846 Tithe Map, with individual mature trees still marking the line of former boundaries now removed. Field barns stood within these enclosures, outliers to the surrounding dispersed farmsteads, the remains of which may be visible on aerial images surviving below ground.
- 8.28 Historically, travel through this landscape was on foot, via a footpath linking historic villages that survives in the west of the appeal site, or along Meriden Road, the historic line of which survives to the west of the site with extensive dynamic views over the centuries-old field-scape. These routes form an intrinsic part of the surrounding fieldscape and, in the case of Meriden Road, the boundaries are inseparable in terms of causality.
- 8.29 Individual elements of the medieval and post-medieval landscape south of Fillongley are have scope for further investigation, but are likely, in isolation, to be of **low** significance.
- 8.30 The value of these assets, however, lies not in their individual significance but in the sum of their parts – in their collective significance as a landscape of aesthetic appeal and high historic value that is legible as illustrative of the organic evolution of the area over centuries.

9 Impact on Significance of the Relevant Heritage Assets

'Temporary' development

- 9.1 Care should be taken in regarding the proposed solar farm development as 'temporary'. The life span of the scheme is intended to be 40 years. A similar projected lifespan for another solar farm scheme was considered by the Inspector⁵⁰ to be perceived as permanent rather than temporary features within the landscape given the chronological span (equivalent to a generation), together with the scale and size of the proposal.
- 9.2 In addition to the visual impact of development, infrastructure such as panel supports, tracks and fencing, over time will generate their own wear patterns and areas of soil accretion. Even after de-commission, these will inevitably leave traces in the landscape that confuse or obscure historic landscape features. Impact on potential buried archaeology within the site cannot be classed as temporary; the invasive destruction of stratigraphic layers beneath the surface is permanent.

Impact on the setting of the scheduled monument

- 9.3 The definition of setting contained in the NPPF refers to the surroundings in which a heritage asset is experienced. The setting of a medieval castle is usually, by its very nature, relatively extensive. It takes into account the topography and drainage of the local area which are intrinsically linked to the reason a castle is sited in its particular location; it includes potentially long-ranging views across land that were once part of its manor, as well as areas from which the fortification could be seen and its presence experienced. Setting, as established, does not depend on public rights of access.
- 9.4 The legibility of the landscape around the scheduled monument is therefore key to the understanding and appreciation of the medieval ringwork at Fillongley. As one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, and one of only two known examples of this class of monument in Warwickshire, such ringworks are of particular value to our understanding of the period.

⁵⁰ s62(A) application reference: s62A/2022/0011.

- 9.5 Parts of the appeal site are visible from the scheduled monument. This means that, if installed, despite facing to the south, the backs of rows of solar panels may well be visible in views from the ringwork towards the north end of the site.
- 9.6 The open and undeveloped nature of the countryside south of Fillongley village and the ringwork has importance to understanding the origins of the castle. The undeveloped nature of the appeal site makes an important positive contribution to the setting and, thereby, the overall significance of the castle.
- 9.7 Development of the site with the proposed solar farm would introduce a highly contrasting industrial-scale infrastructure that is in conflict with the setting of the ringwork. It would have a detrimental impact on views associated with scheduled monument, and on the artistic and historic value of the scheduled monument, and thereby on its significance.

Using the scale in figure 11, this impact is deemed to ‘negatively alter the setting or overall character of the heritage asset and detract from overall significance’. As such, this constitutes change that is **moderate adverse**.

In relation to an asset of high sensitivity, using the matrix below, this level of impact will result in a significance of effect that is **moderate/large adverse**. Due to the impact being indirect rather direct, in NPPF terms, this equates to harm that is at the very upper end of ‘less than substantial’.

| Criteria | | Sensitivity/ Value | | | | |
|---------------------|---------------------|--------------------|-------------------|--------------------|--------------------|-----------------|
| | | Neutral | Low | Medium | High | Very High |
| Magnitude of Impact | Major Beneficial | Slight | Slight / Moderate | Moderate / Large | Large / Very Large | Very Large |
| | Moderate Beneficial | Neutral / Slight | Slight | Moderate | Moderate / Large | Large |
| | Minor Beneficial | Neutral / Slight | Neutral / Slight | Slight | Slight / Moderate | Moderate |
| | Negligible | Neutral | Neutral / Slight | Neutral / Slight | Slight | Slight/Moderate |
| | Neutral | Neutral | Neutral | Neutral | Neutral | Neutral |
| | Negligible | Neutral | Neutral / Slight | Neutral / Slight | Slight | Slight/Moderate |
| | Minor Adverse | Neutral / Slight | Neutral / Slight | Slight | Slight / Moderate | Moderate |
| | Moderate Adverse | Neutral / Slight | Slight | Moderate | Moderate / Large | Large |
| Major Adverse | Slight | Slight / Moderate | Moderate / Large | Large / Very Large | Very Large | |

Figure 30 ICOMOS Matrix showing significance of effect.

Impact on the Fillongley Conservation Area

- 9.8 The open and undeveloped nature of the countryside south of Fillongley is also important to the character of the village as a rural settlement. The preservation of the rural setting of the village is a key principle in the Fillongley Neighbourhood Plan. Much of the core of the historic village has no intervisibility with the site but there is still a connection between the two, experienced on arrival into Fillongley village from the countryside, and in the intervisibility with the church tower. The clear contrast between the settlement and undeveloped countryside beyond is also important.
- 9.9 The south part of the designated area includes the 12th century ringwork and there is intervisibility here with the site. Due to the elevated position of Fillongley church and the height of its tower, the church, too, (which is an important part of the conservation area) has a visual, experiential and liturgical connection with the wider rural parish outside the boundary of the village.
- 9.10 The undeveloped nature of the appeal site makes a positive contribution to the character and setting of the designated area and, thereby, to its overall significance. Development of the site would therefore have a detrimental impact on setting and views associated with the conservation area.
- 9.11 Using the scale in figure 11, this impact is deemed to ‘negatively alter the setting or overall character of the heritage asset and detract from overall significance’. As such, this constitutes change that is **moderate adverse**.
- 9.12 In relation to an asset of high sensitivity, this level of impact will result in a significance of effect that is **moderate/large adverse**. Due to this impact being indirect rather direct, in NPPF terms, this equates to harm that is at the very upper end of ‘less than substantial’.

Impact on grade II* listed Church of St Mary and All Saints

- 9.13 There will be no direct impact on the fabric church as a result of the proposed development, however, there will be indirect impact on the setting of the highly listed building.
- 9.14 The church sits at the heart of a rural parish, an aspect that contributes at a fundamental level to the significance of the building. The church tower is visible from points within the parish

and surrounding countryside, including in views from the footpath immediately north of the appeal site and from Meriden Road in views across the site itself.

- 9.15 The undeveloped nature of the open countryside here makes an important contribution to the rural character and setting of Fillongley church, as well as views associated with the building. Development of the site would therefore have a detrimental impact on the church. This change would result in a **minor adverse** impact on the setting and significance of the church.
- 9.16 In relation to a grade II* listed asset of high sensitivity, this level of impact will result in a significance of effect that is **slight/moderate adverse** significance of effect. In NPPF terms, this equates to 'less than substantial harm'.

Impact on grade II listed Park House and White House Farmhouse

- 9.17 Both Park House and White House Farmhouse possess significance derived from the historic fabric of the buildings, and from the presence of nearby associated buildings that form part of a group in terms of form, function, ownership and layout. There will be no tangible impact on this aspect of significance as a result of the proposed development.
- 9.18 However, both buildings also derive a sense of place and status from the rural landscape in which they are located. Indeed, it is possible that fields within the appeal site may at one time have been in the ownership of these farm estates. The open and undeveloped nature of the farmland around these buildings is intrinsic to their form, function and economy as well as to their siting. Both buildings have been deliberately designed to offer long distance views east and south-east of the surrounding land, an architectural device intended, perhaps, to affirm a degree of ownership and pride in their surroundings.
- 9.19 From both properties, parts of the site are visible - glimpsed or more obviously. Development of the site would present views of an industrial tech-scape that is alien to the historic dwellings; it would effectively sever an important connection between the houses and their setting and would, thereby, have a detrimental impact on the significance of the listed buildings. This change would result in a **minor adverse** impact on the setting and significance of Park House and White House Farmhouse.

- 9.20 In relation to grade II listed assets of medium sensitivity, this level of impact will result in a significance of effect that is **slight adverse**. In NPPF terms, this equates to ‘less than substantial harm’.

Impact on NDHAs

- 9.21 Impact from proposed development on the non-designated elements of the historic landscape within the site will be more direct. Features such as any buried remains of the former field barn will potentially be destroyed (in archaeological terms) along with other buried remains; part of the former medieval deer park would be obscured by solar panels and any archaeology here disturbed by foundations that are presumed to penetrate deeper than normal ploughing.
- 9.22 While the line of the historic footpath along the west side of the site would be preserved, the path itself would be sandwiched between two modern fences, hedging, and rows of c.2.3m high solar panels. This will dramatically alter the character of the historic footpath. Views of the surrounding landscape will be restricted resulting in an adverse impact on the connection the footpath facilitates between pedestrians and the historic landscape, and the experience gained by tracing its route.



Figure 31 Existing view south from historic footpath within the site. Source: Andy Maw Design.



Figure 32 Proposed view south from the historic footpath within the site. Source: Andy Maw Design.



Figure 33 Existing view west from historic footpath within the site. Source: Andy Maw Design.



Figure 34 Proposed view south from the historic footpath within the site. Source: Andy Maw Design.



Figure 35 Existing view looking east across the site from Meriden Road. Source: Andy Maw Design.



Figure 36 Proposed view looking east across the site from Meriden Road. Source: Andy Maw Design.

- 9.23 Dynamic views east across the site from Meriden Road will also be affected. Fields will be obscured and replaced with an industrial scale tech-scape of solar panels; the experience of seasonality from seeing the sowing and ripening of crops and the ploughing of soil will be lost and replaced with an unchanging monoculture of rows of hardware.
- 9.24 The scheme includes the addition of new planting within the site in the form of overall grassland cover, clumps of new trees and new lines of hedging. The proposed hedging is shown below (green dotted lines), superimposed on the Tithe Map. This demonstrates that, for the most part, the proposed hedging will be on alignments that do not correspond with any historic field boundaries. Although some historic hedgerows were removed in in the 20th century to create larger fields, many still survive, including within the appeal site.

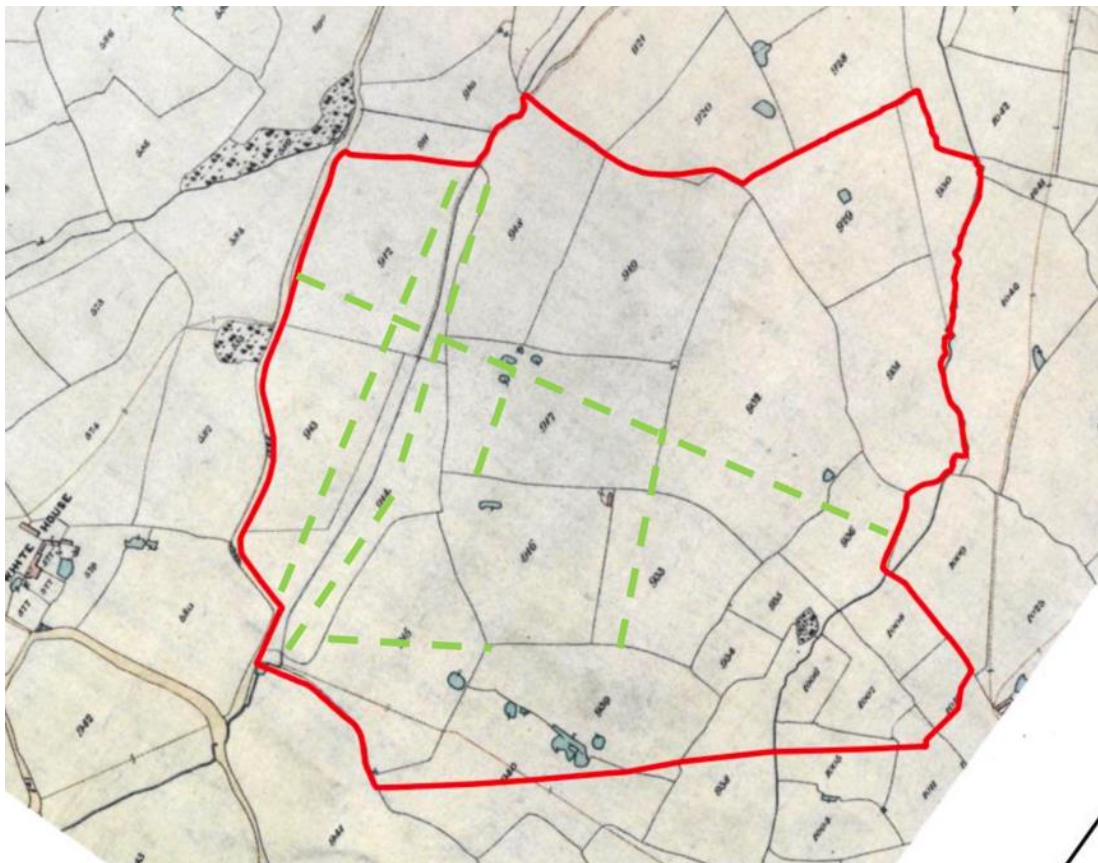


Figure 37 Tithe map (from Heritage & Archaeology Assessment by BWB) showing the site (red line) and pattern of historic fields, overlain with lines of proposed new hedging that conflict with historic field boundaries (green dotted lines).

