

# CD13.1a

## Planning Proof of Evidence

Mr. Steven Bainbridge MRTPI

Enviromena Asset Management UK Ltd.

Construction of a temporary Solar Farm, to include the installation of ground-mounted solar panels together with associated works, equipment and necessary infrastructure.

Land North of the M6 Motorway, Between Birmingham and Coventry

Our ref ENV0076 | LPA ref. PAP/2023/0071 | Appeal ref. APP/R3705/W/24/3349391

March 2025



Image credit: North Warwickshire Council  
(<https://www.northwarks.gov.uk/climate-change>)



# ENVIROMENA

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*“The planning system should **support the transition to a low carbon future** in a changing climate, taking full account of flood risk and coastal change. It should help to: shape places in ways that contribute to **radical reductions in greenhouse gas emissions**, minimise vulnerability and improve resilience; encourage the reuse of existing resources, including the conversion of existing buildings; and **support renewable and low carbon energy** and associated infrastructure.”*

(NPPF 161)

*“When determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should: a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and **give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal’s contribution to a net zero future**; b) recognise that small-scale [...] projects provide a **valuable contribution to cutting greenhouse gas emissions**”*

(NPPF 168)

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# 1. Personal and Professional Statement

- 1.1 My name is Steven Bainbridge. I hold a first-class honours degree in Environmental Science from the University of East Anglia which hosts the world-renowned Climate Research Unit and a masters degree in Town and Country Planning.
- 1.2 I am a chartered member of the Royal Town Planning Institute (RTPI) and have 20 years' professional experience in Town and Country Planning across the private and public sectors, covering a wide-ranging practice, and returning to my undergraduate specialism by focusing on renewable energy. I am Head of Planning at Enviromena, 'the Appellant'.
- 1.3 I am cognisant that the Government and the Borough Council have both declared climate **emergencies**. I am also keenly aware that ground mounted solar is singled out by the Government as being relatively inexpensive to roll out at scale in order to move at pace towards the various targets and crises facing society. I am therefore conscious that scalable distribution of this form of renewable energy at the levels required to address the all-too well-known crises means proposing such development in the countryside; that being where meaningful roll out of ground mounted solar development can occur. I am aware of the implications such development can bring to concerns of heritage, landscape and farmland, but I am also very aware that the adverse effects of climate change are variously and widely acknowledged by statutory consultee organisations as the principal threat to these matters. I find it compelling that the planning system is uniquely placed to facilitate the shift to a low carbon future, and to safeguard society, the economy and the environment from the unparalleled threats that climate change is already imposing.
- 1.4 I am keenly aware that the country's power grid is, by virtue of its history, geared towards the dissemination of power from a few large sources, down increasingly small distribution networks to consumers. However, as the country moves from its historic and polluting fossil fuel powered power stations, to a more diffuse basket of sources, the national grid is ill prepared and struggling to reform itself. Therefore, proximity to points of connection is a vital practical consideration when locating ground mounted solar schemes; to the extent that if the country's targets are to be met and there be any hope of averting or lessening the adverse effects of the various crises facing society, then, as the NPPF tells us, radical action is required, and fast.
- 1.5 I am conscious of the California wildfires, the recent major floods in Spain, hurricane Milton in Florida and storms Bert in the UK in 2024 and Babet in 2023, to name a few.
- 1.6 I am also aware that "*halfway through this critical decade for tackling climate change, **the world is off-track to limiting global warming to 1.5°C. We are facing a triple planetary crisis of climate change, biodiversity loss and pollution posing critical threats to the UK's national***

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*interests across security, resilience, health, the economy and partnerships with other countries” (CD6.60).*

- 1.7 The evidence which I have prepared and provide for this appeal and in this proof of evidence is true and has been prepared and is given in accordance with the guidance of the Royal Town Planning Institute and I confirm that the opinions expressed are my true and professional opinions.

## 2. Introduction

- 2.1 This Proof of Evidence relates to a planning appeal submitted pursuant to Section 78 of the Town and Country Planning Act 1990 and concerns Enviromena’s proposal for:

*“Construction of a temporary Solar Farm, to include the installation of ground-mounted solar panels together with associated works, equipment and necessary infrastructure”*

- 2.2 The ‘appeal scheme’.

- 2.3 On land north of the M6 motorway, between Birmingham and Coventry, referred to on the decision notice as:

*“land 800 metres south of Park House Farm, Meriden Road, Fillongley”.*

- 2.4 In the borough of North Warwickshire, the ‘appeal site’.

- 2.5 The proposed solar farm would be capable of generating 40MW of renewable energy and “will contribute towards the UK’s efforts to tackling climate change and achieving Net Zero emissions and will provide significant environmental benefit by meeting the electrical needs of approximately 17,100 homes providing a CO<sub>2</sub> displacement of 11,300 tonnes compared to the same energy from fossil fuel sources” (CD1.30).

- 2.6 The decision notice (CD2.4) was issued on 10<sup>th</sup> July 2024. As set out between paragraphs 5.125 and 5.144 of CD9.1 I explain how the single reason for refusal can be separated into four constituent parts and my responses to those elements. I return to these constituent parts further on in this proof of evidence because:

- My green belt argument has evolved in response to the introduction of ‘grey belt’ in the Framework.
- The policy ‘tests’ referenced in the reason for refusal do not match the policy tests in the policies themselves, and this undermines the integrity of the reason for refusal.
- The language used to describe claimed harms evolved and emerged after the determinative planning committee meeting, and are therefore not an accurate

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representation of the decision making exercise in July 2024.

- 2.7 This Proof of Evidence evolves from the planning policy and other matters discussed in the Appellant Planning Statement of Case (CD9.1) and by reference to subsequent changes in national policy and other material considerations sets out two overarching and alternative routes through decision making in this case, namely:
- The appeal scheme is **Grey Belt** development, is not inappropriate and does not need to demonstrate very special circumstances.
  - Alternatively, the appeal scheme is **Green Belt** development, is inappropriate development; only impacting purpose c), but any temporary Green Belt and other harms are very clearly outweighed by the planning and wider environmental benefits such that very special circumstances are demonstrated.
- 2.8 This proof of evidence responds to matters raised in the Statements of Case by the LPA (CD9.5) and the Rule 6 Party (CD9.9), both published in November 2024 in advance of the Hearing, and before the appeal format was changed to the inquiry.
- 2.9 Other proofs of evidence are provided on behalf of Enviromena, which will respond as relevant to any opposing statements of case and cover:
- CD13.4 Landscape and green belt (the 'landscape' considerations thereof as distinct to the policy element which is dealt with in this proof).
  - CD13.6 Heritage.
  - CD13.8 Best and most versatile (BMV) land.
- 2.10 Where relevant and appropriate, I will defer to my specialist colleagues' proofs.
- 2.11 A suite of statements of common ground have been drawn up and include:
- Main (planning) statement between Enviromena and the local planning authority (LPA) (CD12.1).
  - Main (planning) statement between Enviromena and the Rule 6 Party (CD12.2).
  - Landscape specific statement between Enviromena and the LPA (CD12.3).
  - Heritage specific statement between Enviromena and the Rule 6 Party (CD12.4).
  - Drainage specific statement between Enviromena, the LPA (CD12.5).
  - Drainage specific statement between Enviromena and the Rule 6 Party (CD12.6).
  - BMV specific statement between Enviromena and the LPA (CD12.7).
  - BMV specific statement between Enviromena and the Rule 6 Party (CD12.8).

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2.12 The disputed matters that this proof of evidence necessarily revolves around include:

- Development plan compliance, with special focus on the proper policy tests.
- The planning balance.
- The deactivation of green belt policy via grey belt or, the degree, if any, of green belt harm caused and the need to demonstrate very special circumstances.
- The weights to be attributed in the final planning balance.

### 3. The Appeal Site and its Surroundings

3.1 As set out at Section 3 of Enviromena’s Statement of Case (CD9.1), the November 2024 Statement of Case prepared between Enviromena and the LPA in preparation for the Hearing defers to the Design and Access Statement (CD1.11) and the May 2023 Officer’s Report (CD2.1) for complementary descriptions of the site and its surroundings.

3.2 I have twice visited the site and would only wish to add how both times I was struck by:

- The ever-present dominance of the M6 motorway visually and audibly (contrary to the LPA’s Planning Agent’s claim of “*limited existing [...] manmade features*” (CD9.5 paragraph 6d),
- The absence of historic field boundaries / patterns and the locally characteristic ridge and furrow field patterns which the Rule 6 party speaks of,
- The varied undulating topography (the lack of dominance of the “*dome*” that the Council’s agents regularly invoke in the Council’s planning and landscape statements of case) and the boundary vegetation and the effect this had on preventing or filtering views of the site from the public rights of way I walked.

### 4. The Appeal Proposals

4.1 The development is a small-scale<sup>1</sup> solar farm of 40MW AC export. The site area is approximately 61 hectares, whilst the direct development footprint is some 5% of this. Recent changes to the wider planning system mean that larger solar farms than this one will soon find their way to being determined by the Town and Country Planning system, because the Government sees the Town and Country Planning system as the conduit to

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<sup>1</sup> CD6.41

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deliver more ground mounted solar, faster.

- 4.2 I am content to rely on our Statement of Case (CD9.1) Section 2 and our submitted drawings for a detailed description of the development, such that they need not be repeated here.

## 5. Planning History

- 5.1 By reference to the Council's committee reports, the Appellant's Planning Statement and the Main Statement of Common Ground, the parties agree there is no site-specific planning history.

## 6. The Decision Making Framework

- 6.1 In this section of my evidence, I identify the planning policies (including the specific policy tests) and guidance that will be of most relevance to the determination of this Appeal.

### **The Development Plan**

- 6.2 As agreed in the Main Statement of Common Ground, the Development Plan comprises:

- The North Warwickshire Local Plan (adopted 2021)(CD4.1)
- The Fillongley Neighbourhood Plan (made 2019)(CD4.2)<sup>2</sup>

- 6.3 The decision notice policies are:

- LP1 (Sustainable development)
- LP3 (Green Belt)
- LP14 (Landscape)
- LP30 (Built Form)
- FNP01 (Built Environment) and
- FNP02 (Natural Environment)

- 6.4 Other relevant policies of the Local Plan in dispute include:

- LP35 (Renewable Energy)

- 6.5 I have discussed in the Statement of Case how I find policy LP35's absence from the decision notice to be conspicuous.

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<sup>2</sup> It is understood that the FNP is under review, but it at an early stage and of no weight.

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6.6 Because of the importance of the advice in NPPF paragraphs 20, 21, 22 and 29 and PPG paragraph 001 Reference ID: 61-001-20190315, I have set out which of these policies I consider to be strategic and non-strategic at paragraph 5.3 of the Statement of Case (CD9.1).

### **Material Considerations**

6.7 The material considerations that I consider are relevant to this appeal are many and varied and are set out at length and in detail in our Statement of Case (CD9.1), and for brevity's sake do not need repeating here.

6.8 However, there have been new material policy considerations emerge since the July 2024 planning committee meeting and the submission and processing of the appeal to this point, that I can usefully direct the Inspector's attention to, and these include:

- Digest of UK Energy Statistics Annual Data for UK, 2023, DfESNZ, 30<sup>th</sup> July 2024
- Strategic Spatial Energy Plan, Commission to the National Energy System Operator, DfESNZ, October 2024 (CD6.23).
- Invest 2035: The UK's Modern Industrial Strategy, October 2024 (CD6.59).
- Clean Power 2030 Advice on Achieving Clean Power for Great Britain by 2030, NESO, November 2024 (CD6.2).
- Clean Power 2030 Action Plan: A New Era of Clean Electricity December 2024 (CD6.3)
- UK Food Security Report 2024, DEFRA, December 2024 (CD6.63).
- National Planning Policy Framework December 2024 (including the draft NPPF 2024 consultation 'overview' (CD6.52), the 'easy read guide' (CD6.54), the Government's response to the proposed reforms (CD6.53) i.e. the Government's response to the consultation responses.
- Land Use Consultation, HM Government, January 2025 (CD6.66, p.179 in particular).
- UK 2035 Nationally Determined Contribution, UK Government, January 2025 (CD6.60).

6.9 There have also been new relevant appeal decisions since July 2024 in this fast-moving area of planning, and these include:

- APP/P3040/W/23/3330045 Land East of Hawksworth and Northwest of Thoroton, Thoroton, Nottinghamshire.
- APP/T3725/V/23/3332671 Land to the west of Honiley Road (A4177), Honiley, Kenilworth.
- APP/D0840/W/23/3334658 Land known as Penhale Moor, south-east of Bosproval Farm and south of Penhale Road, Cornwall.



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- APP/W1525/W/24/3344509 and PP/B1550/W/24/3344510 Land South of Runwell Road, Runwell, Wickford, Essex, SS11 7QH.
  - APP/W3520/W/24/3345132 Land at Woodlands Farm, Stowmarket, Suffolk.
  - APP/V4630/W/24/3347424 Land off Chapel Lane, Great Barr, Walsall.

## 7. Case for the Appellant

### Development Plan position

- 7.1 By reference to Enviromena's detailed policy analysis (Statement of Case CD9.1 paragraphs 5.1 to 5.122 – Appendix 1 below for ease of reference) I maintain that the appeal scheme complies with the development plan.

### Reason for Refusal

- 7.2 In relation to the reason for refusal, my opinion on this remains as set out in the detailed assessment within Enviromena's Statement of Case (CD9.1) paragraphs 5.124 to 5.144, and can be summarised here as follows:

- The reason for refusal is made up of four constituent parts.
- Part 1 was not correct at the time, failing as it did to tackle the question of whether very special circumstances were not met. But in any event has been overtaken by events since the publication of the new NPPF; the appeal site is grey belt and therefore not inappropriate development.
- Part 2 asserts non-accordance with policies without being precise on the nature of the conflict, and the Council's meeting Minute provides no further elucidation the matter.
- Part 3 is an agglomeration of policy extracts from the policies referred to in part 2. However, in all cases the key policy tests are missing from the reason for refusal, which undermines their invocation.
- Part 4 relays the Council's claimed impacts deriving from the planning committee. The claimed impacts were unevidenced by Members and unchallenged by officers. The final balance of claimed substantial harm is then pitched against "any benefits" instead of 'all' the benefits, skewing the final outcome.

- 7.3 I maintain the position that the reason for refusal, is not an accurate representation of the planning committee's comments, necessarily omits policy tests and makes incorrect assertions of policy conflict which do not stand up to scrutiny.

### Main Issues

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7.4 Turning to the Likely Main Issues, these are listed in the post-CMC note (CD8.10) as:

- I. *“Whether the proposed development would not be inappropriate development in the green belt having regard to the Framework and any relevant development plan policies.*
- II. *Likely effects upon the significance of various heritage assets.*
- III. *Likely effects upon the character and appearance of the area having regard to landscape and visual effects – including public viewpoints and effects upon users of public rights of way.*
- IV. *The weight to be attached to effects upon Best and Most Versatile [agricultural] Land.”*

### **Main Issue 1 Development is Not Inappropriate**

7.5 It is common ground that the Appeal Site is located within the Green Belt.

7.6 It is my opinion that the Appeal Site is Grey Belt, for the reasons discussed below.

7.7 Local Plan policy LP3 states that “Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances”. It further provides a suite of criteria that are not prohibitive of this Appeal Scheme, but in doing so says that consideration of those criteria is “in addition to the NPPF”.

7.8 NPPF paragraph 155 states that (my emphasis):

*“The development of homes, commercial and **other development** in the Green Belt should also not be regarded as inappropriate where:*

*a. The development would utilise grey belt land and would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan;*

*b. There is a demonstrable unmet need for the type of development proposed<sup>56</sup>;*

*c. The development would be in a sustainable location, with particular reference to paragraphs 110 and 115 of this Framework<sup>57</sup>; and*

*d. Where applicable the development proposed meets the ‘Golden Rules’ requirements set out in paragraphs 156-157 below.”*

7.9 Criterion b. and c. are subject to Footnotes 56 and 57 which do not apply to this development.

7.10 The Appeal Scheme falls within the term “*other development*” not being “*homes*” or “*commercial*”.

7.11 The Glossary to the NPPF defines Grey Belt as follows (my emphasis):

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*“Grey belt: For the purposes of plan-making and decision-making, ‘grey belt’ is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143. ‘Grey belt’ excludes land where the application of the policies relating to the areas or assets in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development.”*

- 7.12 The Appeal Site is “any other land” in the Green Belt.
- 7.13 The Appeal Site is not excluded by any of the NPPF Footnote 7 policies.
- 7.14 The LPA have been clear since the March 2024 Planning Board Report (CD2.2) that “it is only the third – assisting in “safeguarding the countryside from encroachment”- that is relevant”. For the avoidance of doubt this means Purpose (c) and not (a), (b), (d) or (e).
- 7.15 Based on these conclusions, it is my opinion that the Appeal Site falls to be considered as Grey Belt and this is agreed with the LPA in the Main Statement of Common Ground (CD12.1).
- 7.16 Contrary to the main parties, the Rule 6 party take the view that the proposal does not meet the grey belt definition for the reasons set out in the table on page 17 of the Appellant/Rule 6 Main Statement of Common Ground. I cannot agree that the land strongly contributes to purpose (d) because there are no historic towns nearby. If the Rule 6 Party are going on to claim that Fillongley is a historic town, I know of no authority for that proposition and the recently updated PPG provides clarity: “Purpose D – to preserve the setting and special character of historic towns. This purpose relates to historic towns, not villages”.
- 7.17 The Rule 6 party also claims that Footnote 7 policies provide a strong heritage reason for refusal, disqualifying the grey belt definition. In my opinion the exercise in 215 is a flat balance exercise (as distinct to the 214 exercise which is tilted towards refusal).
- 7.18 In my opinion, the ‘strength’ that flows from a 215 balancing exercise must come from the extent of the imbalance; a finely balanced argument being less compelling, less strong, than a clearly imbalanced one.
- 7.19 My opinion is that the less than substantial harm to assets’ settings (only) is, whether one takes my colleague Ms. Armstrong’s view, or even the Rule 6’s view, compellingly outweighed by the sheer nature and extent of the public benefits from a development that inherently contributes to:
- The fight against climate change, which many consider is an existential threat to society, the environment and the economy.
  - Energy security, volatility and cost to consumers (which includes energy poverty), which

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is a significant societal and economic threat.

