Planning Inspectorate

Appeal Decision

Inquiry held 11 – 14 February 2025

Site visits made on 10 and 13 February 2025

by Alison Partington BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4th March 2025

Appeal Ref: APP/Q3115/W/24/3350890
Burcot Farm, Burcot, Abingdon, Oxfordshire, OX14 3GW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Burcot Solar Farm Limited against the decision of South Oxfordshire District Council.
- The application Ref is P23/S4132/FUL.
- The development proposed is the installation of a ground mounted solar photovoltaic array, co-located battery energy storage scheme (BES) together with associated infrastructure; security fencing; CCTV; access gate; on-site Biodiversity Net Gain.

Decision

1. The appeal is allowed and planning permission is granted for the installation of a ground mounted solar photovoltaic array, co-located battery energy storage scheme together with associated infrastructure; security fencing; CCTV; access gate; and on-site Biodiversity Net Gain at Burcot Farm, Burcot, Abingdon, Oxfordshire OX14 3GW in accordance with the terms of the application, Ref P23/S4132/FUL, subject to the Schedule of Conditions set out in Annex A.

Procedural Matters

2. The Council confirmed (27 July 2021) that an Environmental Impact Assessment was not required. There is no reason to disagree.

3. The application had three reasons for refusal. The third reason for refusal related to ecology and biodiversity. The Council confirmed at the Case Management Conference and in the Statement of Common Ground (SoCG) that in the light of the additional information that had been submitted by the appellant they would no longer be pursuing this reason for refusal. From the evidence before me I agree with this conclusion, and I have determined the appeal accordingly.

4. The first reason for refusal related to the proposed development being inappropriate development in the Green Belt. Subsequent to the application being determined, a revised version of the *National Planning Policy Framework* (the Framework) was published in December 2024. In the light of the changes in this document it was agreed in a supplementary SoCG that the appeal site falls under the definition of Grey Belt, that it would accord with the requirements in paragraph 155 of the Framework, and so would now not be inappropriate development. These are conclusions that I agree with. Given this, and having regard to

paragraph 153 of the Framework, and the Court of Appeal judgement[1], as the effect of the development on openness and the purposes of including land within the Green Belt are not expressly stated as determinative factors in gauging the inappropriateness of the development, there is no requirement for me to separately assess the impact of the development on the openness of the Green Belt, or the purposes of including land within it. I have determined the appeal accordingly.

5. On 27 February 2025, after the Inquiry was closed, the government published an update to the Green Belt section of the *Planning Practice Guidance* (PPG). This was reviewed by both main parties, and they provided an updated SoCG confirming that they consider the site still meets the definition of Grey Belt and that the proposal conforms with the latest guidance.

Main Issue

6. In the light of the above, the main issue in the appeal is the effect of the proposed development on, and the potential loss of, agricultural land.

Reasons

The site, the surrounding area and the proposal

7. The appeal site comprises three, relatively flat agricultural fields that total 56.7ha. External and internal field boundaries are defined by hedgerows with mature trees and tree belts. A small woodland area lies between part of the site and Oxford Road. The farm buildings, which are now used for a variety of non-agricultural uses, are located adjacent to the northeast corner of the site. No Public Rights of Way cross the site but there are a number in the area particularly to the south and west of the site.

8. The surrounding area is largely agricultural in character punctuated with areas of woodland and small settlements - the closest settlements being Burcot, Berinsfield and Clifton Hampden. The B4015 / Oxford Road is immediately adjacent to the western boundary of the site, whilst fields lie between the site and the A415 and A4074 to the south and northeast of the site respectively. To the northwest of the site lies Nuneham Park a Grade 1 Registered Park and Garden.

9. The proposal would comprise ground mounted solar arrays arranged in rows across the majority of the fields, a battery energy storage system (BESS) located on part of the site near the existing farm complex, along with essential electricity generation infrastructure, internal access tracks, an access to the A415, security fencing, CCTV cameras and landscaping.

Planning Policy Context

10. The development plan comprises the *South Oxfordshire Local Plan 2011-2035 (adopted December 2020)* (LP) and the *Burcot and Clifton Hampden Neighbourhood Plan 2011–2035 (made October 2024)* (NP). The main policies relevant to the appeal proposal are set out in the SoCG.

11. Leaving aside the two reasons for refusal which are not being contested, the remaining reason for refusal references LP Policy DES7. This requires “new

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

development to make provision for the effective use and protection of natural resources where applicable, including ….vii) avoiding the development of the best and most versatile agricultural land, unless it can be demonstrated to be the most sustainable choice from reasonable alternatives, by first using areas of poorer quality land in preference to that of higher quality".

12. Policy DES9 of the LP supports schemes for renewable and low carbon energy provided they do not cause a significant adverse effect to: i) the landscape, both designated AONB and locally valued, biodiversity, including protected habitats and species and Conservation Target Areas; ii) the historic environment, both designated and non-designated assets, including development within their settings; iii) openness of the Green Belt; iv) the safe movement of traffic and pedestrians; or v) residential amenity. It is not disputed that the proposal accords with this policy.

13. The Council have not indicated the proposal would be contrary to any of the policies in the NP.

14. The Council are currently in the process of producing a new Local Plan. This was submitted for examination in December 2024. It is agreed by the main parties that limited weight can be given to policies in the emerging plan and none are referenced in the reason for refusal. As a result, I have not considered the policies in the emerging plan.

15. Paragraph 187b) of the Framework, states that planning decisions should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land. Further guidance on the use of agricultural land is provided in footnote 65 of the Framework. This footnote is linked to paragraph 188 which relates to plan making, and specifically to the allocation of land within them, not decision taking. However, even if it is considered to be relevant to decision taking it simply indicates that where significant development is demonstrated to be necessary, areas of poorer quality land should be preferred to those of higher quality.

16. Paragraph 187a) of the Framework refers to the need to protect and enhance amongst other things soils in a manner commensurate with their statutory status or identified quality in the development plan. However, agricultural land classification, of which Best and Most Versatile (BMV) land is a part, takes into account more than just soil and neither DES7 nor DES9, or any other LP policy I have been referred to, identify any soils of specific quality or with statutory status.

17. The *Planning Practice Guidance* (PPG), on renewable and low carbon energy, which dates from 2015, provides a list of planning considerations that relate to large scale ground mounted solar photovoltaic farms[2]. These include: encouraging the effective use of land by focussing such developments on previously developed and non-agricultural land provided it is not of high environmental value; and where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.

[2] Paragraph ID:5-013-20150327

18. There are two Written Ministerial Statements (WMS) that are of relevance. One, dated 25 March 2015, indicates that "…any proposal involving the best and most versatile agricultural land would need to be justified by the most compelling evidence". The other, dated 15 May 2024, sets out further detail on how balancing the competing priorities for energy security and food production is intended to be applied. It indicates "…that due weight needs to be given to the proposed use of Best and Most Versatile land when considering whether planning consent should be granted for solar developments" and that "…as the land grade increases, there is a greater onus on developers to show that the use of higher quality land is necessary."

19. The *National Policy Statement on Energy* (EN-1) states that proposals should seek to minimise impacts on BMV land and preferably use land of Grade 3b and below and that proposals should not be sited on BMV land without justification. The *National Policy Statement on Renewable Energy Infrastructure* (EN-3) indicates that "while land type should not be a pre-dominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land." Although these two documents primarily relate to Nationally Significant Infrastructure Projects (NSIPs), EN-1 confirms they can be a material consideration in the determination of planning applications, and that their materiality will need to be judged on a case-by case basis. In part, given that the proposal is so close to the threshold for a NSIP, I consider they are both material considerations in determining this appeal.

20. There are a large number of other relevant documents. These are listed in the SoCG and the Core Documents and include the National Infrastructure Strategy 2020, Energy White Paper 2020, Net Zero Strategy: Build Back Greener 2021, Environment Act 2021, British Energy Security Strategy (April 2022) and Clean Power 2030 Action Plan (December 2024).

21. Overall, the policies and guidance indicate that careful consideration needs to be given to the use of BMV land but whilst the use of poorer quality land is preferred there is no prohibition on the use of BMV land. The recent Mead Realisations judgement[3] sets out relevant factors that may be considered when deciding what weight to give to various policies and guidance. Being published in December 2024, having been subject to consultation, and representing the views of the current government, I give greatest weight to the Framework, particularly in comparison to the PPG that dates from 2015. Similarly, I find the need to give due weight to the use of BMV, as set out in the 2024 WMS to be more appropriate than the need to provide compelling evidence as required in the 2015 WMS.

Effect on, and potential loss of, agricultural land

22. An Agricultural Land Classification survey of the appeal site and surrounding land was carried out in May 2020. Of the 93ha surveyed it found 22ha were Grade 2 and 68ha were Grade 3a. The appeal site has sought to avoid the use of the majority of the Grade 2 land and comprises 4.1ha Grade 2 and 52.6ha Grade 3a. Nevertheless, it is all BMV land.

[3] Mead Realisations Limited v Secretary of State for Housing, Communities and Local Government and North Somerset Council [2025] EWCA Civ 32

23. The farm is now an arable farm growing wheat, barley, beans and oilseeds. At the inquiry it was indicated that the cereals are feed crops used to feed livestock rather than being used for human consumption. Whilst third parties have suggested that the land is very productive in terms of its yields, the Agricultural Appraisal Report indicates that the yields are average for this type of land.

24. The Provisional Agricultural Land Classification map show that the district has a higher proportion of BMV land (57%) compared to the rest of country (42%)[4]. The appeal site represents a very small proportion of the overall BMV land resource within the district (0.15%) and so even at a district level the impact of the loss of this amount of BMV land for arable production would be minimal.

25. The proposal would change the use of the land for a period of 40 years. Whilst this is a significant period of time it is not permanent. Moreover, although it would be taken out of arable production, it is proposed that the land would be used for both energy production and sheep grazing. This dual use can be secured by condition. Apart from the small areas of land used for fixed infrastructure, which amount to approximately 1.8ha, the majority of the land would still be used for some agricultural use.

26. It is not disputed that there are no national or local policies that require agricultural land of any grade to be farmed. Nor is there any planning control over the type of agricultural use taking place on land. Therefore, even if it may be unlikely on BMV land, there would be nothing in planning terms to prevent the use of the fields that form the appeal site for sheep grazing or even from leaving them fallow. In fact, the Sustainable Farming Incentive encourages farmers to convert arable land to grassland.

27. The appellant's evidence indicates that the maximum production from the highest yielding crop grown on the land is in the region of 536 tonnes of wheat per annum. Given nationally cereal production is in the region of 20 - 25 million tonnes per annum, the impact of the loss of this land for arable production would be negligible. Even if the crops were not used for livestock feed, this level of loss would not have an adverse impact on food security.

28. From the evidence before me I am satisfied that resting the land from intensive arable farming would improve soil health through increasing soil organic matter, soil carbon and soil moisture. It was suggested that the appellant's evidence in this regard did not consider the effects of combined solar farm and pasture on soil health. Nonetheless, the construction of the solar farm involves limited disturbance to soils and a soil management plan would be required by condition. Given this, and in the absence of any evidence to the contrary, I am not persuaded that the impact on soil health from a combined pasture and solar farm use would be materially different from that gained solely from pasture.

29. Although the site is 100% BMV land I note that there was no objection to the proposal from Natural England with their response highlighting that the proposal would be "unlikely to lead to significant permanent loss of BMV agricultural land, as a resource for future generations."

30. At the end of the 40 years, it is proposed that all the infrastructure and components of the scheme would be removed, and the entire site would be returned to

[4] Based on Grade 3 land being equally split between Grade 3a and 3b.

agricultural use. The Council suggested that as the Framework gives strong policy support to repowering and extending the life of existing renewable sites it could result in the use of the land as a solar farm beyond 40 years. However, I have to deal with the appeal on the basis which it was applied for. Any future use of the site at the end of the 40 year period would be taken on basis of the relevant policies extant at that time.

31. In support of their case the Council referred to a number of appeals which were, in part at least, dismissed due to the fact that the proposal used BMV land. However, the appellant equally provided many other appeals where the use of BMV land had not been an impediment to allowing the proposal. These included some which also used 100% BMV land, including a significantly greater amount of both BMV land and Grade 2 land specifically. As such, it is clear that the appropriateness of utilising BMV land is a matter of planning judgement on a case by case basis.

32. 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.

Alternative sites

33. The Council have argued that LP Policy DES7 vii) requires a sequential approach to site selection and that the appellant has failed to undertake a robust assessment of alternative sites to show that the use of the BMV land is necessary. They highlighted that the need for such a robust assessment of sites was supported in an appeal at Lullington, South Derbyshire[5] and the subsequent high court judgement[6].

34. Policy DES7 seeks to make effective use of land and protect natural resources, with one of the objectives of the policy being to tackle climate change. In producing renewable energy, the proposal would clearly help to tackle climate change. In addition, the use of bifacial panels which minimise the amount of land needed and the dual use of the land for both agricultural and energy production makes efficient use of the land. As set out above, the proposal would also improve soil health. In these ways the proposal would accord with the overall thrust of the policy.

35. Whilst the wording of clause vii) of the policy requires that the use of BMV land needs to be demonstrated to be the most sustainable choice from reasonable alternatives it does not specifically require consideration of alternative sites. It goes on to say that areas of poorer quality land are to be used in preference to that of higher quality land. This wording is similar to that used in the PPG. A recent High Court judgement[7], subsequent to that at Lullington referred to above, concluded that this wording does not mandate the consideration of alternative sites and still less does it require a sequential test to be adopted.

36. The Council have suggested the circumstances of the Bramley case are different to this appeal as in Bramley the relevant local plan policy did not require a

[5] APP/F1040/W/22/3323316
[6] Lullington Solar Park Limited v Secretary of State for Levelling Up, Housing and Communities and South Derbyshire District Council [2024] EWHC 295 (Admin)
[7] Bramley Solar Farm Residents Group v Secretary of State for Levelling Up, Housing and Communities, Bramley Solar Limited and Basingstoke and Deane Borough Council [2023] EWHC 2842 (Admin)

sequential approach to site selection. But as set out above, DES7 requires the consideration of reasonable alternatives, not alternative sites, and I consider it does not require a sequential approach. As such the circumstances in this appeal are not different to that in the Bramley case.

37. Moreover, unlike the Framework which clearly identifies in which situations a sequential test is necessary and sets out a methodology for doing this, neither DES7 or its supporting text makes any reference to the need for a sequential approach or how to carry one out. In relation to the use of BMV land the Framework requires the economic and other benefits to be considered, not a sequential approach. Furthermore, neither EN-1 or EN-3 require a sequential approach.

38. It is not disputed by the Council that there is no previously developed or non-agricultural land in the district that could accommodate the proposal. As such, the proposal accords with the requirement in the PPG to show that the use of agricultural, as opposed to BMV, land is necessary.

39. In addition, the appellant argued that in terms of DES7 the proposal is the most sustainable choice from reasonable alternatives. The alternatives being: to not develop the site and not use the grid connection where starting again on a new site would require a new grid connection which currently involves a 10 year wait; to develop the wider 93ha site that would use more Grade 2 agricultural land; and the appeal scheme. Given the urgent need for Renewable Energy set out in various government publications they argue that the appeal scheme represents the most sustainable choice from reasonable alternatives. Moreover, in minimising the use of Grade 2 land within the appeal site, they consider they have used what in this case is the poorer quality land.

40. Nonetheless, should it be considered that to accord with Policy DES7 it is necessary to look at alternative sites the appellant argues that the site selection reports demonstrate a lack of alternative sites, (although I note the appellant's comment that these were not produced for this purpose but the to justify the weight given in their planning balance to the lack of alternative sites). I will therefore consider the report, and the criticisms made of it.

41. The Site Selection Report (SSR) highlights that any other suitable sites it found would be additional sites not alternative sites. This is due in part to the pressing need for Renewable Energy to meet the national target of clean power by 2030 – described within NESO's Clean Power 2030 as requiring "…a once in a generation shift in approach and in the pace of delivery…". But also, because none of the alternative sites would be able to utilise the grid connection available to the appeal scheme which is tied to this site.

42. The Council highlighted that the various comparative site reports all post date the incorporation of the appellant company in July 2021, as does the Agricultural Land Classification report. It is therefore suggested that this means that the site was selected before any meaningful analysis of alternatives took place.

43. However, the Site Selection Statement (February 2022) explains the site search process that was started in May 2019 following the identification of available grid capacity. This considered a wide range of factors including agricultural land quality. Furthermore, whilst the Agricultural Land Classification Report is dated August 2021, the introduction states that the survey work was done in May 2020,

which pre-dates the incorporation of the company. The findings of this could well have been provided in advance of the publication of the formal report.

44. As a result, I am satisfied that a meaningful analysis of sites did take place in advance of the incorporation of the company and the formal grid connection offer which is linked to this site.

45. Whilst the company behind the proposal may work all over the country, the key factor in considering alternatives is grid capacity and the ability to obtain a grid connection. EN-3 specifically highlights that, "The capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development." A grid connection offer has been secured at Cowley substation and will enable the proposal to be delivering energy within 2 years. As a result, it is reasonable for the site selection analysis to focus on Cowley sub-station where the connection has been offered.

46. The SSR uses an 8km search radius. This is the length of the cable connection from the appeal site to Cowley substation and is considered the furthest distance that is viable in this case. Whilst there may be another scheme in the area that is 13km from the point of connection, it was explained at the inquiry that development costs for a scheme and the cost of the grid connection can vary significantly. As such, the fact that that scheme can be viable at 13km does not mean this one can be. In my experience an 8km search area is much larger than other schemes have identified as being the limit of a viable connection. In addition, I agree that the provision of confidential viability information is not expected or reasonable.

47. Criticism was made that the SSR only considers Grade 4 land not Grade 3 land which could include areas of non-BMV Grade 3b land. However, given the only way it can be determined whether the land is Grade 3a or Grade 3b is through intrusive and time-consuming soil sampling and assessment, I consider carrying out this survey work on the 18,000ha of Grade 3 land in the search area would be unreasonable and disproportionate. Whilst the potential for sampling was suggested in the previously referenced Lullington judgement, the appellant has highlighted that neither the judgement nor the appeal decision mention the national guidelines[8] that set out that a definitive agricultural land grading is obtained by detailed surveying not sampling.

48. The Council also criticised the methodology because it did not give BMV land any special value or consideration. However, agricultural land quality is only one of many considerations that have to be taken into account in site selection. Other factors that have to be considered include heritage, ecology, landscape, amenity and whether landowners are willing to let their land be used in this way. Policy protection for BMV land is not as great as that for land in the Green Belt or National Landscape areas, or to heritage assets. Given this, I do not consider it is reasonable for BMV land to be the overriding consideration.

49. Whilst smaller areas of land may be available in some of the search area, there is no policy requirement for developers to seek smaller sites or to fragment their proposed operations. Moreover, smaller sites would result in a smaller scheme

[8] Ministry of Agriculture, Fisheries and Food Agricultural Land Classification of England and Wales, Revised Guidelines and criteria for grading the quality of agricultural land 1988 and Natural England Technical Information Note 049: Agricultural Land Classification: protecting the best and most versatile agricultural land.

with a lower capacity that would not make efficient use of the available grid connection.

50. The SSR analyses 10 potential areas and concludes that none of them are more preferable than the appeal site. The Council disputes this finding on areas 5-10. Within area 5 the Council a parcel of land they considered could be suitable. However, the northern part of this parcel has topographical constraints which not only effect the ability to site solar panels but would potentially increase the visual impact of any scheme. Other constrains such as the nearby SSSIs, listed buildings and the footpaths that cross this land mean I consider that this area is not preferable to the appeal site.

51. As well as the constraints of 2 SSSIs and a flood zone, area 6 is situated beyond the 8km maximum cable length. Whilst the appeal site is also slightly beyond the 8km cable point, the intervening land belongs to the same landowner enabling the additional cabling to be laid easily. The distance area 6 is beyond this 8km point is significantly greater than the appeal site, and I am satisfied that development in this area would not be viable.

52. The Council identified an area of around 92ha of Grade 4 land in Area 7 they considered could be developed. However, this area is adjacent to a residential area and has a footpath that crosses the middle of the area. In addition, the topography of some of the land makes it unsuitable for the siting of panels. The Council accepted that this would reduce the size of the site quite significantly. These constraints mean this area would not be capable of enabling the development of a 49.9MW solar farm.

53. Area 8 had been identified by the appellant as unsuitable for development but subsequently the Council stated that an application for a solar farm was made on a site within the area by the same agent as is acting on behalf of the appellant. However, given the lead in time for an application of this type, the unsuitability of the area could well have been due to the fact that it was known that the land was not available given it was being progressed for another scheme.

54. The land around Toot Baldon that comprises Area 9 is crossed by a number of Public Rights of Way and also contains a strategic housing allocation and another consented solar farm. Furthermore, the Site Selection Statement dated February 2022 shows that landowners in the area were contacted but did not respond. As such, the land would not appear to be available for a solar farm development.

55. For the same reason the southern parcel in Area 10 is also not available. Whilst the northern parcel of land is not mentioned in the SSR, the plan shows that it is crossed and abuts a number of public rights of way. Whilst public rights of way do not necessary preclude the development of a solar farm, the visual impact and effects of any such scheme are likely to be greater. In this case the appellant has highlighted that the site is also constrained by heritage assets and its proximity to a village, making it more constrained for development than the appeal site.

Conclusion on main issue

56. Bringing these points together, I consider that the proposal accords with the overall thrust of Policy DES7 as it makes efficient use of the land, protects natural resources and helps to address climate change. Moreover, I consider that it has adequately been demonstrated that the use of agricultural land is necessary for

the development and that it is the most sustainable choice from reasonable alternatives. However, even if it is considered that the policy requires a sequential approach to be taken, I consider that the SSR and the earlier site selection documents show a reasonable and proportionate assessment has been undertaken that adequately demonstrates the appeal site is a preferable location despite being BMV land.

57. Therefore, I consider that the proposal would not result in the loss of, or have an unacceptable impact on, BMV land. The land could continue to be used for agricultural purposes alongside the production of renewable energy and could return fully to agricultural use at the end of the lifetime of the development. Accordingly, there would be no conflict with Policy DES7 of the LP or the Framework.

Benefits arising from the proposal

Renewable Energy Generation and Energy Security

58. The proposal would have an installed capacity of 49.9MW, estimated to provide sufficient electricity to power 13,000 family homes per annum. The site benefits from an immediate connection to Cowley substation that means it could be generating electricity within 2 years.

59. In 2019 the Government declared an Environmental and Climate Change Emergency. Various recent government publications have highlighted the need to significantly increase generation from onshore wind and solar energy production, as it seeks to ensure that by 2035 all our electricity will come from low carbon sources. The most recent publication, the Clean Power Action Plan 2030 published in December 2024, reiterates this need for a rapid deployment of new clean energy setting an ambitious target of 45-47GW of solar power to be achieved by 2030. To achieve these targets, it is clear that considerable growth in large scale solar farms will be necessary and this cannot be achieved solely by the use of brownfield land or roof top installations. Whilst it has been suggested that the climate in the UK means solar energy is not appropriate, it is clear that the government considers otherwise.

60. The Council also declared a Climate Change Emergency in 2019 and seeks to be carbon neutral in its own operations by 2025 and a carbon neutral district by 2030.

61. The latest government statistics[9] show that to date the additional installed solar PV is falling significantly below the growth required to achieve the five-fold increase to 70GW by 2035. This re-emphasises the immediate pressing need for the deployment of new renewable energy generation schemes.

62. As well as helping to address climate change, the British Energy Security Strategy (April 2022) indicates that renewable energy has a key role to play in providing greater energy security for the country and reducing our need to import energy. This is also highlighted in EN-3.

63. The proposed development would make a valuable contribution to achieving these local and national targets. I therefore consider that the proposal's potential for a rapid contribution to renewable energy generation and addressing climate change,

[9] Digest of United Kingdom Energy Statistics July 2024

as well as towards improving energy security and resilience, are benefits that must be given substantial weight.

64. Moreover, given the well-documented issues with grid capacity, the ability of the site to make use of existing capacity at the Cowley substation, together with the fact that the grid connection available to the scheme will enable the energy produced to be exported without delay and so contribute to the target to be achieved by 2030 favour the scheme. I give this significant weight.

Battery storage

65. The Energy White Paper 2020 is one of a number of recent government publications that highlight the pressing need for battery storage to support the growth in renewable energy. EN-1 sets out that storage is needed to increase the reliability and security of the energy system by providing the ability to store surplus electricity in times of low demand and/or high production and releasing it when demand is high. Recognising the crucial role battery storage has in meeting the growth of electricity demand and maintaining a secure energy supply, the Clean Power Action Plan 2030 sets a target of achieving 23-27 GW of battery capacity by 2030.

66. In being co-located with the solar farm the proposed BESS would enable the energy produced to be used effectively as well as providing flexibility for the grid. I consider this is a separate element of the proposal and the benefit it provides should be given significant weight.

Use of best available technology

67. It is proposed that the development would use bifacial panels. This would deliver greater levels of solar efficiency and reduce the amount of land required to produce the same output. I give limited weight to this benefit.

Biodiversity Net Gain

68. The Council declared an Ecological Emergency in 2021. An Ecological Impact Assessment was submitted with the application and updated at appeal stage. These have taken into account the proposed deer proof fencing and conclude that the proposal would not result in any adverse significant impacts to species present within the site or area. In the absence of any evidence to the contrary I see no reason to disagree with this conclusion.

69. The proposal would include a variety of measures that would benefit biodiversity including new and improved native hedging, and new tree planting. The Biodiversity Metric indicates the proposal would deliver considerable gains in both habitat units and hedgerow units.

70. The improvements to existing tree and hedgerow planting and the reinstatement of historic hedgerows within the fields would be retained after decommissioning and so would be a permanent benefit of the proposal. Overall, I give significant weight to the biodiversity benefits of the proposal.