- 9.25 The effect of this will be not only be to fail to reinforce the historic field pattern of the site, but more importantly, to actively create hedging – that will be permanent – along lines that confuse and obscure the historic field pattern that has formed part of the agricultural landscape for centuries.

- 9.26 Individually, the NDHAs are generally of low heritage value (or unknown in the case of potential buried archaeology). Direct and indirect impact of this type is assessed as ranging from **moderate to major adverse**.
- 9.27 On assets of low sensitivity a moderate level of change will result in a significance of effect that is **slight to moderate adverse**. In NPPF terms, this equates to 'less than substantial harm'.
- 9.28 The resulting magnitude of impact from the proposed development on archaeology of unknown importance within the site is, as yet, unknown.

Summary

- 9.29 It is clear that the impact expected from the solar farm on the built environment of the appeal site and its vicinity is universally adverse. This ranges from slight (in the case of some NDHAs) to moderate/large (in the case of the scheduled monument).
- 9.30 The resulting changes constitute – for the most part – indirect impact on the setting of heritage assets, rather than direct damage to the assets themselves. For this reason, in NPPF terms, this harmful impact is generally assessed as being 'less than substantial'. In the case of the scheduled monument and Fillongley Conservation Area, given the higher sensitivity of the assets, the resulting harm is deemed to be at the very upper end of less than substantial.
- 9.31 Where the scheme would result in the total loss of non-designated heritage assets, including buried archaeology, the harm to these assets will be irreversible.
- 9.32 In the case of designated assets, regard should be had to NPPF paragraph 205. Less than substantial harm should be assessed under paragraph 208 of the NPPF by weighing the harm against the public benefits of the scheme.
- 9.33 Impact on NDHAs should be determined under paragraph 209 using balanced judgement.

10 Appraisal of Appellant's Heritage & Archaeology Assessment

- 10.1 A Heritage and Archaeology Assessment has been prepared by BWB Consulting and submitted in support of the proposed solar farm development. This document has been evaluated here in terms of the methodology used and its findings.
- 10.2 The title of the BWB Assessment gives the address for the assessed site as Nailcote Farm, Warwickshire. This is misleading and incorrect; Nailcote Farm is a dairy farm approximately 8.5km south of the appeal site on the opposite side of the M6 motorway.

Setting of Scheduled Monument

- 10.3 The BWB Heritage and Archaeology Assessment finds insufficient reason to consider that the appeal site contributes to the setting of the scheduled monument despite intervisibility between the scheduled monument and north end of the site, and the fact that the site forms part of the context for the castle in terms of topography and reason for choice of location. This is disputed.

Setting of Conservation Area

- 10.4 In assessing whether the site features in the setting of the Fillongley Conservation Area, the BWB Heritage and Archaeology Assessment is guided by the very limited 1970 designation appraisal which provides policies for buildings within the village only. Consequently, the Assessment only considers the potential impact from development on buildings within the village; it fails to take into account detrimental indirect impact on the 12th century ringwork what forms part of the designated conservation area.

Setting of grade II* listed Church of St Mary and All Saints

- 10.5 In assessing the likelihood of impact on the conservation area, the BWB Heritage and Archaeology Assessment fails to attribute any weight to changes to distant views of the village across the appeal site featuring the tower of grade II* listed Church of St Mary and All Saints. For this reason, the Assessment also attributes insufficient weight to impact on views of the highly listed church as an individual heritage asset.

Setting of grade II listed Park House and farmstead

- 10.6 The Assessment acknowledges the contribution made to these listed buildings by their arrangement and grouping. It also considers the immediate setting of Park House farm, including landscaping, contributes to the setting of farmstead. However, despite describing ‘long views of the surrounding countryside’ and the ‘surrounding rural context’ which includes ‘long views towards the site’, the Assessment fails to acknowledge the contribution made by the surrounding countryside to the wider setting of Park House or associated farmstead. Any impact in the wider landscape is consequently and incorrectly assessed as negligible with a neutral significance of effect.

Setting of grade II listed White House

- 10.7 A similar approach is taken to White House Farmhouse. The BWB Assessment acknowledges the role of nearby buildings and gardens in the immediate setting of the listed building but fails to take into account its relationship with the wider setting or the contribution made to the significance of White House by the rural landscape in which it stands – an aspect that is fundamental to the appreciation and understanding of this listed building. Any impact in the wider landscape is therefore assessed as negligible with a neutral significance of effect which, again, is incorrect.
- 10.8 In conclusion, the Assessment states that *‘the site does not contribute to the setting or significance of the majority of the designated assets within the study area and there will be no impact on their setting.’*⁵¹ This is incorrect.
- 10.9 The Assessment finds that there will be a negligible impact on the settings of Park House and White House Farmhouse, resulting in both cases in a significance of effect that is neutral. And yet the report immediately continues that *‘The impacts are assessed as being less than substantial in terms of the NPPF.’* It is unclear how a significance of effect that is neutral can result in harm of any level (requiring consideration under NPPF paragraph 208 or otherwise) if there is genuinely no impact on the setting of these listed buildings.⁵²

⁵¹ Heritage and Archaeology Assessment, BWB Consulting, 2023, 8.3.

⁵² Ibid.

Impact on Non-designated Heritage Assets

10.10 The BWB Heritage and Archaeology Assessment fails to consider the impact on any non-designated heritage assets either within the site or in its vicinity, other than potential buried archaeology. Relevant NDHAs that it fails to consider include:-

- the medieval landscape of the deer park associated with Castle Yard, ridge and furrow cultivation, fishponds and medieval settlement;
- the post-medieval agricultural landscape including the historic field system within the site and the sites of two former outfarms;
- the historic footpath within the site;
- the historic route of Meriden Road.

Fillongley Neighbourhood Plan

10.11 The Assessment takes no account of the adopted Fillongley Neighbourhood Plan, despite the Plan containing policies relevant to the proposed solar farm - in particular policies relating to the conservation of the rural setting of the village.

Heritage Values

10.12 The Assessment uses a general approach that is compliant with industry standard, i.e. establishing heritage significance using a system of 'values', assigning a level of impact caused by development, and quantifying the resulting effect on the historic environment via a matrix that takes into account the sensitivity level of the heritage asset. This approach conforms to industry standard.

10.13 However, the heritage values used by BWB to assess significance are those proposed by English Heritage's *'Conservation Principles'* guidance in 2008. While this guidance established the concept of 'heritage values', these values have since been superseded in general use by a different set of heritage values used in the NPPF and which have now been adopted by Historic England for use in their current guidance. The use of *Conservation Principles* values to assess heritage significance that is then considered and weighed in reference to the NPPF (which uses a different set of values) causes a potential mismatch in the assessment process that could easily be avoided.

11 Conclusion

- 11.1 This heritage report has been provided in response to the proposed development of a solar farm with associated works, equipment and necessary infrastructure within a 61 hectare area of arable farmland south of Fillongley in Warwickshire.
- 11.2 The significance of relevant heritage assets has been examined and the likely impact on that significance resulting from development has been evaluated. Contrary to conclusion of the BWB Heritage and Archaeology Assessment submitted in support of the development, the impact of the solar farm on the historic environment has been found to be universally adverse in degrees ranging from slight to large adverse.
- 11.3 It is considered misleading to describe the proposal as ‘temporary’ in regard to the historic built environment. Unlike solar energy, the historic environment is not renewable; it is a finite resource. In regard to numerous assets the effects are likely to be permanent - including the total loss of archaeological remains and the practically irreversible creation of a new layer of features (including fences and hedgerows) confusing the historic field pattern.
- 11.4 It has been found that there will be an adverse indirect impact on a number of designated assets as a result of the proposed development, including the scheduled monument of Castle Yard and grade II* listed Church of St Mary and All Saints.
- 11.5 In accordance with paragraph 205, *‘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.’*
- 11.6 The adverse effect on designated assets is assessed as being ‘less than substantial’ – and at the very upper end of this spectrum in the case of the scheduled monument and conservation area. This harm should be considered under paragraph 208 of the NPPF and the harm weighed against the public benefits of the scheme.
- 11.7 It has also been found that there will be both direct and indirect harm to a number of non-designated heritage assets as result of the proposed development. Also assessed as being less

than substantial (although potentially irreversible in the case of unknown archaeology), this harm should be considered under paragraph 209 of the NPPF using balanced judgement.

- 11.8 As stated, the level of harm to *each individual* asset has been assessed as less than substantial; when viewed in isolation, this impact may appear acceptable. When considered collectively, however, this degree of harm to multiple heritage assets (both designated and non-designated) that are components in the tapestry of a wider historic landscape, that harm becomes less acceptable.
- 11.9 While the public benefits of moving towards a lower carbon-polluting future are probably undisputed, no evidence appears to have been put forward as part of the proposed development that the same public benefits cannot be achieved in a location of much lower historic sensitivity – one that does not incur the same degree of harm to the historic environment. As such, the proposal is not deemed to comply with paragraphs 208 or 209 of the NPPF.
- 11.10 Scheduled monuments are classed as assets of the highest possible significance. Any harm to scheduled monuments or other designated assets (including from development in their setting) requires clear and convincing justification under paragraph 206 of the NPPF; justification for this harm has not been provided.
- 11.11 For these reasons, the proposal is deemed contrary to paragraphs 206, 208 and 209 of the NPPF.
- 11.12 For the same reasons, the proposal is also contrary to policy LP15 of the North Warwickshire Local Plan, which states that *'The quality, character, diversity and local distinctiveness of the historic environment will be conserved or enhanced'*, and Policy FNP06 of the Fillongley Neighbourhood Plan, which requires the protection and enhancement of both the recorded assets of the parish, and other locally identified heritage features.
- 11.13 As such, it is respectfully suggested that the appeal is dismissed.

Appendix 1: National Heritage List for England Entries

Scheduled Monument of Castle Yard List Entry

Heritage Category: Scheduled Monument

List Entry Number: 1013152

Date first listed: 16-May-1951

Date of most recent amendment: 28-Jun-1995

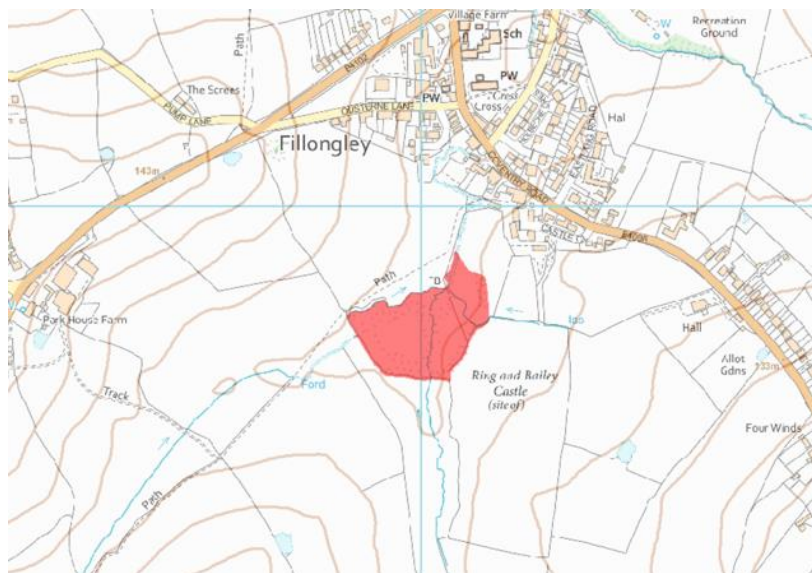
Location The building or site itself may lie within the boundary of more than one authority.