- Improving air quality, which is an important societal issue.

7.20 I am mindful of the range of issues included in the National Trust’s recently published climate hazard map:

- Overheating – of spaces reduces occupancy, visits and increases need for physical interventions such as air conditioning.
- Storm damage – from wind and water.
- Landslides and soil heave – damaging structures and buildings and undermining foundations

7.21 I am mindful that Historic England has said “ *The climate, energy and biodiversity crisis will affect every aspect of Historic England’s work. [...]. Sustainable energy sources are critical in reducing climate change*” (CD6.39).

7.22 I am mindful that the National Trust has said “ *Climate change is the biggest threat to the coastline, countryside and historic buildings we care for*” (CD6.45 and 6.46).

7.23 For these reasons, I cannot agree with the Rule 6 party on Footnote 7 heritage policy and the grey belt definition, but I can understand why, tactically, they would want to ‘hold the line’ at the definition stage, and not venture into the paragraph 155 matters.

#### **Para 155 criterion a**

7.24 NPPF paragraph 155.a. (first part); the Appeal Site meets the NPPF glossary of Grey Belt. This is common ground with the LPA.

7.25 The second part of NPPF paragraph 155.a. requires that the development would not fundamentally undermine, the purposes, when taken together, of the remaining Green Belt across the area of the plan. I take this to mean an assessment of the proposal against all five of the purposes a) to e) in NPPF paragraph 143. This matter is not agreed with the LPA which claims that the criteria is failed by virtue of having only conflicted purpose (c), and by focusing its assessment inwards on the site and immediate area, rather than the remainder of the plan area. For these reasons I cannot agree with the approach that the LPA took to reaching their conclusion on this issue.

7.26 I find the recently published guidance in the PPG supports my view because of the focus on “the site” (my emphasis underlined):

*“Proposals on grey belt land*

*How can Green Belt assessments be used in the development management process?*

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*An assessment of Green Belt will (alongside other considerations) inform the determination of applications which involve reaching a judgement as to whether proposals utilise grey belt land and whether development of the site would fundamentally undermine the purposes of the remaining Green Belt across the plan area.*

*Where grey belt sites are not identified in existing plans or Green Belt assessments, it is expected that authorities should consider evidence, in light of this guidance, on:*

- whether the site strongly contributes to the Green Belt purposes a, b or d; and*
- whether the application of policies to areas and assets of particular importance identified in footnote 7 to the NPPF (other than Green Belt) provide a strong reason to restrict development; and*
- whether development of the site would fundamentally undermine the purposes of the remaining Green Belt across the plan area, as set out in national policy and this guidance.*

*Paragraph: 009 Reference ID: 64-009-20250225' (CD6.70).*

**Why I do not agree with the LPA's position on 155.b. second part – the 'fundamental test'**

- 7.27 In the absence of the anticipated guidance on grey belt interpretation expected to appear in Planning Practice Guidance, the LPA took a Supplementary Report to its Planning Board on 3<sup>rd</sup> February 2025 (Appendix 2), the purpose being to update the Planning Board on "the material change" presented by the new NPPF, grey belt, and implications to this appeal.
- 7.28 The Supplementary Report repeated the reason for refusal and summarised it as relating "to *Green Belt, landscape and visual matters*" only.
- 7.29 The Supplementary Report reappraised the Planning Board on Green Belt policy, and explained the newly introduced concept of Grey Belt.
- 7.30 The Supplementary Report is very clear at its paragraph 3.4 that "*The conclusion above means that this is "grey belt land" within the Green Belt*". The transcript at Appendix 3 confirms that Planning Board accepted that opinion.
- 7.31 The Supplementary Report then went on to advise the Planning Board on the LPA's approach to 155.b. (second part). In my opinion, the short 'assessment' expressed in the Supplementary Report is introspective, 'old-fashioned' and flawed, for the reasons I give below:

Elements of paragraph 3.5 of LPA Supplementary Report	Appellant response.
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<p><i>The first is, that if even if the development would use grey belt land, would it still fundamentally undermine the purposes – taken together – of the remaining Green Belt across the area of the plan?</i></p>	<p>No particular comment, other than to reiterate that the exercise is one of taking the purposes together, not purpose c in isolation.</p>
<p><i>It is evident from the definition of “grey belt” land that purposes (c) and (e) of including land in the Green Belt have been omitted.</i></p>	<p>We agree with that interpretation. We find the omission of purpose c from the grey belt definition to be compelling.</p>
<p><i>Purpose (c) relates to assisting in the safeguarding the countryside from encroachment.</i></p>	<p>We agree with that interpretation.</p>
<p><i>The Officers’ reports concluded that there was conflict with this purpose and the SOCG referred to above did explicitly include this conclusion as a matter agreed with the appellant.</i></p>	<p>It is true that the officer’s report did claim conflict with purpose c in isolation in 2024, but that was prior to Grey Belt and the need to take purposes together.</p>
<p><i>It is not considered that this conclusion has changed with the introduction of “grey belt” land.</i></p>	<p>Whether the LPA’s position on purpose c, in isolation, has changed or not, the Planning Board needed to be advised that it is the purposes a to e taken together across the entire area of the plan that needs to be done now.</p>
<p><i>The physical situation on the site and its setting has not changed since the determination of this application and thus there has been no material change to the “countryside” here.</i></p>	<p>It is not relevant to be discussing matters on the site and its setting and in the context of purpose c in isolation.</p> <p>The Appellant does not understand the reference to “countryside” and finds it irrelevant to Green Belt and Grey Belt matters.</p> <p>It was necessary to advise Planning Board that it needed to consider whether “<i>The development [...] would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area</i>”</p>

	<i>of the plan”.</i> The Supplementary Report and the Transcript both show that the Planning Board were not advised how to approach this matter properly.
<i>The proposal still remains in conflict with this purpose.</i>	This is irrelevant. The question should have been whether “ <i>The development[...] would not fundamentally undermine the purposes (taken together) of the remaining Green Belt across the area of the plan”.</i>
<i>Turning to purpose (e), the earlier officer reports referred to above and the SOCG, confirm that there would be no conflict with this purpose.</i>	We agree with that interpretation.

- 7.32 In my opinion, the table above shows that the Planning Board were not properly advised, and the Transcript further confirms that neither did the Planning Board seek further advice or corrections.
- 7.33 The LPA’s position (the advice given to Planning Board, and the subsequent committee decision) on NPPF paragraph 155.b. second part is therefore based on flawed advice and is itself flawed.
- 7.34 Paragraph 3.5 of the Supplementary Report is very short, bearing in mind its importance to this appeal. Nevertheless, it need not have been long, but it did need to be correct. The record shows it was not.
- 7.35 Having accepted that the appeal meets the Grey Belt definition, and every test within paragraph 155 except 155.b. part 2, and now having no clear or defensible position on 155.b. part 2, I find the LPA’s ongoing position on Green and Grey Belt to be fundamentally flawed.
- 7.36 One cannot know what the Planning Board’s position would have been; had they been properly advised. However, it is conceivable that the Planning Board could have voted to accept that the development was no longer inappropriate, and potentially to abandon defence of the appeal altogether, for fear of costs.

**Why I take my position on 155.b. second part – the ‘fundamental test’**

- 7.37 The area of remaining Green Belt (i.e. land that is Green Belt in North Warwickshire minus

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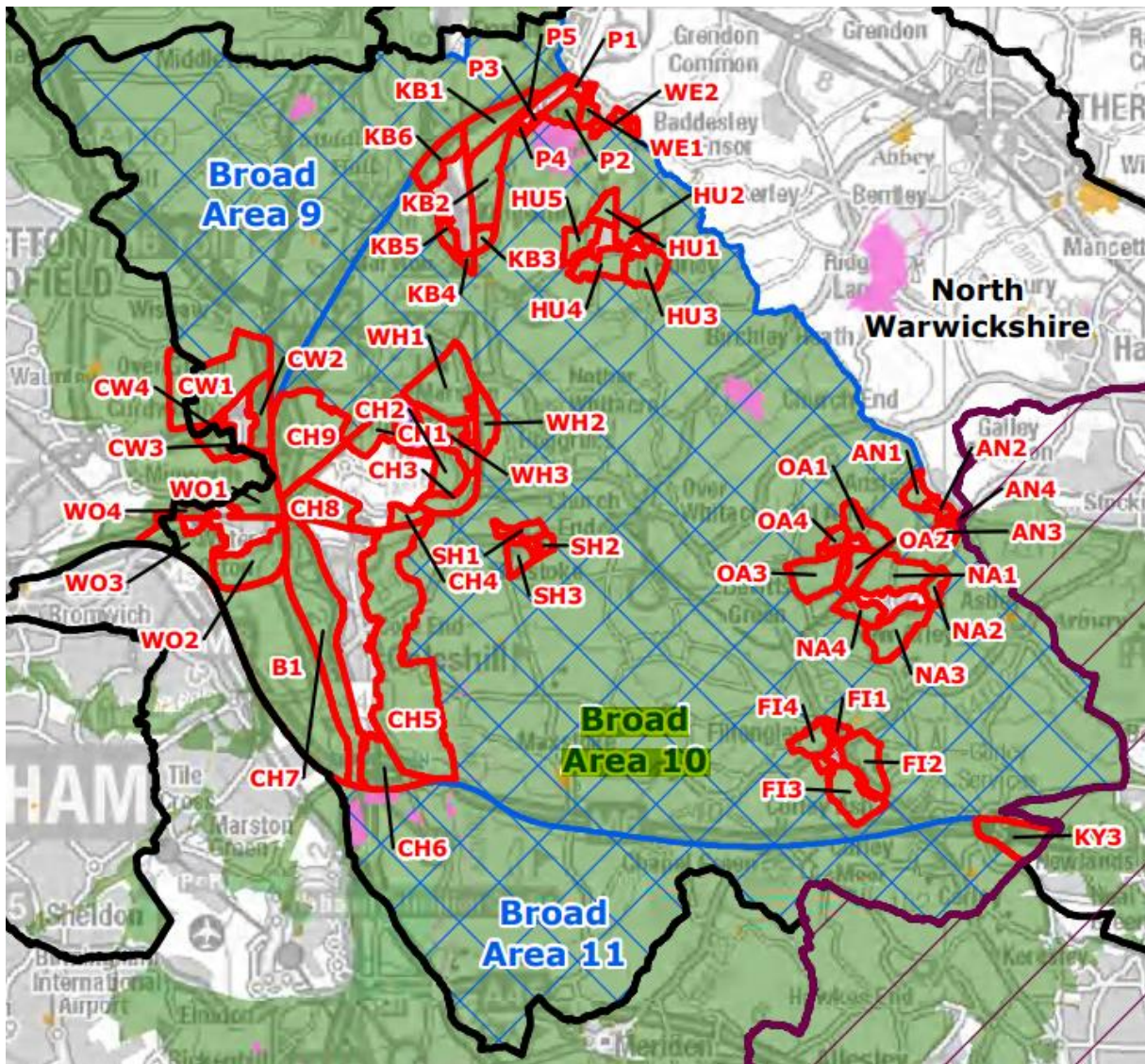
the area of the appeal site) is 17,246 hectares<sup>3</sup> minus 62 hectares = 17,184 hectares. This equates to 99.64% of North Warwickshire's Green Belt. As a headline figure, I think it would not be credible to claim that the combined purposes of 99.64% of North Warwickshire's Green Belt area could be fundamentally undermined by the Appeal Scheme.

- 7.38 I am mindful that this exercise may not be just a mathematical one. Therefore, I discuss the matter further below.
- 7.39 The impact on Purposes (a), (b), (d) and (e) are discussed above, and I have concluded there would be no conflict.
- 7.40 As to Purpose (c) it is common ground that *"It was only the third purpose of including land in the Green Belt that was considered may be conflicted – namely the safeguarding of the countryside from encroachment"*.
- 7.41 The Appeal Site sits in Broad Area 10 of the Coventry and Warwickshire Joint Green Belt Study 2016 (CD5.3).
- 7.42 The map on page 10 of that document (inset below) makes clear that a very large proportion of the Green Belt in North Warwickshire is washed over by Broad Area 10:

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<sup>3</sup> I have derived this figure by asking a design engineer at Enviromena to overlay a GIS Green Belt dataset from here: [English local authority Green Belt dataset - data.gov.uk](#) with a GIS dataset of local authority boundaries from here: [Local Authority Districts \(May 2024\) Boundaries UK BGC | Open Geography Portal](#) and to extract the area of Green Belt overlaying North Warwickshire. In order to double check the figure, I consulted both Chat GPT and Bing Copilot AI and both resources gave similar figures.





7.43 Broad Area 10 receives little coverage in the 2016 study and therefore the text bears repeating here for ease of reference:

*“Broad Area 10*

*4.16 Broad area 10 lies between Nuneaton and Bedworth to the east, Kingsbury and Piccadilly to the north, Coventry to the south east and Coleshill in the west. In between these larger settlements are a number of villages – Fillongley, Old Arley, New Arley, Hurley and Shustoke. The broad area contains several Scheduled Monuments and pockets of ancient woodland, two of which are designated as SSSIs: Hoar Park Wood and Kingsbury Wood. There are two other SSSIs within the broad area, Whitacre Heath and the River Blythe.*

*4.17 Overall, the broad area makes a considerable contribution to all of the Green belt purposes:*

- *Checking the sprawl of Nuneaton and Bedworth, Kingsbury and Piccadilly, Coventry, Coleshill, Fillongley, Old Arley, New Arley, Hurley and Shustoke.*
- *Preventing the merging of Nuneaton and Bedworth, Kingsbury and Piccadilly, Coventry,*

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*Coleshill, Fillongley, Old Arley, New Arley, Hurley and Shustoke.*

- *Safeguarding the countryside which contains several ancient woodlands, SSSIs, historic villages and Scheduled Monuments.*

- *Preserving the setting and special character of the historic town of Coleshill, the historic core of which contains the prominent Grade I listed Church of St Peter and St Paul, which is visible across the western half of the broad area.*

- *Assisting urban regeneration by encouraging the recycling of derelict and other urban land across the West Midlands.”*

7.44 The study claims that “*the broad area makes a considerable contribution to all of the Green Belt purposes*”. It therefore claims to be ‘all things to all purposes’ and I can understand how, because the broad area is so large, such a quantitative conclusion was reached. However, given the relative scale of the Appeal Site in the context of the near-all-encompassing Broad Area 10, the harm from encroachment by the Appeal Scheme can only be negligible.

7.45 It is clear is that the 2016 study came to a global conclusion that all of Broad Area 10 makes its “*considerable contribute*” to purpose (c). The manner in which the 2016 study was undertaken in Broad Area 10 does not assist in assessing the effect of this development on Purpose (c) in this case.

7.46 Drawing all of the above together, I conclude that the development would not fundamentally undermine the purposes (taken together) of the 99.64% remaining Green Belt in the plan area. NPPF paragraph 155.a. is met in my opinion.

#### **Para 155 criterion b**

7.47 NPPF paragraph 155.b. requires that “*There is a demonstrable unmet need for the type of development proposed*”.

7.48 I am mindful that the need to demonstrate unmet need applies broadly, and insofar as renewables development is concerned, could be said to be answered by NPPF paragraph 168.a), which explains that decision-makers on renewable energy developments should “*not require applicants to demonstrate the overall need for renewable or low carbon energy, and give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal’s contribution to a net zero future.*”

7.49 In this case I assert that a range of clear and compelling unmet needs are demonstrated in a number of ways, including:

- The contribution of renewable energy towards net zero targets by 2050 (NPPF paragraphs 161 and 168 in combination). Net zero has not been reached, therefore

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that need has not been met.

- The contribution towards energy security and the Government ambition to be a 'Green Energy Superpower'. The UK is still dependent on volatile and non-domestic sources of energy and the country is not yet a Green Energy Superpower. Therefore, that need remains unmet.
- Government's goal for a fivefold increase in solar by 2035 up to 70GW<sup>4</sup>, maximizing ground mount solar (British Energy Security Strategy CD6.1, Powering Up Britain (CD6.20, 6.21 and 6.22) and the more immediate plan for a trebling of solar to 47GW by 2030 (CD6.2 Clean Power 2030 and CD6.3 Clean Power 2030 Action Plan). These figures have not been met.
- International obligations under the Paris Climate Agreement and the need to limit the global average surface temperature increase by the year 2100 by no more than 1.5°C warmer than pre-industrial levels. I cannot conceive that most people will not be aware from the recent reporting of the IPCC, Royal Meteorological Society, Met Office and others that the limit was exceeded for the whole of 2024 for the first time ever, that this crucial limit already appears redundant as global society faces failing on the 2.0°C limit in coming years. The need to limit to 1.5°C is unmet.
- The need to avert the declared climate crisis. Recent extreme weather events, wildfires and floods internationally demonstrate this unmet need remains.
- The need to avert the declared biodiversity crisis, sometimes referred to as the "*sixth mass extinction*". This unmet need remains.

7.50 In the alternative I find no evidence that any of these needs have been met.

7.51 I find that the quantifiable evidence in support of the proposition that unmet needs have not been met, to which this Appeal Scheme contributes to, and in the short term, is a compelling argument that the requirement of paragraph 155.b. is met.

7.52 It is common ground with the LPA that 155.b. is met.

#### **Paragraph 155 criterion c**

7.53 NPPF paragraph 155.c. requires "*development would be in a sustainable location, with particular reference to paragraphs 110 and 115*". This requirement is aimed at all types of development, such as "*homes and commercial*", where the particular reference to paragraphs 110 and 115 is more logical.

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<sup>4</sup> A figure that I have colloquially referred to in the Statement of Case (CD9.1) as "*two Fillongleys a week*" to convey the scale of the target in 'ley terms'.