Economic Benefits

71. The proposed development would represent a significant financial investment and would give rise to short term construction jobs, albeit the economic benefits would

reduce significantly once the development was operational. It would also result in additional business rates over its 40 year lifespan. It was disputed whether or not the proposal would represent farm diversification or not. Be that as it may, it would be a benefit to the farm business that owns the land by generating a secure income from these fields and helping it to remain profitable. This would be beneficial to the rural economy in the area. I give these economic benefits moderate weight.

Other Matters

Heritage

72. The Grade I Nuneham Courtenay Registered Park and Garden and the Nuneham Courtenay Conservation Area, whose boundaries in the vicinity of the site are contiguous are located to the north-west of the site, on the opposite side of Oxford Road. Whilst there are a variety of other heritage assets in the wider area, it is agreed by the parties that these are the only ones impacted by the proposal. From the evidence before me, and my own observations, I agree with this conclusion.

73. The appellant's Archaeological and Heritage Assessment considered the impact of the proposal on the setting of the assets and the contribution this makes to their significance. As the appeal site does not form part of any significant / designated view out of the parkland and is a very small part of the surrounding farmland to the south, it makes a negligible contribution to the setting of the assets. The only impact would be in the heavily obscured glimpsed views possible along a limited part of the boundary of the assets.

74. Employing the terminology of the Framework, it is agreed with the Council that the harm caused would be less than substantial at the lower end of the scale. From the evidence before me, and what I saw at my site visits, I agree with this conclusion. Nonetheless, in accordance with the Framework and the statutory obligations imposed I give great weight to this harm. I shall weigh this against the public benefits later in my decision.

Landscape Impacts

75. Due to the local topography, and the existing mature hedgerows, tree belts and woodlands both around the site itself and in the surrounding area, the appeal site is visually well contained. Therefore, there would be little opportunity to see the proposed solar farm, and nowhere where the entirety of the scheme would be able to be seen.

76. The only public footpath in the vicinity from where the site can be readily seen is the one which crosses the field to the south of the site. In the short term there would be a major adverse effect on users of this footpath but the proposed hedgerow and tree planting along the southern boundary of the site would reduce this so that within 5 years I consider the effects would be minor adverse.

77. Oxford Road runs adjacent to much of the western boundary. The existing roadside vegetation limits views into the site and the views that are currently possible would be reduced by the proposed gapping up and reinforcing of the existing hedgerow together with the proposed increase to its height. In winter some views into the site through the hedge may be possible. However, given the lack of any footway along this road and the speed of traffic this is unlikely to be a

route frequented by pedestrians, and so such glimpsed views would be from moving vehicles and at an oblique angle. From other roads in the vicinity the existing roadside vegetation, the distance to the site and the planting proposed along the site boundaries means there will be little or no views of the proposal.

78. Part of the site can be seen in views from Wittenham Clumps within the North Wessex Downs National Landscape. From the evidence before me and what I observed at my site visit, the development would occupy a small amount of an extensive panorama. The recessive colour of the panels and the fact that they would not break the skyline means the proposal would not draw the eye. As such I am satisfied that the impact on views from here would be minimal.

79. The proposal would inevitably change the character of the fields themselves, but it would retain the existing field layout, and the existing boundary hedgerows and trees, which are a characteristic feature of the local farmed landscape. The proposed improvements to these together with the reintroduction of historic hedgerows within the site would be beneficial to the landscape character. Furthermore, due to the high degree of visual containment of the site, the character of the landscape beyond the appeal site would be unaffected.

80. Overall, I consider that there would be a moderate adverse effect upon the landscape character of the appeal site and its immediate environs and that the visual impact of the proposed scheme would be limited and localised.

81. I note that within the wider area the local plan makes a number of strategic allocations including a garden village to the east of Berinsfield and for the growth of Culham Science Centre. However, the appeal scheme would be very different in nature and character to the development proposed in these allocations. Moreover, the proposal would remain separated from these allocations, and the nearby villages by intervening open fields. In addition, there would be no intervisibility between the appeal scheme and the consented solar farm around 3km to the north. The character of the area would continue to be of agricultural land and blocks and belts of woodland punctuated by settlements and other built form and traversed by roads.

Flooding

82. The appeal site lies in Flood Zone 1 which is the lowest risk of flooding. Nonetheless given the impact of recent flooding on nearby residents, concerns have been raised about the impact of the scheme in this regard. The application was accompanied by a Flood Risk Assessment, which was updated at appeal stage after the recent flood event. A system of swales is proposed to manage the surface water run-off. The evidence indicates that the capacity of the swales would exceed the predicted run-off and so there would be no residual risk. The final design of the drainage system would be subject to a condition to ensure this remains the case.

Living Conditions and Noise

83. The application was accompanied by a noise assessment which was updated for the appeal submission. This concluded that subject to the provision of an acoustic fence the noise levels at the nearest property (Burcot Farmhouse) would not give rise to any noise related issues. This assessment was reviewed by Environmental Health who raised no objections to the methodology of the assessment or its

findings. In the absence of any evidence to the contrary I have no reason to doubt the conclusion of the study and so I am satisfied the proposal would not have any unacceptable impact in this regard. The provision of the acoustic fence can be controlled by condition.

84. Any noise and disruption during the construction period, which would be in the region of 6 months, would be short lived. The Construction Traffic Management Plan would control the hours of operation on, and deliveries to, the site as well as outlining other measures to mitigate the impact of the construction phase.

85. Very few houses overlook the site. The existing woodland would prevent views of the development from Burcot Farmhouse. The distance maintained to other residential properties in the vicinity, together with the existing and proposed vegetation would mean that the proposal would not have an unacceptable impact on the outlook from any of them.

86. In addition, the Glint and Glare study found that whilst solar reflections are possible to some dwellings, for all of them the existing and proposed vegetation would significantly obstruct views. As a result, no impact is predicted on any residential property. Whilst I note the concerns raised by third parties regarding this assessment, it confirms that views from upper floor windows have been considered where appropriate and that changes to the modelling height by a few metres is not expected to significantly change the results.

Fire Safety

87. Concerns have been raised regarding the fire risks associated with the BESS and the potential for pollution to enter the water courses in the event of a fire at the site. A Fire Risk Report and Outline Management Strategy was submitted with the application and was also updated at appeal stage. These have been assessed by the Fire Risk Manager at Oxfordshire Fire and Rescue Service and were considered satisfactory. The provision of a detailed management strategy would be required by a condition and would ensure the proposal accord with the latest safety codes and standards for BESSs. In addition, the plans show bunds to collect any water within the scheme preventing run-off into the wider area. In the light of this I consider that proper consideration will be given to the potential fire risks associated with the scheme.

Highway Safety

88. Access for construction and emergency vehicles would be from a new access created onto the A415. The scheme was accompanied by a Transport Statement and a Construction Traffic Management Plan. These confirm that adequate visibility splays can be achieved at the access. I note that the Highway Authority, has no objection to the proposal subject to conditions. These would ensure that the access is designed to maintain physical priority to pedestrians and cyclists using the shared footway/cycleway along the A415. In the light of this I am satisfied the proposal would not be detrimental to highway and pedestrian safety.

Community Consultation

89. Whilst the Framework encourages early consultation with the community, there is no requirement for developers of solar farms of this size to do so. The appellant has set out the consultation carried out for this and a previous application for a

similar development of the site, which was undertaken in addition to the Council's own consultation. This included an offer to reimburse people for the error made in the postage on a letter. In the light of this I am satisfied people have had adequate opportunity to comment and this is reflected in the responses made by local residents to both the application and the appeal.

Tourism

90. Whilst tourism can rely considerably on the quality of the countryside, I am not persuaded that the changes to the landscape in this case would lead to the loss of viability of any existing tourism related business or the likelihood of people visiting the area.

Heritage Balance

91. Paragraph 212 of the Framework indicates that when considering the impact of a development on the significance of a designated heritage asset, great weight should be given to its conservation and the more important the asset, the greater the weight should be. Paragraph 215 requires that where a proposal causes less than substantial harm to the significance of designated heritage assets, this harm should be weighed against the public benefits of the proposal.

92. I attribute great weight to the potential harm to Nuneham Courtenay Registered Park and Garden and the Nuneham Courtenay Conservation Area. However, I consider the contribution the scheme would make to the generation of clean and secure energy is a substantial public benefit, and together with the other benefits outlined above, would outweigh the less than substantial harm to the designated heritage assets.

Planning Balance and Conclusion

93. The proposal would utilise Grey Belt land and would accord with the provisions of paragraph 155 of the Framework. It would therefore not be inappropriate development in the Green Belt. Furthermore, I have found that the proposal would not result in the loss of, or have an unacceptable impact on, BMV land and would accord with both Policies DES7 and DES9 of the LP.

94. The Framework sets out a presumption in favour of sustainable development, and renewable energy development is central to achieving a sustainable low carbon future. The appeal scheme would make a significant contribution to this, and I give substantial weight to the contribution the proposal makes to renewable energy generation, addressing climate change and to improving energy resilience and security.

95. In addition, I give significant weight to the provision of a BESS and to the proposals use of available grid connection and its ability to start delivering energy within a short period of time. I also give significant weight to the biodiversity enhancements the scheme would provide, moderate weight to the economic benefits and limited weight to the proposal's use of the best available technology.

96. Whilst limited weight needs to be given to both the heritage harm and landscape harm that the proposal would cause, I consider that these harms are clearly outweighed by the benefits of the proposal and so these do not represent material consideration that require the proposal to be determined other than in accordance with the development plan.

97. For the reasons set out above, I consider the appeal should be allowed.

Conditions

98. The main parties agreed a set of suggested conditions that were discussed at the inquiry. This discussion led to a number of them being revised. I have considered these in the light of paragraph 57 of the Framework. The conditions include a number of pre-commencement conditions that the appellant has confirmed in writing are acceptable.

99. In addition to the standard implementation condition (condition 1), to provide certainty it is necessary to define the plans with which the scheme should accord (condition 2). Conditions 3 and 26 are reasonable and necessary to limit the period of the permission and to ensure the site is decommissioned either at the end of the permission or when energy generation ceases.

100. In the interest of the character and appearance of the area and to accord with LP Policies ENV1, DES1 and DES2 conditions 4, 5 15 and 18 are necessary. The first three need to be pre-commencement conditions – conditions 4 and 5 because they relate to work that needs to be undertaken during the construction period and condition 15 to ensure adequate protection and consideration is given to existing trees before the construction commences.

101. Conditions 6, 22 and 23 are necessary for highway safety and to accord with LP Policy TRANS5. For the same reason and also to protect the living conditions of local residents, condition 19 is required. Conditions 6 needs to be a pre-commencement condition to ensure that a safe access is provided for construction traffic before construction work begins.

102. To protect and record any potential archaeological remains on the site and in accordance with section 16 of the Framework, conditions 7 and 8 are necessary. They need to be pre-commencement conditions as they relate to work that needs to be done before any construction work commences. To protect soil quality and to accord with LP Policy DES7 condition 9 is required. This needs to be a pre-commencement condition as it affects how the construction is undertaken.

103. In the interest of biodiversity and to accord with LP Policies ENV2 and ENV3 conditions 10, 11, 12, 13, 14 and 17 are necessary. These all need to be pre-commencement conditions as they either affect how construction is undertaken or relate to works that will form part of the construction phase. Condition 16 is required to ensure the site is properly drained and does not increase the risk of flooding and to accord with Policy EP4. This needs to be a pre-commencement condition as it relates to works that need to be undertaken during the construction period.

104. To protect the living conditions of nearby residents and in accordance with LP Policy DES6 conditions 20 and 24 are reasonable and necessary. For the same reason and in the interests of biodiversity as well as to accord with Policy ENV12 condition 21 is required. Condition 25 is needed to give effect to the intention of the proposal to retain an element of agricultural use.

Alison Partington

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Ms Odette Chalaby Counsel

She called:

Mr Andrew Cook BA (Hons) MLD CMLI MIEMA CEnv	Executive Director, Pegasus Group
Mr Alastair Field BA (Hons), MSc, FBIAC, PIEMA, MI Soil Sci	Director & Company Secretary – Reading Agricultural Consultants Ltd
Mr Nigel Cussen BSc (Hons) DipTP MRTPI	Senior Planning Director Pegasus Group
Mr Henri Scanlon BSc (Hons) MSc*	Associate Planner, Pegasus Group

FOR THE LOCAL PLANNING AUTHORITY:

Mr Rowan Clapp Counsel

He called:

Mr Mark Reynolds BSc (Hons) MSc MRTPI	Managing Director Context Planning Ltd
Ms Nicola Smith BSc MSc*	Acting Team Leader (Major Applications Team) South Oxfordshire District Council

* In respect of the round table discussion on conditions only.

INTERESTED PARTIES:

Mrs J Roseman	Local Resident
Cllr Christine McCulloch	Burcot and Clifton Hampden Parish Council
Cllr Nick Fielding	Burcot and Clifton Hampden Parish Council

INQUIRY DOCUMENTS

INQ1 Opening Statement by Council
INQ2 Opening Statement by Appellant
INQ3 Clifton Hampden & Burcot Flooding Leaflet submitted by a local resident
INQ4 Lullington Solar Park High Court Judgment [2024] EWHC 295 (Admin) submitted by the Council

INQ5 Mead Realisation Limited Court of Appeal Judgement [2025] EWCA Civ 32 submitted by the Council
INQ6 DEFRA Statistics: Agricultural land use in England at 1 June 2024 submitted by the Appellant
INQ7 Closing Statement by the Council
INQ8 Closing Statement by the Appellant

CORE DOCUMENTS
Can be accessed using the following link: Planning Application P23/S4132/FUL

Annex A – Schedule of Conditions

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans.
   Location Plan (EPD-025-GA-LP-03 Rev.1)
   General Arrangement (EPD-025-GA-LA-08 Rev.0)
   BESS General Arrangement Layout (EPD-025-GA-LA-101 Rev.0)
   BESS Unit (EPD-025-GA-BESS-01 Rev.1)
   Smart Sub Station (EPD-025-GA-STS-01 Rev.1)
   Acoustic Fence (EPD-025-GA-AF-01 Rev.0 (Dated 27.08.24)
   Welfare & Storage Cabin (EPD-025-GA-CAB-01 Rev.1)
   Customer Substation (EPD-025-GA-ELV-CSS-01 Rev.1)
   DNO Sub Station (EPD-025-GA-DNO-01 Rev.0)
   Landscape Masterplan (P23-0074_EN_07H)
   Fence, Security & Site Road Details (EPD-025-GA-SC-01 Rev.0)
   PV Frame & Inverter (EPD-025-GA-MS-01 Rev.0)
   Access Arrangement (PLAN 7834/202 Rev D)

3) Planning permission is hereby granted for a temporary period of 40 years from the date of the first commercial export of energy (the First Export Date). No later than one month after the First Export Date the applicant shall supply written notice to the local planning authority.

4) Prior to the commencement of the development hereby approved a scheme for the landscaping of the site, including the planting of live trees and shrubs, the treatment of the access road and hard standings, and the provision of boundary treatment shall be submitted to, and approved in writing by, the local planning authority. This shall include the landscaping screening identified in the Revised Landscape Masterplan [Dwg. P23-0074_EN07H]

   These details shall include schedules of new trees and shrubs to be planted (noting species, plant sizes and numbers/densities), the identification of the existing trees and shrubs on the site to be retained (noting species, location and spread), any earth moving operations and finished levels/contours, and an implementation programme.

   All new planting shall be implemented in accordance with the approved details and implementation programme. In the event of any of the trees or shrubs so planted dying or being seriously damaged or destroyed within 5 years of the completion of the development, a new tree or shrub or equivalent number of trees or shrubs, as the case may be, of a species first approved in writing by the local planning authority shall be planted in the next available planting season and properly maintained in a position or positions first approved in writing by the local planning authority.

5) Concurrent with the submission of comprehensive details of the proposed landscape works, a maintenance schedule and a long term management plan (for the life of the development), for the soft landscaping works shall be

submitted to, and approved in writing by, the local planning authority. The Landscape Management Plan shall include:

a) Details of long term design principles and objectives;
b) Management responsibilities, maintenance schedules and replacement provisions for existing retained landscape features and any landscape to be implemented as part of the approved landscape scheme;
c) Details ensuring the establishment and thereafter the maintenance of hedgerows at a minimum height of 2.5m in accordance with the approved Landscape Masterplan P23-0074 EN 07H;
d) A plan detailing which areas of the site the Landscape Management Plan covers and also who is responsible for the maintenance of the other areas of the site; and
e) A summary plan detailing different management procedures for the types of landscape on site e.g. Wildflower meadows, native or ornamental hedgerows.

The schedule and plan shall be implemented in accordance with the agreed programme for the full duration of the development hereby permitted.

6) Prior to the commencement of the development, a detailed drawing showing the proposed means of access along the A415 which maintains physical priority for pedestrians and cyclists across the bell mouth as part of the existing shared footway/cycleway shall be submitted to, and approved in writing by, the local planning authority. Thereafter, the agreed means of access shall be provided prior to the construction of the development hereby approved and shall be retained as such for the lifetime of the development.

7) Prior to the commencement of the development a professional archaeological organisation shall prepare an Archaeological Written Scheme of Investigation (WSI), relating to the application site area, which shall be submitted to, and approved in writing by, the local planning authority.

8) Following the approval of the WSI referred to in condition 7, and prior to the commencement of the development (other than in accordance with the agreed WSI), a phased programme of archaeological investigation shall be carried out in accordance with the approved WSI. The programme of work shall include all processing, research and analysis necessary to produce an accessible and useable archive and a report for publication, which shall be submitted to the local planning authority within two years of the completion of the archaeological fieldwork.

9) Prior to the commencement of the development a Soil Management Plan (SMP) shall be submitted to, and approved in writing by, the local planning authority. The SMP shall include the following:

a) Measures to protect soils during development with reference to the guidance found in Defra's Construction Code of Practice for the Sustainable Use of Soils on Construction Sites;
b) A works programme showing how all soil handling and trafficking operations will be undertaken and which makes allowance for poor weather/ ground conditions stoppages;
c) Details of how construction activities will be managed across the site to minimise impact on soils; and

d) Details of appropriate equipment and methods for stockpiling, re-spreading and ameliorating of soil compaction in accordance with good practice techniques to minimise the risk of soil compaction.

The development shall be carried out strictly in accordance with the approved Soil Management Plan

10) Prior to the commencement of the development, including vegetation clearance or any ground works, a construction environmental management plan for Biodiversity (CEMP) shall be submitted to, and approved in writing by, the local planning authority. The CEMP shall include the following:
a) Updated ecological surveys where previous surveys are out of date for relevant habitats and species, including an updated badger survey which is no older than 6 months. Updated surveys shall follow national good practice guidelines;
b) Risk assessment of potentially damaging construction activities;
c) Identification of relevant biodiversity protection zones;
d) Practical measures (both physical measures and sensitive working practices) to avoid, reduce or mitigate the impacts on important habitats and protected species during construction;
e) The location and timing of sensitive works to avoid harm to biodiversity features;
f) The times during construction when specialist ecologists need to be present on site to oversee works;
g) Responsible persons and lines of communication;
h) Use of protective fences, exclusion barriers and warning signs; and
i) Protected species licencing requirements (if any).

The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details.

11) Prior to the commencement of the development a Biodiversity Enhancement Plan (BEP) shall be submitted to, and approved in writing by, the local planning authority. The BEP shall include details of all species enhancements including relevant scale plans and drawings showing the location, elevation and type of features as appropriate. All enhancements should be delivered prior to the First Export Date and retained thereafter in accordance with the approved details.

12) Prior to the commencement of the development a Skylark Mitigation Scheme shall be submitted to, and approved in writing by, the local planning authority. The approved scheme shall be delivered prior to the First Export Date and retained thereafter in accordance with the approved scheme for the lifetime of the development hereby permitted.

13) Prior to the commencement of the development full details of the watercourse crossing shall be submitted to, and approved in writing by, the local planning authority. These shall provide a clear span of the watercourse allowing for the movement of species. The approved details shall be delivered prior to the First Export Date and retained thereafter in accordance with the approved details.

14) Prior to the commencement of the development full details of the fencing shall be submitted to, and approved in writing by, the local planning authority. These shall include mammal access points/squeezes. The approved details shall be delivered prior to the First Export Date and retained thereafter in accordance with the approved details.

15) Prior to the commencement of the development, including any site clearance, an Arboricultural Method Statement and accompanying Tree Protection Plan shall be submitted to, and approved in writing by, the local planning authority. The Arboricultural Method Statement must include the following:
   a) A specification of any pruning or tree surgery works to any trees or hedgerows to be retained, to prevent accidental damage by construction or demolition activities;
   b) The specification and location of temporary tree protective fencing and any ground protection required to protect all retained trees and hedgerows in accordance with the current edition of BS 5837 ''Trees in relation to design, demolition and construction'', and details of the timing and duration of its erection;
   c) The designation of areas for the storage or stockpiling of materials, temporary on-site parking, site offices and huts, mixing of cement or concrete, and fuel storage;
   d) The route and method of installation of drainage or any underground services in the vicinity of retained trees; Consideration will need to be made to avoid siting of utilities and service runs within the Root Protection Area (RPA) of all trees to be retained. Only where it can be demonstrated that there is no alternative location for the laying of utilities, will encroachment into the RPA be considered. Methodology for any installation works within the RPA will need to be provided and must be in compliance with the current edition of NJUG 'Guidelines for the planning and installation and maintenance of utility apparatus in proximity to trees';
   e) The details and method of construction of any other structures such as boundary walls in the RPA of retained trees and how these relate to existing ground levels;
   f) The details of materials and method of construction of any roadway, driveway, parking, pathway or other surfacing within the RPA, which is to be of a 'No Dig' construction method, in accordance with the principles in Arboricultural Association Guidance Note 12 - The use of cellular confinement systems near trees and in accordance with current industry best practice and is appropriate for the type of roadway required in relation to its usage; and
   g) Provision for the supervision of any works within the RPA of retained trees, and for the monitoring of continuing compliance with the protective measures specified, by an appropriately qualified arboricultural consultant, to be appointed at the developer's expense and notified in writing to the local planning authority, prior to the commencement of development; and provision for the regular reporting of continued compliance or any departure there from to the local planning authority.

Thereafter the development shall be carried out in accordance with the approved details and the agreed measures shall be kept in place during the entire course of the construction and decommissioning phases.

16) Prior to the commencement of the development a detailed sustainable drainage scheme sufficient for the development and any upstream catchments shall be submitted to, and approved in writing by, the local planning authority. This shall be based on the Flood Risk Assessment Incorporating Sustainable Drainage System (Document reference J-14196 September 2021), sustainable drainage principles and an assessment of eh hydrological and hydrogeological context of the development. The surface drainage works to serve the development shall be carried out in accordance with the approved details prior to the First Export Date. The scheme to be submitted shall include:
a) Drainage Catchment Plans and outline strategy for the entire development;
b) Information on proposed discharge rates with the overall discharge from the site restricted to the 1 in 1yr greenfield runoff rate for the worst case 1 in 1yr storm and the QBar greenfield runoff rate for the worst case 1:100yr + 40% storm;
c) A compliance report to demonstrate how the scheme complies with the "Local Standards and Guidance for Surface Water Drainage on Major Development in Oxfordshire";
d) Detailed hydraulic calculations including node references with consideration for the worst case 1:100 + 40% event based on using the latest FEH input data;
e) Fully detailed sustainable surface water drainage layouts;
f) Proposed site levels and an exceedance plan;
g) SuDS features and sections;
h) Landscape plans with sustainable drainage features integrated and co-ordinated as appropriate;
i) Drainage Construction Details; and
j) a Maintenance and Management Plan covering all surface water drainage and SuDS features.

17) Prior commencement of development, a Landscape and Ecology Management Plan (LEMP) for the whole site shall be submitted to, and approved in writing by, the local planning authority. The content of the LEMP shall include the following:
a) A description and evaluation of features to be managed;
b) Ecological trends and constraints on site that might influence management
c) Proposals for ecological enhancements for habitats and species as agreed in the BEP;
d) Aims and objectives of management;
e) Appropriate management options for achieving aims and objectives;
f) Prescriptions for management actions;
g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

h) Details of the body or organization responsible for implementation of the plan;
i) Ongoing monitoring and remedial measures; and
j) Details of the legal and funding mechanism by which the long-term implementation of the plan will be secured by the developer with the management bodies responsible for its delivery.

The Plan shall also set out (where the results from monitoring show that the conservation aims and objectives of the LEMP are not being met) how contingencies and/or other remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme.

The development shall be implemented in accordance with the approved details and the management prescriptions shall be implemented across the site for a lifetime to be agreed within the LEMP.

18) Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved details and shall be maintained as such for the lifetime of the development hereby permitted.

19) All works to the site shall occur strictly in accordance with the Construction Traffic Management Plan produced by Cole Easdon (Doc Ref: QMF 09.20 Issue 4 dated November 2023.

20) The mitigation measures outlined in section 5 of the Noise Assessment dated 29 November 2023 shall be installed and operational prior to the First Export Date and shall be retained in situ thereafter for the duration of the operational phase.

21) No external artificial lighting or other security measures other than those agreed on the approved General Arrangement Plan EPD-025-GA-LA-08 Rev.0 and Fence, Security and Site Road Details EPD-0250GA-SC-01-R.0 plans.

22) The visibility splays shown on the approved Access Arrangement (PLAN 7834/202 Rev D) plan shall be implemented prior to the first use of the access, and shall be retained as such, unobstructed by any object, structure, planting or other material with a height exceeding or growing above 0.9m as measured from carriageway level, for the duration of the development.

23) All construction traffic serving the development shall enter and leave the site through the access shown on the approved Access Arrangement (PLAN 7834/202 Rev D) plan and not by any other access.

24) Notwithstanding the submitted information, works to form the Battery Energy Storage System (BESS) shall not commence until a final Detailed Battery Safety Management Plan (DBSMP) has been submitted to, and approved in writing by, the local planning authority. The final DBSMP shall prescribe measures to facilitate safety during the construction, operation and

decommissioning of the BESS. The BESS shall be operated in accordance with the approved DBSMP at all times.