County: Warwickshire

District: North Warwickshire (District Authority)

Parish: Fillongley

National Grid Reference: SP 27995 86815



Reasons for Designation

Ringworks are medieval fortifications built and occupied from the late Anglo-Saxon period to the later 12th century. They comprised a small defended area containing buildings which was surrounded or partly surrounded by a substantial ditch and a bank surmounted by a timber palisade or, rarely, a stone wall. Occasionally a more lightly defended embanked enclosure, the bailey, adjoined the ringwork. Ringworks acted as strongholds for military operations and in some cases as defended aristocratic or manorial settlements. They are rare nationally with only 200 recorded examples and less than 60 with baileys. As such, and as one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, ringworks are of particular significance to our understanding of the period.

Castle Yard survives well and is one of only two known examples of this class of monument in Warwickshire. The foundations of medieval structures will survive as buried features within both the ringwork and the bailey, while the accumulated fill of the ringwork and bailey ditches will retain information valuable for an understanding of the environment and economy of the site's inhabitants. Additionally, the buried land surface beneath the ringwork enclosure will retain environmental evidence relating to the landscape in which Castle Yard was constructed.

Details

The monument is situated approximately 80m south west of Castle Farm on the southern outskirts of the village of Fillongley. It includes the masonry and earthwork remains of Castle Yard, a ringwork castle and its associated bailey. The site occupies an area of approximately 2ha and has been constructed on an area of land which is defined by two stream channels. The stream to the north of the ringwork flows west-east and forms the northern boundary to the site, whilst the second stream, situated in the eastern part of the site, flows from east to north. A third stream channel runs through the central part of the site and flows northwards into the stream defining the site's northern edge. The streams are thought to have been diverted at the time of the castle's construction in order to form its southern outer defences. They also provided the water supply for the inner defensive ditches. The ringwork itself, is situated in the western part of the site and is surrounded by a 12m wide ditch which, with the exception of its waterlogged northern section, is mostly dry. The water supply for the ditch originally entered from the west and the south. An external rampart is visible beyond the western, northern and southern sides of the ditch. The ringwork has a roughly circular plan and has been artificially raised above the surrounding ground surface. Traces of an inner bank are visible along the north eastern and western sides of the ringwork enclosure; this bank is thought to have been present originally on all sides. Access into the ringwork is thought to have been by means of a causeway across the eastern section of its enclosing ditch. The ringwork enclosure itself has an uneven surface, indicating the survival of buried features beneath the ground surface. In the north eastern part of the ringwork a large block of in situ masonry is visible standing to a height of c.1.9m. It is built of local sandstone and represents a rectangular building. The remains of a circular staircase, situated adjacent to the block of standing masonry, have been uncovered in the past though they now lie buried beneath the ground surface. Fragments of masonry are also visible in the north eastern parts of the enclosure. To the north east, east and south east of the ringwork is a polygonal-shaped bailey. It is bounded along its north western side by the northern stream channel, and to the east

and south, by a 6m wide ditch; the ringwork ditch defines the bailey's western side. The north eastern section of the bailey ditch has been infilled and is no longer visible on the ground surface. It is thought to have connected with the northern stream channel and will survive as a buried feature. A stream channel now flows north/south through the central part of the bailey. A dry, 10m wide channel, aligned south west-north east, is visible in the northern part of the bailey. This feature is thought to be original and divides the bailey into two courts. Castle Yard was occupied by the Hastings family from the early 12th century and the site became their chief residence in Warwickshire. The last of the Hastings line died in 1389 and the site became part of the Bergavenny baronry which was held by the Beauchamps and the Nevilles. Castle Yard is thought to have been abandoned during the late 14th or early 15th century. All fence posts at the site are excluded from the scheduling, but the ground beneath them is included.

Sources

Books and journals

The Victoria History of the County of Warwickshire: Volume I, (1904), 376

Salter, M, Castles and Moated Mansions of Warwickshire, (1992), 28

Chatwin, P B, 'Transactions of the Birmingham Archaeological Society' in Castles in Warwickshire, , Vol. 67, (1947), 25

Legal

This monument is scheduled under the Ancient Monuments and Archaeological Areas Act 1979 as amended as it appears to the Secretary of State to be of national importance. This entry is a copy, the original is held by the Department for Culture, Media and Sport.

Church of St Mary and All Saints List Entry

Heritage Category: Listed Building

Grade: II*

List Entry Number: 1034830

Date first listed: 08-Sep-1961

List Entry Name: CHURCH OF ST MARY AND ALL SAINTS

Statutory Address 1: CHURCH OF ST MARY AND ALL SAINTS, COVENTRY ROAD

The scope of legal protection for listed buildings

This List entry helps identify the building designated at this address for its special architectural or historic interest.

Unless the List entry states otherwise, it includes both the structure itself and any object or structure fixed to it (whether inside or outside) as well as any object or structure within the curtilage of the building.

For these purposes, to be included within the curtilage of the building, the object or structure must have formed part of the land since before 1st July 1948.

Location

Statutory Address: CHURCH OF ST MARY AND ALL SAINTS, COVENTRY ROAD

County: Warwickshire

District: North Warwickshire (District Authority)

Parish: Fillongley

National Grid Reference: SP 28088 87171



Details

FILLONGLEY COVENTRY ROAD SP2887 (East side) 18/24 Church of St. Mary and All 08/09/61 Saints GV II* Church. C12 chancel now mainly C15, C14 nave, C15 north chapel and C13 west tower with C15 bell stage. Coursed sandstone rubble; coursed and squared sandstone. Plain-tiled roofs with crocketed pinnacles to east gable of nave and gable end cross. Embattled west tower of 3 stages. 2 lower stages are C13. One lancet window to each stage of side wall. C15 west doorway in 4-centred arch in square head. Angle buttressing. Bell stage, C15, has in each wall two 2-light openings with foiled heads in 2-centred arches. Nave has embattled parapet. C15 clerestory of 5 windows, each of two cinquefoil lights in square head. 3, C14, windows; 2 of 3 trefoil lights in 2-centred arches of 2 chamfered orders, and one of 2 trefoil lights. 2 stage gable buttressing. Chancel: South wall has 2 windows, each of 3 lights and a C15 doorway in 4-centred arch in square head. East window of 3 trefoil lights in moulded 2-centred arch. North chapel: C15. Embattled parapet. 2 windows in north wall of 3 trefoil lights in 4-centred arches. 2 stage buttressing with offsets. Interior: South doorway to nave, C14. 2 hollow and roll moulded orders in 2-centred arch with label and mask stops. C13 tower arch of 3 chamfered orders in 2-centred arch. Original gable end of roof visible in west wall of tower. C19 roof boarded. Braced tie beams. Chancel arch 2-centred and of 2 wave moulded orders. The chancel has a C19 roof of wind braced through purlins. North chapel C15. 2 bays open to chancel. 2-centred arches of 2 hollow moulded orders on octagonal column with moulded capital and base. Original roof with moulded ridge tie beams and purlins. Carved bosses at intersections. Font, C15. Stone. Round bowl with vertical ribs dividing the panels. Wall monument, north wall of chancel. Mrs. Daniel and daughter, 1725. White marble tablet with grey marble fluted ionic pilasters and crest. Chest. Oak. 1729. Oak with iron fittings. Gift of Geo. Aley of Black Hall, Fillongley. (Buildings of England: Warwickshire: p294; VCH: Warwickshire: Vol IV)

Listing NGR: SP2808887171

Sources

Books and journals

Doubleday, AH, Page, W, *The Victoria History of the County of Warwick*, (1947)

Pevsner, N, Wedgwood, A, *The Buildings of England: Warwickshire*, (1966), 294

Park House List Entry

Heritage Category: Listed Building

Grade: II

List Entry Number: 1186219

Date first listed: 11-Nov-1952

Date of most recent amendment: 23-Mar-1988

List Entry Name: PARK HOUSE

Statutory Address 1: PARK HOUSE, MERIDEN ROAD

The scope of legal protection for listed buildings

This List entry helps identify the building designated at this address for its special architectural or historic interest.

Location

Statutory Address: PARK HOUSE, MERIDEN ROAD

County: Warwickshire

District: North Warwickshire (District Authority)

Parish: Fillongley

National Grid Reference: SP 27438 86853



Details

FILLONGLEY MERIDEN ROAD SP28NE (East side) 6/39 Park House 11/11/52 (Formerly listed as Park House and Barn) GV II House. Early/mid C17 and early C19 alterations. Timber-framed

with red brick infill, part rendered, on sandstone plinth. Later red brick of random bond. Plain-tiled gabled roofs with side stacks of sandstone to north and south cross-wings. Red brick above the ridge. Plan of double-ended hall house with central hall and entry bay. Extended by a short service range to north cross-wing and to road side of centre range. 2 storeys. Principal elevation to the garden. Hall range has segmental arch to first floor C20 wood casement. Doorway in early C19 doorcase with moulded architrave and flat hood on scroll brackets. 6 flush panelled door and rectangular fanlight with glazing bars. South cross-wing was probably a parlour range. 2 bays. One C20 3-light wood casement above C19 canted bay with small-pane wood casement. Similar fenestration to gable end of north cross-wing. South cross-wing has exposed wall framing in small panels and at first floor a casement with original chamfered mullions. Adjoining the north cross-wing on the north side wall is a single bay service range. Timber-framed, rendered and plain-tiled roof. One storey and attic. Doorway in segmental arch. Gable end framing exposed. Interior: Centre range has early C19 stick baluster staircase. The hall is unheated. Inglenook hearth to service range and parlour hearth to south range. Cheese room with plaster floor and a ground floor room has a dairy and another thralls for beer. Through purlin wind braced roof.

Listing NGR: SP2743886853

Legal

This building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for its special architectural or historic interest.

White House Farmhouse List Entry

Heritage Category: Listed Building

Grade: II

List Entry Number: 1034868

Date first listed: 23-Mar-1988

List Entry Name: WHITE HOUSE FARMHOUSE

Statutory Address 1: WHITE HOUSE FARMHOUSE, CHAPEL GREEN

Location

Statutory Address:

WHITE HOUSE FARMHOUSE, CHAPEL GREEN



County: Warwickshire

District: North Warwickshire (District Authority)

Parish: Fillongley

National Grid Reference: SP 26904 85868

Details

FILLONGLEY CHAPEL GREEN SP28NE (West side) 6/19 White House Farmhouse - II Farmhouse. Early C19 possibly of earlier origin. Red brick, Flemish bond. Plain-tiled roof with end stacks. 2 storeys. Symmetrical facade of 3 twelve- pane hung sashes under flat arches of stone with raised key blocks. Sandstone steps lead to central doorway in round arch. Broken pedimented doorcase on fluted pilasters. Radial glazing bars to fanlight.

Listing NGR: SP2690485868

Legal

This building is listed under the Planning (Listed Buildings and Conservation Areas) Act 1990 as amended for its special architectural or historic interest.

Appendix 2: Hamilton Hill Farm Appeal



Appeal Decision

Hearing held on 20 and 21 February 2024

Site visit made on 19 and 21 February 2024

by Paul Thompson DipTRP MAUD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 November 2024

Appeal Ref: APP/W3005/W/23/3323952

Hamilton Hill Farm, Cauldwell Road, Sutton in Ashfield NG17 5LB

- 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 Batov (Hamilton Solar Limited) against the decision of Ashfield District Council.
 - The application Ref is V/2022/0562.
 - The development proposed is 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.

Applications for costs

2. An application for costs was made by Ashfield District Council against Mr Batov (Hamilton Solar Limited), which is the subject of a separate Decision.

Preliminary Matters

Requested Information in the Pre-Hearing Note

3. In my Pre-Hearing Note (PHN) the main parties were asked to provide clear direction to agreement and disagreement in a Statement of Common Ground (SoCG) regarding land or buildings that were considered as alternatives to the appeal site. This was required to assess the planning considerations relevant to site selection of the proposed ground-mounted solar farms, as identified in the National Planning Practice Guidance¹ (NPPG), which supports the policies of the National Planning Policy Framework (the Framework); and the appellant's Site Search Report, including clarification on any implications for viability of the scheme. In response, the appellant provided Commercial Viability and Technical Notes, received on 6 February 2024.
4. I accepted the documents to save time at the Hearing, as they referred to points raised in the PHN, that required testing at the Hearing. The main parties also had sufficient time to consider their content and prepare their cases. Interested parties not in attendance at the Hearing may not have been aware of the Notes or their content and, had the availability of other sites in the District had a bearing on the outcome of the appeal, they could have been afforded an opportunity to comment on their content. However, their content

¹ Paragraph: 013, Reference ID: 5-013-20150327, Revision date: 27 03 2015.

<https://www.gov.uk/planning-inspectorate>

could have been referred to at the Hearing, without them being provided. I therefore determined the appeal in light of their content.

