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## Decision Notice and Statement of Reasons

Hearing held on 26 March 2024

Site visit made on 27 March 2024

**by Paul Griffiths BSc(Hons) BArch IHBC**

**A person appointed by the Secretary of State**

**Decision date: 18 July 2024**

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### **Application Ref: S62A/22/0006**

#### **Land at Berden Hall Farm, Ginns Road, Berden**

- The application is made under Section 62A of the Town and Country Planning Act 1990.
  - The site is within the administrative area of Uttlesford District Council.
  - The application dated 7 July 2022 is made by Berden Solar Limited.
  - The development proposed is for a ground mounted solar farm with a generation capacity of up to 49.99MW together with associated infrastructure and landscaping.
  - This Decision Notice and Statement of Reasons supersedes that issued on 9 May 2023 which was quashed by Order of the High Court.
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### **Decision**

1. Planning permission is granted for a ground mounted solar farm with a generation capacity of up to 49.99MW together with associated infrastructure and landscaping on Land at Berden Hall Farm, Ginns Road, Berden, in accordance with the application dated 7 July 2022, and subject to the conditions listed within Schedule 2 to this decision.

### **Procedural Matters**

2. As set out above, the application was made under Section 62A of the Town and Country Planning Act 1990 (as amended). This allows for applications to be made directly to the Secretary of State where a local authority has been designated. Uttlesford District Council has been so designated for 'major applications' since February 2022. The application was made in July 2022 and the Secretary of State appointed a person under Section 76D of the Act to determine the application in their stead.
3. The person so appointed was a colleague Inspector who held a Hearing on 9 March 2023 and carried out site visits on the days before and after. My colleague issued a Decision Notice and Statement of Reasons on 9 May 2023. That was then challenged in the High Court by Protect the Pelhams and the Secretary of State subsequently submitted to judgment accepting that the approach taken to heritage assets was flawed. The proposal was remitted for reconsideration by the Secretary of State and having been so appointed by the Secretary of State, that reconsideration falls to me. I should make clear at the outset that in reconsidering the application, I have started from first principles.
4. Due to the potential for the development proposed to give rise to significant landscape and visual effects, PINS, on behalf of the Secretary of State issued a screening direction dated 19 August 2022, under Regulation 12(3) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017.

This required the applicant to prepare and submit an Environmental Statement (ES). The applicant submitted the ES in December 2022. It was reviewed by PINS and found to accord with the relevant regulations. The ES, along with the other application material, and other documentation pertaining to the application, submitted before, during, and after the Hearing can be found at, or by following links from: <https://www.gov.uk/guidance/section-62a-planning-application-s62a220006-berden-hall-farm-ginns-road-berden-redetermination>.

5. In relation to material submitted after the Hearing, I allowed time for third parties to submit material in response to the applicants' Site Selection document. I also allowed the applicants to submit their completed Unilateral Undertaking (UU), a draft having been available for discussion at the Hearing, and for comments to be made upon it. I also made provision for the applicants and the Council to continue discussions regarding conditions, and for comments to be made on their final versions.
6. On 15 May 2024, the Government, through the Secretary of State for Energy Security and Net Zero issued a Written Ministerial Statement: Solar and protecting our Food Security and Best and Most Versatile (BMV) Land. I allowed comments to be made on this too.
7. In advance of the Inquiry, I completed an Issues Report, prepared under the provisions of the Town and Country Planning (Section 62A Applications) (Hearings) Rules 2013. This was duly published, and it deals with various matters relating to the application, including the main issues to be considered. In tandem with that document, I also produced an Agenda for the Hearing so that all parties could see the format of the event well before it took place.
8. I carried out a visit to the site and its surroundings on the day after the Hearing. This took place unaccompanied, as agreed, and took in the site itself, using Public Rights of Way (PRoWs), the surrounding roads and footpaths, the nearby settlements, and heritage assets. I also drove the route that would be used by vehicles involved in the construction process.
9. The Hearing was held on 26 March 2024 in the Council Chamber at Uttlesford District Council's offices in Saffron Walden. The event was attended by representatives of the applicants, and the Council, local members and residents, and representatives of other interested parties. I have listed those that took part in Schedule 1.

## **The Proposal**

10. The application seeks planning permission for a solar farm with a generation capacity of up to 49.99 MW together with associated infrastructure and landscaping. The application site, which covers 65.84 ha is currently in agricultural use and lies to the south-west of Berden, roughly, and to the east, broadly speaking, of Stocking Pelham. The site is traversed by a series of PRoWs and others bound it.
11. The proposal would involve the installation of around 100,000 photovoltaic solar panels mounted on metal frames and made of non-reflective glass. These panels would have a maximum height of 2.5 metres (with a 20 degree tilt). The rows of solar panels would face south, with the spacing between rows varying between about 8 metres and about 10 metres. The main access would be from Ginns Road.

## The Policy Context

12. The development plan for the area includes the Uttlesford Local Plan which was adopted as far back as January 2005. The application site lies within 'the countryside' as defined in the Local Plan. Policy S7 says, amongst other things, that the countryside will be protected for its own sake and planning permission will only be granted for development that needs to take place there or is appropriate to a rural area. The policy strictly controls new building and development will only be permitted under the aegis of the policy 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.
13. As far as listed buildings are concerned, LP Policy ENV2 prohibits development that would adversely affect their settings. LP Policy ENV4 takes the same approach to Scheduled Ancient Monuments and sites of archaeological importance. Policy ENV5 is aimed at the protection of agricultural land. It sets out that development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.
14. Policy GEN1 only allows development where, amongst other things, the access to the main road network is capable of carrying the traffic generated by a proposal safely and road safety must not be compromised having regard to the needs of other road users.
15. Good neighbourliness is dealt with in Policy GEN4. It is permissive of development where noise or vibrations, amongst other things, would not cause material disturbance or nuisance to occupiers of surrounding properties. In a similar way, Policy ENV11 says that noise generating development will not be permitted if it would be liable to affect adversely the reasonable occupation of existing or proposed noise sensitive development nearby, unless the need for the development outweighs the degree of noise generated.
16. In terms of nature conservation, Policy GEN7 sets out that development that would have a harmful effect on wildlife or geological features will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation. Where the site contains protected species, a survey will be required, and measures to mitigate and/or compensate for the potential impacts of development secured. Biodiversity enhancement through the creation of appropriate new habitats will be sought.
17. Policy ENV15 is permissive of small-scale renewable energy development schemes, to meet local needs, if they do not adversely affect the character of sensitive landscapes, nature conservation interests, or residential and recreational amenity.
18. There are other material considerations too. Notable amongst these is the National Planning Policy Framework (the Framework) but also relevant are EN-1: The Overarching National Policy Statement for Energy (EN-1) and EN-3: National Policy Statement for Renewable Energy Infrastructure (EN-3).

19. I refer to these further below but would highlight at this point paragraph 163 of the Framework. When determining an application like that at issue (a solar array), decision-makers should: a) not require applicants to demonstrate the overall need for renewable or low carbon energy and recognise that even small-scale projects provide a valuable contribution to significant (sic) cutting greenhouse gas emissions; and b) approve the application if its impacts are (or can be made) acceptable. I would also highlight the Government's Written Ministerial Statement: *Solar and Protecting our Food Security and Best and Most Versatile (BMV) Land* made on 15 May 2024. There is also the Written Ministerial Statement of 25 March 2015 and its reference to solar energy to consider. I deal with these below too.

### **Background and Planning History**

20. The site itself has no relevant planning history. However, the Council granted planning permission (ref.UTT/16/2316/FUL) for the development of a 49.99MW battery storage facility connected to Pelham Sub-station, on land adjacent to the south-west corner of the application site. This facility is now operational. I would also note that a Battery Electricity Storage Scheme has been proposed on land to the west of the application site, on the opposite side of Crabb's Lane. This is awaiting a decision from East Hertfordshire District Council.