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- 7.54 Ground mounted solar development is inherently located in rural areas, where the NPPF says approaches will vary.
- 7.55 In this case there is no Highways reason for refusal, and no significant highways implications.
- 7.56 In my opinion the requirement to have particular reference to paragraphs 110 and 115 is of little if any real practical relevance. Construction traffic can be managed, and post-construction maintenance traffic is minimal. Safe and suitable access to the site can be achieved for all users (which will be maintenance staff), as such this requirement is met.
- 7.57 NPS EN3 (CD6.28) paragraph 2.3.9 addresses ‘Other Location Considerations’ and, reiterating the discussion above, and in supporting documents, that a key locational factor for renewable energy schemes is a viable point of connection.
- 7.58 In this case the important point of connection has capacity, is secured and is viable to connect into with an available site; this is a locational benefit that contributes to its sustainability of location in a development-specific way.
- 7.59 The locational considerations for the proposal are set out in Section 5 of CD1.29 submitted with the planning application. I note that it has been accepted in other appeals that solar farms are commonly located in rural areas<sup>5</sup>. I would go further and say that, bearing in mind the Government’s promotion of ground mounted solar as “*one of the cheapest forms of electricity generation and is readily deployable at scale. Government seeks large scale solar deployment across the UK*” (CD6.20 page 20) it is inherent that it will be located in rural areas, and justifiably so with the economies of scale it delivers, as well as the multiple benefits from the utilizing of land (surface water drainage betterments (over and above the relatively unmitigated farmland), BNG, hedgerow restoration).
- 7.60 I consider that the acceptable low level of traffic generation from the proposal, coupled with the inherent necessity of the rural location are such that the proposal meets the requirements of paragraph 155.c. This matter is not disagreed with the LPA in the Statement of Common Ground (CD12.1).

**Paragraph 155 criterion d.**

- 7.61 Criterion d. states “*Where applicable the development proposed meets the ‘Golden Rules’ requirements set out in paragraphs 156-157 below*”.

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<sup>5</sup> Including at New Works, Telford (CD7.44, SoS letter para 12), Steerway, Telford (CD7.33, paragraph 21) and at Halse Road, Northamptonshire, where the Inspector noted: “*For solar farms there is an unavoidable and very strong locational driver of being able to connect to the national grid in an area with capacity to accept the connection. This is a fundamental driver for location, coupled with the need for a large area of land, which invariably drives such schemes into rural areas.*” (CD7.43, paragraph 77).

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7.62 Criterion d. is not relevant because the requirements in paragraphs 156 and 157 relate to housing and this is common ground with the LPA. However, as an aside, the appeal scheme provides improvements to local infrastructure (enhanced flood mitigation and improvements to the local electricity grid network that will leave a connection-legacy for the future), and it provides a green space that will be accessible to the public; the community garden.

### **Conclusion on Main Issue 1**

7.63 In light of my detailed analysis above, I consider that the site meets the NPPF definition of Grey Belt and the proposal meets the criteria of Paragraph 155, so as to conclude that the appeal proposal is not inappropriate development within the Green Belt.

7.64 Consequently, I do not consider that the requirement of NPPF paragraph 153, to demonstrate very special circumstances (VSC), applies.

7.65 As such there would no conflict with North Warwickshire Local Plan Policy LP3 and the first main part of the reason for refusal falls away.

7.66 The Courts have found that where a development is found not to be inappropriate development it should not be regarded as harmful either to the openness of the GB or to the purposes of including land in the GB.

7.67 Notwithstanding my view that the proposal is not inappropriate in terms of the NPPF and therefore there is no requirement to demonstrate VSC, in the event that the Inspector determines that this is required, I have assessed in my evidence below the relevant level harm to the Green Belt and my evidence weighs this harm and any other identified harms against the benefits to determine whether VSCs are demonstrated.

7.68 To inform this consideration, in this section of my Evidence, I now turn to further consider the effect of the Appeal Scheme on the openness of, and purposes of including land within, the Green Belt.

### **Effect on the openness of the Green Belt**

7.69 As above, it is my opinion that the scheme is not 'inappropriate' in the Green Belt. Nonetheless, in case the Inspector concludes otherwise and in light of the reasons for refusal, I have considered impacts on Green Belt openness. I note that the PPG advises that in assessing the impact of a proposal on the openness of the Green Belt, the circumstances of each case require a judgement, and there are 3 specific matters identified in the PPG which may need to be taken into account (Planning Practice Guidance on Green Belts - Paragraph: 001 Reference ID: 64-001-20190722):

- *“openness is capable of having both spatial and visual aspects – in other words, the*

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*visual impact of the proposal may be relevant, as could its volume;*

- *the duration of the development, and its remediability – taking into account any provisions to return land to its original state or to an equivalent (or improved) state of openness; and*
- *the degree of activity likely to be generated, such as traffic generation”.*

7.70 The first consideration is that openness is capable of having both spatial and visual aspects.

7.71 Having regard to the spatial aspect of openness, whilst I acknowledge that there is an effect on the spatial aspect of Green Belt openness, I note and concur with Mr. Cook’s view that *“The introduction of the proposed solar farm would inevitably introduce various elements of the built form and reduce the spatial aspect associated with the site to some degree, though this would be limited given the low-profile nature of the development combined with its light footprint. Given the hedgerows around the perimeter of the Appeal Site being of a comparable height, the perceived loss of any spatial aspect associated with the fields would be limited resulting in a limited and moderate degree of harm in this regard”.*

7.72 I consider that the solar panels and associated infrastructure has a relatively modest mass and footprint, and the perception of the volume of the scheme is further reduced by their spacing and the voids under the panels. These characteristics of solar development are such that the development would differ significantly from other more solid forms of development including residential and commercial development which has a greater mass and permanent effect on openness<sup>6</sup>.

7.73 Nevertheless, as openness can be defined for Green Belt purposes as a relative absence of built form, I acknowledge that the Appeal Scheme would diminish the openness of the Green Belt spatially.

7.74 With regard to the visual aspect of openness, I note and agree with Mr. Cook’s analysis that *“there is already a relatively strong sense of enclosure associated with the Appeal Site. This is due to the substantial presence of mature hedgerows and tree cover which frame much of the Appeal Site, the M6 motorway and the associated belts of vegetation, along with the undulating landform. This aspect of strong enclosure would continue to remain and prevail with the proposed solar farm in place such that in the wider area of countryside within the Green Belt beyond the Appeal Site, there would be generally very little visibility of the proposed scheme and as such, there would be little change to the perceived sense of openness within the locality and this particular part of the Green Belt as a result of the*

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<sup>6</sup> These factors have been recognised as relevant in previous planning appeals including at Harlow Road (CD7.2 para 13) Chelmsford (CD7.8, para 14) and Rayleigh (CD7.1 para 16).

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*proposed solar farm*".

- 7.75 The second consideration identified by the NPPG concerns the duration of the Proposed Development and its remediability.
- 7.76 The Appeal Scheme will be in place for a temporary period of 40 years of operation, after which it will be fully decommissioned, and land returned to its former undeveloped use.
- 7.77 I appreciate some commentators consider 40 years to be a long time, tantamount to permanence from their personal perspective when measured against a human lifetime. However, it is my opinion that 40 years pales in comparison to the adverse effects of climate change, which this development will help to curb, and which are widely accepted adversely affect many future generations. Add to this that the target date for net zero is 2050; the period between now and then is 25 years, over half the lifetime of the Appeal Scheme. Whichever one looks, we are dealing with long timeframes regardless which side of the fence one is on.
- 7.78 I consider therefore that the Proposed Development is not a permanent form of development and as such will not have a permanent effect of the openness of the Green Belt, which would be the case for many other forms of built development<sup>7</sup>.
- 7.79 The third consideration identified by the PPG concerns the degree of activity likely to be generated, such as traffic generation. Once the construction period<sup>8</sup> is completed after a short duration of months, there will be only infrequent maintenance visits to the Appeal Scheme which will be low intensity and low volume. I therefore consider that the harm to the openness of the Green Belt by reason of degree of activity would be very limited once the Appeal Scheme is operational.
- 7.80 In reaching my conclusions on these matters, I rely on Mr. Cook's evidence relating to the potential impacts of the Appeal Scheme on the openness of the Green Belt.
- 7.81 Paragraph 143 of the NPPF identifies five purposes of the Green Belt, and I will consider whether there is any harm in respect of each of these five purposes (again, notwithstanding my overarching conclusion that the proposal is not inappropriate development).
- 7.82 I note that it is common ground in the main SoCG (CD12.1) that the proposal does not conflict with purposes (a), (b), (d) and (e) of the NPPF.
- 7.83 For completeness, I set out my considerations of each of the 5 purposes below:

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<sup>7</sup> I note the Inspector took this temporary 40 year period consideration into account in weighing the harm to the openness of the Green Belt in the Chelmsford decision (CD7.8, paragraph 15). This is also recognised in NPS EN-3 where it states the time limit (temporary nature of) is likely to be an "*important consideration*" for the Secretary of State.

<sup>8</sup> 28 weeks (page 7 of Cd1.34) and "short lived" (page 6g/109 of CD2.2).

- Purpose a) which is to check the unrestricted sprawl of large built up areas, I consider that the Appeal Site lies outside of any large built up area, and would not result in the sprawling of an existing built up area.
- Purpose b) which is to prevent neighbouring towns from merging into one another, the Appeal Scheme does not adjoin any of the neighbouring towns.
- Purpose (d) which is to preserve the setting and special character of historic towns. I consider that the Appeal Scheme does not offend either the setting or special character of a 'historic town' because Fillongley village is not a historic town (CD7.4 para 21 and CD7.9 Inspector's Report para 12.9) and therefore complies with this requirement. If any party were to claim that Fillongley somehow meets any definition of a town, that has a historic core (e.g. the "*village centre*" discussed in policy FNP02) then this is not sufficient to elevate it to being a historic town (CD7.4 para 21 and CD7,1 para 29).
- Purpose (e) which is to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. Due to the large scale and specific grid connection requirements of the Appeal Scheme, there are no derelict or other urban land sites available and therefore I consider that there is no conflict with this objective<sup>9</sup>.

7.84 In conclusion on the 5 purposes of Green Belt, I consider that the Appeal Scheme would result in "limited level of harm" (Mr. Cook CD13.4) to purpose c) only, but that the strategic aims, performance and function of the remaining Green Belt would remain intact both quantitatively and qualitatively.

7.85 Noting the definition of Grey Belt, I have concluded above that the site meets this definition and in accordance with Paragraph 155 the Appeal Scheme is not inappropriate development and does not require demonstration of Very Special Circumstances.

7.86 Nonetheless, in the event that the VSC balance is required, I have assessed if the development were to be considered inappropriate development in the Green Belt it would, by definition, result in harm to the Green Belt.

7.87 As to the nature and extent of this harm, I echo Mr. Cook's opinion that the Appeal Scheme would result in "*moderate (adverse) harm to the openness of the Green Belt though this would be limited and localised within the context of this wide designation*", and that it would further result in some encroachment, which conflicts with Purpose c). In respect of the other four purposes, it is common ground with the LPA that there is no harm in this

<sup>9</sup> I am mindful that in the Chelmsford appeal, the Inspector found no conflict to purpose (e) from a 49.9MW solar farm being sited in the Green Belt rather than being deflected towards previously developed land. The Inspector accepted that it would not be cost effective to locate a solar farm on PDL due to land values and rates of return (CD7.15, paragraph 17).



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case.

7.88 Any harm to the Green Belt should be afforded substantial weight in the planning balance, however that does not mean that the harm is, in itself, great or substantial.

7.89 It is my opinion that there is a limited amount of harm, to which substantial weight will be applied.

7.90 I return in Section 11 to consider this harm to the openness of the Green Belt, together with any other harm, and whether this harm is clearly<sup>10</sup> outweighed by other considerations.

### **Main Issue 2 Effects on Heritage Significance**

7.91 This matter is addressed in Ms. Armstrong's evidence, and I agree with her conclusion that: *"The proposed development would result in less than substantial harm, at the low end of the spectrum, to the heritage significance of the following heritage assets:*

- *Fillongley Conservation Area.*
- *Scheduled Ringwork Castle.*
- *Grade II Listed Park House Farm.*
- *Grade II Listed Fillongley Mount".*

7.92 That: *"The harm identified arises from a change in 'setting' only and would be removed following the decommissioning of the solar farm and removal of associated infrastructure".* Making the harm temporary in line with the lifespan of the development and short in terms of the 'lifespan' of the heritage assets which are measured in terms of centuries.

7.93 That: *"I do not consider that harm to the heritage significance of the following designated heritage assets, as identified by MBC, would arise as a result of a change in 'setting':*

- *Grade II\* Listed Church of St Mary and All Saints.*
- *Grade II Listed White House Farmhouse.*
- *Grade II Listed Barn 20 Metres North of Park Farmhouse.*
- *Grade II Listed Cartshed and Granary 5 Metres North East of Park House".*

7.94 I return in Section 11 to consider the effects on heritage significance, together with any other harm, and whether this harm is clearly outweighed by other considerations.

7.95 I further note Ms. Armstrong's comments that: *"I do not consider that the elements located within the Appeal Site identified as NDHAs by Keystone Heritage should be considered as such, nor do I consider that the Appeal Site should be classified as a non-designated*

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<sup>10</sup> Which I take to be a measure of clarity and not extent.

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*landscape associated with the either the medieval or post-medieval period.*

*The assessment provided within the Keystone Heritage Report over relies on HER data, without considering the source of identification or the current context. Furthermore, the assessment presented does not accurately reflect the current character or composition of the Appeal Site, nor the manner to which it is experienced’.*

- 7.96 I am mindful that the NPPF requires a balancing exercise of harms versus public benefits.
- 7.97 I am also mindful that Historic England and the National Trust have both variously publicly stated that climate change is the greatest threat to heritage (CD6.39, 6.45 and 6.46). This development will lessen that threat.
- 7.98 In my opinion therefore, the effects of the development on the heritage significance of assets’ settings is less than substantial and outweighed by the public benefits of the development, satisfying Main Issue 2 in favour of the appeal scheme.

### **Main Issue 3 Character and Appearance of the Area**

- 7.99 This matter is addressed in Mr. Cook’s evidence, and I agree with his conclusion that whilst there would be some limited adverse effects on landscape character and visual amenity, these would be localised.
- 7.100 Mr. Cook considers that the visual effects of the proposed solar farm would be very limited due to its substantial visual containment as a result of a combination of topography and surrounding vegetation.
- 7.101 On the effect of the Appeal Scheme on landscape character, Mr. Cook considers that there would be a moderate adverse effect upon the landscape character of the Appeal Site itself and its immediate environs. The physical character of the surrounding landscape would remain and prevail unchanged with Appeal scheme in place.
- 7.102 I return in Section 11 to consider the harm to landscape character and visual amenity, together with any other harm, and whether this harm is clearly outweighed by other considerations.

### **Main Issue 4 Weight to be Attached to Effects upon Best and Most Versatile Land**

- 7.103 The agricultural land values across the appeal site are common ground.
- 7.104 It is common ground that the majority of the site will be returned to at least the original land quality on decommissioning and that the site can be used pastorally in the meantime.
- 7.105 It is also common ground that planning policy requires the economic and other benefits of the Best and Most Versatile land to be recognised, but policy does not place a bar on the use of BMV land for ground mounted solar.

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- 7.106 Beyond the statements of common ground agreed with the LPA and the Rule 6 Party, the evidence on BMV land is provided by Mr. Kernon in his proof (CD13.8).
- 7.107 I note and repeat Mr. Kernon's evidence that there is nothing in policy (which is supported by appeal precedent) that requires an alternative or sequential site assessment for use of BMV land.
- 7.108 At Mr. Kenon's paragraph 3.7 he quotes the LPA's case officer to the planning application advising Members that "*the use of BMV is not a reason for refusal as a matter of principle*". Consequently, BMV was not a reason for refusal in this appeal (which is common ground), the LPA having gone as far as to say "*the impact here is "acceptable" in the overall planning balance*"<sup>11</sup> and "*limited benefit*"<sup>12</sup>. Similarly, Enviromena's Statement of Case gave a minor scale of benefit receiving minor level of weight to soil health benefits and a minor scale of benefit receiving moderate weight to the combined use of land.
- 7.109 Nevertheless, the Rule 6 Party have raised the topic in their submissions.
- 7.110 From the various submissions made by Enviromena from the planning application to the appeal submission and to date, I summarise the following findings:
- At the national level the biggest threat to BMV is from climate change (CD13.8 para 4.18 and CD6.57). Ground mounted solar is a principal means by which climate change can be tackled. Ergo, ground mounted solar has a positive impact on BMV in that vein.
  - The land will not be "lost" to the appeal scheme. The majority of the site will be returned to at least its current agricultural land quality at the end of the scheme's lifetime, during which time agricultural flexibility will have been reduced, but multiple land uses will have been achieved. The locations of the parking and DNO substation are not currently in production, they are host to the manure pile (Tony para 16 page 59). Natural England were clear in their consultation response dated 5<sup>th</sup> April 2023 (the 190<sup>th</sup> page of CD3.2) that the appeal scheme is "*unlikely to lead to significant permanent loss of BMV agricultural land*".
  - That NPPF paragraph 187b advises "recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land" and approached positively these include "opportunities to achieve net environmental gains – such as developments that would enable new habitat creation" (NPPF paragraph 125a) but also "wildlife, flood risk mitigation and food production" (NPPF paragraph 125b)., "*contributing to radical reductions in greenhouse gas*

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<sup>11</sup> Page 6g/121 of CD2.2.

<sup>12</sup> Paragraph 9.25 of LPA Statement of Case CD9.5

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*emissions, minimising vulnerability and improve resilience [...] and supporting renewable and low carbon energy”* (NPPF paragraph 161). Food production can include pastoral farming, market gardening, poultry and apiculture (bee keeping, which is increasingly vital for crop production worldwide).

- The Rule 6 Party attempt to invoke former Footnote 62 to paragraph 181 (NPPF 2023), now Footnote 65 to paragraph 188, but in both cases it relates to plan making not decision taking. As an aside, but potential indicative of wider Government policy, the 2024 version of the Footnote removes the requirement for plans to consider food production when deciding what sites are most appropriate for development, which was apparent in the July 2024 draft NPPF, published for consultation well in advance of the Rule 6’s invocation.
- That the planning system has no influence on agricultural practices (CD13.8 para 8.8 and CD7.9 paragraph 12.59).