Agricultural Land Classification

5. On 9 February 2024, the appellant provided a Soil Resources and Agricultural Quality Report². This predated submission of the planning application, but was not submitted with it, and confirms the site to be Grade 2 agricultural land. However, a separate document³, submitted with the application, confirmed the land to be Grade 3b. The former meets the definition of Best and Most Versatile agricultural land (BMVAL) but the latter does not.
6. At the Hearing, the appellant's representatives explained that, following discussion with the Council over the SoCG, separate discussions took place with the appellant and the soil assessor. The submission of the report came about thereafter. The appellant's planning consultants and planning solicitor were only made aware of the report on 8 February 2024 and disclosed it the following day, as they were professionally obligated to do so by the Royal Town Planning Institute and the Law Society. To my mind, there was no advantage to the appellant to do so and there is no reason for me to doubt this chain of events.
7. While the document undoubtedly had implications for the preparation and presentation of the Council's case, that also goes for the appellant, as various documents in his evidence relied upon the premise the land was not BMVAL. The appellant therefore prejudiced his own case, as a new main issue, and reason for refusal, were considered at the Hearing, as set out below. Given the timeframe to the start of the event, the main parties had time to ready and present their cases at the event. Despite the possibility not all interested parties may have known about the report, its findings were of fundamental importance and the appeal would have been determined against incorrect evidence had it not been accepted. This would not have been in the public interest or exercise natural justice. I have therefore determined the appeal based on the latest information.

Planning Policies, Legislation and Case Law

8. The Levelling-up and Regeneration Act 2023 came into force on 26 October 2023, but the duty proposed to be inserted in a new section 58B of the Town and Country Planning Act 1990, to 'have special regard to the desirability of preserving or enhancing [a scheduled monument]...or its setting' is not in force by Royal Assent and secondary legislation is required for it to come into force.
9. The Framework was revised in December 2023 after the determination of the application, but the main parties were able to address any relevant changes in its approach to the matters relevant to the appeal. On 30 July 2024, the Government published further consultations on proposed reforms to the Framework (including draft text) and other changes to the planning system. However, neither constitute Government policy or guidance and are likely to be subject to consultation responses that may result in alternative approaches. Hence, they carry limited weight in the determination of this appeal.

² Report 1668/1, dated 28 February 2020, by Land Research Associates.

³ Produced following a site inspection on 17 May 2020 by Bateman Rural Associates Limited.

10. The emerging Ashfield Local Plan 2023-2040 Regulation 19 Pre-Submission Draft (ELP) was consulted on until the end of January 2024, and was still progressing at the time of the Hearing. The Council has not advanced any policies, but the appellant referred to policies and strategic objectives from the Regulation 18 version of the ELP. The wording and focus of one of which has changed. The ELP still appears, therefore, to be some way off adoption and may potentially have unresolved matters. While I have had regard to the content of the policies and objectives to which I have been referred, I am only able to afford them no more than limited weight.
11. I have been referred to two National Policy Statements (NPS) relevant to this case. The Department for Energy Security & Net Zero *Overarching National Policy Statement for Energy (EN-1)* and *National Policy Statement for Renewable Energy Infrastructure (EN-3)*. The size of the proposal (7MW) means it is not determined under the Planning Act 2008, as a nationally significant infrastructure project (NSIP), and therefore it is not Critical National Priority infrastructure. Despite this, EN-1 is clear that it may be a material consideration in decision making on applications falling under the Town and Country Planning Act 1990 (as amended). The NPS were designated in January 2024, and both refer to an urgent need for energy generating infrastructure.
12. On 27 February 2024, the Council provided a copy of the Lullington Judgment⁴. Furthermore, on 15 May 2024 the then Secretary of State for Energy Security and Net Zero (Claire Coutinho MP) made a written ministerial statement (WMS) about "Solar and protecting our Food Security and Best and Most Versatile Land". I invited the main parties to provide comments in writing to their relevance to the appeal, which I have taken into account in my determination.

Main Issues

13. The Council's first reason for refusal refers to the availability of other sites to accommodate the development. However, given the updated position regarding the agricultural land classification of the site, it is necessary for this to include consideration of the effect to BMVAL. The Council also confirmed, at the Hearing, that concerns identified in its second reason for refusal regarding how the development would be visually perceived by nearby residents relates to the potential effects of change to the character of the land as viewed from nearby homes. On this basis, the main issues are:
 - whether the proposal is consistent with the development plan regarding development in the countryside, having regard to its effect on the landscape character and appearance of the countryside, including its openness;
 - the effect of the proposal on the significance of the Mound on Hamilton Hill⁵, a Scheduled Monument, through development within its setting; and
 - whether there are other available sites within the District that could accommodate the proposed development, including consideration of the proposal's effect on the use of best and most versatile agricultural land and evidence to justify any loss.

⁴ Lullington Solar Park Ltd vs Secretary of State for Levelling Up, Housing and Communities and South Derbyshire District Council, [2024] EWHC 295 (Admin).

⁵ List Entry Number: 1002921.

Reasons

Development in the Countryside

14. Proposals for development in the countryside of Ashfield are considered in relation to LP⁶ Policy EV2. This states that permission will only be given for appropriate development within a closed list of several criteria, one of which concerns rural uses, including agriculture, forestry, mineral extraction, and waste disposal to reclaim mineral workings. The appeal scheme would not fit into any of these criteria. However, the policy also requires development must be located and designed so as not to adversely affect the character of the countryside, in particular its openness.
15. The main parties are in agreement that, for the purposes of the Framework, the site is not situated within a valued landscape, but is part of an existing Mature Landscape Area, Coxmoor/Kings Mill, referred to in LP Policy EV4. The site also forms part of the wider designations of the Sherwood character areas within the Greater Nottingham Landscape Character Assessment (GNLCA, 2009) and National Character Area 49 (2014). It is also within the Sandstone Forests and Heaths character type in the East Midlands Regional Landscape Character Assessment (2010).
16. The site consists of several parcels of open and undeveloped agricultural land at the eastern edge of Sutton-in-Ashfield and the land rises in a southeast direction from Hamilton Road to Cauldwell Road. There it borders a small cluster of homes in its southeast corner, including Hamilton Farm. No footpath exists to that side of Hamilton Road, so the narrow verge and the low hedgerow planting of the site are prominent enclosing features to the road. Hedgerows are also present at other boundaries, including to most of the northern boundary with Cauldwell Road, which also includes hedgerow trees, and to the west at Coxmoor Road.
17. The site is physically contained by these roads and Hamilton Hill to its northeast, and is influenced, to a certain extent, by its close relationship with industrial uses in the adjacent urban area. However, from what I have seen and read, the site and its surroundings embody the typical landscape characteristics of the character areas, which make a positive contribution to the character of the countryside. Moreover, the site is not visually separate from the undeveloped fields and other land within the countryside between urban areas in the districts of Ashfield and Mansfield, which are also undulating and enclosed by planting. While noise and movement on roads nearby, including Sherwood Way, means the site is not a tranquil area of the countryside, this does not alter its perception as part of the countryside.
18. Taken together these stated features, particularly the open and undeveloped nature of the site, give rise to a clear and distinct, pattern of development. The presence, or not, and the nature of built form also helps to distinguish between more urban and rural forms, including the countryside. This makes a significantly positive contribution to the landscape character and appearance of the countryside surrounding Sutton-in-Ashfield. As such, the site would be sensitive to change in this respect.

⁶ Ashfield Local Plan Review – Adopted November 2002.

19. A Landscape Mitigation and Enhancements plan for the site and its long-term future management would generally reflect planting in the local environment. It would also help to conserve the remains of intact historic field patterns with mature bushy hedgerows and reinforce these where they have become degraded or lost, and reinstate hedgerow trees, as identified in actions for two focused policy zones (SPZ11 and SPZ47) within Sherwood in the GNLCA.
20. Despite this, the proposal would be a development of significant proportions to the edge of Sutton-in-Ashfield, which would harm the appearance of a large area of land incorporating open and undeveloped agricultural fields, and would contrast significantly with the modest grouping of homes in Cauldwell Road. Due to the level difference across the site, in the short- to medium-term, the landscaping would have a limited effect in mitigating the visual prominence of the PV panels within the site.
21. The subsequent loss of openness and erosion of the site's undeveloped qualities would undermine how the countryside relates to the settlement. That being said, as with the appeal at Southwell⁷, there is a certain inevitability of some landscape impact associated with solar farms in the early stages of their operational life, when planting is establishing. Equally, in the long-term, while proposed planting would soften the visual effect of the development's physical presence from most views nearby, it would be discernible to users of Hamilton Road above the hedgerows on higher land within the site. While such receptors would likely be transient, the site forms part of the countryside at the very edge of Sutton-in-Ashfield, so the footpaths and roads that pass around it, on three sides, would be highly accessible to pedestrians or those driving to either access the countryside or simply pass by. The effect in this sensitive location would be more profound during winter months when planting may not be in leaf. There would also be visibility of the proposal in more distant views from higher land, including from Mansfield Road to the northwest, which I was asked to visit.
22. The occupiers of the homes to the northern side of Cauldwell Road do not currently entirely enjoy broad open aspect across the site due to the presence of existing planting and outbuildings. Notwithstanding planting that would be introduced, they would remain receptors of the landscape and visual harm that would result from the proposed development, particularly as planting establishes, when it would be highly prominent from these properties. Tree planting close to those properties, to screen the development from view, would alter their perception of the surrounding landscape, but hedgerow trees would not be out of place, nor would they inevitably be oppressive in views.
23. I cannot agree with the findings of the appellant's Landscape and Visual Appendix to the Planning Statement of Case⁸ (PSoC) and the Landscape and Visual Impact Assessment, that the magnitude of the impact of the proposal would be mitigated. However, as the effects would primarily be localised, the harm that would result from the proposal would have a limited effect on the landscape character and appearance of the countryside, including its openness.
24. For the above reasons, I conclude that the proposal would not be consistent with the development plan regarding development in the countryside, having regard to its effect on the landscape character and appearance of the

⁷ Appeal Reference: APP/B3030/W/21/3279533 – Land North of Halloughton, Southwell, Nottinghamshire.

⁸ Ref: R003v2 - P23-0612, dated July 2023.

countryside, including its openness. Moreover, the appeal scheme would not fall into any of the categories of appropriate development listed in LP Policy EV2, so it would conflict with that policy and LP Policy ST4, which also requires countryside development to fit within those categories. The harm to the character and openness of the countryside would also bring further conflict with the aims regarding such matters expressed in EV2 and LP Policies EV4 and ST1. There would also be conflict with Part 15 (Conserving and enhancing the natural environment) of the Framework.

25. While the Council did not refer to Policy EV4 until the Hearing, the appellant had opportunity to address its content so I am satisfied that no one would be prejudiced by my finding in relation to it.

Significance and Setting of the Mound on Hamilton Hill

26. The appeal site is next to Hamilton Hill, atop which is the Scheduled Monument 'Mound on Hamilton Hill'. In considering its significance as a designated heritage asset, I have had regard to Historic England (HE) guidance⁹. There is a certain mystery to the asset and the evidence of the main parties, and HE refers to many possibilities for the potential use of the Mound, including as a Bronze Age Barrow, look out, and site for gallows. However, its significance is most likely to relate to its administrative and decision-making functions as a 'moot'. Moreover, at the Hearing, the parties agreed upon the description of a moot taken from the list entry for the Secklow Hundred Mound, another Scheduled Monument¹⁰. The Mound is therefore most likely to have been used as an open-air place for meeting or assembly, including by courts or other bodies responsible for the administration and organisation of the countryside in Anglo-Saxon and medieval England. While it may have been possible to hear meetings taking place on the hillsides, the principal area for meetings was the Mound itself. Its form also shares similarities with the general characteristics of a moot, as the centre is consistent with the height of the hill and earthworks formed sunken areas surrounding it. This suggests a platform was provided for speaking and the evidence also points to the position of the Mound and its sunken areas to the north of the hill, being a purposeful act to reduce the effects of prevailing winds on speakers being heard.
27. The list entry for Secklow Hundred Mound suggests that they are comparatively rare, which underlines the national importance of the Mound on Hamilton Hill. Furthermore, in the context of paragraphs 206 and 205 of the Framework, it is a designated heritage asset of the highest significance and the greatest of weight should be given to its conservation.
28. While the Mound is scheduled, the hill is not and the evidence before me does not categorically suggest that the bank and ditch at the bottom of the hill are either related to, or contemporaneous with, the Mound.
29. The definition of setting contained in the Framework refers to the surroundings in which a heritage asset is experienced and HE guidance¹¹ states views of or from an asset will play an important part in this. This also confirms the way in which an asset is experienced in its setting is influenced by understanding of

⁹ Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12, 2019.

¹⁰ List Entry Number: 1007940, Secklow Hundred mound: a moot at the junction of North Row and North Ninth Street, Milton Keynes.