21. Many other examples of appeal decisions made on proposals for solar arrays have been brought to my attention. I deal with these, and the extent to which they are relevant, below, but, given the proximity of the site, I would highlight in particular the decision of a colleague Inspector who dealt with a scheme under Section 62A of the Act on Land East of Pelham Substation, Maggots End, Maunden (S62A/2022/0011). I refer to this decision further below.

### **Main Issues**

22. In advance of and at the Hearing, I set out the main issues for consideration as: (1) the effect of the proposal on the character and appearance of the surrounding area (the landscape issue); (2) the effect of the proposal on the setting and thereby the significance of heritage assets (the heritage issue); (3) whether the proposed use of agricultural land is acceptable and, linked to that, the approach to alternative sites (the land use issue); (4) the effect of the proposal in biodiversity terms (the biodiversity issue); (5) the effect of the proposal on highway safety (the highways issue); (6) living conditions and whether any noise impacts resulting from the proposal would be acceptable (the noise issue); and (7) the nature and scale of any benefits of the proposal (the benefits). Alongside all that there are 'other matters' to consider, including consistency of decision-making, and after that a need to conclude against the development plan, and consider 'other material considerations', in order to arrive at a 'planning balance', and final conclusion. I heard nothing at the Hearing to suggest that this approach should change so I have used all that to structure my reasons that follow.

### **Reasons**

#### *The Landscape Issue*

23. As set out above, the application site covers a number of fields that lie to the south-west of Berden, roughly, and to the east, broadly speaking, of Stocking Pelham. The site is traversed by a series of PRowS and others bound it.

24. Paragraph 180 of the Framework tells us that we should recognise the intrinsic character and beauty of the countryside and that, it seems to me, provides a useful starting point. In very simple terms, the installation of around 100,000 photovoltaic solar panels mounted on metal frames and made of non-reflective glass, reaching a maximum height of 2.5 metres, over an area of 65.84 ha, is bound to have a harmful impact on landscape character, and lead to detrimental visual effects. This is accepted in the applicant's Landscape and Visual Impact Assessment (LVIA). The essential question under this issue is the extent of that harm.
25. First of all, it is fair to take account of the overall context of the site. Notwithstanding the countryside location, and the attractive villages nearby, to the south-west of the site lies the Stocking Pelham Substation, a massive piece of electrical infrastructure; there are high voltage power lines that pass the south-east corner of the site; and there is a battery storage facility linked to the substation close to the south-western site boundary, and at least the prospect of another such facility on the opposite side of Crabb's Lane. The proposal, as another major piece of electrical infrastructure, would not appear wholly incongruous in that overall context.
26. On top of that, the proposal would respect the existing field structure. Existing hedgerows would remain, new woodland and hedgerows would be included around the boundaries of the site and within it. A community woodland would be provided in the north-east corner of the site, and further blocks of woodland planting in the south-east corner of the site, and at its eastern extremity. An arable field, to the south of the proposed community woodland, would be converted to a species-rich meadow.
27. Notwithstanding the height of the panels, and associated infrastructure, because of the relatively flat lie of the land, there would be no significantly jarring longer-distance views of the installation. Landscape and visual impacts would be much greater around the fringes of the array but new screen planting along Ginns Road and Crabb's Lane, in particular, would alleviate the harmful impact in those views to a degree, as it grows and becomes more established.
28. As set out there are PRoWs that cross the site. These would allow very close up views of the solar panels and the associated infrastructure. It is from these viewpoints that the landscape character and visual effects of the proposal would be at their greatest. Existing hedgerows and the further hedge planting proposed would provide some screening, but the harmful impact of the array would remain readily perceptible. The experience of walking through the site along the PRoWs would change significantly. Currently, one walks through agricultural fields that are perceived as part of a 'natural' landscape; if the development went ahead, one would be walking through something that was industrial and technological. The term 'techscape' has been used as a descriptor and that seems to me apposite. On top of that, notwithstanding the additional planting, the scheme would largely fill the gap between Berden and Stocking Pelham, and remove what is currently, a relatively attractive rural gap between the settlements.
29. Overall, it is my conclusion that the proposal's landscape and visual effects would be negative, and that harm would be caused to the character and appearance of the area as a result. However, the degree of harm would be alleviated, to a degree, by fact that the array would not be wholly incongruous,

- given the presence of existing electrical infrastructure nearby, the relatively flat nature of the land which means that longer-distance views would be a major issue, the new screen planting, and the retention of the existing field pattern.
30. There is, however, another important point to consider and that is the temporary and reversible nature of the proposal. The landscape and visual harm identified would endure for the period when the installation is in place, but when that period is over, it could be removed, the land could return to its former use, and the harm would disappear. Indeed, as a result of the additional planting and open space provided as part of the scheme, its legacy would be a positive one, in landscape terms. The temporary period, and the decommissioning scheme, would be secured by condition – a matter I deal with below. That means that the grant of planning permission would be temporary. Moreover, the requirement for a decommissioning scheme ensures that it would be reversible.
31. My colleague who dealt with a similar proposal under Section 62A of the Act on Land East of Pelham Substation, Maggots End, Maunden (S62A/2022/0011) referred to 40 years being a considerable length of time noting that given the duration, the proposed development in that case would be ‘perceived as permanent’ and ‘seen as permanent features rather than temporary’<sup>1</sup>. I note that on occasion, the Secretary of State has taken a broadly similar view in attaching ‘little weight’ to the temporary nature of a proposed solar farm<sup>2</sup>.
32. I take a rather different view. A period of 40 years is a long time in terms of the human lifespan. However, I would question whether that is the correct way to measure the duration of the proposal. Tackling the effects of climate change is not a short-term project. We are still some way off 2050, when ‘net zero’ is meant to be attained, and it is fair to observe too that if/when ‘net zero’ is attained in 2050, it will need to be maintained thereafter. In simple terms, current generations are being asked to take action to address the impacts of climate change in their lifetimes, with the attendant impacts of those actions, in an attempt to ensure that future generations inherit a tenable way of life. The 40 year period proposed must be considered in the light of longer term aspirations in relation to our climate; aspirations that stretch well beyond current generations.
33. It might then be argued that there is nothing to prevent a developer at some point in the future making an application to renew the grant of permission so that the solar array is in place for longer. That is a fair point, but one cannot forecast with any confidence what the planning policy context will be in the 2060s. Neither can we realistically foresee what the energy mix might look like that far in the future. Importantly too, we cannot know what the relative importance of food production will be, compared to the generation of renewable energy and energy security, at that time. As such, there is no justification, in my view, in approaching the proposal as if it would be a permanent imposition.
34. The most important point, it seems to me, is not whether the scheme would endure for 40 years or longer, but the fact that it *could* be reversed. If circumstances change during, or at the end of the lifetime of the permission, then the proposal could be removed with relative ease, and the land could revert to food production (a point I return to below), taking away the harmful

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<sup>1</sup> Paragraphs 18 and 51 of the Decision Notice and Statement of Reasons issued on 11 May 2023

<sup>2</sup> See for example paragraph 27 of the SoS decision on a solar farm near Gayton (APP/W2845/W/23/3314266)

landscape, and other, impacts of the array. In that way the temporary nature of the permission, and the reversibility of the scheme are important considerations that must be weighed properly in the overall balance.

35. The weight to be attached to these considerations is of course a matter for the decision-maker but my colleague who dealt with the nearby proposal at Maggot's End appears to have afforded them no weight whatsoever. For the reasons set out, I do not agree with that approach, and neither do I accept that they should be given 'little weight'. The fact that the proposal would not take the agricultural potential of the site away permanently, and that its harmful effects could be reversed relatively easily, are important considerations, and as such in my view they attract a good deal of weight.
36. Bringing all those points together, there would be some, limited harm caused to landscape character, and in terms of visual effects, as a result of the proposal, but in balancing those harmful impacts against benefits, it must be appreciated that the limited harm would be temporary, and reversible. There are no cumulative effects to consider given that the application relating to a solar array at Maggot's End was refused. Nevertheless, because the proposal would cause some harm to the character and appearance of the area, it would be in conflict with Local Plan Policies S7 and ENV15.