7.111 PPG 013 has recently been considered by the High Court in *Bramley Solar Farm Residents’ Group v Secretary of State for Levelling Up, Housing and Communities* [2023] EWHC 2842 (Admin) (CD7.30). In *Bramley*, an Inspector granted permission for a solar farm extending to 85 hectares of agricultural land, of which 53% comprised BMV. In doing so, he dismissed a suggestion that permission should be refused because of the appellant’s failure to consider alternatives sites which would avoid BMV land. I summarise below the reasons of both the Inspector and the judge, as I understand them.

7.112 The Inspector found that:

- PPG 013 identified a range of facts that should be considered including whether the use of agricultural land is necessary; the temporary and reversible nature of the proposal; and the potential to mitigate landscape impacts through screening (*Bramley*, paragraph 169 which quotes the Inspector’s decision letter, paragraph 56);
- This will involve a range of inputs, from grid connection to land ownership, landscape and visual effects and mitigation. The submitted details set out the reasons for the selection of the appeal site, including connecting to the national grid (*Bramley*, paragraph 169 which quotes the Inspector’s decision letter, paragraph 56);
- There was no legal or policy requirement for a sequential approach to considering alternative sites with developments such as the appeal scheme (*Bramley*, paragraph 169 which quotes the Inspector’s decision letter, paragraph 57);
- Planning permission should not be withheld on the basis of a lack of alternative site assessment (*Bramley*, paragraph 169 which quotes the Inspector’s decision letter,

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paragraph 57);

- 53% of the appeal site comprised BMV land, but not all of this land would be covered by PV panels (Bramley, paragraph 169 which quotes the Inspector's decision letter, paragraph 58);
- While the use of higher quality agricultural land is discouraged, the proposal is for a temporary period of forty years. The agricultural land would not be permanently or irreversibly lost, particularly as pasture grazing would occur between solar panels. This would allow the land to recover from intensive use, and the soil condition and structure to improve (Bramley, paragraph 169 which quotes the Inspector's decision letter, paragraph 59);
- It was of note that Natural England, as statutory consultee on agricultural land, had raised no concerns as to the loss of BMV (Bramley, paragraph 169 which quotes the Inspector's decision letter, paragraph 56).

7.113 The judge dismissed a challenge to those findings and in particular, she found that:

- The PPG does not mandate the consideration of alternatives in the context of BMV. Still less does it require a sequential test to be adopted. The Inspector was correct to observe that he had not been directed to any legal or policy requirements which set out a sequential approach in respect of BMV (Bramley, paragraph 79)
- Draft policy in NPS EN-3 (no longer draft) cannot be read as mandating a sequential search for alternatives as it only applies "*where possible*" and states that "*land type should not be a predominating factor in determining the suitability of the site location*" (Bramley, paragraph 180);
- The Inspector had considered the PPG guidance on the range of factors to be considered. He was entitled to find that the proposal would not be harmful to BMV land; that not all of the BMV land would be covered by panels; that there would be ongoing opportunities for pasture grazing; the improvement of the soil and biodiversity; and the temporary nature of the development (Bramley, paragraph 181);
- In view of his conclusion that the appellant was not required to demonstrate a sequential approach to alternative site selection, the Inspector did not have to address allegations raised by objectors as to the inadequacy of the appellant's alternative site search (Bramley, paragraph 185). 7.77.

7.114 In addressing this matter I also refer to the evidence of Mr. Kernon (CD13.8 para 9.2).

7.115 I also note a number of policy considerations in respect of renewable energy and the use of Best and Most Versatile Agricultural Land.

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- 7.116 The LPA's report to the July 2024 planning committee specifically refers to the former Government's Written Ministerial Statement of 15<sup>th</sup> May 2024 (CD6.58) where the LPA case officer advised planning committee that *"It is important to note that the Statement does not alter national planning policy in respect of solar projects. There are no new additional requirements or considerations. It outlines that solar power is a "key part of the Government's strategy for energy security, net zero and clean growth" reinforcing the recent National Policy Statement on Energy. It too recognises that "food security is an essential part of national security". It is thus down to the planning system "to balance these considerations". The Statement therefore does not mean that a proposal should be refused as a matter of principle, if it involves the use of BMV"*.
- 7.117 Whereas the Rule 6 Party's Statement of Case refers to the WMS of 2015 (Core Document 6.31) and quotes it as saying *"we want to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence"*.
- 7.118 It is no longer 2015.
- 7.119 The "we" referred to is the former coalition Government.
- 7.120 I find that the evidence on climate change and the need for the rapid roll out of cheap forms of generation, at pace, is clear justification, and has been for a long time.
- 7.121 I note that significant policy amendments have been made since the 2015 WMS (CD6.31).
- 7.122 I find that the 2015 WMS pre-dated the signing of the Paris Climate Agreement in 2016.
- 7.123 The 2015 WMS references *"last year's comprehensive solar photovoltaic strategy"*, that was the UK Solar PV Strategy Part 2 (CD6.30). That document talked of ground mounted solar in terms of its impact on Government financial incentives schemes, but these ended in 2019 at the latest. The 2015 WMS also foretells a twenty-fold increase in the amount of non-domestic rooftop solar. According to the BRE<sup>13</sup> in 2015 the figure for non-domestic rooftop solar in the UK was 1.2GW deployed. As of the latest Government data<sup>14</sup> that figure is now 2.5GW. That is just over a two-fold increase and not the twenty-fold increase touted in the 2015 WMS.
- 7.124 No policy precludes the use of BMV land for solar proposals. In my opinion the *"compelling evidence"* referred to in the 2015 WMS is no longer the correct test.
- 7.125 The most relevant up to date national policy is provided by the NPPF, NPS EN-1 and NPS EN-3 (CD6.27 & 6.28). These documents do not refer to the need to provide "compelling

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<sup>13</sup> Solar PV on commercial buildings. A guide for owners and developers. BRE National Solar Centre. 2015

<sup>14</sup> Solar photovoltaics deployment. Dept for Energy Security and Net Zero. Updated 19 December 2024

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evidence” to justify the use of BMV land. In addition, the NPPF states that applicants should *“not be required to demonstrate the overall need for renewable or low carbon energy”*.

7.126 The NPS in EN-3 states that *“land type should not be a predominating factor”* and provides that *“Where sited on agricultural land, consideration may be given as to whether the proposal allows for continued agricultural use”*.

7.127 Advice in the NPPG regarding renewable energy and low carbon energy development (CD6.59 Para 013 Reference ID: 5-013-20150327) states that *“where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays”*.

7.128 The PPG goes on to confirm that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use.

7.129 In terms of this guidance, I note that the Government’s latest statement on renewable energy the Clean Power 2030 Action Plan (CD6.3, Page 54) refers to the planning practice guidance in the following terms:

*“The Planning Practice Guidance for renewable energy, which adds further detail to the policy contained within the NPPF, contains outdated guidance which requires updating to reflect new policies”*.

7.130 I consider there are number of factors common to the appeal proposal are relevant to allowing a significant number of other planning appeals affecting BMV agricultural land.

7.131 I have referred above to the 2015 WMS which is referenced in the July 2024 planning committee report, but utilised in the Rule 6 Party’s Statement of Case and I have noted the age of this statement and the significant policy statement issued subsequent to 2015 which lead me to conclude that it is outdated and outmoded, it is therefore not the primary expression of Government policy for determination of the proposal’s acceptability in respect of BMV land.

7.132 However, I would note that even the 2015 WMS does not preclude the use of BMV agricultural land, if compelling evidence can be shown.

7.133 As I have noted the requirement for compelling evidence is not required by the NPPF and is not referred to in the PPG or the NPS. However, I would note that the requirement for compelling evidence in respect of utilising BMV for renewable energy generation must be read in the context of the acknowledged urgent and substantial need, as established in the

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NPPF, NPS, and the statutory target for achieving net zero. This has been accepted as constituting compelling evidence in a number of appeals,

7.134 I have referred above to the policy and advice issued more recently than the WMS in 2015, including in the NPPF that the economic benefits of BMV should be recognised but the avoidance of BMV land is not required. As I have outlined above in my consideration of the caselaw from the Bramley high court decision (CD7.30), there is no national policy requirement for any form of “sequential” test or alternative sites assessment in relation to BMV land. These points have all been accepted in previous appeal decisions, including at Poplar Farm (CD7.23 Paragraph 42), Marden (CD7.39 Paragraphs 46 and 47) and Scruton (CD7.16 Paragraph 27).

7.135 In regard to the NPPF, I note that the revision to the Framework following its most recent publication in December 2024 had amended Footnote 65 (formerly Footnote 62 of the December 2023 version of the NPPF) to remove the reference to food production being a consideration in respect of significant development of BMV land.

7.136 I note that the Rule 6 Party’s Statement of Case runs former footnote 62 concurrently with former paragraph 180b without making clear that former paragraph 180 related to “plans and decisions” and former paragraph 181 related to “plans” only. That dynamic remains in the current NPPF where Footnote 65 arises from to paragraph 188 in relation to plan making only, as opposed to 187b relating to decisions.

### **Continued agricultural use of the land**

7.137 The proposal will allow for ongoing agricultural use during the period of the planning permission via sheep grazing. This has been determined as a relevant factor in a number of appeal decisions:

- The Inspector in the Burcot appeal 3350890, 4<sup>th</sup> March 2025 (CD7.46) stated:  
*“Overall, the proposal would not result in either the temporary or permanent loss of BMV land for agriculture as the land would continue to be used for some agricultural purposes whilst also being used to produce solar energy. As the proposal would not be detrimental to the soil quality, a return to arable production at a later date would still be possible”.*
- The Inspector at Washford where grazing was also proposed (CD7.14 Paragraphs 28-29) noted that a change within agricultural use is not controlled by planning and the proposal would not result in either the temporary or permanent loss of BMVAL as the land would continue to be used for some agricultural purposes whilst also being used to produce solar energy.



- At Washdyke (CD7.13, Paragraph 23) it was noted by the inspector that the agricultural land would not be permanently lost and could still be used for grazing. It was further stated: *"I do not consider that the proposal would lead to a significant loss of agricultural land and find no conflict with the national policy in Framework"*.
- At Graveley Lane (CD7.9 DL28), the Secretary of State agrees the proposal would enable agricultural use of the land to continue through grazing.
- In the Poplar Farm appeal (CD7.23,) the Inspector states that the land would be available for grazing and pasture and that *"this is a common approach used on solar developments in order to manage the grassed areas around solar panels and represents a de facto dual use of the land for both agriculture and creation of renewable energy"* (Paragraph 33). In this respect it was seen that the agricultural land would not be 'lost', stating that *"It can continue to be farmed, albeit in a different way, with the grazing of sheep or similar animals"* (paragraph 35).
- The inspector at the Kemberton Appeal (CD7.3 Paragraphs 49-50) noted that *"during the operational period it is indicated that the land around the solar panels would be used for the grazing of sheep. As a result, apart from the small areas used for the fixed infrastructure, the majority of the land would still be used for some agricultural purposes during the 40 year period the solar farm operated"*.
- In respect of the Gunthorpe Road (Core Document 7.55 Paragraph 12) the inspector notes, *"This would not represent a total loss of agricultural land as sheep would be grazed between and under the arrays, a matter which could be secured through a management plan"*.
- At the Church Farm appeal (CD7.45, paragraph 20) the inspector notes that the site would, be available for agricultural uses for the life of the development; albeit limited principally to sheep grazing.
- At the appeal at Scruton (CD7.16 Paragraph 20) the Inspector noted that *"during the operational period the land around the solar panels would be used for the grazing of sheep, with both farmers expecting to expand their current flocks"*

#### **Change in agricultural production is not controlled by planning**

7.138 There is no planning requirement or restriction on farming businesses to prevent changes from arable to pastoral agricultural production, or indeed to prevent land being left fallow. This has been accepted in a significant number of previous planning appeals, including the following examples:

- At the Washford Appeal (CD7.14 Paragraph 28) the Inspector notes that change within

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agricultural use not controlled by planning.

- At Marden (CD7.39 Paragraph 42) the Inspector states that there is no compunction on landowners to use agricultural land in any particular way.
- In the Kemberton Appeal decision (CD7.3 Paragraph 50) it is stated that *“the specific way agricultural land is farmed is not a matter that is subject to planning controls. As such, there would be nothing in planning terms to prevent the owners using the fields that form the appeal site for the grazing of sheep at present or even leaving them fallow”*

### **Arable farming can return on decommissioning**

7.139 Agreed planning conditions require decommissioning, all infrastructure will be removed and the site restored to a state in which it could return to arable production. I also note the evidence of Mr. Kernon which refers to the potential improvement to soil health which is seen to occur when arable land is rested from an intensive arable rotation with increases in soil organic matter, soil carbon etc.

7.140 The principle that following temporary use for solar energy schemes, this restoration and return to agriculture has been accepted in the following appeal examples:

- At the Washford Appeal (CD7.14, paragraph 29,) the Inspector accepted that the return to arable production at a later date would still be possible.
- In the Poplar Farm Appeal decision (CD7.23, paragraph 35) the Inspector states that “in 30 years time, the relatively simple act of removing metal stakes and associated infrastructure from the site would allow its use to return to arable farming”.
- The Inspector at the Kemberton Appeal (CD7.3, paragraph 54,) notes that a return to agricultural use at a later date would still be possible following the period of the proposed energy generation.
- In the Thaxted Appeal decision (CD7.38,) the Inspector notes that the solar farm will not result in any significant damage to soils and downgrading of agricultural land quality across the majority of the site (paragraph 103) and after the 40 year period the land would be available for farming once more. (paragraph 108).
- At Graveley Lane (Core Document 7.9, paragraph IR12.59) the Secretary of State’s Decision notes that *“The LPA referred to lower productivity and flexibility from use of the fields for sheep grazing as opposed to arable farming. However, there is no policy support for this position. Accordingly, a reduced level of food production and the associated issue of food security are not matters which count against the application to a significant degree. On the other hand the Applicant’s evidence that the removal of*

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*land from intensive agricultural use for a period of time would improve soil health and structure was not disputed by any specific evidence.”.*

- In the Church Farm Appeal decision (CD7.42 paragraph 25) it is stated that, *“the evidence here indicates that the proposal would encourage the conservation of the agricultural land through these nature-funded improvements and improve the overall quality of the land for future generations”.*
- The Inspector at the Squirrel Lane Appeal (CD7.40, paragraph 34) notes that *“The change from arable to pasture would improve soil health; It is also proposed that the site would be fully reinstated to a sole agricultural use when the solar farm ceased to operate”.*
- In the Scruton Appeal (CD7.16, paragraph 21) the Inspector notes that it is the intention that *“it would be returned fully to agricultural land at the end. Moreover, I am satisfied from the evidence before me that resting the land from intensive agriculture would be likely to improve soil health by increasing the organic matter in the soil and improving soil structure and drainage, even if a return to arable farming would then start to reverse this improvement”.*
- In the Bramley Appeal decision (CD7.15, paragraph 59) it is stated that agricultural land would not be permanently or irreversibly lost, particularly as pasture grazing would occur between the solar panels. This would allow the land to recover from intensive use and the soil condition and structure to improve.

#### **Land available for a large solar farm in the district is likely to include some BMV**

7.141 I note from Mr. Kernon’s evidence that:

- *“the available Likelihood of BMV maps show the site, and most of the local area, as falling into a high likelihood of BMV*
- *The Parish Council do not identify any land of lower quality*
- *There is no analysis from the Parish Council that those areas are acceptable for other reasons or that they would have a grid connection”*

7.142 Therefore, it is concluded that the opportunity to avoid using BMV land in the District is unproven by the Rule 6 Party and is not required by planning policy in any event..

7.143 I note that Mr. Kernon has advised that the presence or otherwise of BMV within wider search areas is not possible to establish without detailed surveys which would be impractical. Such survey work is highly resource intensive, requiring agreement of other landowners and would be significantly time-consuming in the context of the urgent need to move forward proposals to meet the need for new renewable energy schemes in a timely

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manner. It has been accepted in other appeals that such research and assessment would not be a reasonable requirement, including at Marden (CD7.39, paragraph 47 & 49,) where the inspector stated:

*“requiring such extensive, time consuming and no doubt expensive analysis (even if permission was granted by the landowner) would be a disproportionate and unreasonable burden on prospective developers. In the light of the climate change emergency declared in 2019 and the UK’s binding net zero targets, alongside the fact that this land has not been identified for its high environmental value”*

7.144 I consider that Mr. Kernon has taken a reasonable and proportionate approach to assessing the likelihood of BMV land outside the development site.

### **Food security**

7.145 Whilst I have noted above that the matter of food security is not identified in the NPPF as a consideration in regard to significant development of agricultural land, I refer to Mr. Kernon’s evidence in respect of food security. In this he notes that whilst the WMS of 2024 – *“Solar and Protecting our Food Security and Best and Most Versatile (BMV) Land”* (CD6.58) notes food security as an essential part of national security, the second paragraph of the statement sets out concerns about energy security and prices and summarises the Government’s position of “racing ahead” with the deployment of renewable energy, especially solar.

7.146 More recently in the July 2024 Secretary of State statement titled *“Clean Energy Superpower Mission”* (CD6.56) it is noted that the biggest threat to nature and food security arises from the climate crisis.

7.147 In terms of the arable crops produced on the appeal site, Mr. Kernon notes that the UK is largely self-sufficient in these and therefore a less intensive agricultural production on the site will have no impact on food security.

7.148 The conclusions above accord with the approach taken at previous appeals. At Scruton (CD7.16, paragraph 26) the Inspector found that the appellant’s evidence that there is no food security problem in the country and that the level of food production is good was not challenged by the LPA and that this was also evidenced by farmers being paid to take land out of production and/or utilise less intensive production methods.

7.149 Similarly at Thaxted (CD7.38, paragraph 26) the Inspector notes the UK being largely self-sufficient in wheat, most meats, eggs, and some sectors of vegetable production and concludes at paragraph 112 that the loss of production from the site would not cause notable harm to food security.