¹¹ The Setting of Heritage Assets (Good Practice Advice in Planning Note 3), Second Edition, 2017.

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.

30. As far as it relates to the appeal before me, the hill physically forms an integral part of the setting of the Mound. As the hill is conspicuous in the surrounding landscape, so too would have been certain elements of its use as a moot. Moreover, during my site visits I observed that views from the centre of the Mound and the sunken areas surrounding are restricted to a certain extent by the hill and there is only limited visibility of the same, from the south and southwest. However, from the edges of the scheduled area, views are expansive in all directions, including over the site and the roads around it. It therefore stands to reason that persons stood to the extremities of the scheduled area and beyond it would also have been visible within the immediate landscape, including from the position of surrounding roads.
31. Although the relationship between the surrounding countryside is fundamental to understanding why the Mound stands where it does, that relationship has been altered by change over time, including through expansion of settlements and the permanent presence of roads and buildings. This includes the large building and infrastructure constructed for Amazon sited a short distance away across Sherwood Way, which is prominent within its setting.
32. Nonetheless, to this day, the hill, and the Mound atop it, are experienced as being separated from Sutton-in-Ashfield by undeveloped agricultural land. Whether or not this was deliberate, and irrespective of the presence of the Amazon building and some other development off Cauldwell Road, this physical separation is important to understanding its likely origins as a moot. The open and undeveloped nature of the appeal site therefore makes an important positive contribution to the setting and, thereby, the understanding of the overall significance of the Mound.

Effect on the Mound on Hamilton Hill

33. In considering the proposal's effect on the setting and, thereby, significance of the Mound, I have had regard to the HE guidance documents and EN-3.
34. With the proposed development it would still be possible to experience the hill, the Mound, and its setting from land to the south and southeast, as this does not form part of the proposal. It would remain undeveloped, and part of the landscape and the views within it. Nevertheless, the proposal would bring development closer to the Mound away from Sutton-in-Ashfield and erode the open and undeveloped qualities of the agricultural land within the site. Where the Mound would be visible across the site, this would unacceptably harm the contribution made by the land to its setting. Similarly, given the expansive views available from the edge of the scheduled area, the development would be a significant detractor and distraction within the views out over land within its setting to the west. The appreciation of this effect would be greater were public access to be reinstated to it as part of the proposal.
35. For reasons identified in the first main issue, the proposed planting around the site, including trees and shrubs to the east of the panels, would not be effective in mitigating against the harm that would be caused within the setting of the asset, for a considerable period during the operational phase of development. Furthermore, while there would be no restriction to planting of agricultural

land, and this could be used to direct views up to the hill from a position opposite in Hamilton Road, in time it could equally partially obscure it from some other views along the road.

36. There is agreement between the main parties that the orientation required to capture sunlight would be away from the Hill, so views from it would be toward the back of the panels. Potential glint and glare from the panels would therefore not detract from the significance of the monument. Similarly, noise associated with construction and decommissioning phases of development would be temporary. I am also mindful that traffic noise is apparent from within the surroundings of the asset and its potential use as a moot means such noise would not be harmful to how it is experienced.
37. Notwithstanding the close relationship of the Amazon building with the Mound, the extent it and the solar panels on its roof are visible from it, or whether the Council found it to be harmful within its setting, this would not provide justification for further development of other land surrounding the Mound that I consider would be harmful to its significance through being within its setting.

Public Benefits of the Proposal

38. The proposed development would be harmful to the understanding and, thereby, significance of the Mound as a designated heritage asset, through development within its setting. The Council considers this would amount to substantial harm, whereas the appellant considers it should be graded at the lower end of less than substantial.
39. In the context of the Shimbles Judgment¹², I am not obliged to place harm somewhere on a 'spectrum' to give the necessary great weight to the asset's conservation. Hence, the Framework's division of harm into categories of 'substantial' or 'less than substantial' would be adequate to carry out the weighted balancing exercise to determine if the proposal would be acceptable.
40. The Holocaust Memorial Judgment¹³ and the appellant's legal opinion¹⁴ both discuss what amounts to substantial harm. The timeframe of the proposed development would not be permanent, and the land would be returned to its original state following decommissioning. However, the extent of harm that would be caused to the significance of the asset through development within its setting over this period would be meaningful and exceed a generation of change. Accordingly, the harm would endure for a considerable amount of time, so I adjudge it to be 'less than substantial'. In the context of Framework paragraph 205, this would be given the greatest of weight, and paragraph 208 identifies it should be weighed against public benefits of the proposal.
41. In assessing and ascribing weight to the scheme's stated benefits, I have had regard to the appeal decisions in the appellant's PSoC, and weight is attributed to each based on the nature and extent of the development in relation to a scale rising from limited, to moderate, to significant and substantial (where relevant).

¹² R on behalf of Simon Shimbles v City of Bradford MBC [2018] EWHC 195 (Admin).

¹³ The London Historic Parks And Gardens Trust vs The Minister of State for Housing and Westminster City Council [2022] EWHC 829 (Admin).

¹⁴ By Charles Banner K.C.

Environmental Benefits

42. The UK Government declared a Climate Emergency in May 2019 and the UK is legally bound through the amended Climate Change Act 2008¹⁵ to achieve net zero greenhouse gas emissions by 2050, from a 1990 baseline. The Council's Climate Change Strategy 2021-2026 made a commitment to do everything possible to combat climate change, including leading by example to assist in reduce the carbon footprint of the District by reducing emissions year on year. However, the measures therein are primarily aimed at how it will reduce its own footprint. I acknowledge that the ELP presents a more up-to-date approach to renewable energy and climate change that are not addressed in the LP. However, ELP Strategic Policy S3 requires demonstration that adverse impacts of such proposals are satisfactorily addressed, which is not the case here. The latest version of EN-1 also identifies the urgency of energy development deployment to support this commitment.
43. Given the scale and urgency of the emergency, I attach significant weight to this material consideration, including the impact of climate change on food production. A balance therefore needs to be struck to reduce the former to protect the latter including, in certain cases, BMVAL. Energy and food security are therefore both key issues.
44. The proposal would generate 7MW of energy, enough to power approximately 2,000 homes, in a manner that would reduce the potential implications of CO₂ pollutants generated by equivalent electricity produced from fossil fuels by 1,170 tonnes each year it is operational. The Framework recognises that even small-scale projects provide a valuable contribution to significant cutting greenhouse gas emissions. In that sense it would assist with the transition to a low carbon future, including the economy, in a changing climate. These would therefore amount to significant environmental and energy security benefits.
45. Biodiversity Net Gain is not a mandatory requirement for this development, but the Framework is supportive of measurable attempts to secure it. The proposal would provide, amongst other things, additional tree planting, new and reinforced hedgerows and an area which would be set aside for species-rich wildflower meadow. This is calculated by the appellant to result in the biodiversity value of hedges increasing by 102.82% and habitat gains of 122.89%. Landscape connections would be maintained through the site for mammals, and there would also be hedgehog, bat roosting and bird nesting boxes, log piles and amphibian and reptile hibernacula. This therefore provides sufficient assurance it should be possible to achieve gains through the proposal. However, given that these could be delivered in the absence of the proposal, I afford them moderate weight as environmental and social benefits. The appellant also confirmed, at the Hearing, that the height of planting at the site's boundaries would not adversely affect the power output of the development, as they would be sufficiently distant to ensure no shading effect.
46. The provisions in the appellant's Unilateral Undertaking (UU) obligate that the proposed landscaping would be maintained throughout the development period. While the appellant has indicated that there is no intention for this to be removed, it is unlikely that the decommissioning scheme could ensure that this would be maintained thereafter. The weight that could be afforded to this as a longer-term benefit following the development would therefore be limited.

¹⁵ The (2050 Target Amendment) Order 2019.

47. The evidence before me suggests the soil types within the site have low nutrient holding ability and high levels of phosphorus. This affects yields but, at the Hearing, the appellant confirmed it is unlikely there would have been any further changes in soil quality to result in the land not being Grade 2 land. Despite this, the report recommends the land is fallowed or sown to grass and grazed with livestock to increase organic matter in the soil. While it would take some time to reduce phosphorous to a normal level, either option could be achieved without the proposal, along with any associated benefit of grazing to farm diversification. In this context, I am only able to afford this limited weight as a long-term benefit to agricultural production.

Site Selection and Timeframe of Development

48. The SSR study area is the starting point in determining the suitability of a site for a scheme of this nature and others were discounted including on heritage grounds. There will therefore evidently be various reasons a site may not be appropriate. However, I only afford this limited weight as a benefit of the scheme given the harm that would result in this particular location.

Economic Benefits

49. The construction phase would be over several months, a relatively short period, due to the lightweight nature of the proposals, but there are likely to be some benefits to the economy from the labour market and the procurement of materials and equipment. There could also be some use of local contractors for longer-term management of the site. The Council was not able to confirm whether the contribution to business rates of £17,490 per annum would be correct, but the proposal would contribute in this manner. Hence, these would be social and economic benefits of moderate significance.

Heritage and Social Benefits

50. The UU includes provision for a Heritage Visitor Management Plan, which would manage visitor access to the Mound until the development is decommissioned. Visitors would be accompanied monthly, with two parking spaces and pedestrian access available to serve this purpose. Together with information boards that are proposed to be erected at the site, this would assist with the understanding of the site and increase recreational opportunities locally. While this is unlikely to be extent of the gatherings expected when the Mound was likely in use as a moot, there are currently only horses grazing on the hill and public access is limited, so its introduction and informative talks about the Mound's history would bring more activity to it. At the Hearing, the appellant explained that the pedestrian link to provide access to the asset is indicative, and details would be secured through the management plan, with no intention to make physical changes to surfacing. A balance would need to be struck, as there could be implications for persons with mobility issues, but access would be provided where it does not exist. Due to the scope of the proposed access, these would amount to heritage and social benefits of moderate weight.

Conclusions on the Second Main Issue

51. Taking the stated benefits of the appeal scheme together, while there would be significant public benefits associated with climate change and energy production and security; and other moderate and limited economic, environmental, heritage, and social benefits, the harm that would be caused to

the designated heritage asset through development in its setting, by allowing the proposal, would be of greater significance. In accordance with Framework paragraphs 205 and 208, I am not persuaded there would be wider public benefits of sufficient magnitude to outweigh the greatest of weight to the asset's conservation and the less than substantial harm identified to its significance.

52. For the above reasons, I conclude that the proposal would have a significantly detrimental effect on the significance of the Mound on Hamilton Hill, a Scheduled Monument, through development within its setting. Hence, the proposal would fail to accord with the heritage aims of LP Policy EV11 and the wider aims regarding the effects to the environment referred to in LP Policy ST1. It would also fail to accord with the design and heritage aims of Chapters 12 and 16 of the Framework.

Site Selection and Best and Most Versatile Agricultural Land

53. Paragraph 163 of the Framework indicates applicants should not be required to demonstrate need for renewable energy developments. However, the Written Ministerial Statement of 25 March 2015 (WMS2015) relates to the unjustified use of agricultural land and expects any proposal for a solar farm involving BMVAL to be justified by the most compelling evidence. The WMS2015 was linked to the updated NPPG, which explains that where a proposal involves greenfield land, consideration should be given to whether the proposed use of any agricultural land has been shown to be necessary, whether poorer quality land has been used in preference to higher quality land and to whether the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
54. This approach is also reflected in the Framework, which requires 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 quality¹⁶. The Lullington Judgment highlights that EN-3 repeats the aims of the Framework in terms of the approach to the quality of land. Moreover, it provides an indication of the Government's most recent thinking on this issue and refers to land type not being a predominating factor in determining the suitability of a site location.
55. All of the land that would be required for the proposal would be Grade 2 agricultural land, so it comprises BMVAL as defined by the glossary in the Framework.
56. I am mindful of the approach taken regarding the identification of alternative sites in the Forge Field Judgment¹⁷, but that was in relation to a scheme for which statutory provisions applied to listed buildings and a conservation area. That is not the case here and the approach adopted in the Bramley Judgment¹⁸ is of greater relevance. Moreover, there is no mandate in national planning policies or guidance for alternative sites to be considered or a sequential approach to their selection. Nevertheless, the appellant's Site Search report (SSR) and the SoCG refer to the availability of alternative sites within 1.15km of the identified Point of Connection (PoC) at Sutton Junction. This is next to

¹⁶ Footnote 62, within paragraph 180.

¹⁷ The Forge Field Society & Others (On the application of) v Sevenoaks DC [2014] EWHC 1895 (Admin).