25) Prior to the First Export Date, a grazing management plan (GMP) shall be submitted to and approved in writing by the local planning authority. The GMP shall detail which parts of the site shall be used for the grazing of livestock, during which months of the year, and how the grazing is to be managed. Within three years of the First Export Date, the grazing of livestock shall be implemented on the site in accordance with the GMP. Any changes to the GMP during the lifetime of the permission shall first be submitted to the local planning authority for approval in writing prior to implementation on site and shall thereafter be provided in accordance with the approved revised GMP.

26) Within 6 months of the cessation of the export of electricity, or within 39 years following the First Export Date, a detailed Decommissioning Method Statement (DMS) shall be submitted to the local planning authority for its written approval. The DMS shall include:
   a) details of the removal of the panels, supports, inverters, cables, buildings and all associated structures and fencing from the site, and a timetable for their removal;
   b) a traffic management plan to address likely traffic impacts during the decommissioning period;
   c) an environmental management plan to include measures to be taken during the decommissioning period to protect wildlife and habitats;
   d) full details of the proposed restoration of the site including a site wide restoration and aftercare scheme which details how the land will be restored to its former agricultural grade; and
   e) Details of the recycling and disposal of the decommissioned elements.

   The Site shall be decommissioned in accordance with the approved DMS within 12 months of the expiry of the 40 year period of planning permission.

Planning Inspectorate

Appeal Decisions

Hearing Held on 1 April 2025
Site visit made on 31 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 16 April 2025

Appeal A Ref: APP/B3410/W/24/3352967
Bramble Cottage, Greensmiths Lane, Upper Leigh, Staffordshire, ST10 4NY

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lightrock Power Ltd against the decision of East Staffordshire Borough Council.
- The application Ref P/2023/00217, dated 15 February 2023, was refused by notice dated 24 April 2024.
- The development proposed is described as: *'Installation of a 49.9MW solar photovoltaic array/solar farm with associated infrastructure'*.

Appeal B Ref: APP/B3438/W/24/3352966
Lower Tean Leys, Tean Leys, Lower Tean, Staffordshire, ST10 4NS

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Lightrock Power Ltd against the decision of Staffordshire Moorlands District Council.
- The application Ref SMD/2023/0059, dated 23 January 2023, was refused by notice dated 2 April 2024.
- The development proposed is described as: *'Installation of a 49.9MW solar photovoltaic array/solar farm with associated infrastructure'*.

Decisions

Appeal A

1. The appeal is allowed and planning permission is granted for the installation of a solar photovoltaic array/solar farm with associated infrastructure at Bramble Cottage, Greensmiths Lane, Upper Leigh, Staffordshire, ST10 4NY in accordance with the terms of the application, Ref P/2023/00217, dated 15 February 2023, subject to the conditions set out in Appendix A.

Appeal B

2. The appeal is allowed and planning permission is granted for the installation of a solar photovoltaic array/solar farm with associated infrastructure at Lower Tean Leys, Tean Leys, Lower Tean, Staffordshire, ST10 4NS in accordance with the terms of the application, Ref SMD/2023/0059, dated 23 January 2023, subject to the conditions set out in Appendix B.

Preliminary Matters

3. This decision letter deals with two planning appeals that seek one scheme that crosses the administrative boundary between East Staffordshire Borough Council (ESBC) and Staffordshire Moorlands District Council (SMDC). The evidence was heard at the same Hearing, and both Councils sought to work in union to present their evidence and respective cases.

4. Appeal A relates to the appeal for the ESBC area, and Appeal B relates to the appeal for the SMDC area. The issues arising are not dissimilar and the scheme is for one site in total. I have, therefore, considered them in this single decision letter. Though, where appropriate; for example in considering suggested conditions, there may be minor differences between the final decisions.

5. During the pre-hearing stage, the Council's representative confirmed that concerns relating to highway safety (reason for refusal three for ESBC) had been adequately addressed by the Appellant. It was, therefore, was no longer a point of contention between ESBC and the Appellant. I have proceeded on this basis. Although I note the concerns raised by interested parties on this matter, which I consider under the Other Matters section of this letter.

6. To provide clarity, although the descriptions for both schemes seek to create a solar farm with generating capacity of 49.9MW, it is one single 'solar farm'. That is, the scheme will only generate up to 49.9MW of renewable energy if both appeals are implemented, and **not** 99.9MW. To provide certainty, I have excluded the reference to '49.9MW' from what the planning permissions have been granted for.

7. An agreed Statement of Common Ground (SOCG) was submitted prior to the Hearing. This was agreed on the 4 March 2025, by both Councils and the Appellant.

8. In terms of Environmental Impact Assessment; it is agreed that following a Screening by the relevant authority at the application stage, the proposal was not EIA Development requiring an Environmental Statement to be submitted. I see no reason to disagree with that evaluation.

Application for costs

9. Prior to the Hearing, the Appellant made an application for partial costs against ESBC. The Council provided a rebuttal in writing prior to the Hearing opening on this application.

10. At the Hearing, a further application for costs was made by the Appellant against both ESBC and SMDC. These applications are the subject of separate Decisions.

Background and Main Issues

11. It is agreed, between the main parties in the SOCG, that the matters that remain in dispute concern the first and second reasons for refusal as stated on the respective Decision Notices[1].

[1] See SOCG, Page 36, Paragraphs 9.1 and 9.2

12. Having considered the totality of the evidence before me, including that heard at the Hearing, I consider that the main issues are:

    i) The effect of the proposed development on the character and appearance of the area, including on the landscape, and;

    ii) The effect of the proposal on the living conditions of nearby occupiers.

Reasons

The scheme and context

13. The proposal seeks planning permission for the construction of a solar farm with an export capacity of not more than 49.9MW in total, for a period of 40 years from the date of the first exportation of electricity from the site.

14. The proposal is anticipated to generate renewable electricity which, as a comparator, would offset the annual electricity usage of more than 11,500 homes. It is anticipated that approximately 7,300 tonnes of CO2 will be saved each year by generating energy this way.

15. The site is approximately 93 hectares (ha) in area, with the development area covering approximately 49.2ha of the site. The northern and western part of the site (which includes nine fields totalling around 38 hectares) is located in the SMDC area. The central and eastern part (which includes eleven fields totalling roughly 56 hectares) is located in the ESBC area. It is located in a rural area around 16km southeast of Stoke-on-Trent and 8.5km from Uttoxeter.

16. The land is gently undulating, sloping mainly to the south-west, towards the River Blithe and the railway line. There is a ridgeline to the north close to the position of the A50. The fields within the site are separated by hedgerows and trees, and are currently pasture.

17. The proposed solar panels would measure approximately 0.8m above ground level rising up to approximately up to 2.4m high at the highest point. They would be mounted on a fixed, metal frame with metal supports to be screwed or pile-driven into the ground. Between each frame there would be a distance of approximately between two and six metres to avoid inter-panel shading and provide suitable access. The panels would be tilted at typically 15 to 25 degrees from the horizontal, orientated east to west, and facing southwards.

18. There would be 19 centralised inverters installed at various points across the site close to the solar panels. The inverters convert the Direct Current (DC) electricity generated by the panels to low voltage Alternating Current (AC). Underground cables would be installed to connect the inverters to the client side switching stations (located in the substation compound) which converts the low voltage electricity to high voltage suitable for export to the gird.

19. The proposed inverters would be housed in Glass Reinforce Plastic (GRP) or container enclosure/kiosk measuring approximately 6.1m x 2.5m x 2.6m (LxWxH). The transformers would be located next to the inverters and inside the containerised solution alongside the switchgear. A 132kV transformer (typically wires and busbars up to approximately 6.8m high and other

structures typically up to three metres high) and a 23.3m 132kV substation connection tower.

20. There would a substation compound (approximately 63.3m x 45m) located within the site to include the Distribution Network Operator (DNO) and Client switch rooms typically measuring 7.5m x 5m x 3.4m (LxWxH) and a 15m high communication tower which would be surrounded by a 2.4m high palisade security fence.

21. It is proposed that 2.4m high post and wire deer fencing would be installed around the perimeter of the site, with a 2.35m high and 5m wide security gate to the site on Leigh Lane. In addition to fencing, it is proposed that the perimeter of the site would be protected by a system of CCTV and/or infra-red cameras, which would provide full 24-hour surveillance around the internal perimeter. Cameras would be inward facing on poles of up to approximately 4m high, spaced at regular intervals along the perimeter fence.

22. The proposal would be accessed from Leigh Lane via the existing access junction into the Lower Tean Leys Farm, which is currently used by large agricultural vehicles. A number of proposed access tracks approximately 4m wide would be located within the site, with a connection to the public highway of Leigh Lane. The internal access tracks/roads would allow for the movement of construction and maintenance vehicles around the site.

23. At the Hearing, the Appellant confirmed that they have an anticipated grid connection date for the proposed development of 2027; although this is dependent on planned upgrades to the local substations provided by other parties responsible for such infrastructure.

24. At the end of the operational lifespan of the proposed development, the complete decommissioning of the development and restoration of the land would occur; which can be reasonably secured by condition. All electricity generating equipment and associated infrastructure with the proposal would be removed from the site and the land would revert back an agricultural only use. All existing and proposed planting would remain except proposed grassland which would revert back to agriculture.

Planning Policy and guidance

25. The SOCG and Decision Notices set out the policies which the Councils consider the proposal do not accord with. The Councils confirmed at the Hearing that it was these policies only which they relied upon to support their justifications for refusing planning permission.

26. The adopted development plans applicable to the appeal scheme[2] are:

    - *East Staffordshire Borough Council Local Plan* (2015); (ESBCLP) and,
    - *Staffordshire Moorlands District Council Local Plan* (2020) (SMDCLP).

27. My attention has been drawn to the *East Staffordshire Design Guide* (June 2008) and *East Staffordshire Climate Change and Sustainable Development SPD* (August 2022).

[2] I have used the term 'appeal scheme' in the singular rather than the term appeals scheme, as there is one site and one proposal, albeit two appeals due to the cross boundary nature of the proposal.

28. Also of relevance is the *National Planning Policy Framework* (the Framework) and the national *Planning Practice Guidance* (the Guidance) which set out national planning policy and guidance.

29. Although of specific relevance to infrastructure schemes under the Development Consent Order process, *Overarching National Policy Statement for Energy (EN-1)* (November 2023) and *National Policy Statement for Renewable Energy Infrastructure (EN-3)* (November 2023), are agreed to be material by the main parties. I see no reason to not concur with that position.

30. I have also been directed to a number of national and local strategies, legislation, or context documents. These are set out in the agreed SOCG at Page 25, Paragraph 7.24. This includes that both Councils declared a Climate Emergency in 2019 (SMDC) and 2020 (ESBC) respectively.

Character and appearance, including Landscape

31. The appeal site is not located within a nationally designated landscape (such as a National Park or National Landscape (the latter formerly Areas of Outstanding Natural Beauty)). Nor is the site located within the Green Belt. The main parties agree within the SOCG[3], that the site is not within any defined settlement boundary. It is, therefore, in open countryside in planning policy terms. For similar reasons, I see no reason to dispute that agreed position.

32. Put simply, both Councils refused permission on the basis that the effects of the proposal would significantly harm the rural character of the area. This was on the basis of the scheme both individually and in combination with other nearby schemes which have either been implemented or have extant planning permission.

33. At the Hearing, the Councils reaffirmed that they considered their reason for refusal on this issue remained. In their Statement of Case, at page 36, the Councils confirmed that '*By virtue of its scale, form, materials and siting, the proposed development would result in unacceptable harm to the character and appearance of the area and the landscape, particularly when considered cumulatively with other solar farm developments in the area*'.

34. The Appellant submitted a number of documents supporting their analysis on character and appearance, including on landscape matters. There is no dispute between the main parties that the methodology used is appropriate for the purposes of assessing the scheme. No other methodology been put before me as an alternative. The Councils Landscape expert made it clear at the Hearing that they had not sought to replicate the assessments contained in the Appellant's written evidence as the methodology was agreed: it was the results of its application that were disputed. In this respect, I find that the methodology and general approach in these documents is sound for the purposes of these appeals.

35. Following discussions at the Hearing from the Landscape experts for each main party, I understood that the dispute between the parties mainly revolved around how the terminology used for the magnitude of change and the effect (at years 1 and 15) differed between the parties. This can be seen in the document *FFC Appendix 4 – Receptor schedule 1.6 annotated* of the Councils

[3] See Statement of Common Ground, page 29, paragraph 8.5

landscape witness[4]. Indeed, at the Hearing Mr Colella, for the Councils, directed me to his *Landscape and Visual Statement* prepared for and submitted in support of the Councils cases at the Hearing.

36. In particular, my attention was drawn to pages 5 to 9[5] where the Council's Landscape expert explained that this demonstrated their assessment of the Appellant's Landscape evidence. It was indicated by their expert that this needed to be read in conjunction with their Appendix 4 document, in order to understand how the Councils had exercised their professional judgement to inform their decisions that the proposal resulted in significant or unacceptable harm in landscape terms.

37. There are, however, a number of issues arising from this matter. For example, I asked the Councils Landscape expert where their VPF4 Railway was to be found in their Appendix 4 comparison table. The closest point was suggested to be *Viewpoint Number 3 River Blithe and Railway* in that table. However, it was pointed out by Mr Cook, the Appellant's Landscape expert, that Viewpoint Number 3 did not correlate with VPF4 on the drawings. Put another way, the analysis, such as it is, undertaken by the Councils and its associated commentary, were not the same as those used in the Appellant's Landscape evidence. This was a methodology and general approach the Councils endorsed and it was confirmed at the Hearing that this was still agreed.

38. In such situation, I cannot be certain that the Councils have assessed the scheme like-for-like in terms of assessing the locations of where impacts may occur on receptors (human beings). This is further compounded by the fact that the Councils have not provided any detail of why it considered that, in that example, the magnitude for route users should be 'large' rather than 'medium' and the effect should be 'moderate' rather than 'moderate and minor' as suggested by the Appellant. All there was before the Hearing is the overlaid information in Appendix 4 of the Councils Landscape expert statement.

39. The Councils approach and analysis as to why it found different outcomes to those of its original landscape expert and the Appellant's landscape expert is not explained within the evidence before the Hearing. This underlying reasoning was specifically sought by me at the Hearing. In response, the Councils Landscape expert explained that even using the same methodology two experts on landscape can come to different conclusions. That may be so, but underpinning such conclusions is, in essence, showing the 'workings out' so that a decision-maker is able to appreciate and understand why those outcomes differ.

40. In this case, there is a paucity of information provided by the Councils that offers the decision-maker any appreciable understanding of why the Appellant has erred in their landscape analysis, or which demonstrates that they have been over-generous in their approach so as to minimise the magnitude and/or effects arising from the development. I am reinforced in this view not only by the oral answers provided at the Hearing by the respective parties, but also by the fact that the Councils own independent external landscape consultant at the application stage did not object to the proposal.

[4] Also referred to as the 'Red box' document owing to the Council's suggested magnitude and effects being framed in red boxes.
[5] Unhelpfully, the statement did not contain paragraph numbers, which would allow me to assist the reader more precisely.

41. Accordingly, I find that the Appellant's Landscape evidence, which also considers character and appearance, to be more authoritative due to its use of an agreed methodology and an explanation as to why it drew the conclusions it did.

Cumulative impacts

42. With regard to the cumulative impacts, near to the appeal site are located four other solar schemes. These have either been built out or have extant planning permission.

43. They comprise Lower Newton Farm, Blythe House Farm, Totmonslow Farm, and Blythe House Farm (extension). As shown on the plan, Figure 1:

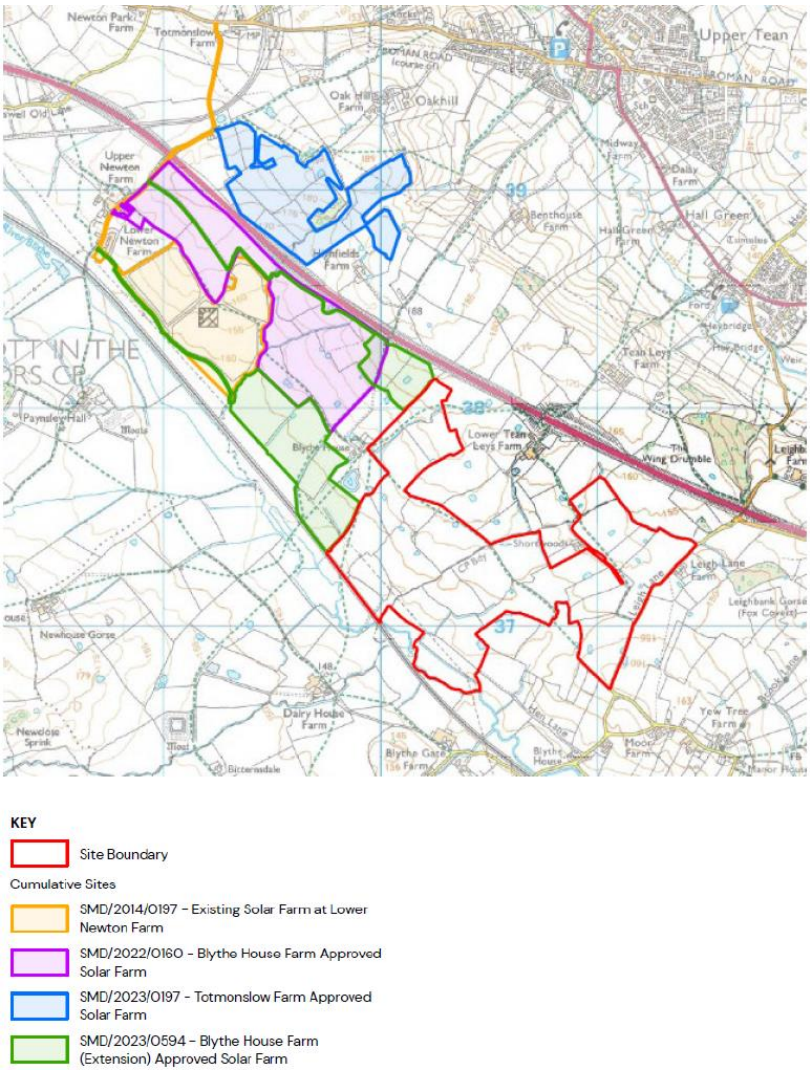

Figure 1: Extract from SOCG, Page 20, Paragraph 6.4.

Alt picture text: Map shows four nearby solar farm developments which are either built or have permission to be built, and their location in relation to the appeal site.

44. The Councils Landscape evidence suggests that *'it is only when one graphically puts all the application and appeal site together on one plan that the true extent of cumulative effects becomes apparent'* and that this equates to a total

of 209 ha of arrays. It is indicated that this is bigger than Hyde Park of 142 ha= 12 Wembley stadiums[6].

45. Whilst the two-dimensional or birds eye view of the extent of the combined sites may be of assistance to the cartographer, it does not necessarily demonstrate the cumulative effects or impacts to those who are most likely to actually see it. For example walkers, drivers, passengers, cyclists, and horse riders are likely to see and experience any cumulative impacts from ground level, and at a human scale, rather than as seen from above as a pilot of an aeroplane might.

46. In this respect, I heard evidence from both main parties as to what cumulative impacts might occur to visitors using nearby public highways and/or Public Rights of Way (PROW) including those that traverse across or through the site. The five PROW which traverse the site include; Checkley 13 which enters the site from the northwest and connects with Leigh 77 providing a continuous route across the full length of the site from northwest to southeast. (PROW Checkley 6 and 14 cross the west and northwest corners of The Site and Leigh 78 crosses the northeast portion).

47. I heard that the longest length of PROW that users of could be affected would be about 1.5 miles / 2.4 kms in length. I also heard from Mr Cook that this would be landscaped, for many parts, with hedges planted along its edges. He indicated that this was not at odds with the character of such lanes in the local area. From what I observed and saw at my site inspection, which included narrow lanes with hedgerows on either side, I concur that landscaping used in this way is consistent with the character of the area. Furthermore, Mr Cook pointed out that the PROWs are not long, flat, and straight paths, but rather ones which have gentle curves left or right and which rise and fall within the undulations of the landscape.

48. Indeed, I consider that these are factors and features which cannot be readily appreciated from looking at the two-dimensional drawing at Figure 1 above, but instead require consideration of Ordnance Survey maps (showing contours of the land) and, particularly important, actually viewing the site. When considered and informed by the facts on the ground, and taking into account the use of appropriate landscaping which accords with that found locally, I do not find that the proposal would result in a 'canyoning' effect. Nor would the proposal result in users of the PROWs, who are seeking to exercise their right to traverse along the paths and appreciate the scenic beauty of the countryside on their journey, being unacceptably harmed; whether individually from the proposed development or when considered cumulatively with other nearby schemes.

49. I am reinforced in this view by the fact that the Ramblers Association, who have a particular interest in such matters in respect of PROWs and access to the countryside, did not raise an objection to the appeal scheme on this matter. My view is further reinforced by the fact that the Councils own independent landscape expert at the application stage did not raise objections on this matter.

50. The Council's landscape evidence on cumulative impacts essentially comes down to an assertion that when looking from a bird's eye view, the proposal

[6] Councils *Statement of Landscape and Visual Matters*, Page 20

and those which are built out or have permission, would cover a large area. This appears to be an assertion that is unsupported by any objective analysis or justified by the use of any guidance or methodology. In doing so, I am inclined to favour the Appellant's evidence on this matter; which is supported by an agreed methodology and a detailed analysis of the potential cumulative impact(s), and where such impacts or adverse effects arise, how these can be mitigated or minimised.

Landscape mitigation

51. Turning to the matter of landscape mitigation suggested, that the character and appearance of the area, and by extension the landscape, would change is not disputed between the main parties. The introduction of vast arrays of solar panels over what are currently regarded as pastoral agricultural fields would result in some change the character and appearance of the area over the 40 years of the proposed development. The Councils consider that these changes and effects would amount to very substantial negative weight against the proposal[7].

52. The key features of the proposed landscaping scheme are set out in the Landscape Mitigation Plan (drawing ref: LRP007-LMP-01 Rev 15) submitted. These include; the retention and protection of almost all existing trees and hedgerows; new hedgerow, tree and scrub planting to be located either on or close to existing field boundaries; native, predominantly deciduous species, planted and maintained as clipped or over-grown hedges on the application boundary, maintained at a height of 3m in order to provide screening; planting of new trees and hedgerows as appropriate within gaps in the existing field margins to strengthen screening and provide enhanced habitat links; hedgerows supplemented in places with hedge trees; areas of native woodland; and the creation of wildflower meadow areas, native species wet meadow mix, and bird cover crop adjacent to the River Blithe along with Newt Habitat Management Areas across the Proposed Development to create a variety of habitats to benefit a range of species including wintering birds, reptiles and amphibians.

53. The proposed landscaping can be reasonably secured by planning conditions. This is not an odd or unusual way in order to secure specific details at the implementation stage. Indeed, many of the points raised by the Councils regarding landscaping mitigation were focused on whether or not the landscape information submitted was detailed enough.

54. The Councils Landscape expert indicated at the Hearing that they would seek the full details of a landscaping scheme so as to be satisfied that any mitigation the proposed landscaping provides can be demonstrated. However, such a requirement would be onerous at the application stage in this instance, and such details can be reasonably secured by planning condition.

55. In any case, I find that the details before the Hearing were sufficiently detailed in order that a decision-maker could make an informed decision. These are details that demonstrate that the site could be adequately landscaped so as to provide mitigation and/or enhancements to the character, appearance and landscape of the area.

[7] Councils Statement of Case, page 35.

Conclusion on the character and appearance of the area

56. In terms of the effect of the proposed development on the character and appearance of the area, including on the landscape (whether individually and/or cumulatively), I find that, at worse, the proposal would result in some limited and localised harm. However, due to the generally visual containment of the site, the topography and surrounding vegetation, the sensitive use of landscaping which can be secured by condition, and the lack of being able to appreciate the entirety of the site in combination with other permitted schemes, I find that the proposal would result in no greater than limited harm.

57. As such, I find that the proposal would broadly accord with Policies SP1, SP8, SP24 and SP30 of the ESBCLP, which, amongst other aims, seek to ensure that development decisions across the Borough will be informed by the relevant sections of the Landscape Character Assessment for Staffordshire, and that the Council will expect applicants to demonstrate that they have taken full account of the LCA and its guidelines to produce a scheme which reflects existing landscape character and where possible seeks to enhance landscape quality, and that development will not be permitted in the countryside (that is land outside settlement boundaries) unless it is infrastructure development where an overriding need for the development to be located in the countryside can be demonstrated.

58. For similar reasons, I find that the proposal would broadly accord with Policies SD2, SS10, DC1 and DC3 of the SMDCLP which, amongst other aims, seek to consider the degree to which the scale and nature of a proposal impacts on the landscape, sustain the rural economy by supporting the diversification of existing farm enterprises and enhance and conserve the quality of the countryside by requiring all development proposals to respect and respond sensitively to the distinctive qualities of the surrounding landscape, and ensuring renewable energy schemes are of an appropriate scale, type and location.

59. It would also accord with the Policies of the Framework including those in Chapter 12 and 14. For example, Paragraph 135 in that decisions should ensure that developments will function well and add to the overall quality of the area, not just for the short term but over the life of the development, and which are sympathetic to the local character and history, including the landscape setting. Paragraphs 168 of the Framework indicates that when determining planning applications for all forms of renewable and low carbon energy developments and their associated infrastructure, local planning authorities should not require applicant to demonstrate the overall need for renewable or low carbon energy.

Living conditions

60. At the determination stage, only SMDC identified a building for which the residential amenities of occupiers were considered to be harmed. This is Blythe House which is located to the northwest of the appeal site.

61. The reason for refusal given by ESBC refer to the proposal being visually intrusive to occupants of nearby residential properties. However, at that stage, no further articulation was given as to which buildings or occupiers were considered to be adversely affected by the proposal.