#### *The Heritage Issue*

37. The starting point for this issue is the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act). S.66(1) of the Act tells us that in considering whether to grant planning permission for development which affects a listed building or its setting, the decision-maker 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. The Framework takes a similar path but widens the ambit of protection to all designated heritage assets. It says in paragraph 205 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).
38. It is with that in mind that I have considered the applicant's Heritage Statement and the other material relating to this issue. Having done so, I have come to conclusion that only very few of the designated heritage assets identified derive anything of their significance from their wider rural setting, and as a result, have the potential for their significance to be affected by the change to their settings that the proposal would involve. I will deal with these in turn.
39. The first of these is the Church of St Nicholas, a Grade I listed building in Berden. The tower of the church marks the position of this important building in the settlement and in some longer-distance views, the position of the settlement in the surrounding landscape. It is readily apparent then that the church derives something of its significance from its rural setting.
40. I saw during my site visit that some of these longer-distance views of the tower are possible from the application site and in particular from the PRoW that runs north-south through the site, and from the PRoW that springs eastward from it. Those views are currently experienced from an agricultural setting that chimes with the wider rural setting that the church has sat within historically. With the

- advent of the proposal, the views would be experienced from what can conveniently be defined as a 'techscape'. That change to the setting of the church would remove the linkage between the church and its rural setting in these views and as a result, the change would be harmful to the setting and thereby the significance of the church.
41. Berden Hall, a Grade II\* listed building, and its associated Granary, a Grade II listed building make up the Berden Hall group. These buildings lie to the south of the church. According to the applicant's Heritage Statement, the Berden Hall Group has a historical connection with the application site. During my site visit I was able to see the rear of Berden Hall from the PRoWs that cross the site. I took in those views from an agricultural setting that allowed for an appreciation of the historical link between the farmland that forms the application site, and the listed buildings that form the Berden Hall grouping.
  42. The change to the agricultural setting for these views caused by the proposal would blur the historical connection between the Berden Hall group and its former hinterland in these views. I consider that this would harm the setting of the listed buildings that make up the Berden Hall group, and their significance.
  43. The applicant proposes additional planting that might screen the church and/or Berden Hall from some of those views. I recognise that this planting might bring some benefits in terms of impacts on landscape character and visual effects, amongst other things, but if it leads to a visual severance of these building from the site, then this would add to the harm caused to the setting and thereby the significance of these heritage assets by reason of the change wrought to the application site itself as a result of the solar array and its associated infrastructure.
  44. The complex known as 'The Crump' is made up of a house and a former barn that make up a Grade II listed building and an adjacent Norman ringwork that is designated as a Scheduled Ancient Monument (SAM). Both derive something of their significance from their setting in a largely rural context. The application site represents a part of that wider context, but the proposal would be some distance away from the complex. Moreover, there are no important views of, or from, the complex from, or across, the application site. In any event, the additional planting proposed at the south-east corner of the proposal would act as a screen that would prevent the proposal being readily seen in the overall setting of the complex. On that basis, the change to the rural context that would flow from the proposal would harm the setting and thereby the significance of these designated heritage assets, but to a very limited degree.
  45. I note too the presence of 'the Rookery' within the site originally proposed for the array. This is another ringwork that has group value with 'the Crump'. The significance of this non-designated heritage asset is largely archaeological and any potential impact on its significance has been addressed by changing the site boundaries to ensure that it falls outside the confines of the array. There is the potential for the proposal to have an impact on archaeological remains more generally, but this can be addressed through a condition.
  46. Given that I have found that there would be harm to the settings of listed buildings, a SAM, and a conservation area, the proposal falls contrary to Local Plan Policies ENV2 and ENV4. Through the workings of the Act, and the Framework, any harm to the setting of a listed building, or to the significance of a designated heritage asset, must attract considerable importance and



- weight. The approach of the Framework requires the harm to be quantified in terms of whether it is 'substantial' which takes the decision-maker to paragraph 207 or 'less than substantial' which is dealt with in paragraph 208.
47. There would be no physical impact on any of the designated heritage assets concerned and the effects on their settings, and thereby significance, is limited to certain inter-relationships and views. There are no cumulative effects to be considered. On that basis, I regard the harm to significance that would be caused as 'less than substantial' in all cases. Paragraph 208 of the Framework tells us that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm (which must attract great weight) should be weighed against the public benefits of the proposal.
48. Given the way in which the Courts have approached these classifications of harm<sup>3</sup>, the scope of 'less than substantial' harm is very broad ranging from harm that is barely perceptible to a level of harm not very far short of the vitiation of significance. On that basis, it is necessary, for the sake of the balancing exercise in paragraph 208 to define where in the 'less than substantial' range that harm would fall.
49. To my mind, the assets in the Berden Hall Group would suffer the most harm to their significance because not only would their wider setting be affected, in certain views, but also the historical connection between the Berden Hall group and its former hinterland would be blurred. That said, most of the significance of Berden Hall, and the Granary, is in their fabric, and their relationship in their immediate setting in their grounds, as part of the village, which would remain intact. On that basis, I consider that the less than substantial harm caused to significance would be at the lower end of the scale. The impact of the proposal on the wider setting of the Church of St Nicholas in certain views would be similar but there would be no formal historical connection blurred. On that basis, the less than substantial harm to significance caused would be lower still. In terms of the designated heritage assets that form the Crump, both derive something of their significance from their surroundings but given the degree of separation, the lack of any important inter-connecting views, and the potential for planted screening, the less than substantial harm caused would be yet lower again.
50. I deal with the balancing exercise required by paragraph 208 below, but I would observe that for the same reasons that I have set out above in dealing with the landscape issue, that the temporary nature of the proposal, and its ready reversibility, needs to be considered in carrying out that process.

### *The Land Use Issue*

51. Footnote 62 to the Framework says that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in the Framework, when deciding what sites are most appropriate for development.

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<sup>3</sup> *Bedford BC v Secretary of State and Nuon Ltd* 2013 EWHC 2847 Admin

52. There are Written Ministerial Statements to be considered too. The first is that of 25 March 2015 and the reference therein to *Solar energy: protecting the local and global environment*. Amongst other things, the point is made that meeting our energy goals should not be used to justify the wrong development in the wrong place and this includes the unnecessary use of high-quality agricultural land. Protecting the global environment is not an excuse to trash the local environment. Particular factors to be considered include making effective use of previously developed land and, where a proposal involves agricultural land, being quite clear that this is necessary, and that poorer quality land is to be used in preference to land of a higher quality. Any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence.
53. Advice in the Planning Practice Guidance follows much the same path. Specifically, it is set out that where a proposal involves greenfield land, a particular factor will be whether the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.
54. The more recent (15 May 2024) Written Ministerial Statement: *Solar and Protecting our Food Security and Best and Most Versatile (BMV) Land* seems to me to be aimed primarily at Nationally Significant Infrastructure Projects. However, as outlined therein, it is a material consideration when considering schemes that do not meet the NSIP threshold. Footnote 62 of the Framework is repeated, and we are told that due weight needs to be given to the proposed use of best and most versatile land when considering whether planning consent (sic) should be granted for solar developments.
55. Further the point is made, with reference to the National Policy Statement (EN-1), that applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. In a similar vein, the PPG encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value.
56. The Framework defines the best and most versatile agricultural land as land in Grades 1, 2 and 3a of the Agricultural Land Classification. On that basis, using the information provided by the applicant, 72% of the application site qualifies as best and most versatile agricultural land.
57. I acknowledge that the erection of a solar array upon the land need not take it completely out of agricultural use; for example, sheep could be grazed on the land. However, there can be no real doubt that for the period the solar array would be in place, the full agricultural potential of the site would not be realised. That would cause some harm in terms of food production though as rehearsed above, that harm would be temporary and reversible. The agricultural potential of the site would not be lost forever.
58. That brings me to how one should approach this matter in the light of the Framework, the Written Ministerial Statements and the PPG. Notwithstanding all this material, the Courts have set out that the PPG does not mandate the consideration of alternatives and still less does it require a sequential test to be

adopted<sup>4</sup>. There is nothing in the 2015 Written Ministerial Statement or the 2024 Written Ministerial Statement that requires anything of that sort and neither does footnote 62 to the Framework. As was pointed out in the Court case referred to above, where the Framework requires a sequential test, for example in relation to flood risk, this is clearly set out.