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7.150 In light of these points, I agree with Mr. Kernon's conclusion that there will be no impact from the Appeal proposal on national food security.

### **Farm Diversification**

7.151 I note Mr. Kernon's evidence considers farm diversification is a benefit to the farmer and his reference to the 2024 WMS (CD6.57) on the threat to the livelihood of farmers from the climate crisis.

7.152 I note that at Kemberton (CD7.3 Paragraph 67) the Inspector included diversification as part of the package of economic benefits which were given moderate weight in the planning balance.

7.153 Overall, I consider that in respect of Main Issue 4, there are clearly two sides to the BMV argument with harms and benefits claimed on both sides, one characterised by science and modern policy, the other by unfounded concerns and outdated policy.

7.154 The proposal will not result in any significant permanent loss of BMV agricultural land.

7.155 In terms of harms, I find there is no established or appreciable harm to the farming industry and UK food supply. There is no food supply crisis.

7.156 There is no permanent loss of BMV land, or even temporary loss; see paragraph 32 of the Burcot appeal decision (CD7.46), referenced above.

7.157 However, there are multiple benefits from the complementary uses of the land (energy, food production and wildlife).

7.158 I attach limited weight to negative effects of reduction in flexibility of BMV on site for the duration of the development.

7.159 I attach the following weight to the related benefits of the development:

- Soil health. Soil is part of society's natural capital and taking it out of intensive use and returning it to future use in at least the state it left, if not better, having generated much needed renewable energy and a local boost to biodiversity in the meantime is a clear benefit. I attach a minor level of benefit (the benefit to the site is significant, but the site is small in comparison to the borough and beyond) and a minor level of weight because, whilst soil health is important, there is not yet a soil crisis.
- Combined use of land (renewable energy, pastoral farming, bettered flood mitigation and biodiversity) = minor scale of benefit (the site is small in the context of the borough and beyond) receiving moderate weight because I cannot think of another form of development that carries this basket of benefits with it, for little or no BMV impact.

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## 8. Development Plan Compliance

8.1 Article 35(1)(b) of The Town and Country Planning (Development Management Procedure) (England) Order 2015 states (my emphasis):

*“(b) where planning permission is refused, the notice must state clearly and precisely their full reasons for the refusal, specifying **all policies** and proposals in the development plan **which are relevant to the decision**”*

8.2 In this section I will consider compliance with the relevant policies contained in the Development Plan, as referenced in the LPA’s Reason for Refusal and cited by the LPA in their Statement of Case.

8.3 Forefront in the Statement of Case (CD9.1 paragraph 1.11), I stated that the most relevant policy for renewable energy development (LP35 Renewable Energy) was conspicuous by its absence from the decision notice, and I maintain that opinion now.

8.4 Policy LP35 is a development management policy<sup>15</sup> and contains a comprehensive, targeted and detailed<sup>16</sup> package of policy criteria covering the decision-making gamut of landscape, ecology, heritage, amenity, economy and design.; a near one-stop-shop for assessing the planning merits of a renewable energy development, as was surely the intention of the policy.

8.5 LP35 is a permissive policy expressing support at the outset, subject to performance on a range of requirements. Only the first paragraph is relevant, the second relates to energy efficiency in buildings.

8.6 In their statements of case, the parties reach the following conclusions on LP35:

- Appellant: Compliance (based on 6½ pages of detailed analysis of the policy and its tests included in Appendix 1 for ease of reference).
- LPA: Significant conflict (based on two short paragraphs of discussion).
- Rule 6: contrary to (based on negligible policy analysis)

8.7 The other parties’ positions on the self-defining most relevant policy therefore remain conspicuous by their absence.

8.8 The LPA’s position on LP35 was clearer before the Planning Committee’s refusal. In contrast with the LPA’s statement of case, the March 2024 committee report (CD2.2) at its paragraphs 4.57 to 4.68, the LPA took a topic by topic approach to LP35 and concluded that *“Drawing all of these matters together, it is concluded that in overall terms the amended*

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<sup>15</sup> Statement of Case CD9.1 paragraph 5.3.

<sup>16</sup> NPPF paragraph 29.

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*proposal would be acceptable under Policy LP35*. I agree with that conclusion.

8.9 Beyond policy LP35, I maintain my opinion that:

- Strategic Policy LP3 Green Belt repeats NPPF policy on inappropriate development and beyond that sets a closed list of criteria which “*set out how Green Belt applies to land and settlements in North Warwickshire*” (CD9.1 paragraph 5.53); none of which present any incumbrance to the appeal scheme.
- Strategic Policy LP14 sets a range of aspirational policy requirements for all development types across the entire local plan area, which the appeal scheme complies with (CD9.1 paragraphs 5.75 and 5.136 bullet 2).
- Development Management Policy LP30 Built Form is, at best, ill-suited for use in this case (CD9.1 paragraphs 5.87, 5.91 and 5.136 bullet 3), being predisposed as it is toward “*new buildings and extensions or alterations to existing buildings*”, reiterating that policy LP35 is better suited / specifically written for the purpose.
- Neighbourhood Plan Policy FNP01 is, at best, ill-suited for use in this case (CD9.1 paragraphs 5.94 and 5.136 bullet 4), being predisposed as it is toward the architectural concerns of new buildings, again reiterating that policy LP35 is better suited / specifically written for the purpose.
- To the extent that they are relevant, and where they are they ‘bite’, the appeal scheme complies with policy FNP02 (CD9.1 paragraph 5.109).

## 9. Material Considerations

9.1 Although I have reached the conclusion in Section 8 of my Evidence that the Proposed Development is in accordance with the Development Plan when read as a whole, and therefore that it should be approved without delay, it is also necessary to consider whether material considerations indicate otherwise.

### Energy Policy Considerations

9.2 This section of my Evidence provides a summary of the most relevant energy legislation, policy and guidance for this Appeal.

9.3 In this Section of my Evidence, for simplicity I refer to “the Government”. For the avoidance of doubt, the majority of the energy polies referred to below relate to the previous Government administration which was in power until the General Election held in July 2024.

9.4 I note that the new Labour Government’s swift action to publish a draft revised NPPF in July

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2024, and the subsequent publication of the latest (Dec 2024) NPPF. The Government's consecutive approval of Development Consent Orders for utility scale ground-mounted solar demonstrates the Government prevailing support for the delivery of renewable energy. This is further supported by the proliferation of solar appeals that have been allowed in both the Green Belt and on BMV land. The actions taken and the decisions made by the Labour Government, even in the short period they have been in office, strongly reaffirms the scale of the Net Zero challenge and the need to immediately address it.

- 9.5 The new Government has also published the Clean Power 2023 Action Plan (CD6.3) in December 2024 to which I refer to further below.

### **UK Legislation and Policy**

- 9.6 The Climate Change Act 2008 brought in the legislative basis for the United Kingdom to reduce net greenhouse gas emissions by at least 80% by 2050 from their 1990 levels.
- 9.7 The target included in the Climate Change Act 2008 was strengthened in June 2019 to be a 100% reduction relative to 1990 levels by 2050 (known as "net zero").
- 9.8 The 'Clean Growth Strategy' (CD6.4) was published by the Department for Business, Energy and Industrial Strategy ("BEIS") in October 2017. In respect of the power sector, the Strategy anticipates that by 2050 emissions from this sector need to be close to zero. In the meantime, the Strategy indicates one possible pathway to the interim step of 2032 is for power emissions to fall by 80% compared to 2017 levels which could be achieved by, inter alia, growing low carbon sources such as renewables and nuclear to over 80% of electricity generation, and phasing out unabated coal power. The Strategy also confirms that the *"Government want to see more people investing in solar without government support"*. Attention is drawn in particular to pages 95 – 96 of the Strategy.
- 9.9 The clear and explicit need to introduce a step change in how the UK reacts to Climate Change has been recognised by UK Parliament who, on 1st May 2019, declared an Environmental and Climate Change Emergency.
- 9.10 At local level, North Warwickshire declared a climate emergency in October 2019 and adopted a Climate Action Plan (CD6.61) which aims to do *"all we can to limit the global temperature rise to no more than 1.5°C is estimated to limit the worst of the damage and enable us to maintain a liveable climate"*.
- 9.11 The Government published the Energy White Paper: Powering our Net Zero Future in December 2020 (CD6.5). In the foreword to the White Paper, the Minister stated:  
*"The UK has set a world-leading net zero target, the first major economy to do so, but simply setting the target is not enough – we need to achieve it. Failing to act will result in natural*



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*catastrophes and changing weather patterns, as well as significant economic damage, supply chain disruption and displacement of populations.”*

9.12 And later in the foreword:

*“The way we produce and use energy is therefore at the heart of this. Our success will rest on a decisive shift away from fossil fuels to using clean energy for heat and industrial processes, as much as for electricity generation.”*

9.13 The White Paper recognises the progress made to increase deployment of renewables and sees the expansion of renewable technologies as a key contributor to achieving an affordable clean electricity system by 2050. The White Paper at page 45 states:

*“Onshore wind and solar will be key building blocks of the future generation mix, along with offshore wind. We will need sustained growth in the capacity of these sectors in the next decade to ensure that we are on a pathway that allows us to meet net zero emissions in all demand scenarios.”*

9.14 In April 2021, the UK Government committed to set in law by end of June 2021 the world’s most ambitious climate change target, cutting emissions by 78% by 2035 compared to 1990 levels.

9.15 On 12 November 2024 at COP29, the Prime Minister announced the UK’s ambitious and credible NDC target to reduce all greenhouse gas emissions by at least 81% by 2035, compared to 1990 levels (CD6.60).

9.16 The Government published its ‘Net Zero Strategy: Build Back Greener’ (CD6.18) in October 2021 which establishes that the UK will be powered entirely by clean energy by 2035, subject to security of supply (first bullet point, page 19).

9.17 Specifically in respect of the ‘Power’ sector, the Net Zero Strategy affirms that one of the Government’s key commitments is to accelerate the deployment of low-cost renewable generation, such as wind and solar (CD6.18, second bullet point, page 94). Another of the key commitments is “to ensure the planning system can support the deployment of low carbon energy infrastructure”.

9.18 I share the opinion of the National Audit Office that the challenge presented here is “colossal” (CD6.67, page 6, point no.6). On the one hand, the Government requires that by 2035 all our electricity will need to come from low carbon sources, subject to security of supply, bringing forward the government’s commitment to a fully decarbonised power system by 15 years from the previous target of 2050 which was envisaged in the Energy White Paper only 10 months previously. On the other hand, the Government is at the same time forecasting 40-60% increase in demand over the same period (CD6.5, paragraph 10,

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page 98).

- 9.19 To meet this challenge, the Government states that a low-cost, net zero consistent electricity system is most likely to be composed predominantly of wind and solar generation, whether in 2035 or 2050 (CD6.5 paragraph 11, page 98). It affirms that we need to continue to drive rapid deployment of renewables so we can reach substantially greater capacity beyond 2030 (CD6.5, paragraph 35, page 103). The Government further indicates that a sustained increase in the deployment of land-based renewables (and specifically identifying solar) will be required in the 2020s and beyond (CD6.5, paragraph 36, page 103).
- 9.20 Given the size of the challenge, the Government states “*we will need to consider how low carbon energy infrastructure can be deployed at an unprecedented scale and pace sympathetically alongside the interests of our communities and consistent with our obligations to a sustainable environment, both land-based and marine.*” (CD6.5, paragraph 32, page 102). It is my opinion that, if consented, the Proposed Development will contribute to the deployment of low carbon energy infrastructure in the immediate future and therefore contributing to the scale and pace of deployment that is needed, whilst also being sympathetic to both the interests of the community and the sustainability of the environment in this location.
- 9.21 The Government also sets out that “*although we need to ensure we can deploy existing low carbon generation technologies at close to their maximum to reach Carbon Budget 6, we also need to de-risk the delivery challenge*” (CD6.5, paragraph 43, page 105).
- 9.22 In response to the rising cost of energy and the crisis associated with the commencement of the Ukraine war, the Government updated its British Energy Security Strategy in April 2022 (CD6.1). When discussing solar technology, the Strategy notes that the government expects a five-fold increase from the current 14GW of solar capacity in the UK by 2035. Specifically in respect of ground-mounted solar, the Strategy explains that consultation on amending planning rules will take place to strengthen policy in favour of development of non-protected land, while ensuring communities continue to have a say and environmental protections remain in place.
- 9.23 Most recently still, the Government published a suite of documentation under the Powering Up Britain in March 2023. This included updated draft NPS on Energy and Renewable Energy, subsequently came into place January 2024, to which I refer below, but also an Energy Security Plan (“the ESP”) (CD6.21). I note that the Government states that “low cost renewable generation will be the foundation of the electricity system and will play a key role in delivering amongst the cheapest wholesale electricity in Europe” (page 34).
- 9.24 The ESP continues to examine the role of solar at pages 37/38, and it reaffirms the

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Government's commitment to aim for 70GW of ground and rooftop capacity by 2035. It again states that this amounts to a fivefold increase on current installed capacity. The ESP then concludes on this matter:

*"We need to maximise deployment of both types of solar to achieve our overall target".*

- 9.25 I attach considerable importance to this clear statement, in that the Government is clear that the deployment of ground mounted solar (as well as roof mounted solar) needs to be maximised if the fivefold increase in solar deployment is to be met.
- 9.26 The ESP again restates that the Government considers that meeting energy security and climate changes goals is *"urgent"* and *"of critical importance to the country"*, and further that *"these goals can be achieved together with maintaining food security for the UK"*.
- 9.27 The ESP further encourages deployment of solar technology that deliver environmental benefits, with consideration for ongoing food production or environmental management. For reasons that I elaborate on in my Evidence, I conclude that the Proposed Development would assist in delivering both food production through sheep farming, and environmental benefits through delivering a significant increase in Biodiversity Net Gain.
- 9.28 I agree with the conclusion reached in the ESP that that 'the Government considers that there is a strong need for increased solar deployment.' I also note the ESP's comment that the planning system allows all views to be taken into account when decision makers balance local impacts with national need. In the case of this Proposed Development, I consider that the limited extent of local impacts identified are outweighed by this *"strong"* national need for solar development, for the reasons I explain in my Evidence.
- 9.29 In November 2023, the Government published a Connections Action Plan (CD6.22, page 9) which acknowledged the serious problems of grid connection delays for renewable bergy projects:
- "Projects crucial to achieving net zero, currently seeking grid connections, are facing serious connection delays. Many are facing delays which cause them real difficulty; equally many new projects with connection agreements never connect. It is clear that the current connection process is not fit for purpose and requires fundamental reform".
- 9.30 Following the issue of the revised NPPF in December 2024, the Government also released the Clean Power 2030 Action Plan: A new era of clean electricity (CD6.3). The Action Plan highlights that achieving clean power is now a broader goal and key to growing the economy and improving national security and standards of living. The document identifies urgency of enacting policy by *"Sprinting to clean, homegrown energy"*, placing delivering clean power by 2030 at the heart of one of the Prime Minister's five missions and the Plan for Change (page 6).

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- 9.31 The Action Plan follows the Government's commissioning of expert advice from the National Energy System Operator (NESO) and builds on that advice, setting out the need to "move fast and build things to deliver the once in a generation upgrade of our energy infrastructure Britain needs"(page 7).
- 9.32 The Government's summary identifies a requirement for rapid deployment of new clean energy, setting a high ambition for 2030 of *"43-50 GW of offshore wind, 27-29 GW of onshore wind, and 45-47 GW of solar power, significantly reducing our fossil-fuel dependency"* (Page 10).
- 9.33 The Action Plan outlines three major challenges as being "the need for a secure and affordable energy supply, the creation of essential new energy industries, supported by skilled workers in their thousands, the need to reduce greenhouse gas emissions and limit our contribution to the damaging effects of climate change." *There is a clear link made between the steps to address energy security and climate change and the potential economic benefits from employment and investment in the energy industry, assisting the national plan for growth".* The document (at page 20) refers to the Clean Power 2030 action plan *"Playing a key part in supporting hundreds of thousands of jobs, as part of the wider transition to net zero"*.
- 9.34 The plan also outlines the role of a clean power system in meeting net zero by 2050. In this it is noted that *"By 2050, annual electricity demand is likely to at least double as a result of electrification"*.
- 9.35 In terms of the need to act immediately and take the opportunity for renewable energy where grid capacity is present, the Action plan states at page 50 *"There is particular urgency to accelerate the planning process across Great Britain for energy infrastructure since we do not have long for many clean power projects to begin construction if they are to be operational for 2030"*.
- 9.36 Clean Power 2030 identifies that the strategy will also represent a significant area for economic growth through expanding employment opportunity in addition to ensuring energy security, affordability and price stability. The Action plan states that *"Another of the key benefits of Clean Power 2030 and the scale up of clean energy sectors is the creation of new job opportunities"*. It is the Government's intention that the new industrial Strategy will include Clean Energy industries as a priority growth sector (pages 43 and 44).
- 9.37 The Government's Action plan looks to the planning sector to be one of the key aspects of supporting progress stating that "Accelerating clean infrastructure projects through the planning system is critical to achieving our goal and unleashing investment to support the Prime Minister's Growth Mission. Our capacity range will ensure that planners and statutory

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consultees at the national and local level have a clear sense of which projects to prioritise for consideration and, where appropriate, fast-track through the process to enable decisions on consent to be taken sooner” (page 36).