62. At the Hearing, the Councils Planning expert, Mr Wedderburn, directed me to their Statement of Case on Planning[8], where at pages 28 to 30 and paragraphs 6.93 to 6.99, and 6.1 to 6.7 the indicate concerns relating to the properties known as Blythe House, Leigh Lane Farm, Shortwoods, and Dairy House Farm. I was also able to hear from local residents at the Hearing, who conveyed their concerns in terms of outlook, and how the proposal would change views from nearby residential buildings from currently open farmland to a solar farm.

63. I note that looking at the drawing on page 2 of the agreed SOCG, under paragraph 2.1, Blythe House and Dairy House Farm appear to lie within the SMDC area. Leigh Lane Farm and Shortwoods appear to lie within the administrative area of ESBC.

64. In response to these concerns, the Appellant submitted a *Residential Visual Amenity Assessment (RVAA)* dated September 2024, in Appendix 9 of their Landscape Proof Appendices. The Councils confirmed at the Hearing that the RVAA was 'very thorough'. I see no reason to disagree with that position; especially as that document appears to have followed a relevant methodology that is logical for assessing the potential impacts arising on this issue.

65. The Councils representatives also confirmed that they had not visited internally any of the dwellings listed to view the proposal from first floor windows or openings. Nonetheless, the Councils reaffirmed that they considered there would be unacceptable harm to the occupiers of all four dwellings.

66. I asked the Councils at the Hearing to identify which openings or windows occupiers would need to look out of in order to feel visually intruded. The Councils were only able to draw the Hearings attention to Leigh Lane Farm, where they indicated it would be windows in the northeast and southwest elevations that would be affected. In particular, although not in the reason for refusal cited by ESBC, I heard that the concerns revolved around glint and glare for occupiers of this dwelling.

67. Looking at the various photos contained in Appendix 9[9], including those of the windows externally and outlook from them, it appears as though the impacts, if any, would arise to users of ground floor and first floor windows. The views from the ground floor windows would be screened; by hedges both outside of the appeal site and those on the edges of Leigh Lane. Views from the first floor rooms would be interrupted by existing landscaping such as trees and hedges – this includes those already present which would be reinforced by the landscape planting secured via condition.

68. For completeness, when looking at the RVAA for Dairy House Farm[10], Blythe House[11] and Shortwoods[12], in all cases whilst the proposal would result in a change in the outlook from various openings, these range from a distance of 380 metres to 20 metres from the edge of the appeal site. When considered in light of the topography of the area and intervening existing and proposed landscaping or planting, most occupiers would see little more than glimpses of

[8] *Statement of Case* by Knights on behalf of East Staffordshire Borough Council and Staffordshire Moorlands District Council, February 2025
[9] Appendix 9: Residential Visual Amenity Assessment (RVAA) dated September 2024, pages 44 to 48 of 116 in pdf version.
[10] Ibid, pages 58 to 62 of 116 in pdf version.
[11] Ibid, pages 64 to 67 of 116 in pdf version.
[12] Ibid, pages 68 to 69 of 116 in pdf version.

the proposal when looking at the site from the upper floors bedrooms from the three dwellings that have first floor living space.

69. On the basis of the evidence submitted, the only conclusion I can draw on this matter is that the proposal – including its landscaping - would not result in overshadowing or visually overbearing effects on the living conditions of nearby occupiers. Furthermore, the concerns of the Councils appear to derive from the impact of the proposal on the outlook or view from bedroom windows, and that this would have a materially harmful impact on the living conditions of occupiers. Notwithstanding the fact that 'views' are not typically attributed any degree of formal 'protection', given the distances involved and the intervening topography and vegetation, I do not find that the proposal would have an adverse effect on the living conditions of nearby occupiers that would justify the dismissal of the appeal.

70. In such circumstances, I find that the proposal would accord with Policies SP1, SP8, SP24 and DP1 of the ESBCLP, which, amongst other aims seek to ensure that proposals are designed to protect the amenity of the occupiers of residential properties nearby, and any future occupiers of the development through good design and landscaping.

71. In such circumstances, I find that the proposal would accord with Policies SD2 and DC1 of the SMDCLP, which, amongst other aims, seek to ensure that all development protect the amenity of the area, and The Council will strive to meet part of the District's future energy demand through renewable or low-carbon energy sources subject to considering the impact on the amenity of residents.

72. The proposal would also accord with the Policies of the Framework set out in Chapter 12, including Paragraph 135 in that planning decisions should ensure that developments are visually attractive as a result of good layout and appropriate and effective landscaping.

Heritage

73. Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, sets out that in considering whether to grant planning permission which affects a listed building or its setting, special regard shall be had to the desirability of preserving the building or its setting.

74. It is a matter of common ground between the main parties that the appeal scheme would result in no more than less than substantial harm to the setting of the Grade II Listed Buildings of Blythe House, Moor Farmhouse, and Moor House Farmhouse. This would be harm to these listed buildings through changes to their settings arising from the proposed development. It is also common ground between the Councils and the Appellant that there would be no alterations to the Grade II Listed Building of Hey Bridge and that the site is not in a conservation area.[13]

75. I heard from the Appellant's Heritage expert at the Hearing and have taken into account the written information before me on this matter including the Heritage Assessment within the Core Documents at CD6.6. There are also comments from the Councils Conservation Officers, who do not object on the grounds of heritage, that I have taken into account.

[13] SOCG, page 31, paragraphs 8.20 to 8.25

76. Put simply, the significance of these listed buildings appears to derive from their intrinsic association with the rural and agricultural history of the area, and the various architectural features the buildings have. The proposed development would erode some of the rural setting of these buildings, and in doing so would fail to preserve their special interest as derived from their settings.

77. The historic heart of these listed buildings would remain unaffected and their proximity in relation to the proposed development would mean that their immediate setting would remain unaffected. As such, I concur with the agreed position between the main parties in that the proposal would result in no greater than less than substantial harm. To articulate this further, I find that the proposal would be in the low part of the less than substantial harm categorisation for the aforesaid reasons.

78. Nonetheless, less than substantial harm does not equate to less than substantial planning objection. I give great weight to the asset's conservation, as required by Paragraph 212 of the Framework. In finding less than substantial harm, I am required to weigh this against the public benefits of the proposal, as set out in Paragraph 215 of the Framework. In this respect the benefits arising, these include that the scheme here is for the generation of renewable and low carbon energy and their associated infrastructure, which Paragraph 168 of the Framework indicates should be given significant weight to the benefits of. I find that these public benefits outweigh the less than substantial harm identified in this instance.

Other Matters

79. A number of concerns have been raised by interested parties; both in writing before the Hearing opened and orally at the Hearing. I have taken these all into account in considering the planning merits of the proposal. The significant concerns raised are included below together with my consideration of them.

80. With regard to the loss of agricultural fields, both Councils and the Appellant agree that the site comprises Grade 3b (moderate) and 4 (poor) agricultural land[14]. Accordingly, the land is not considered as Best and Most Versatile Agricultural Land (BMVAL). Indeed, it would logically fall into the category of poorer quality land, which footnote 65 of the Framework indicates should be preferred to those of a higher quality. Furthermore, the Councils and Appellant agree that the site can remain in agricultural use for grazing[15].

81. Moreover, there is a realistic prospect that, at the end of the use of the land as a solar farm, it can be reverted easily and quickly back to agriculture. This can be reasonably secured by planning condition. As such, I do not find that the proposal would result in the loss of agricultural fields – albeit I acknowledge for a period of 40 years the intensity of farming taking place on the land may decrease.

82. With regard to food security, I have not been provided with any substantive evidence which indicates that the appeal site, which comprises land that is not BMVAL, would result in the loss of land specifically needed for food security purposes. Moreover, there would remain some agricultural activities on the

[14] SOCG, page 35, paragraphs 8.54 and 8.55
[15] Ibid.

site and it would be possible to return the land to more intensive food production at the end of the developments operational life as considered above. As such I do not find that this matter justifies dismissal of the appeal scheme.

83. In terms of traffic on local roads and poor local road infrastructure, I heard the concerns of local residents both in writing and at the Hearing. A representative from Leigh Parish Council provided a number of videos which the main parties and myself were able to watch during the Hearing. These included an event where a red flat-backed lorry and blue tractor met on Leigh Lane and sought to pass each other. Another event showed where a grey-coloured lorry sought to pass cars. It was clear watching the videos, that both incidences resulted in considerable inconvenience to other highway users – including motorists and a cyclist – during these events.

84. I saw during my site visit that Leigh Lane is a narrow and winding road – with a short and steep winding climb from the A522 towards where the A50 passes overhead. Passing places, where present, tend to be informal ones on the edge of the road where it widens created by vehicles over time rather than specifically formed cut outs on the road edge. I also note that there is a narrow and low humped bridge, Hey Bridge, which is Grade II listed, along the road indicated to be used to construct the proposal.

85. In response to the reason for refusal by ESBC in its decision notice, and the concerns raised by local residents, the Appellant brought a highways expert, Mr Nock, to the Hearing. He was able to answer a number of questions on this matter at the Hearing. In addition, I have read the comments from the Local Highways Authority, Staffordshire County Council, who ultimately did not object to the proposal subject to certain planning conditions being imposed. I have also read the correspondence from ESBC where in early 2025 they instructed an independent traffic consultant, who advised that the highway safety matters could be addressed, leading to ESBC no longer contesting this reason for refusal.

86. I note the concerns raised in terms of when large vehicles meet other vehicles on Leigh Lane. Such a situation is not ideal in terms of highway safety, and results in disruption to local residents, farmers, and other users of the road when it occurs. It is highly likely that during the months of construction and decommissioning the appeal site there would be additional traffic movements on Leigh Lane which would disrupt and inconvenience local residents and other road users including pedestrians, cyclists, and/or horse riders.

87. The Appellant has sought to mitigate the impact through the assessment of traffic impacts (such as on Hey Bridge), the use of a Construction Traffic Management Plan (which could reasonably be secured by condition), and the use of suggested conditions over access and highway surveys. The main parties also agree to the imposition of a 'Grampian' style condition requiring the provision of passing bays before any construction works take place on site[16].

88. When considered in combination, I consider that these measures will mitigate the impact in terms of traffic and highway safety matters arising from the proposal. Whilst there would be an increase in traffic movements for a limited

[16] Ibid, page 34, paragraph 8.45

time at the start and end of the development and decommissioning phases, the effects arising would be mitigated through the measures above. Furthermore, the passing bays could be provided for continued use for all road users during the life of the proposal and this would assist in enhancing road safety for the life of the development. I do not, therefore, consider that this matter provides justification for the dismissal of the appeal scheme.

89. Concerns have been raised in terms of the potential for a battery explosion. However, a Battery Energy Storage System (BESS) element was removed from the proposed scheme at an earlier stage. As such, if permission was granted it does not include a BESS. Accordingly, there is minimal risk in terms of battery fires arising from the development.

90. In terms of Biodiversity Net Gain, this would comprise an approximate net gain of +155% for habitats and +47% for hedgerows. There is no substantive evidence before me which indicates that it would not be possible for the appeal site to secure such benefits and net gain. In the absence of evidence to the contrary, I find that this does not constitute justification for the dismissal of the appeal scheme.

91. With regard to flood risk to local roads, I heard and saw at the Hearing various photographs showing where flooding had occurred in the local area. I also heard from the Appellant, who directed me to documents such as their *Flood Risk Assessment* undertaken by Arcus, dated November 2022, which took into account factors such as drainage and flood risk. I heard that assessments were undertaken in order to assess whether the proposal would result in unacceptable impacts in relation to drainage and flooding; including arising from the concentration of water run-off (on the drip-line). This concludes that the proposal would not make flood risk and/or drainage matters any worse than they currently are. There is very little evidence that demonstrates that the existing situation regarding flooding would be worsened by the proposed development. As such, I do not find that this provides a reason for dismissing the appeal scheme.

92. With regard to the risk of crime, the site would be secure and protected by mechanisms such as CCTV. This is a typical approach used on such developments. I am reinforced in this approach given that no objections were raised by the local Police Liaison Officer[17].

93. In terms of the potential reduction in local house prices of circa 10%, this is a private matter between the parties concerned. The increase or decrease in property values is not typically a matter that concerns the planning process, where the objective is to act in the wider public interest.

94. I note the concerns raised in terms of there being no direct benefit to villagers. However, there would be some benefits to the local community such as the provision of passing bays on Leigh Lane, the provision of biodiversity net gain areas which are likely to help support and increase biodiversity in the area more generally, and the creation of renewable energy which would help the wider community and the country as a whole by reducing dependency on fossil fuels and provide better energy security.

[17] Ibid, Pages 28 and 29

95. I have taken into account all the comments received by interested parties. Having considered all of these, I do not find, whether individually or in combination, they provide justification for the dismissal of the appeal scheme.

Conditions

96. Paragraph 57 of the Framework and the Guidance set out that planning conditions should be kept to a minimum and only imposed where they are necessary, relevant to planning and to the development to be permitted, enforceable, precise and reasonable in all other respects.

97. A list of 36 suggested conditions were broadly agreed by the main parties before the Hearing opened. At the Hearing, there was a roundtable session where these suggested conditions formed the basis of discussions.

98. I have not imposed suggested conditions [8] Solar Panel Positions, [10] Boundary Treatments, [20] Construction Noise, [22] Air Quality, [24] Construction Methodology (waste and dust), [27] Grazing Management Plan, [28] Construction Environmental Plan (CEMP), and [36] Battery Energy Storage System.

99. These suggested conditions do not meet the 'test' set out in Paragraph 57 of the Framework. That is because they can either be merged into a single condition as is achieved by merging suggested conditions [20], [22], [24], and [28]. Or they are already included within another suggested condition; for example [10] which is incorporated in condition 2 Plans and drawings. Or they are a suggested condition which is not reasonable [27] as there are a number of ways in which the land could be farmed and grazed once the development becomes operational and the imposition of this condition would be onerous. As such, these suggested conditions are either not necessary or unreasonable.

100. As a result, the conditions imposed have been renumbered to reflect my reasoning below. Where the considerations apply to the conditions imposed on the Appeal A for ESBC, these are shown in brackets (). Those conditions applied to SMDC are shown in more than / less than brackets <>.

101. At the Hearing, concerns raised by the Councils over the drawing numbered: *Planning Drawing 2 – Indicative Site Layout LRP007-PL-01 Rev 14.* This was principally as the scheme is not made in outline and therefore the word 'indicative' should be removed from the description. Whilst I do not consider that there is any ambiguity as to what permission is sought for, in order to assist the Hearing, the Appellant submitted a drawing Rev 15 which omits the word 'indicative'. I see no reason to not accept this drawing, which remains the same except for the omission of the term indicative, nor do I consider any interested party would be prejudiced by this very minor alteration.

102. Conditions relating to a time limit for implementation (1)<1> and in accordance with the submitted drawings (2)<2> are necessary and reasonable to provide certainty. A time period of five years to implement permission is uncommon, but is justified in this instance as there are planned grid upgrades which may necessitate a short delay in implementation.

103. Conditions relating to time-limiting the use of the site for 40-years (3)<3>, and its decommissioning at the end of this period (4)<4>, or earlier (5)<5>, and notification of first electricity export (6)<6> are necessary and reasonable in order to provide certainty.

104. Conditions requiring details of external materials (7)<7>, scheme of landscaping (8)<8>, and approval of a Materials Management Plan (10) <10> are reasonable in order to ensure that the materials (including colour) and landscaping used are in keeping with the area, insofar as possible.

105. A condition requiring the submission and approval of a Landscape and Biodiversity Management Plan (9)<9> is reasonable in order to ensure that the biodiversity benefits cited are achieved. However, I have amended the time frame required from 30 years to 40 years as that would cover the period for which permission is sought.

106. Conditions in terms of access off Leigh Lane (11), visibility splays (12), the provision of a gate across the access (13), passing bays scheme (14), submission of a Construction Traffic Management Plan (16)<13> and construction operating times (17)<14>, are necessary and reasonable in order to minimise traffic and construction impacts on the local community and to ensure that any risks to highway safety are minimised. However, as the access to the site is located within the ESBC area, I have amended wording of conditions (11) and (12) to require SMDC to be consulted.

107. In terms of the passing bays (14) <11> condition, given that parts of Leigh Lane lie within both Councils areas, I have retained this condition on the decision for both local planning authorities.

108. Furthermore, conditions relating to a survey and protection measures to Hey Bridge (15)<12>, which is a Grade II listed building, is necessary in order to protect this heritage asset from any construction traffic vehicles, and should any inadvertent damage be caused to this heritage asset there would be a baseline state for the damage to be repaired to. As this lies within the SMDC area, the condition imposed on ESBC should not require details to be approved by them. Rather, such a condition should just require the approved details to be submitted to ESBC as it is closely associated with the construction traffic accessing the site, the route of which mainly falls within the ESBC area. For precision and clarity, I have also separated the construction and decommissioning phases in order that a survey report is carried out at both phases given changes that may occur over the intervening 40 year period.

109. A condition relating to controls over operational noise (18)<15> is necessary in order to protect the living conditions of nearby occupiers.

110. There is a railway line to the west of the appeal site. There is the potential risk to operations arising from the construction phase and/or the operational phase from construction traffic and/or glint glare or other distractions from the proposed development. In such circumstances, in order to minimise risk to the operation of the railway and in the interests of its safe operation, conditions relating to construction methodology (19)<16> and network rail safety monitoring, including dealing with complaints relating to signal sighting safety or driver distraction (20)<17> are necessary and reasonable.

111. The submission of a Soil Management Plan (21)<18> is necessary in order to ensure that soil resources and quality are maintained so that upon decommissioning the soil quality would be no worse than its current state.

112. A condition requiring a Construction Environmental Management Plan (CEMP) (22)<19> is necessary in order to control activities during the construction phase so as to minimise any effects or impacts on protected species and their habitats, including areas used for foraging, and on nearby occupiers of dwellings.

113. A condition requiring an archaeological Written Scheme of Investigation (WSI) (23)<20> is necessary to ensure that any unknown or unidentified archaeological remains on the appeal site are properly recorded.

114. A condition in terms of a scheme detailing measures to protect public footpaths (24)<21> is necessary to ensure that these remain open for public access during the construction phase as far as is possible (temporary closure is a matter which would still likely require the relevant permissions from the body responsible for the Public Rights Of Way). A condition requiring mitigation measures submitted as part of the applications in relation to flood risk to be implemented before the site is brought into operational use is necessary to ensure that the development does not result contribute to existing flooding issues (25)<22>.

115. A condition requiring the submission of a lighting scheme to be submitted and approved is necessary in order to minimise the introduction of night time lighting into the area that could be for existing residents and/or local wildlife (26)<23>. Conditions relating to the development being carried out in accordance with the Arboricultural Impact Assessment (27)<24> and measures relating to tree protection (28)<25> are necessary and reasonable in order to ensure that existing trees are retained and protected.

116. A condition relating to contaminated land and how this would be dealt with were it found on the site (29)<26> is necessary in order to minimise the risk to human health.

Planning Balance

117. The proposed development would result in some harms. This includes localised and limited harm arising from the effect of the proposed development on the character and appearance of the area; including on the landscape. It also includes the less than substantial harm identified in respect of heritage assets[18].

118. Set against these harms are a number of benefits. This includes: the creation of renewable energy (the general thrust of which is supported by the Climate Change Act 2008, the declaration of a 'climate emergency' by Parliament and both SMDC and ESBC, the National Policy Statements: *Overarching National Policy Statement for Energy (EN-1)* (November 2023) and *National Policy Statement for Renewable Energy Infrastructure (EN-3)* (November 2023), and national strategies such as the *Clean Growth Strategy 2017*, the *Energy White Paper: Powering our Net Zero Future 2020*, and the *Net Zero Strategy: Build Back Greener 2021*).

[18] It is noted that the public benefits arising from the proposal would outweigh this identified less than substantial harm to heritage assets, as set out in the relevant section of this decision letter. For completeness, and given that many of the benefits arising in the planning balance apply to public benefits outweighing the harm to heritage assets, I have included it here. It should not be read that this harm, nor the public benefits arising from that balance, have been double-counted.

119. This benefit is the generation of renewable energy which could power the equivalent of 11,500 dwellings (or facilities such as schools, hospitals, or shops for example), and save in the region of 7,300 tonnes of CO2 each year[19]. This is a benefit which I consider in this instance should be afforded substantial weight in its favour.

120. The benefits also include the enhancement of the biodiversity of the site; demonstrated through the biodiversity net gain calculation which confirms that the biodiversity would be improved with an approximate net gain of +155% for habitats and +47% for hedgerows which would be delivered through the implementation of the proposal. There is also an ability for soil to regenerate over the life of the development in terms of structure and resource, which can be secured by condition.

121. Benefits also include the ability to diversify farming activity on the site and also the economic benefits arising not only from this, but also jobs created during the construction, operational and decommissioning phases.

122. When considered together, I find that the benefits arising would amount to substantial benefits in favour of granting planning permission. Moreover, whilst there is some harm arising on character and appearance and on the setting of designated heritage assets (the latter to which I afford great weight to the conservation of them), I find that the benefits in this case outweigh these harms. Furthermore, the harms arising are either outweighed by the public benefits (in the case of heritage assets) or are able to be mitigated and/or ameliorated, and such outcomes can be reasonably secured through the use of planning conditions.

123. Section 38(6) of the *Planning and Compulsory Purchase Act 2004* as amended, sets out that *'If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.'*

124. In this instance I have considered the scheme put forward to both Councils with regard to their respective adopted development plan. When the proposal is considered having regard to the ESBCLP and the SMDCLP, respectively, as a whole, I find that the proposed development would accord with the relevant development plan for each part of the scheme.

125. Furthermore, even if this is assessment is flawed, I find that the material considerations in this case, including the policies of the Framework and others cited above, indicate a decision otherwise than in accordance with the relevant development plan for each Council. As such, the logical conclusion is that the proposed scheme should be granted planning permission.

Conclusion

126. For the reasons given above, and having taken into account all the evidence before me, I conclude that Appeal A and Appeal B should both be allowed.

C Parker

INSPECTOR

[19] SOCG, page 6, paragraph 3.5

APPEARANCES

FOR THE APPELLANT:

Odette Chalaby, Counsel	instructed by Nigel Cussen

She called:

Nigel Cussen, BSc (Hons) DipTRP MRTPI	*Planning* Pegasus Group – Senior Director
Andrew Cook, BA (Hons) MLD CMLI MIEMA CEnv	*Landscape* Pegasus Group – Executive Director
Michael Sutton, BSc (Hons)	*Glint and Glare* Pager Power – Operations Manager
Laura Garcia, BA (Hons) MCIfA	*Heritage* Pegasus Group – Senior Director
Rob Riding, BSc (Hons) MA MRTPI	*Conditions* Pegasus Group – Associate Planner
Andrew Nock, BSc, CIHT	Motion - Senior Transport Planner *Transport/Highways*

FOR BOTH LOCAL PLANNING AUTHORITIES:

Matthew Wedderburn BSc MA MRTPI	Senior Associate at Knights
Francis Colella Dip.LA CMLI	FFC Landscape Architects

INTERESTED PERSONS:

Toby Collins	Leigh Parish Council
Richard Groves	Local Resident
Darren Smith*	Local Resident
Jessica Smith*	Local Resident
Councillor Colin Whittaker	ESBC Councillor
Gerald Warburton	Local Resident
Charlotte Warburton	Local Resident
Ryszard Kwak, FRICS	Local Resident
Andrew Raby	Local Resident
Iona Raby	Local Resident

*Representation read out by Council Officer.

It is noted that videos provided as evidence by interested parties at the Hearing, watched at different times by all parties, and taken into account in determining the appeals, have been retained and stored by the Councils in accordance with their relevant retention and/or privacy policies.

Appendix A

Appeal A – 3352967 – List of conditions imposed

Related reasoning provided where (number) are shown in the decision letter.