¹⁸ Bramley Solar Farm Residents Group v SoS for Levelling up, Housing and Communities & Others [2023] EWHC 2842 (Admin).

the site and has available capacity for the scheme to meet contractual agreements. The SSR discounted land to the north of the PoC due to constraints relating to size and dissection by a railway line. Meanwhile, to the south of the PoC as it would not be available, and I learned at the Hearing that one area was being considered for housing. It also considered sites based on key designations, including those with heritage and ecological connotations, this included land to the southeast of the Hill. In this sense, the approach aligned with that referred to in paragraph 36 of the Lullington Judgment and the absence of soil testing of the other land within the search area would not have been determinative given the other reasons that sites were discounted.

57. In addition, consideration of other PoCs would amount to an unnecessary sequential approach, so is not justified in this instance, including in relation to sites further to the west of the district near to other solar farms and the M1 motorway. Furthermore, while the appellant accepts there is poorer quality land further away, given the magnitude of the proposed development, the evidence before me demonstrates it would not be cost effective at a greater distance from the identified PoC. I therefore find that a logical and proportionate approach has been adopted to the consideration of sites that could be served by the PoC.
58. In terms of the approach to disaggregated sites, the SSR confirms sites should not be too far apart from one another. There are clear benefits to the use of rooftops for the installation of solar panels, particularly in conjunction with ground mounted solar installations. However, the appellant's Commercial Viability Note confirmed it was not feasible to aggregate multiple rooftops within the locality, as the District Network Operator requires the installation to be served by one metering point. Even so, the cumulative roof space on the buildings in the search area identified by the Council falls significantly below the footprint of the proposal.
59. The proposed solar farm would occupy land within the site for a temporary period of thirty years and it could be constructed to avoid damage to soil during wetter periods. During this timeframe the land would not be available for arable farming, but the appellant's Environmental Enhancement Strategy and Management Plan sets out an approach to conservation grazing by sheep, with an optional hay cut in summer. This approach is commonplace with solar developments to manage the grassed areas surrounding panels and the document would inform a grazing plan to also be agreed by a planning condition. I am mindful of the comparison with the approach taken in appeal schemes to which I have been referred, including at Scruton. Moreover, it is not compulsory for the landowner to use the land for arable farming and there is no compelling evidence before me to suggest there would be a significant change to food productivity or security from the site not being available for arable farming over the lifetime of the development. Accordingly, there are many competing demands for agricultural land, and some represent total loss but, in the case of solar farms, there is only a partial loss for a temporary period, which can be secured by planning condition. The installation would be removed when it is no longer in use and the land wholly restored to agricultural use afterwards.
60. At the Hearing, the Council referred to the Planning Inspectorate's Environmental Impact Assessment Regulations (2017) Screening Opinion, as this did not refer to the land as Grade 2. However, it did not suggest there

would have been any implications for the screening process, including that the temporary use of the area of land identified for the development would have resulted in a 'likely significant effect'.

61. The proposal would also allow for biodiversity and landscape enhancements around the panels but, in accordance with the NPPG, these conditions need to be met alongside the use of BMVAL. There would be a reduction in the productivity of this land and poorer quality land would not be used in preference to higher quality land, as required by the WMS2015, NPPG and the Framework. However, the site selection process demonstrates that such poorer quality agricultural or brownfield land would not be viably available to serve the development. Furthermore, overall, I am satisfied that the economic and environmental benefits associated with the proposal, that I set out in the second main issue, would constitute the most compelling evidence to justify the temporary loss of BMVAL throughout the lifetime of the proposed development, as required by WMS2015, NPPG and the Framework.

Planning Balance and Conclusion

62. There would be harm to the significance of the Mound, through development within its setting; and through development in the countryside, having regard to the effect on its landscape character and appearance, including its openness. These harms bring conflict with the LP which predates the current Framework. However, the Framework is clear existing policies should not be considered out-of-date simply because they were adopted or made prior to its publication. Due weight should be given to policies according to their consistency with it.
63. LP Policy ST1 is a strategic policy that requires compliance with other policies of the plan. This is not uncommon and does not undermine its objectives or compliance with the Framework. It is also supportive of development that does not adversely affect the character, quality, amenity, or safety of the environment. This is generally consistent with the Framework in terms of its aim to achieve well-designed and beautiful places. I therefore afford significant weight to the conflict of the proposal with this policy.
64. The aims of LP Policy EV2 to avoid harm to its character and openness, particularly from development that does not need to be there, differs only slightly from the aim in the Framework to recognise the intrinsic character and beauty of the countryside. However, the policy does not refer to any forms of renewable development, which are generally part and parcel of the countryside. I do not find the references to appropriate development and openness to be a flawed concept, as the supporting text to the policy clearly distinguishes it from the Green Belt. Accordingly, while there is a clear rationale for establishing appropriate forms of development and seeking to avoid harm to the countryside through the design and location of development, the closed list of development types means I regard the underlying objectives of the policy as being only partially consistent with the Framework. On this basis, I am only able to afford the conflict with EV2 and LP Policy ST4, moderate weight, as the latter requires compliance with the former.
65. Despite the Framework not encouraging the designations of landscapes in the manner undertaken by LP Policy EV4, it remains generally consistent with its aim to recognise the intrinsic character and beauty of the countryside. I therefore afford moderate weight to the conflict of the proposal with this policy.

66. Policy EV11 requires development to preserve the setting of a scheduled monument but, as I outlined in Procedural Matters, no such requirement exists in legislation, and the Framework also requires great weight to be given to an asset's conservation. The policy also does not include a balancing exercise in relation to heritage harms included in the Framework. Hence, I only afford limited weight to the conflict of the proposal with this policy.
67. The proposal would not conflict with the WMS, NPPG and Framework regarding the use of BMVAL. The appellant also advances that there would be absences of harm regarding flood risk and drainage betterment, highways and transport considerations, noise and glint and glare. I have not reached a finding on such matters so, in the circumstances, none would neither weigh in favour nor against the appeal scheme.
68. In terms of the harms identified, the localised harm to the landscape character and appearance of the countryside would be limited. Having regard to the weight afforded to development plan conflict in this regard, the stated benefits would be of greater significance and would outweigh the identified harm. However, as I set out in the second main issue, the stated benefits would not outweigh the harm caused by development within the setting of the scheduled monument. Despite the weight afforded to the conflict with the relevant development plan policy, there would be no justification to alter this finding in this overall balance.
69. This leads me to an overall conclusion that the appeal scheme would not accord with the development plan and the material considerations, including the provisions of the Framework and the stated benefits, do not 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

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY

| | |
|----------------------|---|
| Alex Bonser | Planning Officer at Ashfield District Council, MSc. |
| Simon Roper-Pressdee | Consultant Conservation Officer, BSc (Hons), PG Cert IHBC. |
| Bob Woollard | Director at Planning and Design Group (UK) Ltd., BA(Hons), MA, MRTPI. |

FOR THE APPELLANT

| | |
|--------------|--|
| Nigel Cussen | Planning Policy and the Planning Balance Witness (Senior Director, Pegasus Group), BSc (Hons), Dip TRP, MRTPI. |
| Laura Garcia | Heritage Witness (Heritage Director, Pegasus Group), BA (Hons), MCIfA. |

| | |
|---------------|--|
| Frances Horne | Landscape and Visual Impact Witness (Landscape Director, Pegasus Group), BA (Hons), Dip UED, CMLI. |
| David Hardy | Planning Solicitor (Partner, CMS), LL.B (Hons), B.C.L (Hons) (Oxon). |
| Emma Ridley | (Principle Planner, Pegasus Group), BA(Hons), MCD, MRTPI. |
| Swara Shah | Planning Manager, REPD. |

INTERESTED PARTIES

| | |
|-------------------|--|
| Mr Eric Garbutt | Resident |
| Mrs Karen Hewitt | Resident |
| Cllr Matthew Relf | District Ward Councillor and Executive Lead Member for Growth, Regeneration and Local Planning |

DOCUMENTS HANDED UP AT THE HEARING

Draft ELP Strategic Policies S3 and S7.

Application for an Award of Costs on behalf of the Council.

List Entry for Secklow Hundred Mound.

DOCUMENTS RECEIVED FOLLOWING THE CLOSE OF THE HEARING

The decisions referred to in the PSoC (page 38 onwards).

The appellant's signed Unilateral Undertaking.

The final list of agreed conditions.

Responses from the main parties regarding the relevance to the appeal of the Lullington Judgment and the WMS of 15 May 2024.

Decision Notice & Statement of Reasons

Site visits made on:

Tuesday 20 September 2022 & Monday 27 March 2023

By Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC

a person appointed by the Secretary of State

Decision date: 11 May 2023

Application Reference: s62A/2022/0011

**Land East of Pelham Substation, Maggots End, Manuden
(Easting 547257, Northing 228104)**

- The application was made under Section 62A of the Town and Country Planning Act 1990 (TCPA) by Low Carbon Solar Park 6 Limited.
 - The site is located within the local planning authority area of Uttlesford District Council.
 - The application was dated 15 September 2022, with a valid date of 10 February 2023.
 - Consultation took place between 10 February and 20 March 2023.
 - An Environmental Statement was submitted, dated December 2022.
 - The development proposed is described as '*Construction and operation of a solar farm comprising ground mounted solar voltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping.*'
-

Decision

1. Planning permission is **refused** for '*Construction and operation of a solar farm comprising ground mounted solar voltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping*' at Land East of Pelham Substation, Maggots End, Manuden, for the reasons set out in this notice.

Procedural Matters

2. The application was submitted under s62A of the *Town and Country Planning Act 1990*, as amended (TCPA). This allows for applications to be made directly to the Secretary of State (SoS), where a local authority has been designated. Uttlesford District Council (UDC) have been designated for major applications since February 2022. The SoS has appointed a person under section 76D of the TCPA 1990 to determine the application instead of the SoS.
3. The application was screened under *The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017*, (as amended) by UDC and by the SoS¹. The SoS screening direction found that: '*On the basis of the information provided, the Secretary of State considers that the Proposed Development has the potential to give rise to significant visual effects and significant cumulative effects including those on the local landscape through an increase in the amount of electrical*

¹ Dated 5 October 2022, viewable in Appendix 2.2 of the *Environmental Statement, Technical Appendices* dated December 2022.

infrastructure within the locality' and an Environmental Impact Assessment was required. An Environmental Statement (ES) has been submitted. The Applicant publicised the ES in line with the requirements of Regulation 20 of the EIA Regulations 2017. This, together with comments from statutory consultation bodies and any representations duly made by any particular person or organisation about the ES, has been taken fully into account in determining this application.

4. Following the closure of the representation period, Article 22 of *The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013* requires the SoS (or appointed person) to consider the application either by hearing or on the basis of representations in writing.
5. Taking into account Section 319A of the TCPA and the *Procedural guidance for Section 62A Authorities in Special Measures*² published by the SoS (including Paragraph 5.1.1), the appointed person considered that the issues raised in this case could be clearly understood from the written submissions.
6. In accordance with Article 4 of *The Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013*, on 24 March 2023, the Inspectorate wrote to the applicant to confirm the procedure.
7. Unaccompanied site visits were carried out on Tuesday 20 September 2023 at the validation stage and on Monday 27 March 2023; after the consultation period had ended. The inspection included viewing the site and the surrounding area. I, as the appointed person, have taken account of all written representations in reaching my decision.

Background and recent planning history

8. The application seeks permission for a solar farm to generate up to 49.9 MW of electricity to power approximately 16'500 homes and displace 11'000 tonnes of Carbon Dioxide (CO²) per annum. The application site is located on agricultural land to the south of Berden, northwest of Manuden and around 6km to the north of Bishops Stortford. Further particulars are described and provided in the voluminous documents provided by the Applicant, designated authority and other interested parties, which have been taken into account in determining the application. Accordingly, it has not been re-produced here. However, where appropriate, references are provided to the source text.
9. Planning application UTT/21/3356/FUL sought full planning permission for the 'Construction and operation of a solar farm comprising ground mounted solar photovoltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping'. This application was submitted to Uttlesford District Council in November 2021 and subsequently refused on 24 January 2022 under delegated powers with eight reasons for refusal.
10. The Council acknowledged that this revised application has been submitted to the Secretary of State in which further information and revisions have been made in the attempt to address and overcome the reasons for refusal as imposed on the decision notice ref: UTT/21/3356/FUL.