59. The applicant has made it clear that this site was chosen because it offers relatively straightforward access to a grid connection. The 'site selection' exercise carried out by the applicant compares this site with other sites offering the same sort of accessibility. While this approach has drawn criticism, access to the grid is a very important consideration and the ability of the proposal to export power to the grid relatively quickly is a significant benefit, that I return to below. In that context, the way the applicant has 'cast the net' in terms of alternative sites is not unreasonable.
60. Much has been made of the potential for land of lesser agricultural value to be used instead. However, it seems to me that it is unrealistic to make that comparison unless any such land has the same easy access to the grid. Similarly, while previously developed land could be used to accommodate a solar array, the same principle would apply.
61. Overall, I am content that the applicant has approached the question of site selection in an appropriate way. On that basis, it is my conclusion that while the proposal would take best and most versatile land out of productive use for the duration of its operation, the ease of access to the grid that the site provides is a compelling reason to do so. I would point out too that the best and most versatile agricultural land would not be lost as a consequence of the scheme. Unlike if for example if the site was developed for housing, it could be returned to productive use at some point in the future.
62. Nevertheless, the loss of the potential of the site for food production for a considerable time is a harmful consequence of the proposal that weighs against it. It brings the proposal into conflict with LP Policy ENV5.

#### *The Highways Issue*

63. As an introduction to this issue, it must be acknowledged that the Framework says in paragraph 115 that development should only be refused on highway grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.
64. The vehicular access to the site would be from Ginns Lane, at a point where adequate visibility could be achieved in either direction. The detailed design of the access could readily be dealt with through a condition. During the operational phase of the proposal, access by light vehicle would be needed only 3 to 4 times a week. In my view, neither the access itself or the operational traffic would have any harmful impact on highway safety, or capacity.
65. The principal point of contention in highways terms is the construction traffic that would be generated by the proposal. The applicant has produced a Construction Traffic Management Plan 3 (CTMP3) which deals with the number and nature of vehicle movements that the construction and decommissioning phases would involve, and their proposed routes. As part of my site visit, I drove the routes detailed in CTMP3 and observed that there are places where

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<sup>4</sup> *Bramley Solar Farm Residents Group v Secretary of State* 2023 EWHC 2842 Admin (Paragraph 179)

roads are relatively narrow, particularly where they pass through settlements, and that there are schools along the route.

66. According to CTMP3, the HGV traffic would be greatest in the first 2-3 months of a 6 month construction period. There is likely to be a 4 week period during which deliveries of stone, for the access tracks, and fencing materials, and deliveries of electrical components overlap. During this 'worst-case' situation, there could be up to 86 loads per week (172 two-way HGVs) or approximately 17 loads per day (34 two-way HGVs).
67. That said, HGV trips would be restricted to weekdays only and timed to avoid peak hours, and school opening and closing times. I do not doubt that there is the potential for construction traffic to cause some disruption, but any large-scale construction project, whether in towns and cities or the countryside will do that. That is no good reason to stand in the way of development unless the disruption would be severe, or unacceptable in safety terms. I do not consider those thresholds are anywhere near being reached for the numbers of HGV movements, and the routes proposed, in this case.
68. Some issues have been raised about the PRoWs that could be affected during the construction phase. This is dealt with in CTMP3 in a way that I regard as reasonable. The construction phase might cause some inconvenience to users of the PRoWs but precautions can be taken, and secured by condition, to ensure that safety is not compromised to an unacceptable degree.
69. In highway terms, I see no departure from LP Policy GEN1 or advice in the Framework. In any event, the applicant is prepared to submit CTMP3 for the approval of the Council and the Highway Authority through a condition which will allow for further consultation.

### *Biodiversity*

70. Paragraph 186 of the Framework is clear that if significant harm to biodiversity resulting from a development cannot be avoided (through locating to an alternative site with less harmful impacts), adequately mitigated, or as a last resort, compensated for, then planning permission should be refused.
71. The existing site is dominated by arable farmland, and I agree with the applicant that the main ecological value of the site lies within the existing small, woodland compartments, and the native boundary hedgerows. The proposal would retain and strengthen these components. Moreover, as set out in the ES, there would be no adverse impact on any statutory or non-statutory designated nature conservation sites as a result of the proposal. A Biodiversity Net Gain (BNG) assessment concluded that there would be an 89% BNG as a result of the scheme which is well above the required minimum. This BNG can be secured by condition. On the face of it then, the proposal would result in improvements in biodiversity terms.
72. In terms of protected species, the applicant has agreed mitigation measures with Natural England and Essex County Council Place Services. Mitigation for Great Crested Newts has been dealt with through the District Level Licence scheme, and any issues with Great Crested Newts and/or badgers can be dealt with by condition. Concerns have been raised about bats but those elements of the site that are important to them – the hedgerows and woodlands in

- particular – will remain and be augmented. Controls can be exerted on lighting through a condition.
73. The existing farmland might well support ground nesting birds and skylarks in particular. Skylarks are 'red-listed' and a UK Biodiversity Action Plan priority species. The applicant estimates that the site might support up to 14 skylark territories. These would be lost as a result of the proposal and on that basis, the applicant has sought to provide mitigation, in consultation with Essex County Council Place Services. To that end, off-site skylark plots would be created in two nearby fields, on a 2 for 1 territory replacement basis. These would provide skylarks with more access to open areas within which to land and access nests. These plots would be secured through a combination of a condition, and the completed UU. Overall, I am content that this approach would mitigate for any impact on skylarks.
74. On top of that, the proposal would include the conversion of around 50 Ha of arable land to grassland in and around the solar panels, which can be secured by condition. This will provide additional foraging habitat for skylarks, and birds in general, by increasing the insect population. In addition, a temporary grass ley within the application site of 3 Ha will be converted to permanent grassland as part of the proposal. This will also improve foraging opportunities.
75. My attention has been drawn to the decision of a colleague Inspector who dealt with a solar array on Land West of Berrington, near Shrewsbury<sup>5</sup> and the approach taken there to skylarks. There though, it seems that the ability to compensate for the impact on skylarks depended on a scheme yet to be produced, and to be secured by a Grampian condition in parallel with a Unilateral Undertaking. The Inspector was concerned that if in dealing with the scheme that was produced to satisfy the Grampian condition, the Council found the scheme to be unacceptable, it would be faced with a balancing exercise out-with the proposal before the Inspector. The situation before me is different because a scheme of mitigation has been produced, and agreed with the Council, and I have found that it is acceptable. The condition and the UU before me are there to secure the agreed scheme, rather than solicit a new scheme.
76. To conclude then on this issue, the proposal would not have any significant adverse impact on biodiversity, and in some respects, there would be attendant biodiversity benefits that flow from it. There would be no departure from LP Policy GEN7 or the Framework in this regard.

#### *Living Conditions - The Noise Issue*

77. The principal issue here relates to the potential impact of noise from elements of the installation, and low frequency tonal impacts in particular, on nearby residential receptors. I took the view after the discussion at the Hearing that the potential impact was of an order that could reasonably be dealt with through conditions, and thereby comply with Local Plan Policies GEN4 and ENV11. On that basis, I allowed time after the hearing closed for the Council and the applicant to consider how conditions of this sort might be framed. The parties could not reach an agreement, but I have been presented with alternative suites of conditions, and a commentary upon them. Others have been allowed to comment on all this.