<table>
<tr><th colspan="2">Condition</th></tr>
<tr><td>1</td><td>Time Limit

The development hereby permitted shall be begun before the expiration of five years from the date of this permission.</td></tr>
<tr><td>2</td><td>Approved Plans

The development hereby approved shall be carried out in accordance with the following approved plans:

<table>
<tr><th>Drawing Title</th><th>Drawing Reference</th></tr>
<tr><td>Planning Drawing 1 – Site Location Plan</td><td>LRP007-SP-01 Rev 01</td></tr>
<tr><td>Planning Drawing 2 – Site Layout</td><td>LRP007-PL-01 Rev 15</td></tr>
<tr><td>Planning Drawing 3 – Landscape Mitigation Plan</td><td>LRP007-LMP-01 Rev 15</td></tr>
<tr><td>Planning Drawing 4 – Typical PV Panel Station</td><td>4158_DR_P_0003</td></tr>
<tr><td>Planning Drawing 5 – Inverter / Transformer</td><td>4158_DR_P_0004</td></tr>
<tr><td>Planning Drawing 6 – Security Fencing and CCTV</td><td>4158_DR_P_0005</td></tr>
<tr><td>Planning Drawing 7 – Security Gate</td><td>4158_DR_P_0006</td></tr>
<tr><td>Planning Drawing 8 – Access Track Cross Section</td><td>4158_DR_P_0007</td></tr>
<tr><td>Planning Drawing 9 – Container Storage Units</td><td>4158_DR_P_0008</td></tr>
<tr><td>Planning Drawing 10 – Substation Compound</td><td>4158_DR_P_0009</td></tr>
<tr><td>Planning Drawing 11 – Indicative Temporary Construction Compound</td><td>4157_DR_P_0010</td></tr>
<tr><td>Planning Drawing 12 –Compound Component Elevations</td><td>4158_DR_P_0011 Rev 2</td></tr>
<tr><td>Planning Drawing 13 – Public Rights of Way Plan</td><td>4158-REP-036</td></tr>
<tr><td>Sections through Field 16 and 20</td><td>LRP007-EL-01 Rev 04</td></tr>
</table>
</td></tr>
<tr><td>3</td><td>Time limit for operation of site

The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity generated by the solar panels is first commercially exported to the electricity network. At the end of this 40-year period, the development shall be removed, and the land restored to its previous agricultural use pursuant to the Decommissioning Method Statement approved under Condition 4 of this permission.</td></tr>
<tr><td>4</td><td>Decommissioning (end of lifetime)

No later than 6 months prior to the expiry of the planning permission, a Decommissioning Method Statement setting out a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the Local Planning Authority. The scheme of works shall include the following:
a) A programme of works;
b) A method statement for the decommissioning and dismantling of all equipment and surfacing of the site;
c) Details of items to be retained on site (if any);
d) A method statement for restoring the land to agriculture to at least its former land quality as indicated in Section 6 of the Agricultural Land Classification survey dated May 2023;
e) Timescales for the decommissioning, removal and reinstatement of the land;
f) Measures to address traffic management during the process;</td></tr>
</table>

Condition	
	g) Measures to protect wildlife and habitats; and h) A method statement for the disposal/recycling of redundant equipment/structures. The decommissioning of the site shall be undertaken in accordance with the approved Decommissioning Method Statement.
5	**Decommissioning (early cessation)** In the event that the development hereby permitted ceases to export electricity to the grid for a continuous period of 6 months at any point after the date of first export (other than for reasons outside of the operator's control) the operator shall notify the Local Planning Authority in writing within 10 working days and a scheme of early decommissioning works (the Early Decommissioning Scheme) shall be submitted no later than 3 months after the end of the 6 month non-electricity generating period to the Local Planning Authority for its approval in writing. The scheme of works shall include the following: a) A programme of works; b) A method statement for the decommissioning and dismantling of all equipment and surfacing of the site; c) Details of items to be retained on site (if any); d) A method statement for restoring the land to agriculture to at least its former land quality as indicated in Section 6 of the Agricultural Land Classification survey dated May 2023; e) Timescales for the decommissioning, removal and reinstatement of the land; f) Measures to address traffic management during the process; g) Measures to protect wildlife and habitats; and h) A method statement for the disposal/recycling of redundant equipment and / or structures. The approved early decommissioning scheme shall be implemented in full in accordance with a timetable that shall be set out in the Early Decommissioning Scheme.
6	**Notification of First Electricity Export** The operator shall notify the Local Planning Authority in writing within 10 working days of electricity generated from the development being first commercially exported to the electricity network.
7	**External Materials** Prior to the commencement of the development hereby approved full details of the materials for the solar panels (to include anti reflective coatings on the panels where necessary), frames, all ancillary buildings and equipment, and other built development including access tracks, transformers, substation compound, communication tower and CCTV to include external finish and colour shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
8	**Scheme of Landscaping** Prior to the commencement of the development hereby approved a scheme of landscaping together with a timetable for its implementation shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme should take into consideration the requirements of the approved Landscape Mitigation Plan (drawing ref: LRP007-LMP-01 Rev 15), and shall include planting

Condition	
	plans, including specifications of species, sizes, planting centres, number and percentage mix and details of seeding or turfing. The landscaping scheme shall ensure that there is generally no planting within 3 metres of a Public Right of Way (PRoW). The development shall be carried out in accordance with the approved details. Any trees or plants which within a period of 10 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.
9	**Landscape and Biodiversity Management Plan** Prior to the first operation of the solar farm hereby approved a Landscape and Biodiversity Management Plan (LBMP) should be submitted for approval in writing of the Local Planning Authority. The Management Plan shall provide for 40 years of management and maintenance of habitats, for monitoring of habitats and species, and for remediation of any failures during the establishment phase and shall include the following: a. Description and evaluation of features to be managed (including the landscaping provisions approved under Condition 9 of this permission above). b. Ecological trends and constraints on site that might influence management. c. Aims and objectives of management. d. Appropriate management options for achieving aims and objectives. e. Prescriptions for management actions. f. Preparation of a work schedule (including an annual work plan capable of being rolled forward). g. Ongoing monitoring and remedial measures; The approved LBMP shall be implemented in accordance with the approved details and thereafter adhered to for the lifetime of the development.
10	**Materials Management Plan (MMP)** Prior to the commencement of the development hereby approved (including site stripping and clearance) a Materials Management Plan (MMP) shall be submitted to and approved in writing by the Local Planning Authority. The MMP shall define the excavation and bund formation processes for the transformer and substation area and any other proposed areas of bunding and provide detailed drawings of these proposed raised earthworks. The development shall be carried out in accordance with the approved details.
11	**Access off Leigh Lane** Prior to the commencement of development, details of the access off Leigh Lane (identified in Planning Drawing 2 Ref: LRP007-PL-01 Rev 15, Indicative Site Layout) shall be submitted to and approved in writing by the Local Planning Authority (in consultation with Staffordshire Moorlands District Council, or any replacement body). The access shall be laid out, constructed, and surfaced in a bound material in accordance with the approved details prior to any other works commencing on site. The approved access arrangements shall thereafter be maintained for the lifetime of the development.
12	**Visibility Splays** Prior to the commencement of development, details of the maximum achievable visibility splays in both directions at the site access onto Leigh Lane shall be submitted to and approved in writing by the Local Planning Authority (in consultation with Staffordshire Moorlands District Council, or any replacement body). No other works shall take place until the approved visibility splays have been provided and thereafter retained. The visibility splays

Condition	
	shall at all times be kept free of all obstructions to visibility over a height of 900mm above the adjacent carriageway level.
13	**Gate across the access** Any gate to be erected to the approved vehicular access off Leigh Lane shall be a minimum distance of 10 metres back from the carriageway edge.
14	**Passing bays (Grampian)** The commencement of construction works on site shall not take place until a scheme for the provision of passing spaces on Leigh Lane and Leigh Bank has been completed under the provisions of the Highways Acts in accordance with a technical scheme first submitted to and approved in writing by the Local Planning Authority. The passing bay scheme shall be provided generally in accordance with the scheme detailed in Highways Technical Note 03 dated 29th September 2023.
15	**Hey Bridge – Condition Survey** A. Before the commencement of development, a Condition Survey Report of Grade II Listed Hey Bridge on Leigh Lane shall be submitted to the Local Planning Authority. The report should include details of any remedial works required and protection measures for the bridge during the construction phase. B. At least three months before the decommissioning of the development, and before any associated decommissioning works are undertaken, a Condition Survey Report of Grade II Listed Hey Bridge on Leigh Lane, shall be submitted to the Local Planning Authority. The report should include details of any remedial works required and protection measures for the bridge during the decommissioning phase.
16	**Construction Traffic Management Plan** No development shall take place, until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for: a) a site compound with associated temporary buildings; b) the parking of vehicles of site operatives and visitors; c) loading and unloading of plant and materials; d) storage of plant and materials used in constructing the development; e) wheel wash facilities; f) mechanical road sweeper for existing carriageway; g) details of any temporary lighting proposed; h) a highway dilapidation survey to be undertaken. The approved CTMP shall be adhered to throughout the construction period of the development.
17	**Construction Operating Times** No construction or decommissioning works or deliveries of plant or construction materials shall take place except between the following hours: 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 Saturday. No construction or decommissioning works or deliveries of plant or construction materials shall take place at any time on Sundays or Public or Bank Holidays.

Condition	
18	**Operational Noise** The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5 dB(A) between the hours of 07.00-23.00 (taken as a 15 minute LA90 at the nearest sound-sensitive premises) and shall not exceed the background sound level between 23.00-07.00 (taken as a 15 minute LA90 at the nearest/any sound-sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014 + A1:2019) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location, which shall first be agreed in writing with the Local Planning Authority, and corrected to establish the noise levels at the nearest sound-sensitive property. The noise sensitive properties subject of this condition are those listed in Table 6 of the Noise Impact Assessment dated 2023.
19	**Construction methodology (in relation to Local Railway network)** Prior to the commencement of the development hereby approved a construction methodology in relation to the impact of the scheme on the railway network shall be submitted to and approved in writing by the Local Planning Authority. The construction methodology shall demonstrate that the operator has consulted with the Asset Protection Project Manager at Network Rail (or any subsequent replacement body / person). The development shall thereafter be carried out in accordance with the approved construction methodology.
20	**Network Rail Safety Monitoring** In the event of any complaint to the Local Planning Authority from: Network Rail, and / or train operators using the nearby railway network, in relation to the development permitted within 24 months of the first commercial export of electricity to the electricity network relating to signal sighting safety or driver distraction, the operator shall, within three calendar months of receipt of full details of the incident leading to the complaint, submit for approval to the Local Planning Authority details of a scheme of remedial measures, where necessary, to address the concerns raised including a timescale for the implementation of the works. The works shall be carried out in accordance with the approved details and retained thereafter.
21	**Soil Management Plan** Prior to the commencement of each phase of development (construction, operation and decommissioning), a Soil Management Plan (SMP) shall be submitted to and approved in writing by the Local Planning Authority. The SMP shall include the methodology for soil stripping, including how and where soils are to be stored, consideration of the appropriate time of year for soil handling, planting beneath the panels, and return to at least the former land quality as indicated in Section 6 of the Agricultural Land Classification survey dated May 2023. The development shall be carried out in accordance with the approved SMP.
22	**Construction Environmental Management Plan (CEMP)** No development shall take place (including vegetation clearance or any ground works) until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following: a) Risk assessment of potentially damaging construction activities; b) Identification of relevant biodiversity protection zones; c) Practical measures to avoid, reduce or mitigate the impacts to identified protected species and/or habitats during construction (which may be provided as a set of method statements); d) The location and timing of sensitive works to avoid harm to biodiversity features;

Condition	
	e) The times during construction when specialist ecologists need to be present on site to oversee works and that access will be afforded to the Local Planning Authority's appointed ecologist at all times with five days written notice; f) Responsible persons and lines of communication; g) Use of protective fences, exclusion barriers and warning signs; h) Protected species licencing requirements (if any); i) Details of any lighting to be used during the construction phase, including its control and management; j) Details for the control and management of noise and dust during the construction phase; and, k) Shall have due consideration of noise guidance contained within BS 5228:2009+A1:2014 (or any subsequent replacement or equivalent standard). The development shall be carried out in accordance with the approved CEMP throughout the construction of the development.
23	**Archaeology** Prior to the commencement of the development, a Written Scheme of Investigation (WSI) shall be submitted to and approved in writing by the Local Planning Authority. The WSI shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication, and also the date when archaeological works are to start on the site. The archaeological site work shall thereafter be implemented in full in accordance with the approved WSI. Access shall be afforded to the Local Planning Authority's appointed Archaeologist to view any archaeological site work. The development shall not be brought into operation until the site investigation and post-excavation assessment has been completed in accordance with the approved WSI and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
24	**Footpaths** No development shall take place (including ground works and vegetation clearance) until a scheme detailing measures to protect the public footpaths which cross the site during construction has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
25	**Flood Risk Assessment** The development hereby permitted shall not be brought into use until the mitigation measures set out in the Flood Risk Assessment (dated (November 2022) have been implemented, including the installation of PV arrays located within 1:100 year pluvial flood depths being raised 0.8m above ground level and therefore above the maximum flood depths (0.3m).
26	**Lighting** No lighting shall be erected and / or installed at the site to serve the development hereby permitted unless a Lighting scheme - including details of the types of lights to be installed, their proposed locations and operating parameters - has first been submitted to and approved in writing by the Local Planning Authority. Any lighting scheme shall be designed in accordance with Paragraph 5.4.2.3 of the Ecological Impact Assessment dated November 2022, and shall include a lighting contour plan that demonstrates there will be minimal impact on receptor habitats such as hedges, ponds and created habitats. The development shall only be implemented in accordance with any approved lighting scheme and no other lighting shall be installed at the site.

Condition	
27	**Arboricultural Impact Assessment** The development permitted shall only be carried out in accordance with BS.3873.2012 (tree work) (or any subsequent replacement or equivalent standard) and the Tree Protection Plan and Outline Arboricultural Method Statement by Arcus Consultancy Services (dated as received on 22nd February 2023).
28	**Tree protection** Prior to the commencement of any works on the site in relation to the development hereby approved the tree protection scheme shall be implemented as detailed in the Tree Protection Plan and Outline Arboricultural Method Statement by Arcus Consultancy Services (dated as received on 22nd February 2023). The approved tree protection scheme shall be retained in situ throughout the construction phase.
29	**Contaminated Land** In the event that contamination is found at any time when carrying out the approved development it must be reported in writing immediately to the Local Planning Authority. Development should not continue until an initial investigation and risk assessment has been completed in accordance with a scheme to be agreed by the Local Planning Authority to assess the nature and extent of any contamination on the site. If the initial site risk assessment indicates that potential risks exist to any identified receptors, development shall not continue until a detailed remediation scheme, to bring the site to a condition suitable for the intended use by removing and/or preventing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been prepared and approved in writing by the Local Planning Authority. Thereafter, the detailed remediation scheme shall be implemented as approved.

***** END OF CONDITIONS IMPOSED ON 3352967 *****

Appendix B

Appeal B – 3352966 – List of conditions imposed

Related reasoning provided where <number> are shown in the decision letter.

<table>
<tr><th colspan="2">Condition</th></tr>
<tr><td>1</td><td>Time Limit

The development hereby permitted shall be begun before the expiration of five years from the date of this permission.</td></tr>
<tr><td>2</td><td>Approved Plans

The development hereby approved shall be carried out in accordance with the following approved plans:

<table>
<tr><th>Drawing Title</th><th>Drawing Reference</th></tr>
<tr><td>Planning Drawing 1 – Site Location Plan</td><td>LRP007-SP-01 Rev 01</td></tr>
<tr><td>Planning Drawing 2 – Site Layout</td><td>LRP007-PL-01 Rev 15</td></tr>
<tr><td>Planning Drawing 3 – Landscape Mitigation Plan</td><td>LRP007-LMP-01 Rev 15</td></tr>
<tr><td>Planning Drawing 4 – Typical PV Panel Station</td><td>4158_DR_P_0003</td></tr>
<tr><td>Planning Drawing 5 – Inverter / Transformer</td><td>4158_DR_P_0004</td></tr>
<tr><td>Planning Drawing 6 – Security Fencing and CCTV</td><td>4158_DR_P_0005</td></tr>
<tr><td>Planning Drawing 7 – Security Gate</td><td>4158_DR_P_0006</td></tr>
<tr><td>Planning Drawing 8 – Access Track Cross Section</td><td>4158_DR_P_0007</td></tr>
<tr><td>Planning Drawing 9 – Container Storage Units</td><td>4158_DR_P_0008</td></tr>
<tr><td>Planning Drawing 10 – Substation Compound</td><td>4158_DR_P_0009</td></tr>
<tr><td>Planning Drawing 11 – Indicative Temporary Construction Compound</td><td>4157_DR_P_0010</td></tr>
<tr><td>Planning Drawing 12 –Compound Component Elevations</td><td>4158_DR_P_0011 Rev 2</td></tr>
<tr><td>Planning Drawing 13 – Public Rights of Way Plan</td><td>4158-REP-036</td></tr>
<tr><td>Sections through Field 16 and 20</td><td>LRP007-EL-01 Rev 04</td></tr>
</table>
</td></tr>
<tr><td>3</td><td>Time limit for operation of site

The planning permission hereby granted shall be limited to a period of 40 years commencing from the date electricity generated by the solar panels is first commercially exported to the electricity network. At the end of this 40-year period, the development shall be removed, and the land restored to its previous agricultural use pursuant to the Decommissioning Method Statement approved under Condition 4 of this permission.</td></tr>
<tr><td>4</td><td>Decommissioning (end of lifetime)

No later than 6 months prior to the expiry of the planning permission, a Decommissioning Method Statement setting out a detailed scheme of works for the removal of the development (excluding the approved landscaping and biodiversity works) shall be submitted to and approved in writing by the Local Planning Authority. The scheme of works shall include the following:
i) A programme of works;
j) A method statement for the decommissioning and dismantling of all equipment and surfacing of the site;
k) Details of items to be retained on site (if any);
l) A method statement for restoring the land to agriculture to at least its former land quality as indicated in Section 6 of the Agricultural Land Classification survey dated May 2023;
m) Timescales for the decommissioning, removal and reinstatement of the land;
n) Measures to address traffic management during the process;</td></tr>
</table>

Condition	
	o) Measures to protect wildlife and habitats; and p) A method statement for the disposal/recycling of redundant equipment/structures. The decommissioning of the site shall be undertaken in accordance with the approved Decommissioning Method Statement.
5	**Decommissioning (early cessation)** In the event that the development hereby permitted ceases to export electricity to the grid for a continuous period of 6 months at any point after the date of first export (other than for reasons outside of the operator's control) the operator shall notify the Local Planning Authority in writing within 10 working days and a scheme of early decommissioning works (the Early Decommissioning Scheme) shall be submitted no later than 3 months after the end of the 6 month non-electricity generating period to the Local Planning Authority for its approval in writing. The scheme of works shall include the following: i) A programme of works; j) A method statement for the decommissioning and dismantling of all equipment and surfacing of the site; k) Details of items to be retained on site (if any); l) A method statement for restoring the land to agriculture to at least its former land quality as indicated in Section 6 of the Agricultural Land Classification survey dated May 2023; m) Timescales for the decommissioning, removal and reinstatement of the land; n) Measures to address traffic management during the process; o) Measures to protect wildlife and habitats; and p) A method statement for the disposal/recycling of redundant equipment/structures. The approved early decommissioning scheme shall be implemented in full in accordance with a timetable that shall be set out in the approved Early Decommissioning Scheme.
6	**Notification of First Electricity Export** The operator shall notify the Local Planning Authority in writing within 10 working days of electricity generated from the development being first commercially exported to the electricity network.
7	**External Materials** Prior to the commencement of the development hereby approved full details of the materials for the solar panels (to include anti reflective coatings on the panels where necessary), frames, all ancillary buildings and equipment, and other built development including access tracks, transformers, substation compound, communication tower and CCTV to include external finish and colour shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
8	**Scheme of Landscaping** Prior to the commencement of the development hereby approved a scheme of landscaping together with a timetable for its implementation shall be submitted to and approved in writing by the Local Planning Authority. The landscaping scheme should take into consideration the requirements of the approved Landscape Mitigation Plan (drawing ref: LRP007-LMP-01 Rev 15), and shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Condition	
	The landscaping scheme shall ensure that there is generally no planting within 3 metres of a Public Right of Way (PRoW). The development shall be carried out in accordance with the approved details. Any trees or plants which within a period of 10 years from the completion of the development die, are removed, or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species unless the Local Planning Authority gives written consent to any variation.
9	**Landscape and Biodiversity Management Plan** Prior to the first operation of the solar farm hereby approved a Landscape and Biodiversity Management Plan (LBMP) should be submitted for approval in writing of the Local Planning Authority. The Management Plan shall provide for 40 years of management and maintenance of habitats, for monitoring of habitats and species, and for remediation of any failures during the establishment phase and shall include the following: h. Description and evaluation of features to be managed (including the landscaping provisions approved under Condition 9 of this permission above). i. Ecological trends and constraints on site that might influence management. j. Aims and objectives of management. k. Appropriate management options for achieving aims and objectives. l. Prescriptions for management actions. m. Preparation of a work schedule (including an annual work plan capable of being rolled forward). n. Ongoing monitoring and remedial measures; The approved LBMP shall be implemented in accordance with the approved details and thereafter adhered to for the lifetime of the development.
10	**Materials Management Plan (MMP)** Prior to the commencement of the development hereby approved (including site stripping and clearance) a Materials Management Plan (MMP) shall be submitted to and approved in writing by the Local Planning Authority. The Management Plan shall define the excavation and bund formation processes for the transformer and substation area and any other proposed areas of bunding and provide detailed drawings of these proposed raised earthworks. The development shall be carried out in accordance with the approved details.
11	**Passing bays (Grampian)** The commencement of construction works on site shall not take place until a scheme for the provision of passing spaces on Leigh Lane and Leigh Bank has been completed under the provisions of the Highways Acts in accordance with a technical scheme first submitted to and approved in writing by the Local Planning Authority. The passing bay scheme shall be provided generally in accordance with the scheme detailed in Highways Technical Note 03 dated 29th September 2023.
12	**Hey Bridge – Condition Survey** A. Before the commencement of development, a Condition Survey Report of Grade II Listed Hey Bridge on Leigh Lane shall be submitted to and approved in writing by the Local Planning Authority. The report should include details of any remedial works required and protection measures for the bridge during the construction phase. Any works and measures in the approved report shall be undertaken throughout the construction phase of the development.

Condition	
	B. At least three months before the decommissioning of the development, and before any associated decommissioning works are undertaken, a Condition Survey Report of Grade II listed Hey Bridge on Leigh Lane, shall be submitted to and approved in writing by the Local Planning Authority. The report should include details of any remedial works required and protection measures for the bridge during the decommissioning phase. Any works and measures in the approved report shall be undertaken throughout the decommissioning phase of the development.
13	**Construction Traffic Management Plan** No development shall take place, until a Construction Traffic Management Plan (CTMP) has been submitted to, and approved in writing by the Local Planning Authority. The Plan shall provide for: i) a site compound with associated temporary buildings; j) the parking of vehicles of site operatives and visitors; k) loading and unloading of plant and materials; l) storage of plant and materials used in constructing the development; m) wheel wash facilities; n) mechanical road sweeper for existing carriageway; o) details of any temporary lighting proposed; p) a highway dilapidation survey to be undertaken. The approved CTMP shall be adhered to throughout the construction period of the development.
14	**Construction Operating Times** No construction or decommissioning works or deliveries of plant or construction materials shall take place except between the following hours: 08:00 to 18:00 Monday to Friday, and 08:00 to 13:00 Saturday. No construction or decommissioning works or deliveries of plant or construction materials shall take place at any time on Sundays or Public or Bank Holidays.
15	**Operational Noise** The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed background sound levels by more than 5 dB(A) between the hours of 07.00-23.00 (taken as a 15 minute LA90 at the nearest sound-sensitive premises) and shall not exceed the background sound level between 23.00-07.00 (taken as a 15 minute LA90 at the nearest/any sound-sensitive premises). All measurements shall be made in accordance with the methodology of BS4142 (2014 + A1:2019) (Methods for rating and assessing industrial and commercial sound) (and / or subsequent replacement or equivalent standards). Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location, which shall first be agreed in writing with the Local Planning Authority, and corrected to establish the noise levels at the nearest sound-sensitive property. The noise sensitive properties subject of this condition are those listed in Table 6 of the Noise Impact Assessment dated 2023.
16	**Construction methodology (in relation to Local Railway network)** Prior to the commencement of the development hereby approved a construction methodology in relation to the impact of the scheme on the railway network shall be submitted to and approved in writing by the Local Planning Authority. The construction methodology shall demonstrate that the operator has consulted with the Asset Protection Project Manager at

Condition	
	Network Rail (or any subsequent replacement body / persons). The development shall thereafter be carried out in accordance with the approved construction methodology.
17	**Network Rail Safety Monitoring** In the event of any complaint to the Local Planning Authority from; Network Rail, and/or train operators using the nearby railway network, in relation to the development permitted within 24 months of the first commercial export of electricity to the electricity network relating to signal sighting safety or driver distraction, the operator shall, within three calendar months of receipt of full details of the incident leading to the complaint, submit for approval to the Local Planning Authority details of a scheme of remedial measures, where necessary, to address the concerns raised including a timescale for the implementation of the works. The works shall be carried out in accordance with the approved details and retained thereafter.
18	**Soil Management Plan** Prior to the commencement of each phase of development (construction, operation and decommissioning), a Soil Management Plan (SMP) shall be submitted to and approved in writing by the Local Planning Authority. The SMP shall include the methodology for soil stripping, including how and where soils are to be stored, consideration of the appropriate time of year for soil handling, planting beneath the panels and return to at least the former land quality as indicated in Section 6 of the Agricultural Land Classification survey dated May 2023. The development shall be carried out in accordance with the approved SMP.
19	**Construction Environmental Management Plan (CEMP)** No development shall take place (including vegetation clearance or any ground works) until a Construction Environmental Management Plan has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall include the following: l) Risk assessment of potentially damaging construction activities; m) Identification of relevant biodiversity protection zones; n) Practical measures to avoid, reduce or mitigate the impacts to identified protected species and/or habitats during construction (which may be provided as a set of method statements); o) The location and timing of sensitive works to avoid harm to biodiversity features; p) The times during construction when specialist ecologists need to be present on site to oversee works and that access will be afforded to the Local Planning Authority's appointed ecologist at all times; q) Responsible persons and lines of communication; r) Use of protective fences, exclusion barriers and warning signs; s) Protected species licencing requirements (if any); t) Details of any lighting to be used during the construction phase, including its control and management; u) Details for the control and management of noise and dust during the construction phase; and, v) Shall have due consideration of noise guidance contained within BS 5228:2009+A1:2014 (or any subsequent replacement or equivalent standard). The development shall be carried out in accordance with the approved CEMP throughout the construction of the development.
20	**Archaeology** Prior to the commencement of the development, a Written Scheme of Investigation (WSI) shall be submitted to and approved in writing by the Local Planning Authority. The WSI shall provide details of the programme of archaeological works to be carried out within the site, including post-excavation reporting and appropriate publication, and also the date when archaeological works are to start on the site.