- 9.38 The Action Plan includes addressing planning and consenting as a measure for removing roadblocks to enable consenting regimes to bring new projects through the system at pace. It is stated that *“Our planning system needs to quickly change to enable government’s missions to grow the economy and deliver clean power”*. The plan states that *“There is particular urgency to accelerate the planning process across Great Britain for energy infrastructure since we do not have long for many clean power projects to begin construction if they are to be operational for 2030, especially networks and offshore wind developments.”* (pages 49 and 50).
- 9.39 Reform of locally consented decision making is proposed to deliver clean power 2030. The Action Plan identifies that the NPPF does not make clear that local planning authorities should *“consider the benefits associated with renewable energy generation, and proposals’ contribution to meeting a net zero future when determining applications for these developments”* (the revision NPPF 2024 incorporates this into the new para 168 (a).)
- 9.40 It is also stated that the Planning Practice Guidance for renewable energy *“requires updating to reflect new policies”* (page 54). The Government states that this will be updated in 2025 to provide clarity on the application of planning policy (page 56).
- 9.41 In relation to the electricity networks and connections, the Action plan acknowledges that grid infrastructure requires strengthening, with a requirement for *“unprecedented expansion.”* (page 62). Whilst the process of network improvement is needed to reduce network constraints, the Action Plan confirms that *“Whenever renewables can connect to the distribution network, this should be encouraged for reasons of speed and efficiency.”* (page 63).
- 9.42 In the key headlines to the ‘Renewable Sources of Energy’ chapter (CD6.3, Chapter 6), I note that renewable capacity increased by 5.2 per cent, which is 2 per cent less than evidenced in the previous year in 2022. This rate of increase also remains significantly lower than the average annual growth rate between 2012 and 2018 which was 20 per cent. De-rated renewable energy capacity is stated to have increased by 10.8% to 2.8GW in 2023, whilst amount of new solar PV capacity installed increased by 1.3GW (CD6.3, Chapter 6 key headlines).
- 9.43 This additional 1.3GW of installed solar PV in 2023 comprises an annual figure which is far below that which is required to achieve the 5-fold increase to 70GW by 2035 as stated in the British Energy Security Strategy 2022 (CD6.1) and repeated in the Energy Security Plan

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2023 (CD6.21), or the 45-47GW solar target in Clean Power 2030 (CD6.2). I estimate that the deployment per annum needed to meet the 70GW target (which requires an increase of 56GW over 13 years) would be 4.3GW pa on a straight-line trajectory<sup>2</sup>. The 0.7 GW achieved in 2022, added to the 1.3GW achieved in 2023, totals 2.0GW of additional solar PV over these first 2 years. This weak growth has resulted in only meeting 23% of the equivalent annual target over these 2 years, and serves to further underline the need for a substantial and rapid deployment of new solar PV capacity.

9.44 I also draw attention to two other concerning matters having regard to the wider context of improving security of electricity generation for the UK. The first concern is that total de-rated generation capacity in the UK overall fell by 2.6% in 2023 compared to 2022 to stand at 74.8GW (CD6.3, chapter 5, page 7). This reflects the closure of two large coal-fired plants and this reduction in generation capacity was not kept pace by increases in capacity in other low-carbon forms of electricity generation. The second is that the UK returned to being a net electricity importer in 2023, with net imports totalling a record 23.8 TWh, and that the UK's total imports were more than double 2022 levels (CD6.3, chapter 5, page 6).

9.45 The National Audit Office cast doubt on the progress being made and the achievement of the pre-"net zero" (80%) reduction compared to 1990 levels in their December 2020 'Achieving net zero' report (CD6.67). As I have already noted earlier, in the summary at page 6, when discussing the scale of the challenge, the NAO noted that achieving net zero is a "*colossal challenge*" and is significantly more challenging than the Government's previous target to reduce carbon emissions by 80% by 2050.

9.46 The report recognised the progress of the energy sector, but confirms this sector's importance in achieving legislative targets:

*"Reducing emissions further to achieve net zero will require wide-ranging changes to the UK economy, including further investment in renewable electricity generation, as well as changing the way people travel, how land is used and how buildings are heated."*

#### Summary

9.47 The above matters emphasise the immediate and pressing need for deployment of renewable energy generation infrastructure in the UK, to assist with meeting the challenging legally binding obligations to reach net zero by 2050. It is clear that the continued deployment of Solar PV, and low carbon technologies more generally, are and have been consistently recognised by the Government as a key part of the UK's transition to achieving a low carbon economy and tackling Climate Change.

9.48 Having regard to the above, the application proposals make an appreciable contribution to meeting the amended Climate Change 2008 targets. It is clear that in order for the UK to

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meet the ambitious target of reducing greenhouse gas emissions by 100% or "net zero" compared to 1990 levels by 2050, a presumption in favour of increasing the number and output of low carbon energy sources, such as solar farms, is entirely appropriate and necessary.

9.49 The UK's Climate emergency declaration and North Warwickshire Council's acknowledgement of the need to deliver on Net Zero targets provide further context for this Appeal. The Proposed Development would support the intentions of these declarations.

9.50 The application of the Government's energy policy framework is a highly significant material consideration to this Appeal and is further considered in the balance of material considerations below.

### **National Policy and Guidance on Energy & Renewable Energy**

#### National Planning Policy Framework ("NPPF")

9.51 The National Planning Policy Framework (NPPF) was last updated in December 2024. The Appellant understands that the application was determined based on the policies contained within the previous iteration of the NPPF, but in the context of the July 2024 consultation draft.

9.52 The NPPF states that the purpose of the planning system is to contribute to the achievement of sustainable development in its three dimensions; economic, social and environmental. Central to the NPPF is presumption in favour of sustainable development. For decision taking this means (paragraph 11):

- *approving development proposals that accord with an up-to-date development plan without delay; or*
- *where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless:*
  - *the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
  - *any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

9.53 Paragraph 160 of the NPPF confirms "*when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources*".

9.54 Paragraph 161 of the NPPF states that the planning system should support transition to a

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low carbon future in a changing climate and should support renewable and low carbon energy and associated infrastructure.

9.55 Paragraph 164 of the NPPF states that *“new [renewables] development should be planned for in ways that:*

*a) avoid increased vulnerability to the range of impacts arising from climate change. When new development is brought forward in areas which are vulnerable, care should be taken to ensure that risks can be managed through suitable adaptation measures, including through the planning of green infrastructure; and*

*b) can help to reduce greenhouse gas emissions, such as through its location, orientation and design. Any local requirements for the sustainability of buildings should reflect the Government’s policy for national technical standards”.*

9.56 Paragraph 166 outlines that when *“determining planning applications, local planning authorities should expect new development to:*

*a) comply with any development plan policies on local requirements for decentralised energy supply unless it can be demonstrated by the applicant, having regard to the type of development involved and its design, that this is not feasible or viable; and*

*b) take account of landform, layout, building orientation, massing and landscaping to minimise energy consumption”.*

9.57 Paragraph 168 states that *“when determining planning applications for renewable and low carbon development, local planning authorities should:*

*a) not require applicants to demonstrate the overall need for renewable or low carbon energy, and give significant weight to the benefits associated with renewable and low carbon energy generation and the proposal’s contribution to a net zero future;*

*b) recognise that small-scale and community-led projects provide a valuable contribution to cutting greenhouse gas emissions”.*

9.58 Paragraph 215 states that, where a development proposal will 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 including, where appropriate, securing its optimum viable use.

9.59 Annex 2 Glossary to the NPPF defines Grey Belt land as follows:

*“Grey belt: For the purposes of plan-making and decision-making, ‘grey belt’ is defined as land in the Green Belt comprising previously developed land and/or any other land that, in either case, does not strongly contribute to any of purposes (a), (b), or (d) in paragraph 143.*

*‘Grey belt’ excludes land where the application of the policies relating to the areas or assets*



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*in footnote 7 (other than Green Belt) would provide a strong reason for refusing or restricting development”.*

National Planning Practice Guidance (“NPPG”) (First Published March 2014)

- 9.60 The PPG is a material consideration in the consideration of planning applications.
- 9.61 Renewable and Low Carbon Energy forms one of the chapters in the PPG. Paragraph 013 (ID: 5-013-20150327) is entitled “*What are the particular planning considerations that relate to large scale ground-mounted solar photovoltaic farms?*”. I have taken these into account as relevant in my Evidence as the specific consideration arises.
- 9.62 As I have noted above the Government’s Clean Power 2030 – Action plan (CD6.3, Page 54) advises that the PPG provides outdated guidance and requires updating to reflect new policies. I am of the opinion that the above considerations are satisfactorily addressed for the reasons set out elsewhere in my Evidence as noted above.
- 9.63 I also note that this Guidance dates back to 2015 and therefore predates the more recent legal and policy changes as set out in the Climate Change Act, NPPF, the Net Zero Strategy requirement to achieve Net Zero by 2050, and the more recent energy policy statements encouraging the deployment of solar PV, as noted most recently in the Powering Up Britain Energy Security Plan (CD6.21) and the National Policy Statements as summarised below as Designated in January 2024. This goes to the weight that can be afforded to that earlier guidance.

Overarching National Policy Statement for Energy (EN-1) (November 2023)

- 9.64 EN-1 (CD6.27) was revised and presented to the Houses of Parliament in November 2023 to set out national policy for energy infrastructure in the UK. Its primary purpose is to be applied to decisions for Nationally Significant Infrastructure Projects, however, it can be a material consideration in the determination of planning applications (CD6.27, paragraph 1.2.1), and the extent to which the policies in the NPS are material, and to what extent, will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy (CD6.27, paragraph 1.2.2).
- 9.65 I note that the NPS re-iterates a number of matters already referred to in my Evidence earlier in this Section, including:
- “*we need to dramatically increase the volume of energy supplied from low carbon sources*” (CD6.27, paragraph 2.3.5).
  - “*demand for electricity is likely to increase and could more than double by 2050 as large parts of transport, heating and industry decarbonise by switching from fossil fuels to low carbon electricity*” (CD6.27, paragraph 2.3.7, 3.3.3).

- *“we will need a fourfold increase in low carbon generation....In addition, we committed in the Net Zero Strategy to take action so that by 2035, all our electricity will come from low carbon sources, subject to security of supply, whilst meeting a 40-60% increase in electricity. This means that the majority of new generating capacity needs to be low carbon”. (CD6.27 8.15, paragraph 3.3.16).*
- *“Wind and solar are the lowest cost ways of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply (as they are not reliant on fuel for generation). Our analysis shows that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar” (CD6.27, paragraph 3.3.20).*

9.66 I also draw attention to the general framework established in EN-1 with regard to the statements that the government has demonstrated that:

- there is a need for the types of infrastructure identified (which includes solar PV development) which is urgent (Core Document 8.15, paragraph 3.2.6);
- substantial weight should be given to this need when considering applications for development consent under the Planning Act 2008 (Core Document 8.15, paragraph 3.2.7); and
- the government has concluded that there is a ‘critical national priority’ for the provision of nationally significant low carbon infrastructure.

9.67 Finally, I draw attention to the implications of this urgent need for the delivery of this ‘Critical National Priority’ (“CNP”) infrastructure when EN-1 advises that other residual impacts should, in general, be outweighed by the energy objectives:

*“Subject to any legal requirements, the urgent need for CNP Infrastructure to achieving our energy objectives, together with national security, economic, commercial, and net zero benefits, will in general outweigh any other residual impacts not capable of being addressed by application of the mitigation hierarchy. Government strongly supports the delivery of CNP Infrastructure and it should be progressed as quickly as possible.” (CD6.27, paragraph 3.3.6.3).*

9.68 I consider that considerable weight should be given to the policies set out in the NPS. In my opinion, this is due to the scheme’s benefits in terms of renewable energy electricity generation, and its contribution to the security of supply of electricity for the UK.

9.69 In the Appeal at Fobbing (CD7.4, Paragraph 39, the Inspector noted that EN-1 was a material consideration which in that instance should be given more weight than conflict with policies of the development plan.

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9.70 My reading is that the NPS can be a material consideration for the decision-taker to apply to non-NSIP scale projects. Indeed, wider changes to the planning system announced alongside the draft NPPF in July 2024 and confirmed in December 2024 set out that the threshold for non-NSIP projects would be increased from the current 50MW to 100MW to enable more large projects to be approved faster through the s78 planning system. This change is not yet in place, and when it is transitional arrangements will exist for projects in-process, so in the intervening time this proposal remains close to the 50MW threshold. NPS EN1 post-dates the development plan and a “*further material consideration is the new policy contained within NPS EN-1, the critical national priority for nationally significant low carbon infrastructure*”<sup>77</sup>. *The closer a scheme is in size to a nationally significant infrastructure project the greater the weight that can be given to EN-1. Furthermore, EN-1 explains that the materiality of the policies contained within it in the wider planning system depends on the extent to which the matters are already covered by applicable planning policy*<sup>78</sup>. *In this case there are no development plan policies dealing specifically with large-scale solar, nor with critical national priority infrastructure. In most circumstances, residual impacts are unlikely to outweigh the urgent need for critical national priority infrastructure. The Secretary of State will take as the starting point for decision-making that critical national priority infrastructure has met policy tests which require a clear outweighing of harm*” (paragraph 7.44 of CD7.42). I opine that the NPSs are more important than ever in guiding local level decision making on energy infrastructure projects where local plans and the NPPF inherently tend to focus on ‘traditional’ built development (houses, retail and commercial buildings) as the development plan does in this case.

National Policy Statement for Renewable Energy Infrastructure (EN-3) (November 2023)

- 9.71 NPS EN-3 (CD6.28) was also revised and presented to the Houses of Parliament in November 2023.
- 9.72 Under the specific heading of Solar Photovoltaic Generation at Section 2.10, EN-3 confirms that “*The Government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero emissions by 2050. As such solar is a key part of the government’s strategy for low-cost decarbonisation of the energy sector.*” (CD6.28, paragraph 2.10.9).
- 9.73 I note that the Government affirms that “*solar also has an important role in delivering the government’s goals for greater energy independence and the British Energy Security Strategy states that government expects a five-fold increase in combined ground and rooftop solar development by 2035 (up to 70GW)*” (CD6.28 paragraph 2.10.10).
- 9.74 EN-3 further explains that “*solar farms are one of the most established renewable electricity technologies in the UK, the cheapest form of electricity generation, can be built quickly and*

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*with consistent reductions in the cost of materials and improvements in efficiency, are now in some cases viable to deploy subsidy-free” (CD6.28, paragraphs 2.10.13-2.10.14).*

9.75 It then explains a number of key considerations involved in the siting of a solar farm, and also technical considerations for the Secretary of State to consider. I have taken these considerations into account as relevant in my Evidence as the specific consideration arises, but would draw attention to the section on “*Project lifetime and decommissioning*”, where EN- 3 advises that “*the time limited nature of the solar farm, where a time limit is sought as a condition of consent, is likely to be an important consideration for the Secretary of State*” (CD6.28, paragraph 2.10.150). I further note that the Appeal Scheme is proposed to be limited for an operational period of up to 40 years from the date of the first export of electricity, and therefore this project-lifetime consideration should be given significant weight in the decision.

#### Appeal Decisions

9.76 There is now a considerable body of evidence of appeal decisions issued over the last several years where the increasing government energy policy imperative to accelerate the delivery of renewable or low carbon energy schemes have been a key material consideration and policy driver.

9.77 When considering the general need for, and weight afforded to, renewable energy and while each scheme must be considered on its merits, it is sensible to have regard to the national picture. It is clear from the suite of Secretary of State and Inspector decisions before the Inquiry that many sensitive sites and sites in protected areas have been granted permission on the basis of the urgency of the need for solar development and the imperative of using grid opportunities where they arise. This includes Halloughton in respect of heritage interests (CD7.12), and Telford in respect of valued landscapes (CD7.3).

9.78 Specifically with regard to sites proposed within Green Belt locations, there are a number of schemes where solar schemes have been granted permission, including at Chelmsford (CD7.8), Fobbing (CD7.4) Honiley Road (CD7.29) and Southlands (CD7.34).

9.79 I comment on the appeals included in the Core Documents list as appropriate when examining the weight which Inspectors have afforded to various material considerations in the planning balance section set out in my Evidence.

9.80 Although I have reached the conclusion that the Proposed Development is in accordance with the Development Plan when read as a whole, and therefore that it should be approved without delay applying the advice of the NPPF (paragraph 11), it is also necessary to consider whether material considerations indicate otherwise, and I have done that above.

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## 10. Response to Third Party Representations

- 10.1 I note that a number of matters were raised in representations on the Planning Application. These comments were summarised in the planning officers report.
- 10.2 I set out a summary of the comments made to the appeal and a response to each of the considerations in Appendix 4 to my evidence, together with signposts to application and appeal documentation and the relevant sections of the SoCGs as appropriate.

## 11. Overall Planning Balance in the Grey Belt Scenario

- 11.1 In this section I explain how I believe the decision maker should approach the determination of this appeal if the site is grey belt, before going on to identify any material considerations that need to be weighed in the overall planning balance.

### **The Decision-Making Framework**

- 11.2 The starting point for the determination of a planning application or appeal is the Development Plan. The planning system is plan led and planning law requires that applications for planning permission must be determined in accordance with the Development Plan unless other material considerations indicate otherwise.
- 11.3 I consider the determination which would be in accordance with the Development Plan would be to allow the appeal because the Proposed Development accords, where relevant, with the Development Plan when read as a whole.

### **Overall Planning Balance Considerations**

- 11.4 Taken overall, as I consider that the Proposed Development is broadly in accordance with the Development Plan, this would normally indicate that planning permission should be approved without delay (NPPF, Paragraph 11). There are no material considerations that indicate permission should be refused.
- 11.5 However, should the Inspector conclude that the Development Plan indicates that the appeal should be dismissed, then, applying S38(6), there is a need to consider whether material considerations indicate otherwise.

### **Material Considerations and Weight**

- 11.6 In considering the weight that should be afforded to each consideration in the overall planning balance, I apply the scale set out in the Statement of Case; a scale of minor, moderate and significant in terms of benefits and disbenefits and a scale of minor, moderate and significant/substantial/great (which I interchange synonymously unless the NPPF

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prescribes otherwise). In other words, significant/substantial/great are equivalent at the top of my scale.

- 11.7 Set out below is an assessment of each of these material considerations followed by a conclusion on whether the benefits outweigh any adverse impacts identified when taken as a whole.