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<sup>5</sup> APP/L3245/W/23/3332543

78. Having considered the material, and mindful of the existing situation where there is already something of a noise impact from the existing battery storage facility off Crabb's Lane, I have come to the conclusion that the applicant's preferred conditions offer the best balance between the protection of nearby residents' living conditions, and the effective operation of the facility. In my view, the Council's suggested conditions are too onerous, especially in relation to requiring noise levels to be averaged over 15 minutes, the requirement to measure background noise levels with the battery storage facility turned off, and the measurement of noise levels at the boundaries of properties, rather than the buildings themselves. Moreover, the requirement for equipment to be serviced regularly in accordance with the manufacturer's instructions seems to me excessive – this is a matter for the operator and if any excessive noise resulted from any failure on the operator's part, in this respect, then the other parts of the suggested condition would kick in, and the installation would have to be turned off.
79. There is of course the possibility that the construction process itself might cause some issues for local residents in terms of noise, dust, surface water run-off, pollution, and so forth, but in my view all this could be effectively managed by a suitably worded condition.

#### *Other Matters*

80. There is no evidence to suggest that there are any considerations that need to be factored in on the harmful side of the planning balance. Other matters such as export capacity, soil management, surface water drainage and flood risk, and the potential for unexpected land contamination can all be dealt with through conditions.

#### *The Benefits*

81. It is important to set some context for consideration of the benefits the proposal would bring forward. The Climate Change Act 2008 (as amended) set the attainment of 'net zero' by 2050 as a binding target. More recently, the Government committed to reducing emissions by 78% when compared to 1990 levels by 2035. The Clean Growth Strategy (2017) anticipates that meeting the 2050 targets will require a diverse electricity system based on growth in the renewable energy sector. The Government's 2020 Energy White Paper sets out that solar energy will be a key component of the future energy mix required to attain 'net zero' by 2050. The Government's British Energy Security Strategy (April 2022) expects a five-fold increase in the deployment of solar energy schemes by 2035 in order to meet the aim of decarbonising the electricity system by that date, reducing our dependence on imported oil and gas and providing for a shift in energy production to cleaner, cheaper forms of power, which in turn, in theory at least, will lead to lower energy bills. It is against that background that the Framework sets out that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. Locally, the Council declared a climate emergency as far back as 2019 and seeks to reduce its own emissions to 'net zero' by 2030.
82. That leads me to the scheme itself. With a generation capacity of 49.99MW it can hardly be described as small-scale being just under the threshold of something that would be considered as a NSIP. It would make a significant contribution to the Government ambitions that I have set out above, as well as local ones. On top of that, importantly, the proposal has a ready grid

connection so the contribution could come forward quickly. Moreover, the proposal would improve UK energy security. In an unstable world, that is an important consideration. Altogether, these are matters that attract considerable weight in favour of the proposal.

83. On top of that, the proposal would bring forward some benefits in biodiversity terms, and some economic benefits through the construction process. These attach much less weight, clearly, but they are nevertheless positive factors that add to the benefits set out above. The central question, in Framework terms, is whether in the light of these benefits, the (negative) impacts of the proposal are, or can be made, acceptable. I deal with this below.

### *The Planning Balance*

84. The proposal would cause a limited degree of harm in terms of landscape character and visual effects, it would have a harmful impact on the setting and thereby the significance of some designated heritage assets, and it would reduce the potential of the application site in terms of food production because of the loss of best and most versatile agricultural land. These effects would be temporary, and they would be readily reversible. Against that, bearing in mind the threat of climate change, and Government's commitments, and the quest to attain 'net zero' by 2050 in particular, the benefits in terms of the generation of renewable energy would be very considerable. There would be a significant benefit too in terms of energy security, and more minor benefits in relation to biodiversity and economic matters.
85. In terms of the balancing exercise, I must begin with the development plan. Given that the proposal would have the harmful impacts outlined above, it would fail to comply with Local Plan Policies S7, ENV2, ENV4, ENV5 and ENV15, and as a result, the development plan read as a whole. That is not the end of the matter though because I must go on to consider other material considerations. In doing so, I am conscious that the Local Plan is relatively dated, and it was adopted long before more up-to-date thinking on renewables. In particular, it pre-dates by some time the Climate Change Act (as amended) and the commitment therein to reaching 'net zero' by 2050. It also long pre-dates the Council's declaration of a climate emergency.
86. In dealing with the Framework there are different balancing exercises to be carried out. The first concerns the approach to designated heritage assets. As set out above, paragraph 208 says that where a development proposal would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal. While it would be temporary, and reversible, I attach great weight on the negative side of the balance to the harm that would be caused to the setting and thereby the significance of the designated heritage assets affected. Nevertheless, I consider that harm to be clearly and conclusively outweighed by the very considerable public benefits that would flow from the proposal in terms of the generation of renewable energy, and improved energy security, for the duration of the proposal, alongside less weighty biodiversity and economic benefits.
87. I must then consider the balancing exercise more generally. Paragraph 163 b) of the Framework says that proposals like that at issue should be approved if impacts are (or can be made) acceptable. I am of course conscious of the workings of paragraph 11 d) ii of the Framework too. However, even without

applying the 'tilted balance' I am content that the benefits of the proposal far outweigh the harmful effects in terms of landscape character and visual effects, the setting and thereby the significance of some designated heritage assets, and the potential of the application site in terms of food production because of the loss of best and most versatile agricultural land. As such, the impacts are (or can be made) acceptable. Consequently, I am of the view that the proposal is in ready compliance with the Framework, read as a whole. I consider this compliance with the Framework to be a material consideration that justifies a grant of planning permission, notwithstanding the failure of the proposal to comply with the Local Plan.

88. Having reached that conclusion, I need to deal with issues around the consistency of decision-making. As I have set out above, many other decisions by Inspectors, the Secretary of State, and the Courts, have been brought to my attention. I have dealt with some important points raised by the Courts above but in more general terms, decisions by Inspectors and the Secretary of State, given that they involve different schemes, on different sites, often far away from the application site, following no obvious pattern, offer no sensible guide for the decision to be taken here.
89. There is one exception to that and that is the decision of my colleague Inspector who dealt with the Maggot's End proposal (S62A/2022/0011) that I have already referred to. Given that this site of this scheme is not very far away from the site before me, it is clearly an important material consideration. At the time of the hearing, this decision was subject to a challenge in the High Court on procedural grounds, but that challenge was subsequently dismissed. The decision to refuse permission for the application stands, therefore. I have read the decision obviously and cast an eye over the site involved during my site visit. However, that decision does not necessarily bind me to reaching the same conclusion. It was a different scheme on a different site. Nevertheless, there are some themes in common.
90. I would say first of all that proposals like this always involve a balance to be struck between harmful impacts on landscape, heritage assets, and so forth, against benefits. That 'balance' involves the application of planning judgment and in reaching my judgment, I have reached a different conclusion to my colleague, and attached more weight to the benefits, than the harmful impacts.
91. I would highlight two major points of departure that underpin my judgment and set it apart from that of my colleague. Firstly, I take a totally different approach to issues around the temporary nature of the proposal, and its reversibility, and the consequent approach to landscape, heritage harm, and the loss of best and most versatile agricultural land, in particular. I have explained why in my reasoning above.
92. Secondly, it is my view that the decision-maker in cases involving renewable energy needs to carry out the 'balance' referred to above in its proper context. The Climate Change Act 2008 (as amended) set the attainment of 'net zero' by 2050 as a binding target for good reasons, recognising that climate change is a serious threat; a threat that cannot be understated or ignored. It is in my view wholly unrealistic to think that attaining 'net zero' can be achieved without some harmful impacts on the landscape, heritage assets, and/or other considerations. That is why the Framework tells us that we should approve applications for renewable or low carbon if the impacts are (or can be made)



acceptable. Obviously, that does not mean that all such applications should be approved, but at the same time, if the bar for impacts to be regarded as acceptable is set too high, we are not going to get very far towards attaining 'net zero' by 2050. Neither will we achieve the five-fold increase in the deployment of solar energy schemes by 2035, envisaged in the British Energy Security Strategy. I have approached my balancing exercise pragmatically, with all that in mind.