Condition	
	The archaeological site work shall thereafter be implemented in full in accordance with the approved WSI. Access shall be afforded to the Local Planning Authority's appointed Archaeologist to view any archaeological site work. The development shall not be brought into operation until the site investigation and post-excavation assessment has been completed in accordance with the approved WSI and the provision made for analysis, publication and dissemination of the results and archive deposition has been secured.
21	**Footpaths** No development shall take place (including ground works and vegetation clearance) until a scheme detailing measures to protect the public footpaths which cross the site during construction has been submitted to and approved in writing by the Local Planning Authority. The development shall be carried out in accordance with the approved details.
22	**Flood Risk Assessment** The development hereby permitted shall not be brought into use until the mitigation measures set out in the Flood Risk Assessment (dated (November 2022) have been implemented, including the installation of PV arrays located within 1:100 year pluvial flood depths being raised 0.8m above ground level and therefore above the maximum flood depths (0.3m).
23	**Lighting** No lighting shall be erected/installed at the site to serve the development hereby permitted unless a Lighting scheme - including details of the types of lights to be installed, their proposed locations and operating parameters - has first been submitted to and approved in writing by the Local Planning Authority. Any lighting scheme shall be designed in accordance with Paragraph 5.4.2.3 of the Ecological Impact Assessment dated November 2022, and shall include a lighting contour plan that demonstrates there will be minimal impact on receptor habitats such as hedges, ponds and created habitats. The development shall only be implemented in accordance with any approved lighting scheme and no other lighting shall be installed at the site.
24	**Arboricultural Impact Assessment** The development permitted by this planning permission shall only be carried out in accordance with BS.3873.2012 (tree work) (or any subsequent replacement or equivalent standard) and the Tree Protection Plan and Outline Arboricultural Method Statement by Arcus Consultancy Services (dated as received on 22nd February 2023).
25	**Tree protection** Prior to the commencement of any works on the site in relation to the development hereby approved the tree protection scheme shall be implemented as detailed in the Tree Protection Plan and Outline Arboricultural Method Statement by Arcus Consultancy Services (dated as received on 22nd February 2023). The approved tree protection scheme shall be retained in situ throughout the construction phase.
26	**Contaminated Land** In the event that contamination is found at any time when carrying out the approved development it must be reported in writing immediately to the Local Planning Authority. Development should not continue until an initial investigation and risk assessment has been completed in accordance with a scheme to be agreed by the Local Planning Authority to assess the nature and extent of any contamination on the site.

Condition	
	If the initial site risk assessment indicates that potential risks exist to any identified receptors, development shall not continue until a detailed remediation scheme, to bring the site to a condition suitable for the intended use by removing and/or preventing unacceptable risks to human health, buildings and other property and the natural and historical environment, has been prepared and approved in writing by the Local Planning Authority. Thereafter, the detailed remediation scheme shall be implemented as approved.

***** END OF CONDITIONS IMPOSED ON 3352966 *****

The Planning Inspectorate

Appeal Decision

Hearing held on 5 November 2024

Site visit made on 6 November 2024

by Grahame Kean BA(Hons) Solicitor, MRTPI, MIPRoW

an Inspector appointed by the Secretary of State

Decision date: 15 May 2025

Appeal Ref: APP/B3030/W/24/3344502
Land at Knapthorpe Lodge, Hockerton Road, Caunton, Nottinghamshire NG23 6AZ

- The appeal is made under section 78 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant planning permission.
- The appeal is made by Knapthorpe Solar Limited against the decision of Newark and Sherwood District Council.
- The application Ref 22/00975/FULM, dated 12 May 2022, was refused by notice dated 17 November 2023.
- The development proposed is: Construction of a solar farm, access and all associated works, equipment and necessary infrastructure.

This decision is issued in accordance with section 56 (2) of the Planning and Compulsory Purchase Act 2004 as amended and supersedes that issued on 31 March 2025.

Decision

1. The appeal is allowed and planning permission is granted for Construction of a solar farm, access and all associated works, equipment and necessary infrastructure at Land at Knapthorpe Lodge, Hockerton Road, Caunton, Nottinghamshire NG23 6AZ in accordance with the terms of the application, Ref 22/00975/FULM, and the plans submitted with it, subject to the conditions in the attached schedule.

Preliminary Matter

2. On 14 June 2024 the Council confirmed that it would not defend this appeal. The appellant considered the appeal should proceed as proposed with the hearing as previously arranged. After taking account of third-party representations the Planning Inspectorate agreed to this approach. The Council was present at the hearing. My thanks go to all parties for their cooperation throughout the proceedings.

Procedural matter

3. Since the application was made Knapthorpe Solar Limited changed its name to SSE Knapthorpe Solar Limited. A completed section 106 deed of obligation was submitted for the provision, management and monitoring of skylark plots and a suitable mitigation area.

4. A revised National Planning Policy Framework (NPPF) was published on 12 December 2024. Comments were invited thereon and I have taken account of the replies received.

Main Issues

5. The appellant agreed a statement of common ground (SoCG) with the Council that identified 7 main issues. These related to the loss of best and most versatile agricultural land; character and appearance including local landscape character; and whether the environmental and economic benefits of the proposal outweigh any harm identified.

6. The development plan comprises the Newark and Sherwood Amended Core Strategy DPD (2019) (ACS) and Allocations & Development Management DPD (2013) (DPD). By s38 (6) Planning and Compulsory Purchase Act 2004, applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise.

Reasons

Character and appearance including local landscape character

7. The appeal site comprises around 74ha of agricultural land in the countryside between the settlements of Hockerton, Caunton, Bathley and Kelham. Orchard House Farm and Manor Farm nearby contain several large-scale poultry units. Hockerton Road is centrally located in the appeal site spanning north-south. Doncaster's Plantation lies to the east and Newbottles Plantation to the north. Muskham Wood, a local wildlife site, is some 850m to the south of the appeal site. The site has mature hedgerows and trees on several of its boundaries.

8. An electricity pylon and 2 wind turbines lie further to the east. A PRoW cuts through the eastern part of the appeal site in a north south direction (FP2) and another runs north-south to the west of the appeal site (FP6). Caunton Airfield is to the south of the appeal site.

9. Muskham Woodhouse Farm buildings are non-designated heritage assets and visible on raised land to the east of the appeal site. The appeal site is viewed from the highway due to gaps in the hedgerows. Two Scheduled Monuments lie within a 1km radius of the site, Earlshaw Hall Moat by the north-west corner of the appeal site and Moated site, fishponds and decoy pond to the north-west of Parking Spring Farm, some 880m south-west of the site. Caunton conservation area is c500m to the north-east and contains a number of Grade I and II listed buildings.

10. Vehicular access to the western part of the appeal site would be from Caunton Road in the south-west corner via an existing farm track. Access to the eastern portion would be via a farm entrance at the western boundary of the site off Hockerton Road. Existing PRoWs would be retained with perimeter fencing and a 10m off-set at both sides.

11. There are no international, national designated ecological sites or national landscape designations within 1km of the appeal site which is in Flood Zone 1. The closest Local Wildlife Site is Muskham Wood, a semi-natural Ancient Woodland approx. 0.6km to the south of the site. Due to its distance from the application boundary, direct impacts on this site would not occur.

12. The proposal is for the construction of a solar farm with capacity of up to 49.9MW for a period of 40 years from the date of the first export of electricity to the electrical grid. Some 62ha of land within the appeal site would have panels or ancillary development sited on it. After 40 years equipment would be

removed, and the land returned to its former condition in accordance with a decommissioning scheme. Construction is expected to take some 6 months.

13. The proposed connection point would be completed under permitted development legislation related to electricity undertakings. The Council is unaware of alternative brownfield sites that could accommodate the scale of development proposed which could be utilised to access this connection point in the vicinity.

14. The proposed solar farm would generate up to 49.9MW of clean renewable electricity per year, distributed via a connection to the local electricity grid, providing power for between 12,900 and 18,700 homes depending on the range of household energy use, and based on average UK household electricity consumption annually. The proposal seeks to assist in saving 22,710t of CO2 emissions per annum by displacing the use of gas.

15. The proposal comprises solar panels dark blue or black in colour, on a metal framework supported by pile driven foundations, installed in rows across the appeal site in an east-west orientation facing south, without the need for concrete foundations. The maximum height would be 4m, the panels would move and track the movement of the sun across the day, increasing their efficiency and would be spaced to avoid shadowing effects from one panel to another. There would be at least 0.8 m between the bottom of the panels and the ground. The appeal site would be enclosed by c2.4m high mesh security fencing with pole mounted CCTV cameras 2.6m in height, positioned inside and around the appeal site to provide security.

16. A construction traffic management plan (CTMP) envisages a construction period of some 6 months with an average of around 7 HGV deliveries (14 movements) per day plus several construction movements associated with smaller vehicles for waste management, construction workers and so forth.

17. To allay concerns about the proposed accesses speed surveys were undertaken resulting in the proposed addition of visibility splays such that the western access would be relocated 50m north of the position in the CTMP and the eastern access moved 75m north of its original position, both locations being subsequently accepted by the local highway authority.

18. The designated route for construction related traffic would be via the A1(T) / A46(T), B6325, A616 and Caunton Road. The cumulative highway impact assessment states that should this appeal proposal and the adjacent Muskham Wood scheme be constructed at the same time there could be up to 14 HGVs per day (28 movements) during the temporary construction period. Local roads have two lanes and are suitable to accommodate construction traffic associated with both sites. The mitigation and management measures in the CTMP would minimise the impact on background traffic. Once operational, traffic flows associated with both sites are likely to be within the daily variation of traffic flows on the local highway network. Thus, there would be no significant cumulative or unacceptable impacts on the public highway as a result of both this proposal and the Muskham Wood scheme if considered together.

19. The proposal would require around 20 visits per year for maintenance purposes and would otherwise be unmanned, being remotely operated and monitored. After its 40-year operational lifespan it would be decommissioned

and completely removed save for structural landscaping where necessary, and the site returned to its current use. It is proposed to secure the decommissioning process by conditions agreed between the main parties.

20. A Landscape and Visual Impact Assessment (LVIA) was submitted to assess the likely significance of the landscape and visual effects of the proposed development on the surrounding area. It concluded that major effects on visual amenity would be limited to receptors within the site or within c550m of the site boundary (or within c900m to the south). Visually, the receptors most likely to receive the greatest effects from the proposed development would be users Caunton FP3 and FP2, and residents of Middlethorpe Grange, Knapthorpe Lodge, Orchard House Farm/Knapthorpe Grange and Red Lodge.

21. To improve the scheme and mitigate some of the impacts the proposal was amended to show the PRoW within a 20m wide corridor from the solar arrays which would reduce the impacts to users of the PRoW network. In addition a more substantial offset was applied to Orchard House Farm/ Knapthorpe Grange, supported by a landscaping scheme. The proposed greater offset (c60m) from this property and additional planting proposed around the site boundaries to reduce the potential impacts of the proximity of the compound from this dwelling is welcomed and is likely to reduce the scale of effect on the property from major-adverse at Year 5 to no greater than moderate-adverse at Year 5.

22. In terms of cumulative effects, applications for two solar farms have been made in the vicinity of Knapthorpe Grange at Foxholes Farm (c3.3km to the north-east) and Muskham Wood, immediately to the south of the site. In respect of landscape character, the cumulative magnitude of change is assessed as large with medium sensitivity and the cumulative scale of effect would be major adverse. However, this localised effect would not result in a notable change in the overriding landscape character of the wider Policy Zone MN30 as a whole as intensively managed farmland with views often enclosed by vegetation. There would be highly localised major adverse cumulative effects on landscape character in the immediate environs of the sites, however in the context of the LCA as a whole there would be a moderate adverse cumulative effect, reducing to minor adverse with increasing distance from the site.

23. There would be more notable cumulative visibility of the Knapthorpe Lodge and Muskham Wood sites. However, the locations from which there may be cumulative visibility are considerably reduced by intervening vegetation such that overall there would be a small number of receptors where the cumulative effect would be greater than moderate adverse and, in such cases would not be notably greater than those which would arise from the proposed development considered on its own.

24. There is no dispute between the main parties regarding LVIA matters that would justify refusal of planning permission. Taking account of all the representations on this subject I find that overall, in the context of the scale of the scheme in isolation (and cumulatively with the adjacent Muskham Wood scheme and the scheme at Foxholes Farm) adverse effects on landscape character and visual amenity would be limited to the site and its immediate environs. Subject to conditions including the submission of a detailed landscape scheme to provide additional screening and mitigation planting, the

proposal would comply with ACS Core Policy 10 and DPD Policy DM4. Adverse effects on landscape character and visual amenity would be localised with impacts to the local landscape character acceptable.

Loss of agricultural land

25. The appeal site contains a small element of Grade 3a land, land that in the best and most versatile agricultural land (BMV). However, this amounts to some 9.52 hectares whilst the rest of the developable land comprises some 64 hectares of Grade 3b land.

26. The BMV land is either side of a stream and could not practicably be farmed separately to the rest of the appeal site. Sheep grazing or a similar use would continue for smaller animals or poultry, grass cutting for conservation and so forth. The land would remain capable of maintaining a basic agricultural function that could be sympathetically managed for the lifetime of the development.

27. The loss or mixed use of agricultural land is not raised as a matter of dispute by the Council. Natural England is a statutory consultee on development that would lead to the loss of over 20Ha of BMV agricultural land, however this threshold is not triggered. The BMV land adversely affected by fixed infrastructure is a small area, capable of restoration on decommissioning. This is not significant development of BMV agricultural land in my view.

Principle of scheme and environmental and economic benefits

28. DPD Policy DM4 (Renewable and Low Carbon Energy Generation), provides the key development plan policy against which the appropriateness of the proposal should be assessed. Permission will be granted for renewable and low carbon energy generation development as standalone projects and part of other development and associated infrastructure where its benefits are not outweighed by detrimental impacts.

29. The proposed development would support the Government's policy for the UK's transition to a low carbon economy and assists in meeting the need for renewable energy generation to meet obligations for renewable energy consumption, challenging targets in 2030 and onwards to net-zero emissions by 2050. The solar farm would generate up to 49.9MW of clean renewable electricity per year, distributed via a connection to the local electricity grid, providing power for between 12,900 and 18,700 homes depending on the range of household energy use, and based on average UK household electricity consumption annually. The proposal seeks to assist in saving 22,710t of CO2 emissions per annum by displacing the use of gas. Overall, the proposed scheme would constitute a low carbon, renewable energy source of energy generation that would make a significant contribution towards meeting national renewable energy targets.

30. The appeal site is located in an area with grid capacity availability and a viable connection to the network is available. The site selection methodology adequately demonstrates why this site was deemed most appropriate for the location of the proposed development. Information has been supplied to demonstrate the proposed connection point and how this could be completed under permitted development legislation related to electricity undertakings. No evidence has been forthcoming as to any alternative brownfield sites that

could accommodate the scale of development proposed and could be utilised in order to access this connection point in the vicinity. The aims of ACS Core Policy 9 (Sustainable Design) would be met in this respect for selecting appropriate sites for new development.

31. There would be Biodiversity Net Gains of c.67% in habitat units and c.27.7% in hedgerow units through the proposed landscape planting, habitat enhancements and long-term management as set out in the supporting documents to this application. The proposed BNG would significantly exceed 10%. BNG must be balanced against the initial disruption to local biodiversity during construction, however the potential biodiversity enhancements that would be delivered would be a significant benefit.

32. Economic benefits would result from farm diversification and job creation during the construction and decommissioning phases of the development which would contribute to employment in the area.

33. In these respects the aims of Policy DM4 would be met as well as ACS Policy CP10 which seeks to tackle the causes and impacts of climate change and deliver a reduction in the district's carbon footprint by among other things, promoting energy generation from renewable and low-carbon sources.

Other Matters

34. I heard submissions from representatives of the Ramblers Association (RA) as to the effect of the proposal on the PRoW network generally. The site is popular with walkers and the proposal would result in some adverse impacts on several PRoWs that traverse the site. However, the proposal would not result in any diversion of established PRoWs and whilst it would mean that certain footpaths would be more enclosed and lessen one's enjoyment as a user, the buffer zones to be secured by condition would provide some mitigation.

35. Concerns were expressed as to the capacity of the local road network to accommodate the traffic generated form the construction phase of the proposal. A construction traffic management plan (CTMP) envisages a construction period of some 6 months with an average of around 7 HGV deliveries (14 movements) per day plus several construction movements associated with smaller vehicles for waste management, construction workers and so forth.

36. The designated route for construction related traffic would be via the A1(T) / A46(T), B6325, A616 and Caunton Road. The cumulative highway impact assessment states that should this appeal proposal and the adjacent appeal be constructed at the same time there could be up to 14 HGVs per day (28 movements) during the temporary construction period. Local roads have two lanes and are suitable to accommodate construction traffic associated with both sites. The mitigation and management measures in the CTMP would minimise the impact on background traffic. Once operational, traffic flows associated with both sites are likely to be within the daily variation of traffic flows on the local highway network. Thus, there would be no significant cumulative or unacceptable impacts on the public highway as a result of both this proposal and the Muskham Wood scheme if considered together.

37. It was queried whether the proposal taken in combination with the appeal at Muskham Wood, would be a nationally significant infrastructure project (NSIP). Whilst solar farms with a generating capacity exceeding 50MW are classified as an NSIP and should be submitted to the Planning Inspectorate rather than local councils, the proposal under consideration has a generating capacity of up to 49.9MW and is independent from any other proposal being considered by the Council or on appeal. There is no policy regarding the clustering of solar developments in rural areas and whilst I am satisfied that the cumulative impacts of several proposals in the same locality have been properly considered, the Council makes no objection to the proposal on this basis.

38. Many residents have gardens bordering the site and several concerns were raised that the proposal would generate harmful overbearing effects on their living conditions. Having considered the layout of development within sites and separation distances from neighbouring development, I am satisfied that these would be sufficient to ensure that there would be no unacceptable reduction in amenity including overbearing impacts, loss of light and privacy. Issue was taken with the methodology used in the glint and glare assessment which for dwellings, was limited to ground floor receptors, justifiably so in my view since such rooms are typically occupied during daylight hours. The two nearby dwellings within 1km of the proposed development (also identified in the appeal related to Muskham Wood) would clearly experience views of the solar farm producing moderate impacts which would be mitigated through planned growth of hedgerows to a height of 3m. All other dwellings were identified as being screened by existing vegetation.

39. A Glint and Glare Memorandum was submitted to consider the users of Caunton Airfield and the potential impact of the development in greater detail. No objections were raised by Caunton Airfield, National Air Traffic Safeguarding, Ministry of Defence or the Council's Environmental Health Officer. I have no reason to disagree with the conclusion that the predicted glare would not pose an unacceptable risk towards airfield operations which should not prevent pilots from using any of the four runways or endanger them during the landing process. The initial results presented in the Muskham Wood report were then repealed and the risk toward the airfield was then considered acceptable.

40. Potential noise effects from the proposed development would be effectively managed by conditions securing a construction environmental management plan (CEMP), restrictions on permitted construction hours and regulation of sound levels emitted from fixed plant and machinery associated with the development.

41. The archaeological potential of site is said by some consultees to be high or very high. Although the appellant took issue with this assertion, I am satisfied from what I have read that subject to the condition agreed with the Council, an appropriate strategy would be put in place for the protection of archaeological remains as may be found necessary.

42. The submitted Heritage Assessment explains that no designated heritage assets within the Site or beyond the 1km study area were considered to have the potential to experience any change to their setting through the

development of the Site. The Council's Conservation Officer has not raised any concerns with this conclusion.

43. Subject to conditions, the application is acceptable with regards to impact on trees including ancient woodland, hedgerows, and ecology. I have considered the representations concerning the habitat and biodiversity of the sites. It is accepted that there would be initial disruption to local biodiversity during construction, however the landscape proposals have been designed to preserve and enhance the existing and future landscape features, to screen some views of the solar panels from outside the site and to enhance its biodiversity and habitat value. The completed section 106 deed of obligation provides specifically for the management of skylark plots and a suitable mitigation area. Overall, the opportunities for enhancing the green infrastructure network and potential biodiversity enhancements would be a significant benefit.

44. Policy DM8 states that development in open countryside will be strictly controlled and limited to certain types of development, which does not include solar farms. Despite the objections raised by some interested parties, I accept that this does not apply to renewable developments which are a particular form of development with their own policy (Policy DM4) concerning renewable and low carbon energy generation. Nor should the generic requirement for a sequential assessment of "versatile agricultural land" be applied other than to the specific forms of development that are mentioned in the policy itself.

Planning balance

45. There is no dispute between the main parties regarding LVIA matters that would justify refusal of planning permission. Taking account of all the representations on this subject I find that overall, in the context of the scale of the scheme in isolation (and cumulatively with the adjacent Muskham Wood scheme and the scheme at Foxholes Farm) adverse effects on landscape character and visual amenity would be limited to the site and its immediate environs.

46. I find that there would be some adverse effects on the enjoyment of some parts of the public path network through and around the appeal site. These effects would be mitigated to some extent through the buffer zones either side of the paths in question. Whilst there would be some diminution in such enjoyment, the proposal would still maintain safe, convenient and attractive accesses over the existing network of footways and bridleways in accordance with the aims of Spatial Policy 7. The interests of PROW users have been considered, however, I am satisfied that there would be no impacts on PRoW users that would justify the refusal of planning permission.

47. Subject to conditions including the submission of a detailed landscape scheme to provide additional screening and mitigation planting, the proposal would comply with ACS Core Policy 10 and DPD Policy DM4. Adverse effects on landscape character and visual amenity would be localised with impacts to the local landscape character acceptable.

48. NPPF recognises the benefits of the best and most versatile agricultural land. However, the loss of a small amount of Grade 3a agricultural land during the lifetime of the development would not represent a significant loss of agricultural land, best and most versatile land, or productive agricultural

capacity, and does not constitute a sound reason for dismissing the appeal. The proposal would therefore not conflict with DPD policies DM4 and DM8.

49. The proposed scheme would provide very considerable benefits through a low carbon, renewable energy source of energy generation that would significantly contribute towards meeting national renewable energy targets in accordance with the aims of Policy DM4 as well as ACS Policy CP10, including the delivery of a reduction in the district's carbon footprint. I attach substantial weight to the renewable energy benefits flowing from the proposed scheme.

50. Overall, I am satisfied that the benefits of the proposed development outweigh the temporary harm identified through reduction in agricultural productivity, small loss of BMV land and adverse effects on landscape character and visual appearance. Accordingly, permission should be granted.

Conditions

51. I will attach conditions covering commencement of development to comply with statutory requirements and as the proposal is unsuitable for a permanent permission, conditions making the permission temporary for 40 years with a requirement to undertake decommissioning pursuant to approved details to be submitted, or if operations are suspended for a substantial period of time.

52. Conditions are required to approve details of the proposed materials and finish of the solar panels and associated equipment, in the interests of the character and appearance of the area and for the same purpose a landscaping scheme and arboricultural method statement should also be secured by condition. Hours of construction will be restricted by condition to preserve the amenities of neighbouring properties, as will the levels of noise emanating from plant and machinery.

53. A Land and Soil Management Plan will be secured by condition to preserve and maintain the agricultural potential of the land, and a Public Rights of Way Management Plan should also be put in place that ensures consultation with users of the PRoW network, to be approved by the Council. Further conditions are necessary in the interests of biodiversity to approve a landscape and ecological masterplan and a construction environmental management plan during the construction period to preserve the amenities of neighbouring properties.

54. Further conditions are necessary to manage tree works and vegetation clearance, and external lighting in the interests of biodiversity, and an archaeological method statement should be secured by condition to preserve any below ground assets in an appropriate manner.

55. A detailed surface water drainage scheme is necessary to put in place by condition to ensure no risk of increased flooding. Further conditions to secure implementation of the Construction Traffic Management Plan and associated measures shall be imposed in the interests of highway safety.

Conclusion

56. For the reasons given above the appeal should be allowed.

Grahame Kean

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with drawing nos:

   Site Location Plan – Ref. P21-1381.001 Rev. C - Layout Plan – Ref. P21-1381.002 Rev. L - Landscape Master Plan – Ref. P21-1381.003 Rev. I - Elevations – Ref. P21-1381.101 - Typical Client and DNO Substation Detail – Ref. P21-1381.102 - Typical Inverter Detail – Ref. P21-1381.103 - Typical CCTV, Post and Security Speaker Details – Ref. P21-1381.104 - Typical Fence detail – Ref. P21-1381.105 - Typical Access Track Detail – Ref. P21-1381.106 - Compound Area Plan – Ref. P21-1381.004 Rev. A

3) The permission hereby granted shall be limited to a period of 40 years from the date when electricity is first exported from this development to the electricity network (The First Export Date). Written confirmation of the First Export Date shall be given to local planning authority within 14 days of the First Export Date.

4) In the event of the development hereby permitted failing to produce electricity supplied to the local grid for a continuous period of 12 months, it will be deemed to have ceased to be required. The solar farm and its ancillary equipment shall be dismantled and removed from the site within 6 months of the deemed cessation date and the site restored in accordance with a scheme that shall first have been submitted to and approved in writing by the local planning authority, which scheme shall have included provision for:

   a) the removal of the solar panels and associated above ground works hereby approved;

   b) the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period;

   c) an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats; and

   d) details of site restoration measures.

5) Within the year prior to decommissioning of the site, but no later than 6 months prior to decommissioning, a full ecological survey of the site shall be undertaken to inform decommissioning. Prior to the commencement of the decommissioning of the site, a report shall be submitted to and approved in writing by the local planning authority. The report shall include the results of the survey and any ecological mitigation measures, as appropriate, based on the ecological assessment findings to be followed during decommissioning, and beyond. The decommissioning of the site shall be carried out in accordance with the approved report.

6) Within 40 calendar years from the date when electricity is first generated to the grid, the facility and all associated works and equipment shall be

dismantled and removed from the site and the land restored in accordance with details that shall first have been submitted to and approved in writing by the local planning authority.

7) Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to the Local Planning Authority for approval in writing. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development

8) No works or development shall take place until the Local Planning Authority has approved in writing the full details of the tree, shrub, and hedgerow planting (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards. The landscaping scheme shall be based on the Species List for the Mid Nottinghamshire Farmlands Landscape Character Type included within the Newark and Sherwood Landscape Character Assessment.

9) The approved landscaping scheme shall be carried out within the first planting season following the date when electrical power is first exported ("first export date"). If within a period of 7 years from the date of planting any tree, shrub, hedgerow, or replacement is removed, uprooted, destroyed, or dies then another of the same species and size of the original shall be planted at the same place.