² [Procedural guidance for Section 62A Authorities in Special Measures - GOV.UK \(www.gov.uk\)](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/101444/Procedural-guidance-for-Section-62A-Authorities-in-Special-Measures-2022.pdf)

11. The Council has also recognised that the Applicant held pre-application discussions with the officers of both Essex County Council and Uttlesford District Council prior to the submission of this application to the Secretary of State.³

Reasons

Need and potential benefits

12. The proposal would generate electricity to power around 16'500 homes and displace around 11'000 tonnes of CO² per annum. On the basis of these figures, over the 40-year lifespan of the proposal, it would potentially displace around 440'000 tonnes of CO². This would make a moderate contribution to the local and national aspirations and legal requirements to transition to a low carbon future.
13. Indeed, there is a large amount of national legislation, guidance, and policy which supports the transition to a low carbon future⁴. Renewable energy creation; including schemes such as the proposal here, will play an important part in delivering this. Locally, UDC declared a climate change emergency in 2019, and seeks to reduce its own emissions to net zero by 2030.
14. It is clear, therefore, that there is a pressing need for renewable energy sources to provide part of the future energy mix as England moves towards a low carbon future. This is a factor which I afford significant weight in favour of the proposal. That said, it does not automatically follow that any scheme for renewable energy creation has a *carte blanche*: as with most planning matters the need for renewable energy creation needs to be weighed against the potential adverse effects or harm arising and, if this occurs, whether this harm can be mitigated, so allowing a judgment in favour of the proposal.
15. The proposal would result in socio-economic benefits in the form of the creation of 117 direct/indirect jobs and up to £3.6 million of gross value added over the five-month construction period. During the proposed 40-year operational lifespan, the proposed development would create five net additional jobs in the Uttlesford economy, £6 million of gross value added per annum and business rates of around £3.7 million over 40-years⁵ (at present values). However, it has not been clearly indicated how this would compare with the existing socio-economic activity on the application site. This being so, these social-economic benefits are afforded modest weight in favour of the proposal.
16. The development proposes biodiversity enhancements including the provision of ten bat boxes, hedgerow improvements, the provision of three hibernaculum for Great Crested Newts, seeding of native grassland and diverse wildflower seeded areas, 20 bird boxes, and installation of 20 dormouse boxes in Battles Wood. Given that many of these enhancements could be instigated regardless of whether permission was forthcoming, and that some of them are mitigation measures intended to ameliorate adverse impacts on protected species arising from the proposal, these benefits are accordingly afforded only modest weight in favour of the proposal.

³ Letter from UDC dated 15 March 2023 from Principal Planning Officer following Planning Committee meeting on 8 March 2023

⁴ See for example, *Planning Statement, Pelham Spring Solar Farm, P20-1300, Appendix 4*, Dated August 2022

⁵ *Environmental Statement, Non-Technical Summary, January 2023* Page 15

Character and appearance of the area

17. The application site is currently used as a mix of nine agricultural fields. These are used as a mixture of mainly arable farmland with two pastoral fields. The proposal would see a large part of the nearly 80-hectare site area covered by solar arrays and associated infrastructure in six 'development zones'. The effect would be that the currently open, rural and agrarian character and appearance of the area would be drastically and noticeably altered with the introduction of an overtly utilitarian industrial infrastructure into the open countryside.
18. This would be highly contrasting industrial infrastructure that would be present for an extended period of around 40 years. This extended chronological span, together with the scale and size of the proposal, would be perceived as permanent rather than temporary features within the landscape. Whilst there is the potential to use planting to mitigate some of the impact, this would take time to establish and would not completely screen the site from public vantage points.
19. Accordingly, the proposal would have a significantly harmful effect on the rural character and appearance of the area through adversely eroding the agricultural landscape and the intrinsic beauty of the countryside. As such the proposal is contrary to Policy S7 of the *Uttlesford Local Plan 2005* (LP) which sets out that in the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there, or is appropriate to a rural area and that development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.
20. The proposal is also contrary to Paragraph 174 of the *National Planning Policy Framework* (the Framework) which sets out that planning policies and decisions should contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside.

Landscape and Visual

21. Chapter 6 of the *Environmental Statement* (ES) identifies in the summary of Significant effects, that during the five months construction period there would be High magnitude of effect and Major significance of effect which would have major adverse significant residual effects from a number of viewpoints, public footpaths/bridleways, and for receptors (occupiers) at residential properties Brick House End Cottages and Rose Garth.
22. Longer term, during the 40-year operational phase, the magnitude of effect would be High in most cases, with a few reductions to Medium. The magnitude of effects would be High to the sensitivity of receptors, with significance of effects Major, with the residual effects considered to be 'Moderate'.⁶
23. In landscape terms, the proposal would introduce long rows of solar panels and associated infrastructure which would have a starkly more utilitarian appearance when compared to the currently unspoilt and open rural qualities of the site. The proposal would detract from the currently pleasant rural scene

⁶ *Environmental Statement, Chapter 6, Table 6.5 Summary of Significant Effects, Mitigation and Residual Effects*

and erode the qualities of the lower rolling farmed and settled undulating slopes.

24. Moreover, with the solar panels potentially up to three metres high, it would not be possible to completely mitigate the effects of the development. The regimented arrays of dark coloured panels would contrast sharply with the harmonious organic pattern of open fields and appear odd amongst the typical patchwork of green- and yellow-coloured fields found in the location generally. This drastic change would become especially acute for users of various Public Rights of Way and Bridleways both in and near to the site, and also users of nearby public highways such as that between East End and Maggots End, who would no longer be able to enjoy the rural landscape through its extended and prolonged use as a large utilitarian development.
25. Accordingly, the proposal conflicts with Paragraph 174 of the Framework which sets out that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

Heritage assets – setting

26. The Framework explains in the Glossary that:

'Setting of a heritage asset: *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.'*

27. In terms of Scheduled Monuments, the Applicant's Heritage Statement concludes that there is considered to be no harm to the heritage significance of the Scheduled The Crump with regards to setting⁷. It provides no similar conclusion in respect of the Scheduled Monument of Battles Manor.
28. The Crump is a well-preserved earthwork. Historic England, the government's statutory adviser on the historic environment, identify that these are rare nationally with only 200 recorded examples and, as one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, ringworks are of particular significance to our understanding of the period. Historic England identify that the proposal would result in less than substantial harm to The Crump. Similarly, the 'Moated site at Battles Manor' are the remains of a medieval moated enclosure⁸. Historic England suggest that there is the potential for less than substantial harm to this latter Scheduled Monument.
29. These Scheduled Monuments are located within a strongly defined rural context, and this contributes positively to their surroundings and significance. Visitors are currently able to appreciate the agricultural and societal history of this part of Essex and its connection with the wider landscape. The introduction of rows of solar panels and associated infrastructure would drastically alter this relationship and the experience of those seeking to appreciate it. Instead of open agricultural fields the proposal would form an expansive industrial 'techscape', severing the monuments from the rural context in which they are currently experienced.

⁷ Applicant's *Heritage Statement* dated September 2022, Page 47, paragraph 7.11

⁸ Historic England representation dated 23 February 2023

30. The Crump in particular is a rare survival, and the monument draws a considerable amount of significance from how it is experienced in the historic landscape setting. A setting which, whilst changing over the centuries, retains a dominantly rural character. Accordingly, this would result in harm to the significance of the scheduled monument The Crump, and to a lesser degree, that of Battles Manor.
31. With regard to listed buildings, Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, (PLBCA) requires that the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.
32. The Crump (buildings rather than the ringworks) and Battles Hall are both Grade II listed buildings. The latter is also associated with the Grade II listed Cart Lodge, and Dovecote. Brick House, Rose Garth and Peyton Hall and Barn are all Listed Grade II buildings and located no more than 500 metres from the site. Similar to the Scheduled Monuments, the settings of these listed buildings would be dramatically altered. Rather than read and experienced within a rural landscape and associated historical connections with it, the listed buildings would instead be experienced in an utilitarian setting defined by solar arrays, fencing, CCTV cameras on poles, a DNO substation and other infrastructure. Accordingly, the proposal would fail to preserve the setting of the listed buildings.
33. Great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be. In this case, the harm arising to the settings of the Scheduled Monuments and listed buildings identified would be no greater than less than substantial⁹ and therefore Paragraph 202 of the Framework applies.
34. The public benefits of the proposal are set out in the 'Need and potential benefits' section of this decision. Whilst these benefits weigh significantly to moderately in favour of the proposal, they would not outweigh the significant harm to the settings of the Scheduled Monuments the conservation of which is afforded great weight in the Framework. For similar reasons, they would fail to preserve the setting of the listed buildings, in being contrary to the clear expectations of s66(1) of the PLBCA, which anticipates special regard being had to that preservation. The dual conflict of the proposal with national policy and statute, and the cumulative harm that would arise from them, are matters of very significant weight that militate against them succeeding.
35. Accordingly, the proposal conflicts with Policies ENV2 and ENV4 of the LP which require that where nationally important archaeological remains and their settings are affected by proposed development there will be a presumption in favour of their physical preservation in situ and development affecting a listed building should be in keeping with its scale, character and surroundings.
36. It is also at odds with Chapter 16. Conserving and enhancing the historic environment of the Framework, which include in determining applications, local planning authorities should take account of the desirability of sustained and enhancing the significance of heritage assets and that great weight should be

⁹ This is, to varying degrees and applicability, in line with the advice provided by the Applicant's Heritage Consultant, Historic England, and the designated authority's heritage advisers who all identified 'less than substantial' to at least some of the heritage assets in this section.

given to the asset's conservation. This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Heritage assets – Archaeology

37. Paragraph 194 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. Footnote 68 of the Framework sets out that '*Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.*'
38. Significant archaeological remains from Iron Age to Roman dates and a moated enclosure and ditch-like anomalies from geographical survey are identified on the site. These are located in the northern and western parts of the application site. The applicant's heritage expert indicates that '*The majority of moated sites served as prestigious aristocratic and noble residences with the provision of a moat was intended as a status symbol. They commonly consist of wide ditches which are often water-filled, which partly or completely enclose an 'island' of dry ground*¹⁰.'
39. A metal detector survey was undertaken in the mid-2000s, but only on part of the northern end of the site, and there have been finds of coins from the early first millennium. On this basis, the Applicant considers that the potential for significant archaeological remains of Iron Age to Roman date within the site is moderate to high. They go on to consider that there are around 6'000 moated sites known within England, and the two potential enclosures identified within the application site, and contained within areas earmarked for development, are not scheduled like others found nearby with the visible remains are barely perceptible above ground. They should, therefore, be considered as non-designated heritage assets rather than as commensurate with Scheduled Monuments.
40. Place Services, Essex County Council -Specialist Archaeological Advice dated 20 February 2022¹¹ set out that significance of the remains of the moated enclosure have not yet been ascertained. They recommend that trial trenching evaluation is undertaken in advance of a planning decisions. Historic England note the above comments and indicate that it is best practice in terms of the assessment of archaeological remains to identify whether any important remains are present that could preclude or modify the proposed development.
41. With a lack of trial trenching at the application site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, the decision-maker is unable to undertake the balancing exercise set out at Paragraph 202 of the Framework (or Paragraph 201 if substantial harm).
42. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of Romano-British enclosed structures; yet it is unclear whether there is any discernible evidence as to what these are and what other archaeology remains. Whilst there has been some metal

¹⁰ Applicant's *Heritage Statement* dated September 2022, Page 18, Paragraph 5.28

¹¹ I consider this to be a typo of 202, as it is clearly referenced as a response to the application here.

detector surveying these were limited to the northern part of the site and took place some time ago. My role is to consider what is reasonable and proportionate based upon the available evidence before me. Despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.

43. 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 proposal, for example through the siting of solar arrays and the groundworks required.
44. 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 nearby Scheduled Monuments), I find that the approach suggested by Place Services and endorsed by Historic England 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 194 of the Framework.
45. 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 is in close proximity to land that has known above ground archaeological remains which are afforded the highest levels of protection as Scheduled Monuments.
46. After careful consideration of the archaeological matters arising in this instance the evidence remains incomplete. I therefore conclude that the application 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.
47. Accordingly, the application would fail to accord with Policy ENV4 of the LP, which, amongst other aims, seeks to ensure that in situations where there are grounds for believing that sites, monuments or their settings would be affected developers will be required to arrange for an archaeological field assessment to be carried out before the planning application can be determined thus enabling an informed and reasonable planning decision to be made. In circumstances where preservation is not possible or feasible, then development will not be permitted until satisfactory provision has been made for a programme of archaeological investigation and recording prior to commencement of the development. This policy requires an approach to the conservation of archaeological remains that is consistent with the *Overarching National Policy Statement for Energy (EN-1)* July 2011.
48. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework and in particular Paragraphs 194 and 200 (and footnote 68) which, amongst other aims, set out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to assets of the highest significance, notably scheduled monuments should be wholly exceptional.