### **Conditions and the Obligation**

93. Paragraph 56 of the Framework tells us that conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise, and reasonable in all other respects. I allowed time after the Hearing for a list of conditions to be agreed, as far as possible, between the applicant and the Council. Most conditions were agreed but those relating to noise were presented in the alternative. I allowed statutory consultees, and third parties, to comment on the list that was eventually arrived at. I have considered those conditions, and all the comments upon them, in the light of advice in the Framework. I have treated those that are pre-commencement in nature as accepted by the applicant given their inclusion on an agreed list.
94. The standard conditions relating to commencement (condition 1) and setting out the approved plans (condition 2) are necessary. Given the basis of the proposal, a condition is required (condition 3) to confirm the first export date, and to ensure that the facility operates for no more than 40 years, before being decommissioned in accordance with a Decommissioning Scheme first agreed with the Council. There has been some suggestion that decommissioning ought to be dealt with through a Planning Obligation but in my view a properly worded condition would be better, as it would be far easier to enforce<sup>6</sup>. As is usually the case for proposals involving renewables, a condition is also necessary (condition 4) to address the situation where, for whatever reason, the development fails to generate electricity for a period of six consecutive calendar months. In which case it would need to be decommissioned in accordance with an approved Early Decommissioning Scheme. A limit on the export capacity of the proposal must be imposed by condition (condition 23).
95. Conditions are required to secure several aspects of the proposal relating to landscaping, ecology and biodiversity, as indicated above. These involve a condition to secure the Landscape and Ecological Management Plan (condition 5), a condition to deal with Great Crested Newt (condition 6), cover the need for a Construction Environmental Management Plan (condition 7), address the Biodiversity Enhancement Strategy (condition 8), and provide for the Skylark Mitigation Strategy in parallel with the UU referred to below (condition 9). Another condition is necessary to pick up the potential issues around lighting (condition 10).
96. I have referred above to the need for a Construction Traffic Management Plan and the requirement for Version 3 to be further approved through the mechanism of a condition (condition 11). Similarly, a condition is needed to ensure the site access is properly constructed at the appropriate time (condition 12), and to ensure that users of PRoWs are protected during the construction process (condition 13). Finally, in relation to highways, the need

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<sup>6</sup> Through a Breach of Condition Notice served on the landowner(s)

- to make sure that new screen planting does not encroach upon PRoWs must be dealt with (condition 14).
97. Conditions are also required to pick up surface water drainage (condition 15), potential run-off and pollution in the construction period (condition 16), soil management (condition 17), and unexpected contamination (condition 21). Archaeology needs to be dealt with through conditions (conditions 18, 19, and 20) and so does the need for a Construction Environmental Management Plan (condition 22). As set out above, there is the potential for an impact on living conditions of nearby residents as a result of noise. There has been no agreement on the necessary conditions between the Council and the applicant but for the reasons set out above, I prefer the applicant's suggestions (conditions 24, 25, and 26). I note also the suggestion by Historic England that a condition might be applied to secure a Conservation Management Plan for 'the Crump' along with a scheme of interpretation and display. While either or both would be welcome additions, I am sure, the applicant has no control over 'the Crump' so such a condition would not be reasonable. In any event, these matters are not necessary to make the proposal acceptable in planning terms.
98. A draft UU was discussed at the Hearing too and I allowed time after it was closed for a final version to be prepared and signed. I made provision for third parties to be able to comment on the final version. Paragraph 57 of the Framework sets out that planning obligations must only be sought where they meet a series of tests. They must be: (a) necessary to make the development acceptable in planning terms; (b) directly related to the development; and (c) fairly and reasonably related in scale and kind to the development. The completed UU provides for a Skylark Mitigation Strategy, as set out in Schedule 3 of the undertaking. Put simply, Schedule 1 requires the owner to implement the Skylark Mitigation Strategy in full before the development commences and to maintain and comply with it for the lifetime of the development. As set out above, this is to bring the proposal into line with the requirements of the Framework and is therefore necessary to make the development acceptable in planning terms.

### **Final Conclusion**

99. For the reasons given above I conclude that planning permission should be granted for the proposal, subject to the conditions listed in Schedule 2 below.

Paul Griffiths

**INSPECTOR**

## **Schedule 1**

### **APPEARANCES**

#### **FOR THE COUNCIL**

Maria Shoesmith	Strategic Applications Team Leader, Uttlesford DC
Marcus Watts	Environmental Health Manager, Uttlesford DC
Ella Gibbs	Place Services
Rachel McKeown	Strategic Development Engineer, Essex County Council

#### **FOR THE APPLICANT**

David Hardy	Barrister and Solicitor, and Partner CMS
Jo Atkinson	Associate Ecologist, RPS
Christopher McDermott	Director, Sightline Landscape
Christopher Miles	Director, Miles White Transport
Susana Parker	Associate Director, RPS
Christina Ioannidou	Senior Consultant – Acoustics, RPS
Oliver Troup	Statera Energy Ltd

#### **INTERESTED PERSONS**

Colin Berthoud	Local Resident
John Arnell	Local Resident
Jo Van Riemsdijk	Local Resident
Rosie Somers	Local Resident
Katherine Armstrong	Local Resident
Sarah Wright	Protect the Pelhams
Sara Yarrow	Local Resident
Dr Richard Hoggett	Heritage Consultant for Berden Parish Council
Richard Haynes	Local Councillor & CPRE Essex
Geoff Williamson	Local Councillor
John Burton	Former Chair Berden Parish Council
Fergus McMullen	Local Resident

## Schedule 2

### CONDITIONS

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans: ES Fig 1.1: Location Plan; ES Fig 2.8: Layout at ES (Block Plan Rev.B); ES Fig 2.2: Solar Panel; ES Fig 2.3: Inverter and Transformer Block Plan; ES Fig 2.4: Substation plan and elevation; ES Fig 2.5: Substation\_Connection\_Compound; ES Fig 2.6: Deer Fence A3; ES Fig 2.7: Proposed\_Site\_Access\_Arrangement; ES Fig 2.9: Temporary\_Construction\_Compound; ES Fig 3.3: Planting Plan Rev A 08.11.22; Pelham Solar Skylark Nest sites 527 SL LP Rev A 08.02.23 v2; and 21120-GA01 Revision A (dated 16.12.21).
- 3) Within 1 month of the date of first export of electricity to the National Grid ("the date of first export") confirmation shall be given in writing to the local planning authority of the date of first export. The development hereby permitted shall then cease on or before the expiry of a 40-year period from the date of the first export. The land shall thereafter be restored to its former condition (allowing for any appropriate enhancements) in accordance with a scheme of decommissioning work ("the Decommissioning Scheme"), which will include: (a) a Transport Management Plan to address transport routes; (b) all landscape restoration works needed; (c) measures to address all environmental effects of decommissioning; (d) an Ecological Assessment Report; and (e) the landscape and ecological features on the site to be retained. The Decommissioning Scheme shall be submitted to and approved in writing by the local planning authority no later than 38 years from the date of the first export and subsequently implemented as approved.
- 4) In the event that the development hereby approved ceases to generate electricity for a period of 6 consecutive calendar months at any time prior to the end of the 40 year period, a scheme of earlier decommissioning works ("the Early Decommissioning Scheme") which shall include a Transport Management Plan and an Ecological Assessment Report, as required by Condition 3, shall first be submitted to the local planning authority for approval in writing no later than 3 months from the end of the 6 month period. Thereafter, the Early Decommissioning Scheme shall subsequently be implemented as approved.
- 5) The development hereby approved shall be carried out in full accordance with the details contained within the Landscape and Ecological and Management Plan by Sightline Landscape Plan - Document Ref: 458\_Pelham Solar Rev B (November 2022).
- 6) Prior to commencement of any works which would impact the breeding or resting place of Great Crested Newt, the local planning authority shall be provided with either: (a) a licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified activity/development to go ahead; or (b) a GCN District Level Licence issued by Natural England pursuant to Regulation 55 of The Conservation of Habitats and Species Regulations 2017 (as amended) authorizing the specified