10) Notwithstanding the submitted details, no works or development shall take place until an Arboricultural Method Statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the Local Planning Authority. This scheme shall include:

    a) a plan showing details and positions of the ground protection areas;

    b) details and position of protection barriers;

    c) details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site;

    d) details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g., in connection with foundations, bridging, water features, hard surfacing);

    e) details of construction and working methods to be employed for the installation of access tracks within the root protection areas of any retained tree/hedgerow on or adjacent to the application site; and

    f) details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

    All works/development shall be carried out in accordance with the approved arboricultural method statement and tree/hedgerow protection scheme.

11) At all times there must be:

    a) no fires lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site;

b) no equipment, signage, or fencing attached to or supported by any retained tree on or adjacent to the application site;

c) no temporary access within designated root protection areas without the prior written approval of the local planning authority;

d) no mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree or hedgerow on or adjacent to the application site;

e) no soakaways routed within the root protection areas of any retained tree or hedgerow on or adjacent to the application site;

f) no stripping of topsoil, excavations or changing of levels within the root protection areas of any retained tree or hedgerow on or adjacent to the application site;

g) no topsoil, building materials or other stored within the root protection areas of any retained tree or hedgerow on or adjacent to the application site; and

h) no alterations or variations of the approved works or protection schemes without the prior written approval of the local planning authority.

12) Except for emergency works, construction works on the site shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1400 hours on Saturdays or at any time on Sundays or Bank Holidays.

13) The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed the stated noise levels set out at Table 4.1 of the Noise Impact Assessment undertaken by ENS, dated 19.05.2022 at the nearest sound-sensitive premises. All measurements shall be undertaken in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.

14) Prior to the commencement of development, a Land and Soil Management Plan shall be submitted to and approved in writing by the Local Planning Authority. All works shall thereafter be carried out in accordance with the approved details for the lifetime of the development.

15) Prior to the commencement of development, a Public Rights of Way Management Plan shall be submitted to and approved in writing by the Local Planning Authority which shall include

a) details of the future management and maintenance of the site and Public Rights of Way network within and around the site; and

b) consultation with representatives of the users of the PRoW network.

The approved Public Rights of Way Management Plan shall be implemented for the lifetime of the development.

16) The development hereby permitted shall be carried out in strict accordance with the pre, post and during construction habitat retention,

protection, creation, mitigation/enhancement, management and monitoring measures outlined within the Biodiversity Management Plan (Ref. BG21.211.3 Rev. 1, March 2023 by Brindle & Green), Ecological Impact Assessment (Ref. BG21.211, October 2022 by Brindle & Green) and Landscape and Ecological Masterplan (Ref. P21-1381_03 Rev. L). All described measures should be carried out and/or installed in accordance with the timescales embodied within the Biodiversity Management Plan (BMP) and work schedule following the cessation of construction works. The BMP and Landscape and Ecological Masterplan shall be implemented for the lifetime of the development. To assess the implementation and success of the BMP a Monitoring Report shall be prepared by a qualified Ecologist and submitted to the Local Planning Authority during the 12th month following the commencement of the development and thereafter during the 12th, 24th and 48th month after the first report, and thereafter every five years until 40 years after the date of first export. Should the Monitoring Report(s) conclude that any of the Biodiversity Management measures are unsuccessful a Remedial Scheme shall be submitted to and approved in writing by the Local Planning Authority and thereafter implemented in accordance with the approved details.

17) Prior to the commencement of development (including ground works and vegetation clearance) a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority. The approved CEMP shall be adhered to and implemented throughout the construction period strictly in accordance with the approved details which for the avoidance of doubt shall have included at submission stage the following:

a) Risk assessment of potentially damaging construction activities;

b) Identification of "biodiversity protection zones" where required;

c) Practical measures (both physical measures and sensitive working practices) to avoid or reduce impacts during construction (may be provided as a set of method statements);

d) The location and timing of sensitive works to avoid harm to biodiversity features;

e) The times during construction when specialist ecologists need to be present on site;

f) Responsible persons and lines of communication;

g) The role and responsibilities on site of an ecological clerk of works or similarly competent person;

h) Use of protective fences, exclusion barriers and warning signs;

i) Details for the control and management of noise and dust during the construction phase; and

j) Evidence of consideration within the submitted CEMP of noise guidance contained within BS 5228:2009+A1:2014.

18) Prior to the commencement of development, a Landscape and Ecological Management Plan (LEMP) shall be submitted to and be approved in writing by the Local Planning Authority. The content of the LEMP shall include the following:

a) description and evaluation of features to be managed;

b) ecological trends and constraints on site that might influence management;

c) aims and objectives of management;

d) appropriate management options for achieving aims and objectives;

e) prescriptions for management actions;

f) preparation of a work schedule (including an annual work plan capable of being rolled forward over a five-year period);

g) details of the body or organisation responsible for implementation of the plan; and

h) ongoing monitoring and remedial measures.

The plan shall also set out (where the results from monitoring show that conservation aims and objectives of the LEMP are not being met) how contingencies and/or remedial action will be identified, agreed and implemented so that the development still delivers the fully functioning biodiversity objectives of the originally approved scheme. The approved LEMP shall be implemented in accordance with the approved details for the lifetime of the development.

19) Prior to the commencement of development, a Woodland Management Plan for the part of Muskham Wood which is adjacent to the southern boundary of the site and within the land edged in blue on the Site Location Plan (Ref. Ref. P21-1380.001 Rev. D) shall be submitted to the Local Planning Authority for approval in writing and thereafter implemented in accordance with the approved details for the lifetime of the development.

20) No tree works or vegetation clearance shall take place during the bird nesting period (beginning of March to end of August inclusive) unless a precautionary pre-start nesting bird survey has been carried out by a qualified ecologist/ornithologist and the findings have been submitted to and approved in writing by the Local Planning Authority.

21) No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the Local Planning Authority. The lighting shall be installed and thereafter maintained in accordance with the approved details of the lifetime of the development.

22) Prior to commencement of development an archaeological method statement shall be submitted to and approved by the Local Planning Authority. The method statement shall set out the measures to be implemented prior to and during the construction period to ensure that the below ground assets within the area concerned are preserved in situ. The development shall be carried out in accordance with the approved details.

23) No part of the development hereby approved shall commence until a detailed surface water drainage scheme based on the principles set forward by the approved Pegasus Group Flood Risk Assessment (FRA) and Surface Water Drainage Strategy dated February 2022 ref P211380,

has been submitted to and approved in writing by the Local Planning Authority in consultation with the Lead Local Flood Authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The scheme to be submitted shall:

a) demonstrate that the development will use SuDS throughout the site as a primary means of surface water management and that design is in accordance with CIRIA C753;

b) limit the discharge rate generated by all rainfall events up to the 100 year plus 40% (for climate change) critical rain storm 5 l/s rates for the developable area;

c) provision of surface water run-off attenuation storage in accordance with 'Science Report SCO30219 Rainfall Management for Developments' and the approved FRA;

d) provide detailed design (plans, network details and calculations) in support of any surface water drainage scheme, including details on any attenuation system, and the outfall arrangements. Calculations should demonstrate the performance of the designed system for a range of return periods and storm durations inclusive of the 1 in 1 year, 1 in 2 year, 1 in 30 year, 1 in 100 year and 1 in 100 year plus climate change return periods;

e) for all exceedance to be contained within the site boundary without flooding new properties in a 100year + 40% storm;

f) details of STW approval for connections to existing network and any adoption of site drainage infrastructure; and

g) evidence of how the on-site surface water drainage systems shall be maintained and managed after completion and for the lifetime of the development to ensure long term betterment.

24) Development shall take place in strict accordance with all the mitigation measures set out in the Construction Traffic Management Plan (Ref. P21-1380/TRO1, April 2022) by Pegasus Group.

25) No construction shall take place until the accesses are surfaced in a hard bound material for a minimum of 20 metres to the rear of the highway boundary, with measures to prevent the egress of surface water onto the highway.

26) Prior to commencement of development, a survey of the highway route from the main road to the vehicle access point to the site should be undertaken, to assess the condition of the road in its current state. After the development has been completed, a further survey to the road should be undertaken, and any damage inflicted upon the road should be rectified by the Developer.

27) No development shall take place on site until a haulage route pre-construction dilapidation survey has been submitted to, and approved in writing by, the local planning authority. A post-construction dilapidation survey shall be submitted to and approved in writing by the local planning authority within 6 months of the First Export Date.

APPEARANCES

APPELLANT:

Mr Garden	Solicitor CMS
Mr Pybus	Project director
Chris Calvert	Pegasus Group
Peter Roberts	Project director
Mr Kernon	Town and Countryside
Mr Cook	Pegasus Group

LOCAL PLANNING AUTHORITY:

Ms Whitfield	Senior Planner
Ms Norman	Principal legal officer

INTERESTED PARTIES:

Mr Thompson	Ramblers Association (RA)
Ms Anson	Nottinghamshire Rambler
Mr Johnson	Footpath officer, RA

The Planning Inspectorate

Appeal Decision

Hearing Held on 23 November 2022

Site visits made on 22, 23 and 24 November 2022

by Philip Major BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 December 2022

Appeal Ref: APP/J3720/W/22/3292579
Land near to Bishop's Itchington, Stratford on Avon, Warwickshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Low Carbon against the decision of Stratford on Avon District Council.
- The application Ref: 20/02839/FUL, dated 7 October 2020, was refused by notice dated 13 August 2021.
- The development proposed is the construction of a solar farm together with all associated works, equipment and necessary infrastructure.

Preliminary Matters

1. The application was accompanied by a plethora of written material, including an Environmental Statement. However, it is clear that the matters at issue between the Appellant and the Council are narrow, and that most considerations are not in dispute between these parties. The single reason for refusal of the proposal relates to the impact of the proposed development on the character and appearance of the surrounding landscape. Having looked carefully at the submitted material, including the statement of common ground, I have no reason to question the fact that the majority of considerations are agreed between the 2 main parties, but I nevertheless deal with other representation made later in this decision.

2. Since the Council made its decision the Appellant has slightly amended the proposal by reducing the number of solar panels and the area which they would cover. The amendment lessens any potential impact, but not to the extent that the Council's and third party objections are removed or materially affected. In these circumstances it would not prejudice any party if I were to accept the amended drawings and I am content to do so. The layout and landscaping drawings and plans I am taking into account, therefore, are those numbered 7782/ASP3/LSP Revision C, and 7782/ASP4/LP produced by Aspect Landscape Planning in January and February 2022. I have also noted the contents of the updated biodiversity net gain calculation and the glint and glare study update.

3. The appeal site is of significant size at around 82.5Ha, but not all of that area would be used for solar panels or associated development and infrastructure. Something over 25Ha would be free of solar panels. It is not disputed that the majority of the land is grade 3b quality, with the remainder being grade 4. Therefore, none of the appeal site is recognised as best and most versatile agricultural land as set out in the National Planning Policy Framework (NPPF). The application is for a time limited development for a period of 40 years.

4. Although the lead local flood authority (LLFA) has made comments on a revised submitted scheme (which is not before me) there was no objection to the appeal proposal from the LLFA subject to the imposition of an appropriate condition. That remains the position.

5. Matters of agreement are set out in the Statement of Common Ground which was signed on behalf of the Appellant and the Council on 21 November 2022. In particular I note here that there is agreement on the quantum of biodiversity net gain (BNG) at an increase of 96.5%; that there is no objection from the Highway Authority; that residential amenity would not be unacceptably harmed; and that any less than substantial harm to heritage assets should not form a reason for refusing the proposal.

Decision

6. The appeal is allowed and planning permission is granted for the construction of a solar farm together with all associated works, equipment and necessary infrastructure on land near to Bishop's Itchington, Stratford on Avon in accordance with the terms of the application, Ref: 20/02839/FUL, dated 7 October 2020, subject to the conditions set out in the attached schedule.

Main Issue

7. As intimated above, the main issue in the appeal is the effect of the proposed development on the character and appearance of the surrounding landscape.

Reasons

Character and Appearance

8. The proposed development would be located in the Feldon Vale Farmlands landscape character type (LCT) of the Stratford on Avon Renewable Energy Landscape Sensitivity Study (LSS) of 2014. The area is also dealt with as part of the Feldon area in the Warwickshire Landscape Guidelines of 1993, and the Vale Farmlands of the District Design Guide of 2001. These documents, taken in the round, identify characteristics typical of the study areas. The appeal site has many of these characteristics, such as being mainly flat, with occasional small undulations, medium to large scale field pattern, areas of permanent pasture, numerous hedgerows and some hedgerow trees. The appeal site itself is also largely self-contained by the extensive hedgerows and some tree belts associated with small streams.

9. The overriding character of the locality is one of a mixed pastoral and arable landscape which is perceived as being deeply rural because of the narrow connecting lanes which criss-cross the area, and the general lack of built development outside the scattered settlements and farmsteads. Although the area is rural it is also affected by some audible intrusion from the nearby M40, and this in turn reduces the tranquillity which is experienced.

10. The LSS is, in my judgement, the most relevant landscape study because of its fine grained approach and its relatively recent publication (at least in comparison with other studies). The study identifies the area as having a medium susceptibility to solar energy development, and a medium to high value. It is clear from the study that the main elements contributing to higher value are the proximity to the Cotswolds Area of Outstanding Natural Beauty (AONB) and heritage assets scattered throughout the area. The sensitivity to

solar development is affected by these features and by proximity to higher ground. It is notable that the LSS concludes (on sensitivity) that where there is enclosure of hedgerows some distance from hill fringes, and where there is movement and disturbance, there may be potential for solar energy development.

11. The LSS goes on to find that in relation to the size of solar energy developments the most suitable location would be limited to broader, flatter or very gently sloping areas where there is potential for hedge or tree screening away from the views from surrounding higher ground. Sensitivity is assessed as medium to high for developments of 25Ha or more. There is an expressed potential for field solar energy developments. Whilst the LSS is of assistance it cannot, of course deal with individual proposals. I do, though, find its assessment criteria to be helpful.

12. In particular I agree that the susceptibility and sensitivity assessment sets out sensible and logical matters which need to be taken into account. In relation to the proposed development I note here that the appeal site is not in close proximity to the higher ground surrounding the site, especially in the case of the notable and prominent outcrop at Burton Dassett Country Park to the south. The site is closer to higher land at, for example, Christmas Hill to the north-west, but this is at a significantly lower height. In addition there are few heritage assets nearby, the only proximate listed building being at Old Town Farm (which I address later). The Cotswolds AONB is some distance away. As a result it seems to me that the appeal site, albeit typical of a low lying rural area, has no special features which raises it above commonplace countryside. The sensitivity to development is therefore, in my judgement, assessed correctly as being in the medium bracket.

13. That said, it is inevitable that an array of solar panels covering almost 55Ha of the appeal site would have an impact on the existing character. Rather than being a typical if unremarkable tract of countryside the character would change to an area of countryside with a solar farm within it. But the magnitude of the change in character would be mitigated by the presence of hedgerows which currently exist, by their management, and by the increase in hedgerow and tree cover which is proposed and which can be ensured by the imposition of suitable conditions. Furthermore the proposed development would be developed in blocks which take account of the existing field pattern.

14. I have taken careful note of the review of the landscape and visual impact assessment prepared on behalf of the Council. This takes a somewhat unusual approach and uses what appears to be drone photography, which is of limited use since it does not illustrate what is experienced on the ground. Nonetheless those photographs show the localised existing character of the land, and some of the field compartments into which solar panels would be placed.

15. In the early part of the life of the development there would be some locations where the magnitude of change in landscape character would be high. This would notable be on the periphery of the site where there are locations of limited vegetation. Elsewhere the essential character would be changed, but at a more moderate level because of the retained and strengthened landscape features. I disagree with the Council's overall assessment that the magnitude of change would be such as to lead to a significant and adverse impact on landscape character. In my judgement the impact would, bearing in mind the

medium sensitivity to development of this type, be moderate and adverse overall at the time of development, but reducing over time to a minor adverse impact.

16. Turning to the visual impact, it is clear that the most noticeable parts of the development would be on the edges of the site. Any recreational walkers, or horse riders, who have an agreed high sensitivity to adverse impacts, would see the panels from locations adjacent to local roads and the public rights of way to the south and east. The visual impact here would be high and likely to be adverse. But I disagree with the Council's suggestion that the response of users of the lanes and footpaths would inevitably be "what a shame". There are many who would no doubt welcome the presence of measures designed to deliver 'green' energy. However, I do not seek to find that there would be visual benefits to the landscape or its enjoyment here as the panels and associated inverters, fencing and other infrastructure would not be typical of a rural landscape. They would introduce regular and regimented structures which would be assimilated to a degree by landscaping proposals, but the visual impact would not be wholly mitigated. In my judgement it would be of moderate adverse impact reducing over time to a moderate to minor impact.

17. Other people likely to see the proposal are those who would pass the site in vehicles, or on cycles. To some extent their sensitivity to development would be less (especially those in vehicles routinely travelling from place to place) and as such the visual impact of the development would be less likely to be perceived as being unfavourable. The impact for these people would be likely to be minor.

18. In longer distance views, such as that from Burton Dassett Country Park, it would be possible to catch a glimpse of solar panels in the distance. But these glimpses would be of an array of panels visually fragmented by vegetation. There would be an impression of a darker layer of material interspersed with trees and hedgerows but remaining within the established field pattern. I agree with the Appellant that it is likely that the array would be perceived as being akin to a body of water in the distance. The fact that the submitted study (which is not contested) finds that there would be no adverse impact from glint or glare adds weight to this finding. There would therefore be a minor visual impact from these longer distance viewpoints.

19. Reference has been made to the fact that there is a solar farm near Bishop's Itchington a little distance to the north-west of the appeal site. However, there is no intervisibility between that site and this proposal and there would be no cumulative impact on either landscape character or visual amenity.

20. Taking this issue in the round it can be summarised as follows:

- There would be a change to the character of the landscape in the immediate locality of the solar farm;
- That change would be adverse and, given the moderate sensitivity of the site, the overall magnitude of impact would also be moderate, reducing over time to a minor impact as the mitigating landscaping took effect;
- There would be a moderate visual impact overall, albeit with some locally major magnitudes of impact in the short term. In the longer term visual impact would be reduced to a minor level.

21. It is agreed that development plan[1] Policy CS.3 is one of the most important policies for determining this case. This deals specifically with renewable and low carbon energy generation. In respect of solar energy the policy is supportive of such development where the impacts are, or can be made, acceptable (which follows the advice of the NPPF). A number of issues are identified against which proposals will be assessed. Most of the issued are uncontested by the Council. The only matter at issue is the impact on landscape character and visual amenity.

22. It is my judgement that the proposed development has addressed the matter of landscape and visual impact in an appropriate manner, and that it has been shown that the impacts can be made acceptable. That is not to say there would be no impact, but any impact would be at a level which would not be unduly harmful. The Council's LSS clearly indicates that solar farms of more than 25Ha could be possible in the Feldon Vale Farmlands and it is my view that this particular proposal would be at the lower end of any finding of harm to landscape or visual amenity (no more than moderate to minor over time). I therefore find that the proposal accords with Policy CS.3.

23. Policy CS.2, also agreed as one of the most important policies, seeks to address the challenge of climate change. Amongst its objectives is the promotion of low carbon renewable energy. Albeit that the policy is primarily aimed at general development, this proposal follows the themes of providing renewable energy whilst addressing flood risk and biodiversity. Taken overall the proposal accords with Policy CS.2.

24. Because I have found that the landscape and visual impacts would be acceptably mitigated and minimised it also follows that the proposal meets the objectives of Core Strategy CS.5 which seeks to achieve those aims. In some ways the development would assist in enhancing landscape features such as hedgerows and tree planting, thus meeting a further objective of Policy CS.5. This policy is also agreed as being most important in determining the appeal.

Other Matters

25. Although the dispute between the Appellant and Council revolves around one main issue there are some other matters which have been raised in writing and at the hearing which I deal with here.

26. First, although the Council takes no issue with the proposed access to the site, many residents are concerned that construction and, in due course, decommissioning of the solar farm would be disruptive and damaging to local highway conditions. I acknowledge that concern, and note that construction would take place during a relatively short time period. No doubt any decommissioning would be of similar length. Highway matters can be controlled by condition, and I have no reason to disagree with the position of the Highway Authority that this scheme can be accommodated safely.

27. It is correctly pointed out that despite being largely graded as 3b land, much of the appeal site is capable of growing crops (as I saw at my site visits). But the NPPF is clear that best and most versatile land is that to which particular consideration should be given in weighing economic and other benefits. That position has not changed in national policy. Therefore, the fact that the land

[1] Stratford on Avon District Core Strategy 2011 to 2031 (adopted July 2016)

can support cropping is not a matter to which I can attach weight against the proposal in this instance.

28. There are particular comments and concerns raised in relation to the potential for damaging archaeological remains. This is not a matter of concern to the Council and can be controlled by condition. I am therefore satisfied that the archaeological resource in the locality can be satisfactorily protected.

29. Similarly the impact on the closest listed building at Old Town Farm is of concern to some. This building is hardly discernible from the edge of the appeal site, and is shielded by vegetation. I note the comments made in relation to the setting of the listed building, but in reality there is no impression of the setting extending beyond the immediate locality of the building itself. In my judgement there would not be any impact on the setting of the building, or its significance, as a result of this development. Other heritage assets are further afield, and although there would be some distant views of the site from, for example, the Beacon Tower at Burton Dassett Country Park, these assets would retain their essential relationship with their surroundings such that there would be no material impact on their heritage significance.

30. I have also been made aware of criticisms of the consultation exercise carried out by the Appellant with the local community. However it is clear that the details of the proposed development have been widely shared and I have no evidence to suggest that local people have not had an opportunity to express their views on this proposal.

The Planning Balance

31. The Council declared a climate emergency in July 2019, following which it has resolved to support actions which, amongst other things, encourages the use of renewable energy such that by 2030 the local planning authority will be at the forefront of climate change adaptation.

32. These actions dovetail with central government intention in relation to the reduction of greenhouse gas emissions. Over a significant period of time there have been national objectives and policies which seek to encourage renewable energy developments where they are appropriate. I do not need to recite them all in detail here but note that the NPPF follows this route, as does the now somewhat aged National Policy Statement for Energy (EN-1) and its draft replacement. Of note are the recent Energy White Paper – Powering our Net Zero Future of December 2020 and the Net Zero Strategy: Build Back Greener of 2021. One of the key policies in the latter is to enable the UK to be powered entirely by clean electricity by 2035. Included in this key policy is the provision of more solar renewable energy. Although some of these policies and objectives are aimed at nationally significant infrastructure projects above 50MW in size, the direction of travel applies equally to schemes such as that in this appeal.

33. The need for energy security has been highlighted by recent international developments, and this scheme, which would provide power to about 16,500 homes, would assist in achieving that aim. I agree with the Appellant that the provision of clean renewable energy which contributes to security of supply attracts substantial positive weight.

34. There would be an agreed, and high, level of biodiversity net gain resulting from this scheme, and some enhancement to the land around the solar panels by the introduction of flower rich meadows. This attracts significant weight in favour of the proposal.

35. The provision of jobs and sourcing of materials associated with the construction of the solar farm and the operational phase of development would bring economic benefits of a moderate magnitude, and this attracts some limited weight.

36. Set against these positive benefits is the moderate initial harm to landscape character and appearance, reducing over time to a limited impact. It would be time limited, although I acknowledge that 40 years is a long period of time. Overall, in my judgement the positive weight which attaches to the proposed scheme clearly outweighs the harm identified. Furthermore, the proposal accords with the most important polices of the development plan when read as a whole, and also accords with the objectives of national policy and advice.

37. None of the other matters raised in writing or at the hearing affects my judgement or alters the weight which I attach to the positive and negative factors in this appeal.

Conditions

38. An agreed list of conditions was supplied, in the event that planning permission was granted. Conditions controlling the longevity of the permission, the removal of the development at the end of the 40 year period, and the approved plans are necessary in the interests of accurately defining the permission.

39. It is also necessary to impose conditions to ensure that development is carried out with minimal disruption during construction and decommissioning. In addition conditions are necessary to ensure that access to the development site is suitable and safe, and that drainage matters are properly dealt with.

40. In order to best protect the appearance of the area conditions requiring landscaping, tree protection, the finish of materials associated with the development and lighting are reasonable and necessary. Biodiversity gain and protection of particular species can be ensured by imposing appropriate and necessary conditions. In order to ensure that there would be no unacceptable impact on the nearest dwellings a condition controlling proposed CCTV is necessary. An archaeological investigation condition is necessary to ensure the protection of any such remains.

Overall conclusion

41. For the reasons given above, and subject to the imposition of necessary conditions, I conclude that the appeal should be allowed.

Philip Major

INSPECTOR

SCHEDULE OF CONDITIONS

1) The development hereby permitted shall begin not later than 3 years from the date of this decision.

2) The planning permission hereby granted shall be for a temporary period to expire 40 years and 6 months after the first export date of the development. Written confirmation of the first export date shall be provided to the local planning authority within one month after the event.