### **Material Consideration weighting in favour of the appeal scheme**

#### The Need for Renewable Energy Generation

- 11.8 The Appeal scheme would supply up to 40MW to the National Grid, providing the equivalent annual electrical need of approximately 17,100 homes.
- 11.9 As explained above, there is an urgent and compelling need for this development and very strong policy support for solar development to help increase the supply of renewable energy.
- 11.10 The NPPF says that local plans should provide a positive strategy for energy that maximises the potential for suitable development and that plans should consider identifying suitable areas for renewable energy schemes. As discussed in the Statement of Case, North Warwickshire's the evidence base behind North Warwickshire's local plan is out of date and out of touch; failing as it does to countenance ground-mounted solar as a technology type.
- 11.11 Turning to the local plan itself, the Council has chosen to not take up the advice in the original 2012 NPPF (*"to **consider identifying suitable areas for renewable and low carbon energy sources, and supporting infrastructure, where this would help secure the development of such sources**"*) and ever since (*"Once **suitable areas for renewable and low carbon energy have been identified in plans, local planning authorities should expect subsequent applications for commercial scale projects outside these areas to demonstrate that the proposed location meets the criteria used in identifying suitable areas**"*).
- 11.12 This failure to identify areas for renewables in tantamount to failing to allocate sites for housing, meaning that developers must find their own sites and therefore it will be necessary for speculative schemes to come forward to meet need.
- 11.13 In reviewing appeal decisions and SoS decisions since summer 2024, I note that there is very clearly a consistent approach from the Secretary of State and appointed Inspectors in determining solar farm appeals over the last 2 years that either 'substantial' or 'significant' weight should be given to this benefit. This approach accords with the range of information stressing the urgent and significant need for additional renewable energy generation which I have set out above.
- 11.14 Further, the publication of the latest suite of NPS's, where the latest published version of EN-

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I states that the government has demonstrated that there is a need for those parts of infrastructure which is urgent (which includes solar as part of the new electricity generating plants needed) and that, in addition, substantial weight should be given to this need in determining applications for development consent under the Planning Act 2008. Whilst I accept that this policy statement applies to NSIP projects, the policies in the NPS are capable of being a material consideration in determining this Appeal and, given their direct relevance to the Appeal Scheme which whilst being further away from the former NSIP threshold of 50MW, then new incoming threshold of 150MW (more recently 100MW), I maintain that the Government's express intention that this threshold change should speed up sizeable projects means this should in my opinion carry significant weight in the determination of this appeal.

- 11.15 As I have identified above, The Clean Power 2030 Action plan is the latest statement of policy from the new Government, published in December 2024. This includes an objective of creation of essential new energy industries as a key aspect of the overall economic growth plan, targeting specifically 45-47 GW of solar power by 2030.
- 11.16 The Rule 6 Party acknowledges that *"the Framework sets out a presumption in favour of sustainable development, and renewable energy development is central to achieving a sustainable low carbon future as well as improving energy security. The appeal scheme would make a significant contribution to this, and this should be given substantial weight in the planning balance"*.
- 11.17 I also note that the LPA's Statement of Case gives substantial weight (using a slightly different scaling method to mine) to the *"generation of renewable energy"* which itself contributed to an on-balance conclusion in favour of the scheme<sup>17</sup>.
- 11.18 All parties are in agreement of the urgent need for renewable energy, and the significant or substantial weight that should be given to this scheme's contribution to that increasingly urgent need.
- 11.19 Taking all the above into account, I am of the opinion that, due to the imperative to deliver renewable energy schemes which can assist in decarbonising the UK's electricity supply, that the benefit of a 40MW solar farm's renewable energy generation is a **significant benefit** that should be afforded **significant weight** in favour of the grant of planning permission in this appeal.

#### Climate Emergency

- 11.20 I have quoted the following globally-notable people and organisations on this topic:

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<sup>17</sup> The LPA SoC Planning Balance Table under its paragraph 9.31 'totals' more weight in favour than against by reference to its own weighting scale under its paragraph 8.3.

- The “biggest threat modern humans have ever faced” (United Nations Press Release SC/14445, 23rd February 2021).
- “Doubling the number of those [species] at risk of extinction” (Nature, Research Highlights, 2nd June 2023) and “Accelerating the Earth’s sixth mass extinction” (the Smithsonian, 30th April 2015).
- “In the longer term dominating the top 10 risks global populations will face” (World Economic Forum, Global Risks Report 2024).
- The “biggest threat to global economy” (United Nations, 14th January 2016). “An existential threat” (US President Joe Biden to the UN, July 2023).

11.21 I have also quoted organisations closer to home on this topic:

- *“We are in a climate and biodiversity crisis. The science is absolutely clear that the impacts of climate change and biodiversity loss are happening now”* (The Landscape Institute 2020).
- *“We are in a climate and biodiversity crisis. The evidence of the multiple negative effects of climate change and biodiversity loss is clear, and humanity must take urgent, collective action to prevent global temperature rises and further ecosystem collapse”* (The Landscape Institute 2021).
- *“If urgent and large-scale action isn’t taken to address climate change, we predict that more than 70 per cent of the places in our care will be at medium or high risk of climate-related hazards by 2060”* (Historic England 2022).
- *“The National Trust cares for more than 28,500 buildings across England, Wales and Northern Ireland, housing museum collections totaling over one million items. Over the long term climate change is likely to be the biggest threat they face”* (National Trust 2023).
- *“The threat of climate change is real, and time is running dangerously short. A resilient and sustainable future is achievable, but only if we act now”* (RTPI & TCPA 2023).
- *“If urgent and large-scale action isn’t taken to address climate change, we predict that more than 70 per cent of the places in our care will be at medium or high risk of climate-related hazards by 2060”* (National Trust 2024).

11.22 A national climate emergency was declared by the UK Parliament April 2019.

11.23 At a local level, North Warwickshire joined over 300 Local Authorities in England and voted to declare a climate emergency later in October 2019 and stated in September 2024 that *“There is still a lot of work to be done to make sure we stop climate change and limit*



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*warming of the planet to 1.5 degrees” (CD9.1 paragraph 1.7).*

- 11.24 Through the generation of renewable energy, I consider that the appeal scheme will contribute towards assessing these declaration of climate emergencies.
- 11.25 At the Southlands Appeal, I note that the Inspector accorded significant in favour of the appeal to the issue of climate emergency (CD7.34, paragraph 99).
- 11.26 The Clean Power 2030 Action Plan (CD6.3) is the latest statement of government underlining the objective of urgently delivering clean energy to limit our contribution to the damaging effects of climate change. The call to act with urgency adds to the weight which I consider would be accorded to the climate emergency. As I have noted this appeal scheme has an agreed grid connection with immediate capacity and is intended to export power to the grid within 2 years of the grant of planning permission.
- 11.27 By providing a positive, deliverable action on these statements of intent and incomparable quotations, I consider that the declaration of climate emergencies at both national and local level is a material consideration which should afford **significant weight** in the planning balance; a contribution to a national target that I have colloquially referred to as “*two Fillongleys a week*” to convey the scale of the target in ‘ley terms’ is a **significant benefit**.

#### Energy Security

- 11.28 The Appeal Scheme will supply renewable energy to the National Grid, comprising secure, distributed and diversified energy generation which fully accords with the Government policy on energy security, set out in greatest detail in Powering Up Britain: Energy Security Plan 2023 (CD6.21).
- 11.29 I consider that energy security should be regarded as a material consideration in its own right, one which is separate to the generation of renewable energy per se. This is because of its contribution to national security (reducing reliance on imported energy from volatile international sources) but also its contribution to the economy and the income of ordinary people through stabilised and/or reduced energy bills.
- 11.30 Renewable energy generation by virtue of its contribution to reducing carbon emissions and the drive to decarbonise the electricity system is a separate and distinct type of benefit i.e. there could be an energy security crisis without a climate crisis.
- 11.31 In this regard, I draw attention to the latest published version NPS EN-3 (CD6.28) which, when setting the policy for Solar Photovoltaic Generation at Section 2.10, refers at paragraph 2.1.9 to solar playing a key part of the government’s strategy for low-cost decarbonisation of the energy sector in the context of the net zero emission pathway to 2050; but then in a separate following paragraph 2.10.10 goes on to state that:

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“Solar also has an important role in delivering the government’s goals for greater energy independence ...” (CD6.28, paragraph 2.10.10)

11.32 At Cutlers Green Lane, Thaxted (CD7.38, paragraph 141), the Inspector in allowing an appeal for a 40 MW solar farm afforded substantial weight to the contribution the development would make to a low carbon economy and the provision of low cost and secure energy. Similarly, in the cases of Kemberton (CD7.3) and Great Wheatley Farm (CD7.1) the renewable energy benefit of the proposal in terms of its contribution towards energy security and resilience was afforded “substantial weight”. The Southlands decision (CD7.34, paragraph 111) affords even greater weight to energy security, whereby the Inspector states:

*“There is an urgent need for renewable energy to mitigate the climate emergency, achieve net zero targets and enable energy security and lower energy bills. Together with the other benefits set out above, these matters weigh very substantially in favour of the development.”*

11.33 Given the clear importance of these government policy statements, I am firmly of the opinion that delivering energy security is both ‘urgent’ and of ‘critical importance’ to the country (CD6.21, page 38), and as such should be regarded as a **significant benefit** of this development which should be afforded **significant weight** in favour of the grant of planning permission in the planning balance.

#### Good Design

11.34 This is a benefit outlined in Enviromena’s Statement of Case (CD9.1) at paragraph 5.132, but not overtly expressed in the Planning Balance at paragraph 8.4, which I have decided to separate out here in response to the LPA’s Statement of Case (CD9.5 para 25 bp8, para 8.20 and atop para 10.9) and the Rule 6 Party’s Statement of Case (CD9.9 para 3.8).

11.35 National design policy for all development is provided by the NPPF.

11.36 National design policy specifically for renewable and low carbon energy development is provided by NPS EN1 and EN3.

11.37 Both are material considerations.

11.38 The overall design and layout of the Appeal Scheme has been designed from the outset to minimise harm within the Appeal Site and wider area, whilst providing significant multiple benefits.

11.39 This positive approach to design chimes with that outlined in NPS EN-1 (CD6.27), which, such is its importance in considering design, I think bears repeating here (my emphasis):

*“4.7 Criteria for good design for Energy Infrastructure*

*4.7.1 The visual appearance of a building, structure, or piece of infrastructure, and how it*

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*relates to the landscape it sits within, is sometimes considered to be the most important factor in good design. But high quality and inclusive design goes far beyond aesthetic considerations. The functionality of an object – be it a building or other type of infrastructure – including fitness for purpose and sustainability, is equally important.*

*4.7.2 Applying good design to energy projects should produce sustainable infrastructure sensitive to place, including impacts on heritage, efficient in the use of natural resources, including land-use, and energy used in their construction and operation, matched by an appearance that demonstrates good aesthetic as far as possible. It is acknowledged, however that the nature of energy infrastructure development will often limit the extent to which it can contribute to the enhancement of the quality of the area.”*

- 11.40 I have explained earlier in this proof, and in the Statement of Case, that a similar dynamic exists at the local level, with ‘generic’ design policy applicable to all forms of development provided in policies LP30 and FNP01, and design policy specifically for renewable energy development in policy LP35. In the local design policy tug of war I have been clear that the ‘generic’ design policies are ill-suited to the particularities of renewable energy and that I find the policy written for the purpose to be far more useful in decision making.
- 11.41 The appeal scheme will comprise good functional design, utilizing the latest technology including in this case bifacial panels (which can absorb light on both the ‘top’ surface and, to a lesser extent the underside), and the multiple land uses are an efficient use of land that has the added benefit of returning it to its current use in a better state than it is now.
- 11.42 I note that at the Honiley appeal (CD7.29 DL para 30 and IR para 184-186) the secretary of state and the Inspector considered that the use of efficient technology enabling efficient use of land would be accorded moderate weight in favour of the proposal.
- 11.43 The NPPF is clear that significant weight should be given to development which reflects local design policies. I remain content that the Appeal Scheme complies with the design expectations of local plan policy LP35; that policy being the better fit that LP30 and FNP01 which are ill-suited to the purpose because they are pre-occupied with buildings (in the usual sense) and not written to deal specifically with renewable energy development.
- 11.44 On the basis that, in the context of policies written for the purpose, the appeal scheme represents good design, this is a material consideration of at least **moderate benefit** to which I attach **significant weight** in favour of granting planning permission in this appeal.

#### Grid Connection

- 11.45 It is well established that grid-connections are a scarce resource in the UK and represent a major barrier to the transition to net zero. The Powering Up Britain Energy Security Strategy 2023 (CD6.21, page 50) explains that connections times are a very significant issue, with

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over 250GW of generation in the transmission queue. To put the scale of that connection queue into context, that is over 3 times the schemes currently connected into the grid of 80GW.

11.46 EN 3 paras 2.10.22 to 2.10.25 (Core Document 8.4) acknowledges the capacity of the local grid network to accept the likely output from a proposed solar farm as being critical to the technical and commercial feasibility of a development proposal and that the connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a development proposal. Para 2.10.25 states that:

*“To maximise existing grid infrastructure, minimise disruption to existing local community infrastructure or biodiversity and reduce overall costs, applicants may choose a site based on nearby available grid export capacity.”*

11.47 I have referred above to the opportunity which the scheme presents to utilise an early grid connection and that this will assist in fulfilling the objectives of the Clean Power 2030 Action Plan (Core Document 8.28).

11.48 The need to take up the opportunity for an early grid connection was recognised by the Planning Inspector in determining the appeal at Southlands noting (CD7.34, para 77):

*“It is therefore important, to meet the urgent need for solar energy, for capacity to be taken up where it is available and the prospect of an early connection for the appeal scheme is an important factor in its favour.”*

11.49 In Chelmsford (CD7.8 paragraph 92), the Inspector accepted that a solar farm requires grid capacity and a viable connection to operate. He further considered that as such, this requirement places a locational restriction on site selection that limits the number of appropriate sites for such a facility, and he further noted that the national grid suffers capacity difficulties and limits suitable points of connection. He concluded that this ‘rational approach’ to site selection lent support for the selected site.

11.50 In November 2024, the Inspector at Southlands (CD7.34 paragraph 101) disagreed with the assessment of the appeal parties that moderate weight be applied to the available grid connection allowing an early contribution to legally binding targets for net zero. Instead, the Inspector accorded this significant weight, as a result of the urgency of need and the difficulties experienced in obtaining grid connections currently.

11.51 I therefore conclude that the availability of grid capacity combined with a secured grid connection offer of up to 40MW for the Appeal Scheme is a **significant benefit**. On the basis of my colloquial comment that national targets require the delivery of ‘two ‘Fillongleys’ a week’, the matter warrants **significant weight** in favour.

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## Biodiversity and Net Gain

- 11.52 I note the LPA advised the Council's planning committee (CD2.2) that *"It is of substantial weight that the County Ecologist acknowledges that the appropriate bio-diversity assessment has been undertaken and that this when the additional planting has been included, shows a net gain of 62% in habitat units and a 25% gain in hedgerow units"*.
- 11.53 With regard to the weight recently attached at other solar PV appeals to net gains in excess of the 10% minimum, I note the following:
- Halse Road, Greatworth a net gain of 71% in habitat units and 33% in hedgerow units was attributed 'significant weight' (CD7.43, paragraph 7.33);
  - Bishops Itchington the level of BNG (which was unspecified) attracted 'significant weight' (CD7.17, paragraph 34); and
  - Halloughton a net gain of 73% was given 'significant weight' appeal (CD7.12, paragraph 59).
- 11.54 Going beyond the development statistics, the government and most local authorities have declared biodiversity crises in addition to the climate crisis declaration, because the two are inextricably linked, but crucially different. As quoted in the Appellant's Statement of Case, the Journal of Nature has said that climate change is *"Doubling the number of [species] at risk of extinction"* and the Smithsonian has stated that climate change is *"Accelerating the Earth's sixth mass extinction"*.
- 11.55 The Landscape Institute is clear that *"We all, individually and professionally, have a role to play in addressing this crisis"* (CD6.38).
- 11.56 The RTP1 and TCPA are clear that *"We have three shared messages for planners and the wider community: 1 Ensure that tackling the climate crisis is at the heart of the vision for the future of our communities. 2 Recognise how vital planning is to securing that vision – both directly, through facilitating the extension of renewable energy generation, and strategically, through practical nature-based solutions and design actions that can promote sustainable travel, urban cooling, or natural flood defence. 3 Finally, recognise how many of the actions necessary to tackle the climate crisis are also key in creating healthy, ecologically rich, prosperous and beautiful places for us and for future generations"* (CD6.43).
- 11.57 The State of Nature Report (CD6.69) is very clear that *"The UK distributions of 4,979 invertebrate species have on average decreased by 13% since 1970"* and *"Nature needs space to live and flourish, but around the globe we humans have decreased and diminished those spaces. This is especially the case in the UK. There are substantial negative*

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*consequences of living in a nature-depleted country. These include impacts on human health, and direct costs associated with adaptation to lost and damaged ecosystem services. For example, pollinating insects are worth millions of pounds to UK agriculture, and their population declines threaten food production” and “the UK is now one of the most nature-depleted countries on Earth”.*

- 11.58 In the context of a declared biodiversity crisis, sometimes referred to as ‘the sixth mass extinction’, I give the benefits of exceeding BNG a **significant level of benefit** to which **significant weight** should be applied.

#### Landscape and Green Infrastructure Benefits

- 11.59 I note the landscape mitigation and enhancement works proposed including new infilled hedgerow planting, tree planting and enhancement of field margins through proposed species-rich grassland. The extensive green infrastructure proposed for the Appeal Scheme, identified on Pegasus' Landscape Strategy p17 (CD1.20). Details of these enhancements are expanded upon in Mr. Cooks evidence.
- 11.60 Those measures would serve to create a more coherent landscape framework across the Appeal Site which would deliver a number of long-term benefits to which I give **moderate weight**.

#### Air Quality

- 11.61 Renewable energy reduces greenhouse gas emissions, which drive global warming, but are also harmful to human health more directly. This is a clear benefit to which I apply **moderate weight**.