- activity/development to go ahead; or (c) a statement in writing from the Natural England to the effect that it does not consider that the specified activity/development will require a licence.
- 7) Prior to the commencement of development, a construction environmental management plan (CEMP: Biodiversity) shall be submitted to and approved in writing by the local planning authority. The CEMP: Biodiversity shall include the following: (a) risk assessment of potentially damaging construction activities; (b) identification of "biodiversity protection zones"; (c) practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (which may be provided as a set of method statements) to include the protection of adjacent and surrounding Local Wildlife Sites and Priority Habitats as well as precautionary working methods for protected species such as reptiles; (d) an up-to-date walkover survey for Badger to inform the need for a licence; where impacts on badger setts cannot be avoided, the local planning authority will be provided with either a i) a licence issued by Natural England pursuant to the Badger Protection Act 1992 authorising the specified activity/ development to go ahead; or ii) evidence of site registration supplied by an individual registered to use a Badger Mitigation Class Licence; (e) the location and timing of sensitive works to avoid harm to biodiversity features; (f) the times during construction when specialist ecologists need to be present on site to oversee works; (g) details of responsible persons and lines of communication; (h) the role and responsibilities on site of an ecological clerk of works (ECoW) or similarly competent person; (i) the use of protective fences, exclusion barriers and warning signs. The approved CEMP: Biodiversity shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.
  - 8) Prior to any works above slab level, a Biodiversity Enhancement Strategy ("the Biodiversity Enhancement Strategy"), prepared by a suitably qualified ecologist in line with the recommendations of the Landscape and Ecological Management Plan by Sightline Landscape Plan Document Ref: 458\_Pelham Solar Rev B (November 2022) shall be submitted to and approved in writing by the local planning authority. The content of the Biodiversity Enhancement Strategy shall include the following: (a) the purpose and conservation objectives for the proposed enhancement measures; (b) detailed designs to achieve stated objectives; (c) the locations of proposed enhancement measures on appropriate plans; (d) a timetable for implementation demonstrating that works are aligned with any phasing of development; (e) details of the persons responsible for implementing the enhancement measures; and (f) details of initial aftercare and long-term maintenance (where relevant). The approved Biodiversity Enhancement Strategy shall be implemented in full before the site is brought into operation and retained as such thereafter.
  - 9) Prior to commencement of the development hereby approved, the content of the submitted Skylark Mitigation Strategy, dated 9 November 2022 in combination with the Skylark Nest Sites Field Location Plan, drawing no. 527\_SL\_F1\_Rev A (February 2023) and Proposed Skylark Plots Field 1, drawing no. 527\_SL\_F1\_Rev A (February 2023) shall be fully implemented.

- 10) No external lighting shall be installed before a "lighting design strategy for biodiversity and neighbouring residents" in accordance with Guidance Note 08/23 (Institute of Lighting Professionals) and The Institution of Lighting Engineers Guidance for the Reduction of Obtrusive Light – Table 1 criteria is submitted to and approved in writing by the local planning authority. The strategy shall: (a) identify those areas/features on site that are particularly sensitive for bats and Badger and that are likely to cause disturbance in or around their breeding sites and resting places or along important routes used to access key areas of their territory, for example, for foraging; (b) show how and where external lighting will be installed (through provision of appropriate lighting contour plans and technical specifications) so that it can be clearly demonstrated that areas to be lit will not disturb or prevent bats using their territory or having access to their breeding sites and resting places; and (c) include the design of the lighting unit, any supporting structure and the extent of the area to be illuminated. All external lighting shall be installed in accordance with the specifications and locations set out in the scheme and retained thereafter in accordance with the scheme. Under no circumstances should any other external lighting be installed without prior consent from the local planning authority.
- 11) No development shall take place until a detailed Construction Traffic Management Plan ("CTMP") incorporating the principles of the submitted CTMP Version 3 and a programme of actions for delivery has been submitted to and agreed in writing by the local planning authority. The approved CTMP shall be adhered to throughout the construction period. The detail within the CTMP shall include details of: (a) any other consented major development(s) and associated construction traffic in the area (approx. 5km radius) expected during the construction programme; (b) the expected vehicle movements required during the construction period of the development, including the number of expected HGVs, LGVs, minibuses, cars expected in each week of the construction programme; (c) the proposed construction traffic route which, where the highway authority deem necessary, shall coordinate with the construction routing plans for developments identified at item (a); (d) the proposed route mitigation measures with design plans/traffic management plans as relevant, along with a programme for delivery of the mitigation measures ahead of commencement; (e) parking of vehicles of site operatives and visitors; (f) loading and unloading of plant and materials; (g) storage of plant and materials used in constructing the development; (h) wheel and underbody cleaning facilities; (i) the mechanisms for liaising with other developers in the vicinity to co-ordinate construction activity and reducing the impact on the network; (j) the scope and methodology for joint inspection of the construction traffic route by the highway authority and the developer including a requirement that the route be inspected prior to the commencement of any work and again every three months during construction and finally upon completion of the development; and (k) the process whereby any damage to the highway resulting from traffic movements generated by the application site should be repaired to an acceptable standard and at no cost to the highway authority.
- 12) No development shall take place until the access as shown in principle on submitted drawing number 21120-GA01 Revision A (dated 16/12/21) has

been provided, including clear to ground visibility splays with dimensions of 2.4 metres by 181 metres in both directions, as measured from and along the nearside edge of the carriageway. Any gates provided at the vehicular access shall be inward opening only and shall be set back a minimum of 17 metres from the back edge of the carriageway. No unbound material shall be used in the surface treatment of the vehicular access within 17 metres of the highway boundary. The associated vehicular visibility splays shall be retained free of any obstruction at all times thereafter.

- 13) No construction shall take place until a plan for the protection of the public rights of way and users affected by the development (within the site and adjacent to it) ("the Public Rights of Way Plan") has been submitted to the highway authority for approval. The Public Rights of Way Plan shall address the treatment of the public rights of way during construction and operation of the solar farm. The approved plan shall be implemented thereafter. The plan will contain but shall not be limited to the following: (a) details of any temporary diversions required during construction; (b) details of the method of the protection of users during construction, such as fencing, use of banksmen; (c) a before and after condition survey of the PROW network within the vicinity of the site and where provision for repairs to be undertaken at the expense of the developer where identified as being made necessary by the developer; (d) details of the method of protection of the PROW network during operation phase – ensuring vehicle maintenance routes avoid the network or appropriate crossing points and protection is provided; (e) details of planting and fencing adjacent to public rights of way, ensuring appropriate buffer zones within the site and at the edges of the site; (f) a maintenance regime for any screen planting adjacent to a public right of way; (g) details of historic and cultural information display(s) referring to local heritage assets and their importance for members of the public, and any other signing required; and (h) a programme for implementation of the Public Rights of Way Plan.
- 14) No new screening planting shall be located within 3m of a public right of way, and any new planting shall be regularly maintained and cutback to ensure clear passage for users of the public right of way throughout the period of occupation of the site.
- 15) The development hereby approved shall be carried out in accordance with the document "Stratera Pelham Solar Farm Flood Risk Assessment and drainage" HLEF81444, ver001 dated May 2022, by RPS Consultants. No works shall take place until a detailed surface water drainage scheme for the site ("the surface water drainage scheme"), based on sustainable drainage principles and an assessment of the hydrological and hydrogeological context of the development, has been submitted to and approved in writing by the local planning authority. The surface water drainage scheme should include but not be limited to: (a) verification of the suitability of infiltration of surface water for all rainfall events up to the 1 in 100 year + 40% cc event. This should be based on infiltration tests that have been undertaken in accordance with BRE 365 testing procedure and the infiltration testing methods found in chapter 25.3 of The CIRIA SuDS Manual C753; (b) final modelling and calculations for all areas of the drainage system; (c) a final drainage plan which details