Best and Most Versatile Agricultural Land

49. The Applicant's survey and report on Agricultural Land Classification identifies that around 54% of the site is evaluated to be within the Grade 2 (very good) category, roughly 28% as 3a (good) and the remaining 19% as 3b (moderate) or other land/non-agricultural¹². The *Framework* defines the Best and Most Versatile Agricultural Land (BMVAL) as being in Grades 1, 2 and 3a. Accordingly, around 82% of the site is within the BMVAL classification. The Report suggests that the Uttlesford district benefits from a high proportion of agricultural land in Grade 2 (approximately 80%, compared to 14% in England and 29% in the Eastern Region)¹³.
50. Whilst the currently arable land around the solar arrays and associated infrastructure could potentially be used for sheep grazing, it is likely that over the 40-year life of the proposed development there would be a significant reduction in agricultural production over the whole development area. This would not be an effective use of BMVAL, as reflected in the planning practice guidance which encourages the siting of large solar farms on previously developed and non-agricultural land.
51. Whilst the Applicant refers to the temporary nature of the proposal, 40 years is a considerable length of time for the solar arrays, DNO substation, fencing, CCTV towers and other associated structures to be present on site. Given this duration the proposed development would be seen as permanent features rather than as temporary.
52. Whilst an *Alternative Sites Assessment* (dated September 2022) has been submitted, this is limited by the reliance on an unsubstantiated distance of 4km point of connection with the electricity grid. Moreover, the search area was mainly limited to the Uttlesford District (for example the brownfield land search) even though the East Herts District is located immediately to the west of the site. Whilst such assessment cannot be exhaustive *ad infinitum* it is, nonetheless, reasonable to assume that it would detail reasoning as to why 4km is the maximum range for a connection point and take into account the geographical scope of the site – rather than local authority boundaries. It has also not been demonstrated that the significant development of this BMVAL is necessary in this instance – even taking into account net zero aspirations.
53. Accordingly, the proposal would conflict with Policy ENV5 of the LP which sets out that development of BMV land will only be permitted where opportunities have been assessed for accommodating the development on previously developed sites or within existing development limits. It goes on to indicate that where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.
54. It would also conflict with Paragraph 174 of the *Framework*. This sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside – including the economic and other benefits of the best and most versatile agricultural land. Footnote 53 indicates that where significant

¹² *Agricultural Land Classification: Pelham Spring Solar Farm, Essex* dated September 2021, Page 12, Paragraph 3.6.1

¹³ *Ibid*, page 13, Paragraph 4.2.1

development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

Highway safety

55. Principally, construction traffic (of around 922 vehicles/trips) would access the site to the east of Manuden Road, with the vehicles having lengths of no more than 16.5 metres. These vehicles would use the M11, with access to and from along the B1383 (aka London Road to the south of Newport), turning to the west at Newport along the B1038, to Clavering when turning to leave/enter the site down Manuden Road. It is envisaged that construction traffic will only access the site from this north route and not through Manuden. Nonetheless, these are roads which, when leaving the motorway, tend to become narrower and winding without many places for larger vehicles to easily pass each other the closer to the site one is.
56. The proposed route for construction traffic is included in the submitted *Construction Transport Management Plan Sept 22 Issue (2)* (CTMP). However, since that work was undertaken further planning applications for similar development proposals have been submitted¹⁴. The CTMP does not take into account the potential cumulative impact arising from the number of proposed developments in this locality. In particular, it requires further investigation on traffic movements on Stortford Road and in specific around Clavering Primary School. The cumulative impact of construction traffic should be assessed in order to inform any plans for mitigation and co-ordination of traffic movements between sites during the construction phases.
57. Moreover, the main site access requires an updated Stage 1 Road Safety Audit and additional information to determine if the existing vehicular access at Maggots End is safe and suitable for operational vehicles. This should include a speed survey with visibility splays provided in accordance with the 85th percentile recorded. A road safety audit should accompany the current proposals.
58. In the absence of the above information and assessments, the proposal is contrary to Policy GEN1 of the LP which sets out that certain criteria should be met in order for development to be permitted. This includes that access to the main road network must be capable of carrying traffic generated safely and accommodated within the surrounding road network.
59. For the same reasons, in the absence of the above information, surveys and assessments the proposal would have an unacceptable impact on highway safety. It is therefore contrary to Paragraph 111 of the Framework which sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

Biodiversity

60. The Applicant's *Ecological Impact Assessment* (September 2021) identifies that the application site contains breeding territories, sites, or foraging areas for farmland bird species including Skylarks, Yellow Wagtails, and Yellowhammers. These are all 'Red Species of Conservation Concern' and as 'Species of Principal

¹⁴ See consultation response from Essex County Council Highways and Transportation Services, dated 20 March 2023

Importance' under Section 41 of the *Natural Environment and Rural Communities Act 2006*, as amended (NERC). In particular, Skylarks were found to show 'a persistent association with the site'.¹⁵

61. The *Ecological Impact Assessment* identifies that at the time of the surveying, around seventeen breeding territories for Skylarks were identified across the site¹⁶ and in particular on the areas identified as development zones. The main loss of habitat is almost entirely attributed to loss of arable vegetation; habitat which is used by at least three Species of Principal Importance. Ground-nesting species such as Skylark will be especially affected by the loss of the arable farmland and its conversion to pastoral land for sheep-grazing and solar farming.
62. Consequently, it is necessary to adopt a precautionary principle and so it is reasonable to assume that the application site will support a considerably reduced number of birds than it currently supports. As such, a negative impact on breeding birds of open ground (particularly skylarks) is anticipated as a result of loss of nesting habitat as well as unmitigated direct impacts of construction associated with the proposal.
63. Mitigation for the loss of the Skylark territory has been suggested in arable fields in the local area through the provision of two 'bird foraging plots' per territory lost and that there is an abundance of open, arable farmland within the surrounding 5km of the site. However, it is unclear as to how such mitigation would be provided given that, as the *Ecological Impact Assessment* identifies: 'any off-site mitigation would need to be secured via a Section 106 agreement' but no such legal agreement is before me. Nor is there any indication where within the application site itself such areas could be provided. Lastly, it is unclear as to how such provision would also be made for other Species of Principal Importance identified such as Yellowhammer and Yellow Wagtail.
64. The potential biodiversity improvements arising from the proposal are noted. These include improvements in foraging areas, in soil qualities, and in hedgerows. However, the proposal would result in significant harm to Species of Principal Importance and their habitats. This is harm that cannot be avoided, adequately mitigated, and there is no mechanism to secure compensation for. Paragraph 180 of the Framework indicates that planning permission should be refused in such circumstances.
65. The proposal in this case would fail to conserve and enhance biodiversity, the Duty of which falls on public bodies in England under Section 40 of NERC. It is contrary to Policy GEN7 of the LP which sets out that development that would have a harmful effect on wildlife will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation and where the site includes protected species or habitats for protected species measures to mitigate and/or compensate for the potential impacts of the development, secured by planning condition or condition, will be required.
66. The proposal is also contrary to Paragraph 180 of the Framework which sets out that when determining planning applications, local planning authorities should apply the following principles: (a) if significant harm to biodiversity

¹⁵ Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.127

¹⁶ Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.105

resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

67. The information concerning European Protected Species on or near to the site, including Bats and Great Crested Newts (GCN), has been fully considered. The information concerning badgers, which are protected under the *Countryside and Wildlife Act 1981*, as amended, and also the *Badger Protection Act 1992*, as amended, has been taken into account.
68. The impact of the proposal on these species could potentially be adequately mitigated through the biodiversity improvements suggested and secured through the use of appropriately worded planning conditions. Nonetheless, this does not overcome the significant harm identified to bird species on or visiting the application site arising from the proposal.

Noise

69. The submitted *Acoustics Report A1784 R01b* dated September 2021 identifies that the noise climate during set up of monitoring equipment was relatively tranquil. Besides some noise from larger passenger aircraft, most sources of noise included birdsong, grasshoppers, other natural sounds and low-level wind noise in trees at monitoring station M01 and M02. The application would result in operational noise from the facility and associated infrastructure. The report does not consider impact arising from noise to users of the nearby Public Rights of Way/ Public Bridleway.
70. The UDC Environmental Health comments of 17 March 2023 identify a number of concerns with the submitted report, including what British Standards have been applied. It concludes that it is not possible to apply a robust post construction condition to ensure that noise from the site will not be detrimental to residential amenity or increase background and ambient noise levels in the area. It also raises concerns that the low frequency noise levels at noise sensitive receptors will increase because of the proposed development and may result in significant adverse impact when considered individually and cumulatively with the existing facilities.
71. Whilst there are some 'modern' noise intrusions – such as that from the overhead power lines and commercial aircraft – in the main the application site currently benefits from a relatively tranquil noise environment. This includes users of Public Rights of Way close to and near to the site. As evidenced in the comments from interested parties, this is an area that is prized for its recreational and amenity value because of its tranquillity.
72. Accordingly, the proposal would be at odds with Paragraph 185 of the Framework which sets out that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or wider area to impacts that could arise from the development. In doing so they should (a) mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life and (b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

73. Accordingly, the proposal conflicts with Policies GEN2, GEN4, and ENV11 of the LP which, amongst other aims seek to not permit developments where noise generated would cause material disturbance or nuisance to occupiers of surrounding properties.

Other Matters

Planning obligation

74. The designated planning authority indicate that they expect the submission of a s106 agreement (or planning obligation) to address a decommissioning plan and secure a bond or deposit to cover decommissioning works if required. No such obligation was submitted by the applicant. Nonetheless, as the proposal is refused, I have not considered this matter further.

Conditions

75. I note that conditions have been suggested by the designated planning authority and other parties. Whilst my considerations of the planning merits indicate that permission should be refused, I am satisfied that the use of planning conditions would not mitigate or address the harms arising in this case in order to make the proposal otherwise acceptable.

Planning balance and Conclusions

76. The proposal would clearly result in wider benefits including the moderate contribution to the local and national aspirations to transition to a low carbon future, the significant benefit arising from the renewable energy creation and future energy mix, the modest weight to socio-economic benefits and the modest benefits to ecology and biodiversity.

77. However, these fail to negate the harms identified to character and appearance, landscape and visual matters, the settings of designated heritage assets, archaeological remains, loss of BMVAL, highway safety, biodiversity and noise. The benefits in this case are clearly outweighed by the harms identified.

78. Accordingly, the proposed development would not accord with the adopted development plan when considered as a whole and there are no material considerations which indicate a decision otherwise than in accordance with it. It would also conflict with significant parts of national planning policy identified, including those principally contained within the Framework.

79. Accordingly, planning permission is refused for the aforesaid reasons.

C Parker

INSPECTOR (appointed person for the purposes of s62A and 76D TCPA)

Informatives

- (i) *In determining this application, the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so, the Planning Inspectorate worked with the applicant to seek solutions to ensure an efficient and effective determination of the application.*
- (ii) *The Planning Inspectorate, on behalf of the Secretary of State, has taken the environmental information provided - comprising the Environmental Statement and technical appendices - into account during the determination of this application by the appointed person.*
- (iii) *The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 is final. This means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision.*
- (iv) *These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>*

Appendix 4: Sources

Bibliography

Commercial Renewable Energy Development and the Historic Environment, Advice Note 15, Historic England, 2021.

Conservation Area Appraisal, Designation and Management, Historic England Advice Note 1 (Second Edition) 2019.

Conservation Principles, Policies and Guidance, English Heritage 2008.

Guidelines for Landscape and Visual Impact Assessment, the Landscape Institute and the Institute of Environmental Management and Assessment (in partnership with Historic England), 3rd Edition, 2013.

Managing Significance in Decision-Taking in the Historic Environment, Historic Environment Good Practice Advice in Planning:2 Historic England, 2015.

National Planning Policy Framework, Department of Communities and Local Government, December 2023.

Planning Practice Guidance on Conserving and Enhancing the Historic Environment, 2021.

Statements of Heritage Significance: Analysing Significance in Heritage Assets, Historic England Advice Note 12, Historic England, 2019.

The Buildings of England: Warwickshire, Chris Pickford and Nikolaus Pevsner, 2016.

The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning: 3 (second edition), 2017.

Warwickshire Historic Landscape Characterisation, June 2010.

Warwickshire Historic Farmstead Characterisation Project, August 2010.

Cartographic Sources

1794 John Cary's map of Warwickshire

1846 Fillongley Tithe Map

1887 Ordnance Survey 6 inch map sheets XVI.NW and XVI.SW

1905 Ordnance Survey 6 inch map sheets XVI.NW and XVI.SW

Online resources - accessed November 2024

<https://historicengland.org.uk/listing/the-list/>

<https://historicengland.org.uk/images-books/archive/collections/aerial-photos/>

<https://maps.nls.uk/>

<https://www.heritagegateway.org.uk>

<https://archaeologydataservice.ac.uk/>

Keystone Heritage



© 2024