#### Farm Diversification

- 11.62 This is a ‘new’ benefit that I am advancing, in part as a result of the focus provided by Mr. Kernon’s evidence.
- 11.63 The Appeal Scheme is a rural development that will benefit the farmer by diversifying his income, and solar farms are now a common feature of the countryside across the UK.
- 11.64 The solar farm will support the rural economy through farm diversification, allowing continued agricultural use for sheep grazing and ensuring that decommissioning after the 40-year operational period will see the land returned to (at least) its current state.
- 11.65 I note that the NPPF confirms that planning decisions should enable the development and diversification of agricultural and other land based rural businesses.
- 11.66 It is widely acknowledged that farming is becoming less and less viable and when farmers are beginning to rely upon innovative farm diversification schemes to support and compliment traditional farming practices.

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- 11.67 The National Farmers Union see renewable energy as an important step towards making British agriculture carbon neutral within two decades, an important consideration as farming is responsible for around one tenth of UK greenhouse gas emissions (CD6.68).
- 11.68 I consider that the rural economic benefits delivered by the proposal in terms of farm diversification are of **moderate weight** (minimal benefit as part of the national picture but significant local benefit to the farmer and local rural economy) should in itself be granted moderate weight in favour of the grant of planning permission.

#### Economic Development

- 11.69 NPPF paragraph 85 states that: *“Planning policies and decisions should help create the conditions in which businesses can invest, expand and adapt. Significant weight should be placed on the need to support economic growth and productivity”*.
- 11.70 NPPF paragraph 87 is clear that: *“Planning policies and decisions should recognise and address the specific locational requirements of different sectors”*.
- 11.71 I understand that the recent Bewley Homes judgement (CD7.19) has clarified that this does not necessarily translate to a generic significant weighting to all economic development.
- 11.72 In my opinion economic development associated with renewable energy goes far beyond the site-specific construction activities and includes the wider contribution that net zero industries make to the wider UK economy, including in the professional, design and engineering fields, as well as the indirect benefits of stabilised and secure domestic energy production, and its onward benefit to energy costs. Examples are given in the Statement of Case (CD9.1 under paragraph 7.8) for the avoidance of doubt.
- 11.73 I also contend that the vital nature of these considerations affords significant weight to be given in support of the economic development associated with renewable energy as a matter of principle when viewed through the prism of the government’s aspirations for a ‘green industrial revolution’.
- 11.74 Footnote 44 to paragraph 85 of the 2023 NPPF directed the reader to the Government’s Industrial Strategy 2017 (CD6.25). The Industrial Strategy includes ‘Clean Growth’ as a key part of the UK’s industrial Strategy. The Industrial Strategy links to the UKs Clean Growth Strategy 2017 (CD6.4). Both the Industrial and Clean Growth strategies link to the British Energy Security Strategy 2022 (CD6.1), and beyond that to Powering Up Britain Net Zero Growth Plan (CD6.22).
- 11.75 Bringing these references up to date, Footnote 43 of the NPPF refers to *“Invest 2035: The UK’s Modern Industrial Strategy [which] ‘identifies priority sectors for growth and support as: [amongst others] clean energy industries”*.

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- 11.76 I have identified that the Clean Power 2030 Action Plan 2024 (CD6.3, pages 20, 43 and 44) identifies significant beneficial impact for businesses from clean power, including price stability, market certainty encouraging investment and job opportunity. The Action Plan places the clean energy industries as a priority growth sector as part of the Government's Industrial Strategy. Clean energy is noted as creating employment and delivering price stability which is crucial for businesses.
- 11.77 I find that not only does the renewables industry generate significant revenue for the UK economy, but it is also an engine of green skills and education, and a key part of the government's wider strategy for economic recovery and onward green growth.
- 11.78 At Bramley, I note that the Inspector afforded 'significant' weight to economic benefits associated with that solar farm scheme (CD7.15, paragraph 79).
- 11.79 I consider it follows that the weight to be given by decision makers to economic development generated by the renewables industry is significant, regardless of the size of the proposal, because even small-scale projects provide a valuable contribution to significantly cutting greenhouse gas emissions, boosting the green economy and upskilling the UK low carbon and renewable energy workforce.
- 11.80 I therefore consider that in this case a **moderate level of benefit** accrues to the green economy which requires constant investment, innovation and support, to which **significant weight** should be applied.

#### Flood risk betterment

- 11.81 It has been agreed with the Rule 6 Party that the 'ponds' are to be retained within the appeal scheme.
- 11.82 The ponds provide betterment, over and above the policy-compliant drainage strategy agreed with the LPA and LLFA.
- 11.83 This benefit is **minor** in scale to which I attach **minor weight** in favour.
- 11.84 As an aside, the ponds generate a small amount of BNG uplift<sup>18</sup> of 0.63% in habitat units.

#### BMV Land

- 11.85 I have explained that the proposed use of the land for solar is for a temporary period, will be associated with continued agricultural production through grazing, will allow an improvement in soil through resting the land from arable production and will have no significant impact on food production.

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<sup>18</sup> V5 BNG is 62.54% habitat units and 25.76% linear units and v6 BNG (CD1.9) is 63.17% habitat units and 25.76% linear units.



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11.86 I am mindful that the LPA committee report of March 2024 (CD2.2) stated that *“it is considered that the impact here is “acceptable” in overall planning terms”* and the LPA Statement of Case (CD9.5) states that *“the dual use of the land/BMV impact is considered to represent a limited benefit”*.

11.87 As noted above and noting the evidence of Mr. Kernon, I have concluded that the proposal will not result in permanent or even temporary loss of BMV land for agriculture and the balance of harms and benefits discussed above falls to a **minor level of benefit** to which I attribute a **minor degree of weight** in favour.

### **Material Considerations which are harms**

#### Effect on Landscape

11.88 The landscape is under threat from climate change. This is acknowledged by no less than the Landscape Institute, the RTPI and the TCPA. Whether this be by biodiversity and habitat loss, or unpredictable and potentially adverse changes to ‘English’ landscape character.

11.89 I have referred to the evidence of Mr. Cook in relation to landscape matters.

11.90 I have noted Mr. Cooks overall conclusion that:

*“whilst there would be **some limited adverse effects** on landscape character and visual amenity, these would be localised. There would be **localised moderate adverse harm** to the openness of the Green Belt and the Appeal scheme would conflict with one purpose (c) of the Green Belt in terms of encroachment in the countryside. The other four remaining purposes would not be affected by the Appeal scheme. I consider that there are no substantive landscape character, visual amenity or Green Belt reasons from a landscape planning perspective for refusing planning permission for the proposed solar farm”*

11.91 and

*“The Appeal Site does not strongly contribute to any of the purposes (a), (b) or (d) nor does the Appeal Scheme harm these four purposes”*.

11.92 I consider that these matters should be afforded moderate weight because the landscape is not designated or valued.

11.93 I note that harm arising from the proposal would diminish as the proposed landscape mitigation planting matures. I also note that landscape mitigation will leave a positive legacy beyond the 40 year development lifespan.

#### Effect on Heritage significance

11.94 This matter is addressed in Ms. Armstrong's evidence, and I agree with her conclusion that:

*“The proposed development would result in **less than substantial harm, at the low end of***

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*the spectrum, to the heritage significance of the following heritage assets:*

- *Fillongley Conservation Area.*
- *Scheduled Ringwork Castle.*
- *Grade II Listed Park House Farm.*
- *Grade II Listed Fillongley Mount’.*

11.95 That: *“The harm identified arises from a change in ‘setting’ only and would be removed following the decommissioning of the solar farm and removal of associated infrastructure”.* Making the harm temporary in line with the lifespan of the development and short in terms of the ‘lifespan’ of the heritage assets which are measured in terms of centuries.

11.96 That: *“I do not consider that harm to the heritage significance of the following designated heritage assets, as identified by MBC, would arise as a result of a change in ‘setting’:*

- *Grade II\* Listed Church of St Mary and All Saints.*
- *Grade II Listed White House Farmhouse.*
- *Grade II Listed Barn 20 Metres North of Park Farmhouse.*
- *Grade II Listed Cartshed and Granary 5 Metres North East of Park House”.*

11.97 I have given consideration to the effect of the proposals on the heritage significance of assets’ settings, to which great weight can be attributed<sup>19</sup>.

11.98 Heritage is under threat from climate change. This is acknowledged by no less than Historic England and the National Trust. Whether that be by flood, fire, pest-vectors or soil heave as included in the National Trust’s recently published climate hazard map.

11.99 Historic England has said *“The climate, energy and biodiversity crisis will affect every aspect of Historic England’s work. [...]. Sustainable energy sources are critical in reducing climate change”* (CD6.39).

11.100 National Trust has said *“Climate change is the biggest threat to the coastline, countryside and historic buildings we care for”* (CD6.45 and 6.46).

#### **Material Considerations which are Neutral**

11.101 Grey belt – I have set out above that the appeal scheme meets the definition of grey belt in the NPPF and satisfies the criteria of NPPF paragraph 155 where relevant. Therefore, the proposal’s interaction with green belt policy is neutral.

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<sup>19</sup> Noting that NPPF paragraph 212 afford great weight to asset conservation, not to heritage harms. In my opinion, contributing to reducing climate change effect on heritage contributes to the conservation of assets, but a precautionary approach is taken on this heritage-weighting topic

11.102 Archaeology – I note the County Council Archaeological officer did not raise any objection subject to appropriate condition for a program of archaeological investigation. The significance of below ground archaeology can be safeguarded through conditional planning permission. The advancement of knowledge arising from the interpretation of any subsequent archaeological finds could be said to be a small benefit to society, but I am content to rest this matter as a neutral outcome.

11.103 Access and Transport - It is agreed that the Highways Authority raises no objection to the application subject to the imposition of reasonable planning conditions.

11.104 Residential Amenity – No party raises issues in relation to residential amenity. The LPA March 2024 Officer’s Report states *“it was also concluded above that there would be unlikely to be any adverse residential amenity impacts”* and Statement of Case (CD9.5) at its paragraph 8.32 is clear that *“overall the development accords with the intention to protect residential amenity”*.

**Planning Balance Summary Table (grey belt scenario)**

11.105 The table below sets out my opinion on the balance of harms and benefits. It differs from the balancing exercise in the Statement of Case because BMV and Flood Risk Betterment have been added in in response to ongoing objections and good design has been included for the reasons discussed under paragraph 11.34 above. In addition, I have split out the climate benefit from the energy security benefit because *“Delivering energy security is a further matter that is both urgent and of critical importance to the country. This is a separate benefit, as it turns on how and where energy is produced and therefore how secure it is”* (paragraph 7.49 of CD7.42).

Benefits	Neutral	Harms
Climate emergency: <b>Substantial</b> benefit and <b>Significant</b> weight	Grey/green belt	Landscape and visual: <b>Some limited adverse effects</b> on landscape character and visual amenity and <b>moderate</b> weight.
Energy Security: <b>Significant</b> benefit and <b>Significant</b> weight	Archaeology	Heritage: <b>Less than substantial harm</b> to some heritage assets’ settings

		and <b>great weight</b> <sup>20</sup> .
Good design and efficient use of land: <b>Moderate</b> benefit and <b>Significant</b> weight	Residential amenity	
Grid connection/rapidity of deployment: <b>Significant</b> benefit and <b>Significant</b> weight	Access & transport	
Biodiversity net gain: <b>Significant</b> benefit and <b>Significant</b> weight		
Green infrastructure and environment: <b>Significant</b> level of benefit and <b>Significant</b> weight		
Economic development: <b>Moderate</b> benefit and <b>Significant</b> weight		
Farm diversification: <b>Moderate</b> benefit and <b>Moderate</b> weight		
Flood risk betterment: <b>Minor</b> benefit and <b>Minor</b> weight		
BMV land: <b>Minor</b> benefit and <b>Minor</b> weight		

11.106 Having regard to my analysis of the benefits of the Appeal Scheme and the weights that I think should be afforded to them, to conclude that material considerations weight overwhelmingly in favour and do not pull away from the grant of planning permission in compliance with the development plan which I have fully justified in the Statement of Case and summarise in this proof of evidence.

11.107 It is my opinion that the acknowledged omission of purpose (c) in the Grey Belt definition by Government was purposive. When compared to the July 2024 draft definition, that can be the only answer. It is my opinion that this was a natural 'next step', from the approach taken in NPPF paragraph 160 (156 as was) to single out renewable energy as having characteristics capable of demonstrating very special circumstances, in the context of the

<sup>20</sup> Noting that NPPF paragraph 212 afford great weight to asset conservation, not to heritage harms. In my opinion, contributing to reducing climate change effect on heritage contributes to the conservation of assets, but a precautionary approach is taken on this heritage-weighting topic.

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Government's policy statements about being a green energy superpower.

- 11.108 In my opinion, the concept of Grey Belt is a paradigm shift in thinking on Green Belt matters that must be reflected in the approach to decision making.
- 11.109 Grey Belt would not have been introduced with the in-built omission of purpose c. (the purpose most often brought to bear against ground mounted solar) from the Grey Belt definition, and in the context of Government ambitions to be a 'green energy superpower', to see decision making undertaken in a business as usual way. I have set out above that the LPA's advice to its Planning Board on the topic was limited in its scope and insular, focussing inward on the site, rather than outward on the integrity of the remaining Green Belt as a whole.
- 11.110 Alongside the introduction of Grey Belt, the weight to be given to renewable energy development has been confirmed, and this aligns with the increasing need and reducing time to deploy ground-mounted solar, at pace and scale, whether Green Belt or not. I have likened this to 'two Fillongleys a week' at the national level to keep pace with need.
- 11.111 I was content that very special circumstances were clearly in favour of the grant of planning permission in this appeal before the introduction of Grey Belt. I am even more firmly of the opinion that the benefits clearly and compellingly outweigh the harms in this case.

## 12. Overall Planning Balance in the Green Belt Scenario

- 12.1 In this section I explain how I believe the decision maker should approach the determination of this Appeal if the site is not Grey Belt, before going on to identify any material considerations that need to be weighed in the overall planning balance.
- 12.2 For the sake of brevity and to avoid repetition, only the summary table is included here for comparison with the Grey Belt version above.
- Openness and Purposes of the Green Belt
- 12.3 I have considered the potential harm from elements of the Appeal Scheme to the openness and purposes of the Green Belt and have concluded that the development would be inappropriate development in the Green Belt and would by definition therefore result in harm to the Green Belt.
- 12.4 As to the nature and extent of this harm, I considered the Appeal Scheme would result in limited harm to the Green Belt in both spatial and visual terms to Purpose c). In respect of the other four purposes, I do not consider there to be harm in this instance, and this is

common ground with the LPA.

- 12.5 I note that the identified harms would be temporary. The PPG states “*Particular factors a local planning authority will need to consider include: that solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use*” in the context of NPPF paragraph 163b and 55”
- 12.6 If the harm is deemed necessary to consider, all such harm to the Green Belt should be afforded substantial adverse weight in the planning balance, although I have noted that that does not mean that the harm is, in itself, great or substantial.

**Planning Balance Summary Table (Green Belt scenario)**

Benefits	Neutral	Harms
Climate emergency: <b>Substantial</b> benefit and <b>Significant</b> weight	Grey/green belt	Green belt: <b>Limited harm</b> and <b>substantial</b> weight
Energy security: <b>Significant</b> benefit and <b>Significant</b> weight	Archaeology	Landscape and visual: <b>Some limited adverse effects</b> on landscape character and visual amenity and <b>moderate</b> weight.
Good design: <b>Moderate</b> benefit and <b>Significant</b> weight	Residential amenity	Heritage: <b>Less than substantial harm</b> to some heritage assets’ settings and <b>great weight</b> <sup>21</sup> .
Grid connection: <b>Significant</b> benefit and <b>Significant</b> weight	Access & transport	
Biodiversity net gain: <b>Significant</b> benefit and <b>Significant</b> weight		
Green infrastructure and environment: <b>Significant</b> level of benefit and <b>Significant</b> weight		
Farm diversification: <b>Moderate</b> benefit and <b>Moderate</b> weight		

<sup>21</sup> Noting that NPPF paragraph 212 afford great weight to asset conservation, not to heritage harms. In my opinion, contributing to reducing climate change effect on heritage contributes to the conservation of assets, but a precautionary approach is taken on this heritage-weighting topic.

Economic development: <b>Moderate</b> benefit and <b>Significant</b> weight
Flood risk betterment: <b>Minor</b> benefit and <b>Minor</b> weight
BMV land: <b>Minor</b> benefit and <b>Minor</b> weight

- 12.7 Having regard to my analysis of the benefits of the Appeal Scheme and the weights that I think should be afforded to them, I conclude that the harms, temporary as they mostly are, are clearly outweighed by the benefits such that very special circumstances accrue from the wider environmental benefits and other benefits associated with the Appeal Scheme.
- 12.8 In addition, I conclude that, on balance, the material considerations weigh overwhelmingly in favour and do not pull away from the grant of planning permission in compliance with the development plan which I consider is fully justified in the Statement of Case and reiterated in this proof of evidence.
- 12.9 Climate change has been variously described as an existential threat to mankind, the environment, the economy to name a few. I struggle to conceive of a set of circumstances that could be said to be more 'special' i.e. urgent, compelling or (I would suggest) desperate.
- 12.10 Time is running out to try to halt climate change. It appears we have already failed at the crucial 1.5 degree mark. The impacts of this are felt and seen everywhere, all the time, from the very affluent Hollywood Hills to the less affluent island nation of the Maldives (the first country to sign the Kyoto Protocol) where the mass evacuation of the archipelago has already begun. One needs only turn on the news to see communities, homes, infrastructure, flora, fauna and heritage assets washed away in flooding, or burned to ash in wildfires.
- 12.11 In my opinion, under these dire circumstances a temporary harm should be allowed for the greater gain.

### 13. Planning Controls

- 13.1 A suite of agreed planning conditions are appended to the Main Statement of Common Ground between Enviromena and the LPA.
- 13.2 I am of the opinion that appropriate planning controls can be achieved through the imposition of planning conditions and the s106 obligation.

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## Appendices – see separate document.

Appendix 1 Extract of Appellant Statement of Case

Appendix 2 North Warks Planning Board 3/2/25 Supplementary Report

Appendix 3 North Warks Development Board 3/2/25 Meeting Transcript

Appendix 4 3<sup>rd</sup> Party Reps Table

Appendix 5 Drainage Technical Note