- exceedance and conveyance routes, floor finishing levels and ground levels, and location and sizing of any drainage features; (d) clarification of the discrepancies between the text of the Flood Risk Assessment concerning the absence of poured concrete foundations to the ancillary structures, and the drawings, which indicate their presence; (e) a written report summarising the final strategy and highlighting any minor changes to the approved strategy; and (f) a programme for the implementation of the surface water drainage scheme. The surface water drainage scheme shall be implemented in accordance with the approved details
- 16) No development shall take place until a scheme to minimise the risk of offsite flooding caused by surface water run-off and groundwater during construction works and to prevent pollution has been submitted to, and approved in writing by, the local planning authority. The scheme shall subsequently be implemented as approved.
  - 17) No development shall take place until a Soil Management Plan ("the SMP") has been submitted to, and approved in writing by, the Local Planning Authority. The SMP should cover, but not be limited to: (a) construction phase soil protection during, for example, piling and array installation; (b) temporary loss of vegetation cover during/immediately following construction; and (c) operational phase monitoring of vegetation within the site. The SMP shall be implemented in accordance with the approved details.
  - 18) No development or preliminary groundworks of any kind shall take place until: (a) a programme of archaeological evaluation has been secured in accordance with a Written Scheme of Investigation (WSI) which has been submitted by the applicant and approved in writing by the local planning authority; and (b) the completion of the programme of archaeological evaluation identified in the WSI defined in (a) as confirmed by the local planning authority.
  - 19) A mitigation strategy detailing the excavation/preservation strategy shall be submitted to the local planning authority following the completion of the archaeological evaluation. The approved mitigation strategy shall be implemented in full thereafter.
  - 20) No development or preliminary groundworks shall commence on those areas containing archaeological deposits until the satisfactory completion of fieldwork, as detailed in the mitigation strategy, has been approved in writing by the local planning authority.
  - 21) If during any site investigation, excavation, engineering, or construction works evidence of land contamination is identified, works shall cease and it must be reported in writing immediately to the local planning authority. The contamination shall be investigated by a competent person in accordance with the Essex Contaminated Land Consortium's 'Land Affected by Contamination: Technical Guidance for Applicants and Developers' and The Environment Agency Land Contamination Risk Management (LCRM) and other current guidance deemed authoritative for the purposes, to the satisfaction of the local planning authority, to ensure that the site is made suitable for its end use. Where remediation is necessary, a remediation scheme must be prepared and submitted for the approval in writing of the local planning authority. Following completion of measures identified in the approved remediation scheme a



- verification report must be prepared, submitted to, and approved in writing by, the local planning authority.
- 22) No development shall take place until a detailed Construction Environmental Management Plan ("the CEMP") has been submitted to and approved in writing by the local planning authority. The plan shall include details of: (a) the construction programme and phasing; (b) hours of operation, delivery and storage of materials; (c) details of any hoardings; (d) measures for the control of dust and dirt on the public highway; (e) procedures for consultation and complaint management with local businesses and residents; (f) waste management proposals; (g) mechanisms to deal with environmental impacts such as noise and vibration, air quality and dust, light and odour; and (h) any proposed piling operations, including justification for the proposed piling strategy, a vibration impact assessment and proposed control and mitigation measures. The CEMP shall be consistent with the best practicable means as set out in the Uttlesford Code of Development Practice. The development shall be carried out in accordance with the approved CEMP.
  - 23) The approved development, once operational, shall have an export capacity of no more than 49.9MW (AC).
  - 24) The development hereby approved shall not commence until a plant noise assessment has been undertaken and submitted to the local planning authority for approval in writing. The noise assessment shall include the specific plant to be installed and predict external noise levels during the day and night from the operation of the solar farm and substation at the nearest residential receptors (NSRs) and compare the plant noise to the existing background sound levels. The location of NSRs for the assessment shall be submitted to the local planning authority for written approval prior to undertaking the plant noise assessment. The plant noise assessment shall include a scheme of noise mitigation measures to ensure that the proposed development does not increase the background noise levels (LA90, 15 mins). The noise mitigation scheme shall also ensure that the development hereby approved does not increase the total daytime, evening and night-time ambient noise level (LAeq, 15 mins) at noise sensitive receptors at any time.
  - 25) Prior to the development becoming operational, commissioning testing must take place within the proposed development site at times and under conditions approved by the local planning authority. The noise emissions measured during commissioning should be used to predict the external noise levels during daytime and night-time from the operation of the solar farm and substation at the NSRs. A pre-occupation testing report must be supplied and approved in writing by the local planning authority. Non-compliance with the noise levels approved in condition 24 will require additional mitigation measures to be incorporated into the development prior to commencement of the operational phase. Additional mitigation work measures shall be submitted to and approved in writing by the local planning authority before the operational phase commences. Any scheme of additional mitigation shall be implemented in accordance with the approved details and shown to be effective prior to commencement of the operational phase.

- 26) Should the plant installed under the planning permission hereby approved fail to comply with the noise limits specified in condition 24 at any time, it shall be switched off and not used again until it is able to comply. The use of the equipment must not commence or re-commence until a fully detailed noise survey and report has been submitted to and approved in writing by the local planning authority and approved mitigation measures such as acoustic screening, enclosures or silencers have been implemented.

## **INFORMATIVES**

1. 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 through correspondence during its course.
2. The applicant should refer to the Essex Green Infrastructure Strategy to ensure that the proposals are implementing multifunctional green/blue features effectively. The link can be found at <https://www.essex.gov.uk/protectingenvironment>
3. The applicant's attention is drawn to the new procedures for crane and tall equipment notifications issued by London Stanstead Airport.
4. Cadent Gas Ltd own and operate the gas infrastructure within the area of the development. Prior to carrying out works the applicant is advised to register relevant details of any planned works for Cadent's further review, to ensure that their requirements are adhered to.
5. All work within or affecting the highway is to be laid out and constructed by prior arrangement with, and to the requirements and satisfaction of, the Highway Authority, with details to be agreed before the commencement of works. The applicant is advised to contact the Development Management Team by email or by post to SMO2 – Essex Highways, Springfield Highways Depot, Colchester Road, Chelmsford CM2 5PU.
6. Prior to any works taking place in the public highway or areas to become public highway, the developer shall enter into an appropriate legal agreement to regulate the construction of the highway works. This will include the submission of detailed engineering drawings for approval and a safety audit.
7. The Highway Authority cannot accept any liability for costs associated with a developer's improvement. This includes design check safety audits, site supervision, commuted sums for maintenance, and any potential claims under Part 1 and Part 2 of the Land Compensation Act 1973. To protect the Highway Authority against such compensation claims, a cash deposit or bond may be required.
8. The Public Right of Way network is protected by the Highways Act 1980. Any unauthorised interference with any route noted on the Definitive Map of PRoW is a breach of this legislation. The public's rights and ease of passage over the public rights of way within the site (FP5/26 and FP5/21) and adjacent to the site (FP5/27, FP5/25 and FP5/22), shall be maintained free and unobstructed at all times to ensure the continued safe passage of the public on the definitive right of way.

9. Any drainage features proposed for adoption by Essex County Council should be consulted on with the relevant Highways Development Management Office.
10. Changes to existing water courses may require separate consent under the Land Drainage Act before works take place.
11. Any potential challenge to this Section 62A decision can only be made by an application to the High Court under s.288(1) of the Town and Country Planning Act 1990. An application must be made within six weeks of the date of the decision made. These notes are provided for guidance only. A person who thinks that 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 the link: <https://www.gov.uk/courts-tribunals/planning-court>
12. Responsibility for ensuring compliance with this Decision Notice rests with Uttlesford District Council and any applications relating to compliance with the conditions must be submitted to the Council.

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