3) The development hereby permitted relates to the following drawing numbers:

- Drawing LCS015-SP-01 Rev 03 'Site Location Plan'
- Drawing LCS015-SD-02 Rev 02 'Indicative Customer Substation Container Standard Detail'
- Drawing LCS-SD-01 Rev 02 DNO Substation Elevations and Dimensions Plan
- Drawing LCS015-SD-03 Rev 02 'Indicative CCTV Post - Standard Drawings'
- Drawing LCS015-SD-04 Rev 02 'Indicative DNO Track Cross Section Standard Detail'
- Drawing LCS015-SD-05 Rev 02 'Cable Trench Cross Section'
- Drawing LCS015-SD-06 Rev 02 'Indicative Access Track Cross Section Standard Detail'
- Drawing LCS015-SD-07 Rev 02 'Indicative Deer Fence - Standard Detail'
- Drawing LCS015-PAP-08 Rev 02 'Indicative Inverter/Transformer Elevations and Dimensions Plan'
- Drawing LCS015-PAP-09 Rev 02 'Inverter/Transformer Roof Plan'
- Drawing L481-11 Typical Porous Sub-base Detail
- Drawing LCS015-PL-03_rev02 Substation Detail Plan
- Drawing 7782/ASP4/LP Site Layout and Landscaping Plan
- Drawing 7782/ASP3/LSP Rev C - Landscape Strategy Plan

4) No development shall take place, including any demolition works, until details of a Construction Management Plan has been submitted to, and approved in writing by, the local planning authority. The approved details shall be adhered to throughout the construction period. The Construction Management Plan shall be in general accordance with approved Construction Traffic Management Plan rev A, and shall provide for:

a. the parking of vehicles of site operatives and visitors;

b. loading and unloading of plant and materials, including the times of such loading and unloading;

c. storage of plant and materials used in constructing the development or stockpiling during development;

d. the erection and maintenance of security hoarding including decorative displays and facilities for public viewing, where appropriate;

e. wheel washing facilities including the location of wheel washing facilities;

f. measures to control the emission of dust and dirt during construction;

g. a scheme for recycling/disposing of waste resulting from demolition and construction works;

h. the hours of demolition and/or construction. No works (including the deliveries) shall take place outside 08.00 hours to 18.00 hours Mondays to Fridays; 08.00 hours to 13.00 hours on Saturdays or at any time on Sundays or Public Holidays);

i. details of any piling together with details of how any associated vibration will be monitored and controlled;

j. the location and noise levels of any site electricity generators or industrial equipment and hours of use of such equipment;

k. means of access and routing plan for construction traffic;

l. management of surface water run-off;

m. contact telephone number(s) and email address(es) of the site manager(s) which shall be displayed on the site;

n. details of external lighting required during construction;

o. measures to prevent degradation of the public highway by construction vehicles.

5) Notwithstanding the details shown on the submitted soft landscaping plans, prior to the commencement of development hereby permitted a scheme of landscaping shall be submitted to and approved in writing by the local planning authority. The landscaping scheme shall include:

a) planting plans;

b) written specifications including cultivation and other operations associated with tree, plant and grass establishment;

c) a schedule of plants noting species, plant sizes and proposed numbers/densities;

d) existing landscape features such as trees, hedges and ponds to be retained accurately plotted (where appropriate);

e) existing landscape features such as trees, hedges and ponds to be removed accurately plotted (where appropriate);

f) existing and proposed finished levels (to include details of grading and contouring of earthworks and details showing the relationship of proposed mounding to existing vegetation and surrounding landform where appropriate);

g) a hedgerow management plan.

The approved scheme shall be carried out in accordance with the approved details within the first planting season following the first implementation of the development.

6) Any planting approved as part of the soft landscaping details within condition 5, that is removed, uprooted, severely damaged, destroyed or dies during the operational life of the development, shall be replaced with

the same species and size of the original planting, unless the local planning authority gives its written approval to any variation. This shall be undertaken before the end of the first available planting season (October to March inclusive for bare root plants), following the removal, uprooting, destruction or death of the original trees or plants.

7) No demolition, site clearance or building operations of any type shall commence, or equipment, machinery or materials be brought onto site until a scheme for the protection of all existing trees and hedges has been submitted to and approved in writing by the local planning authority. The tree protection measures shall include:

a) The submission of a Tree Protection Plan and appropriate working methods - the Arboricultural Method Statement in accordance with BS5837:2012 Trees, in relation to design, demolition and construction - Recommendations.

b) The scheme must include details of the erection of stout protective fencing in accordance with British Standard BS5837:2012, Clause 6.2.

c) Fencing shall be shown on the Tree Protection Plan and installed to the extent of the tree Root Protection Area (RPA) as defined in BS5837:2012 and as agreed in writing by the local planning authority.

d) No equipment, machinery or structure shall be attached to or supported by a retained tree.

e) No mixing of cement or use of other contaminating materials or substances shall take place within, or close to, a root protection area (RPA) such that seepage or displacement could cause them to enter a root protection area.

f) No fires shall be lit within 10 metres of the nearest point of the canopy of any retained tree within or adjacent to the site.

The approved scheme shall be kept in place until all parts of the development have been completed and all equipment, machinery and surplus materials have been removed from the site.

8) No later than 6 months prior to the expiry of the planning permission or within 6 months of the cessation of electricity generation by the solar PV facility, whichever is the sooner, a detailed site restoration scheme for the removal of all solar panels and associated apparatus, structures and access tracks hereby permitted and for the restoration of the land to a condition suitable for exclusive agricultural use shall be submitted to and approved in writing by the local planning authority. The site restoration scheme shall include a timetable for the completion of restoration works and shall be implemented wholly in accordance with the agreed restoration details and timetable. The operator of the solar farm shall notify the Council in writing no later than five working days following the cessation of electricity generation.

9) No later than 6 months prior to the expiry of the planning permission or within 6 months of the cessation of electricity generation by the solar PV facility, whichever is the sooner, a detailed Decommissioning Statement (in accordance with the general principles of the Construction Method Statement for the site) including safeguards for protected species, a HGV routeing plan, details of traffic management measures and measures to

prevent mud and debris on the public highway, and identifying suitable areas for the parking of contractors and visitors and the loading of materials during decommissioning shall be submitted to and approved in writing by the local planning authority. The Decommissioning Statement shall include a timetable for the completion of decommissioning works and shall be implemented wholly in accordance with the agreed decommissioning details and timetable. The operator of the solar farm shall notify the Council in writing no later than five working days following the cessation of electricity generation.

10) Notwithstanding the approved drawings contained in Condition 3, prior to their erection on site, details of the proposed materials and finish, including colour, of all solar panels, frames, ancillary buildings, equipment and enclosures including boundary treatments, shall be submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details and be retained as such for the lifetime of the proposed development.

11) No external lighting shall be erected or used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter retained in accordance with the approved details for the lifetime of the development.

12) Notwithstanding the information submitted with the application, full details of the direction and field of vision of the CCTV cameras shall be submitted to and approved in writing by the local planning authority. The cameras and poles shall thereafter be installed wholly in accordance with these agreed details in accordance with Policy CS.5 and CS.9 of the adopted Stratford-on-Avon Core Strategy (2011-2031).

13) No development shall take place until the applicant, or their agents or successors in title, has secured and had implemented a programme of archaeological work in accordance with a written scheme of investigation and timetable which has been submitted to and approved in writing by the local planning authority.

14) The development hereby approved shall be carried out in full accordance with the avoidance and protection measures for badgers contained in the Badger Report by Avian Ecology, version 3, report dated 25/09/2020.

15) The development hereby approved shall be carried out in full accordance with the ecological mitigation and enhancement measures contained in the Biodiversity Management Plan by Avian Ecology, version 2, report dated 18/09/2020, the Biodiversity Metric 3.0 Report by Avian Ecology dated 27/02/2022 and Drawing 7782/ASP3/LSP Rev C – Landscape Strategy Plan.

16) No construction shall be undertaken until the existing northern vehicular access to the site has been remodelled in accordance with drawing number P20-0362 FIGURE 3 of the Construction Traffic Management Plan (CTMP) by Pegasus Group, dated September 2020, and the existing southern vehicular access to the site has been remodelled in accordance with drawing number P20-0362 FIGURE 5 of the same CTMP.

17) No construction shall be undertaken until visibility splays have been provided to the northern vehicular access to the site in accordance with

drawing number P20-0362 FIGURE 3 and Designer's Response document P20-0362 dated May 2021. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.

18) No construction shall be undertaken until visibility splays have been provided to the southern vehicular access to the site in accordance with drawing number P20-0362 FIGURE 5. No structure, tree or shrub shall be erected, planted or retained within the splays exceeding, or likely to exceed at maturity, a height of 0.6 metres above the level of the public highway carriageway.

19) Within six months of the commencement of the development hereby permitted, all parts within the public highway of the proposed northern bell mouth access shall be closed and a verge crossing access shall be reinstated in accordance with the standard specification of the highway authority.

20) No occupation and subsequent use of the development shall take place until a detailed, site specific maintenance plan has been provided to and approved by the local planning authority in consultation with the lead local flood authority (LLFA). Such maintenance plan should:

a. Provide the name of the party responsible, including contact name, address, email address and phone number;

b. Include plans showing the locations of features requiring maintenance and how these should be accessed;

c. Provide details on how surface water at each relevant feature shall be maintained and managed for the lifetime of the development;

d. Be of a nature to allow an operator, who has no prior knowledge of the scheme, to conduct the required routine maintenance.

APPEARANCES

FOR THE APPELLANT:

Ms Thea Osmund-Smith	Of Counsel
Mr Rhys Bradshaw BA(Hons) MSc MRTPI	Director, DLP Planning Ltd
Mr Ben Wright BA(Hons) DipLA CMLI	Director, Aspect Landscape Planning Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Mr J Brooke	Stratford on Avon District Council
Dr David Hickie BSc(Hons) MA PhD	Managing Director, David Hickie Associates

INTERESTED PERSONS:

Ms Cynthia Bettany	Vice Chair, Burton Dassett Parish Council

DOCUMENTS HANDED IN AT THE HEARING

1 Confidential Badger Report by Avian Ecology
2 Statement of Cynthia Bettany

The Planning Inspectorate

Appeal Decision

Inquiry Held on 7 December 2021

Site visit made on 16 December 2021

by S R G Baird BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/B3030/W/21/3279533
Land north of Halloughton, Southwell, Nottinghamshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by JBM Solar Projects 6 Limited against the decision of Newark & Sherwood District Council.
- The application Ref 20/01242/FULM, dated 7 July 2020, was refused by notice dated 4 March 2021.
- The development proposed is the construction of a solar farm and battery stations together with all associated works, equipment, and necessary infrastructure.

Preliminary Matters

1. Further to Regulation 14(5) of the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (SI 571/2017), the Secretary of State issued a direction that an Environmental Statement (ES) was required. An ES was submitted on 30 November 2021. At the inquiry, the appellant submitted a revised Biodiversity Nett Gain Assessment (BNG) using the updated Biodiversity Metric 3 issued in July 2021. I have had regard to its contents and the representations made.

2. The appellant requested that the appeal be determined based on an amended plan, *P18-2917_12 Rev M Site Layout and Planting Proposal*, and an additional plan *P18-2917_26 Indicative Landscape Site Section (Year 5 & 15)*. Whilst the boundaries of the site remain unchanged, the amendment involves, the removal of solar panels and associated infrastructure from Fields 7 and 12, additional planting in the south-west corner of Field 3 and on the northern boundary of Field 1 and the introduction of a rewilding area in the north-west corner of Field 1. Following public consultation and formal consideration the local planning authority (lpa) has no objection to the proposal being determined on these plans. No party would be prejudiced by the appeal being determined based on Drawing Nos. P18-2917_12 Rev M and P18-2917_26 and I have proceeded on this basis.

3. To allow for consideration of the ES, the revised BNG assessment and receipt of closing submissions, the inquiry was adjourned and closed in writing on 14 January 2022.

Decision

4. The appeal is allowed, and planning permission is granted for the construction of a solar farm and battery stations together with all associated works, equipment, and necessary infrastructure on land north of Halloughton, Southwell, Nottinghamshire in accordance with the terms of the application,

Ref 20/01242/FULM, dated 7 July 2020, and the plans submitted with it, subject to the conditions contained in Annex A to this decision.

Main Issues

5. These are: (1) the landscape and visual impact of the scheme; (2) the effect on heritage assets (HA); and (3) whether the proposal would conflict with the development plan and if so whether there are any material considerations that would outweigh that conflict; the planning balance.

Development Plan and other relevant Policy Guidance

6. The development plan includes the Newark and Sherwood Amended Core Strategy (CS), the Allocations and Development Management Development Plan Document (A&DM) and the Southwell Neighbourhood Plan (SNP).

Core Strategy

7. The objective of Policy CP 9 is the protection and enhancement of the natural environment. Policy CP 10 indicates that proposals for renewable energy generation will be supported, where adverse impacts have been satisfactorily addressed. To assist decision makers in assessing the impact of proposed developments on landscape character, the lpa has adopted the Newark and Sherwood Landscape Character Assessment Supplementary Planning Document (SPD). The SPD identifies Landscape Policy Zones (LPZ), and landscape conservation and enhancement aims for each LPZ. Policy CP 13 seeks to secure development that positively addresses the implications of the relevant LPZs consistent with the landscape conservation and enhancement aims for those areas ensuring that landscapes, including valued landscapes, have been protected and enhanced. Policy CP 14 seeks the conservation and enhancement of the character, appearance and setting of HAs in line with their significance.

Allocations and Development Management Development Plan Document

8. Policy DM 4 indicates that applications for renewable energy schemes will be permitted where the benefits are not outweighed by harm to, amongst other things, landscape character, HAs or living conditions. Policy DM5 lists the criteria against which proposals are assessed. These include access, amenity, landscape, biodiversity, green infrastructure, ecology, and flood risk. Policy DM9 adopts a positive approach to proposals to reflect the overarching presumption in favour of sustainable development.

Southwell Neighbourhood Plan

9. The supporting text to Policy E6 indicates that the SNP seeks to increase the amount of energy generated locally from renewable sources. Low carbon energy schemes will be supported where, amongst other things, they would not negatively impact on local landscape character. Whilst Policy E6 refers to effect on the setting and character of HAs, this criterion relates to Policy DH3, which solely relates to Southwell and as such is not relevant to this proposal.

National Planning Policy Framework Framework) and Planning Practice Guidance (PPG)

10. The Framework and PPG provide generic and specific policy and guidance on development in general and renewable energy developments. These cover

considerations such as biodiversity, historic environment, landscape and visual effects, traffic, living conditions and socio-economic benefits.

Reasons

Issue 1 – Landscape & Visual Impact

11. Given their nature and scale, it is inevitable that large scale solar farms may result in landscape harm. In this context, national and development plan policy adopts a positive approach indicating that development will be approved where the harm would be outweighed by the benefits of a scheme.

Landscape Character

12. Framework, paragraph 174, indicates that the intrinsic character and beauty of the countryside should be recognised. That said, the Framework does not seek to protect, for its own sake, all countryside from development; rather it concentrates on the protection of valued landscapes. The site does not form part of any designated landscape and the lpa acknowledges that for the purposes of the Framework, the site is not a valued landscape.

13. The Framework does not define what constitutes a valued landscape. However, given that all landscapes are valued by someone at some time, the term, valued landscape, must mean a landscape that is of value because of demonstrable attributes that takes it to a level of more than just mere open countryside. I note the strong feelings eloquently expressed both at the inquiry and in writing by residents about their attachment to and value they place on Halloughton and its surroundings. However, nothing I have read, heard, or seen would elevate this site and its surroundings to that of a Framework valued landscape.

14. Of the various landscape character documents referred to, the most relevant is the SPD. The site extends over 12 fields at the confluence of 3 LPZs. Fields 1 to 5 and 12 are within LPZ 37 – Halam Village Farmlands with Ancient Woodlands. Part of Field 8 and Fields 9 to 11 are within LPZ 38 - Halloughton Village Farmlands. Field 7 and the balance of Field 8 is found within LPZ 39 - Thurgarton Village Farmlands with Ancient Woodlands.

15. The landscape characteristics of the site and immediate surroundings are consistent with the characteristic visual features listed for the LPZs. These are: a predominantly arable agricultural landscape with medium to large scale fields with some smaller pasture fields; field boundaries comprising well-maintained hedgerows albeit fragmented in places, with some mature hedgerow trees; blocks of woodland of varying age and linear sections of woodland along field boundaries, streams, and drains. Topography is gently undulating and rounded with medium distance skyline views enclosed by hedgerows and woodland.

16. The assessments of the individual LPZs conclude on their value and sensitivity. However, as the LPZs cover extensive areas and the site extends over a relatively small part of these LPZs, I see it as an area of transition. Here, it would be inappropriate to apply the wider area values and sensitivities uncritically. For example, Field 7 and less than half of Field 8 is located within LPZ 39. However, there is nothing on the ground that would distinguish that part of Field 8 falling within LPZ 38, which is judged to be of moderate landscape sensitivity from that part in LPZ 39, which is judged to

have a high landscape sensitivity. Taking the landscape characteristics, condition, and sensitives of each of the 3 LPZs as a starting point and looking at value and sensitivity in the round, the site and its surroundings have a medium landscape value and medium sensitivity to change.

17. The key elements that contribute to landscape character are topography, land use/land cover, tree/woodland, hedgerows, public footpaths, and watercourses. Although for some of these elements, the conclusions reached by the lpa and appellant differ in terms of value, susceptibility and sensitivity, there is a large measure of agreement on the significance of effect.

18. Apart from the proposed permanent electricity substation, the solar panels and associated infrastructure, would, for the wont of a better phrase, sit lightly on the affected fields, with no material change to topography. As to land use/land cover, most of the site would be retained in agricultural use as grazing pasture. Sheep grazing is an accepted part of solar farm developments as a means of naturally managing the pasture. Seeking opportunities to restore arable land to pasture is an "action" promoted by the SPD. For these landscape elements, the lpa and appellant agree that the degree/scale of effect would be *Not Significant* in landscape character terms.

19. For trees and hedgerows, whilst the lpa accepts there would be some minor to moderate beneficial impacts from the proposed mitigation, it regards these changes as Not Significant. The appellant, on the other hand, assesses the changes as being Major Beneficial and Significant. Relative to the existing fund of trees/woodland in the area, the additional tree planting on the southern edges of Fields 8 and 9, the northern edges of Fields 7 to 11, the western and southern edges of Field 4 and on the northern edge of Field 1 does appear modest. However, these are strategic areas for planting and the impact belies their extent. In my view the outcome would be a Major and Significant Beneficial Effect. A similar approach can be adopted for hedgerows. Here, the existing 8km of hedgerow around and within the site would be supplemented by some 1.2km of new planting. This would be a significant expansion and result in a Major and Significant Beneficial Effect. Moreover, tree and hedgerow planting are consistent with "actions" promoted by the SPD, which are, to conserve and enhance hedgerow and tree cover

20. For public footpaths there would be no change. For watercourses, whilst there is a difference between the parties as to the scale of beneficial effect, there is agreement that it would be Not Significant in terms of landscape character effect.

21. It common ground that, given their spatial extent, there would be no significant adverse effects on the landscape character of the wider LPZs. Moreover, the lpa accepts there would be no direct impacts on landscape character outside the boundaries of the site. Given the topography of the area, existing planting and overhead power lines/pylons that bisect Fields 6 and 8 to 11, the lpa acknowledges there are, limited medium distance views and visibility of the site. Accordingly, whilst the solar panels and associated infrastructure would, in Environmental Impact Assessment terms, have a Significant Adverse effect on landscape character, it would be highly localised.

22. In terms of the degree/scale of impact of the scheme, the assessments carried out by the lpa and the appellant concentrate on the construction period and Years 1 and 10. During the construction period and at Year 1, it

is agreed that within the site, the scale of effect would be Major and have a Significant adverse effect on landscape character. In my view, this significant adverse effect would be experienced at several places where there are views into the site. However, given the relatively short construction period, some 26 weeks, and at a time when the mitigation planting would be young, such adverse impacts cannot be avoided. Thus, the weight I attach to these early effects is limited. As François Athenase de Charette de la Contrie[1] is reputed to have said, "…*you cannot make an omelette without breaking a few eggs*".

23. The lpa acknowledges that over the lifetime of the scheme the planting would increasingly mitigate the landscape impact of the solar panels and associated infrastructure. The main difference between the parties is that by Year 10 the appellant considers that the adverse effect would be reduced to a largely Moderate Adverse impact and Not Significant in landscape character terms whereas the lpa submit that there would still be a Major Adverse and Significant effect on landscape character. The difference appears to rest largely on the lpa's conclusion that the impacts of the proposed mitigation measures rather than the presence of the solar panels and associated infrastructure would be the source of the enduring adverse landscape effect. Essentially, the additional tree cover, hedgerow reinforcement and allowing the hedgerows to grow out would result in long term harm by interrupting or curtailing medium distance views.

24. The lpa acknowledges that the proposed mitigation, is consistent with the nature and character of existing planting. Moreover, these works are entirely consistent with the "actions" to conserve and reinforce hedgerow and tree cover promoted for these LPZs. Indeed, the landscape character changes the lpa assert would be a harmful is something that has already occurred in the landscape to the north of the village. Here, over the last 2 decades landowners have engaged in extensive tree planting and hedgerow maintenance. The prime example of this is the extensive and dense woodland planting to the east and south of Fields 10 and 11.

25. No important or protected views were identified by the lpa. However, residents refer to the loss of views of the twin towers of Southwell Minster, looking eastwards from public footpaths that run along the western and northern boundaries of the site. That said, whilst there are some views of the tops of the Minster towers from the field to the west of Fields 2 and 4, these are not from the official line of the public footpath that runs hard against the hedge line of Fields 2 and 4, but a desire line that follows vehicle tracks across the centre of the field. In any event, these views are not sequential, but glimpsed and any loss would be limited.

Visual Impact

26. The assessment of visual impact is based on an assessment of views from 18 agreed representative viewpoints[2] (VP). In concluding on visual impact, I acknowledge that, (a) the views obtained from these VPs are a snapshot of the site and do not reflect the experience of walkers as they proceed along the road/public footpath and (b) the photographs were taken when the deciduous trees and hedgerows were in full leaf. That said, my visits to the

[1] Breton soldier and politician 1863 to 1796.
[2] In addition, there are views from 3 points on the edge of Southwell included for the assessment of impact on heritage assets.

site and its surrounding were in winter, which presents a worst-case scenario. Moreover, on views, the area is well endowed with extensive tree and hedge cover that limits views to short or medium range. Moreover, given the topography and existing tree/hedgerow cover, the opportunity for sequential views is limited. This is particularly the case where Footpath 209/74/1 runs along the southern boundary of Field 6 and where Footpath 209/42/1 runs northwards along Fields 4 and 2.

27. The parties agree that the Year 10 assessments of effect are the most important to assess the visual impact of the scheme. It is these effects that would last for most of the life of scheme. That said, the existing and proposed planting would continue to grow and increasingly screen the development. Thus, the Year 10 assessment of effect must be regarded as a worst-case scenario. It is common ground that there would be no significant visual effects after decommissioning.

28. There is a significant amount of agreement between the parties regarding visual impact. Taking the lpa's conclusions in each case as a worst-case scenario, the visual effect at VPs 1, 3, 5, 6, 7, 9, 10 to 13 and 16 to 18 are judged as Negligible and Not Significant. In landscape assessment terms, a negligible effect is where the proposed changes would maintain the existing view or where, on balance, the proposed changes would maintain the quality of the view, which could include adverse effects that would be offset by beneficial effects for the same receptor. At VPs 2 and 8, the visual effect is judged as Minor Adverse and Not Significant. Typically, this is where a proposal would represent a low magnitude of change and/or the proposal would result in a slight deterioration of the view.

29. The effect at VPs 4 and 14 is described as a Moderate to Negligible Adverse effect. A moderate adverse effect is typically described as a Medium Magnitude of change where the proposal would result in a clear deterioration in the view. In this context, I would also describe the views to the north-west obtained when walking west on Footpath 209/74/1, towards VP 2 as being Moderate Adverse and Not Significant. On this stretch of path, views of panels in Fields 3 and 5 would be obtained across the shallow valley containing the Westhorpe Dumble where the field hedgerow is heavily gapped.

30. One Significant Year 10 effect would occur on Public Footpath 209/43/1 at VP 15, and a Major Adverse effect would be experienced by walkers on the stretch between VPs 14 and 15. Here, the footpath runs along the southern edge of a tall, dense, mature hedge that has been allowed to grow out limiting the visual effect to one side of one field. That said, the lpa agreed, the effect is limited geographically and of short duration. Any impact on the footpath where it extends to the east beyond Field 1, VP 16, or to the west and north of Field 2, would, due to existing screening, be limited if not negligible. Here, the proposed mitigation includes a native hedgerow with trees along the northern edge of the solar panels and a substantial area left for rewilding in the north-east corner of Field 1. As the planting matures, the solar panels would largely disappear behind the planting mitigating the visual harm.

31. Currently, on Footpath 209/43/1, between VPs 14 and 15, the walker experiences an open aspect to the south-east albeit the extent of view is short range as Field 1 rises to the south-east and a mature hedgerow along the

eastern boundary of Field 1. Concern was expressed that the narrowness of the gap between the existing hedge and the proposed mitigation would result in walkers experiencing an unacceptable tunnel effect. Whilst walkers may experience what the appellant suggests would be a "green corridor" this is not an unusual feature of the area. Footpath 209/80/2 to the north of Halloughton Wood runs for a significant length with dense woodland on either side and Footpath 209/74/1 runs between tall dense Miscanthus planting on its northern and southern side as shown by the view from VP 3.

32. Drawing the above together, it is inevitable that located in a countryside location a solar farm of this scale would have some adverse landscape character and visual impact. However, through a combination of topography, existing screening and the introduction of landscape mitigation, the adverse effect would be limited and very localised. Moreover, as the existing and proposed planting matures, the adverse effects, would be acceptably mitigated. Whilst the 40-year lifetime of the scheme is significant, once the solar farm was decommissioned, there would be no residual adverse landscape effects. Rather the scheme would, through the mitigation planting, leave an enhanced landscape consistent with the objectives of the development plan and the SPD.

Issue 2 - Heritage

33. The site lies partly within the Halloughton Conservation Area (CA), and within the settings of several Listed Buildings (LB). Regarding the LBs, there would be no direct physical impact, rather the potential for harm would be indirect. As to effect, the key difference between the parties is the contribution the Halloughton Prebend males to the heritage interest these HAs. Briefly, a Prebend is a salary generally given to clergymen, the Prebendary, derived from tithes on agricultural land. Here, the Halloughton Prebend was given to Canons of Southwell Minister and ceased around 1840. At that time, the estate reverted to the Diocese of Southwell and in 1952 sold to the tenants.

34. The Prebend is not, on its own, an HA rather it is a matter of historical record, and no tangible connection can be experienced on the ground or in the wider landscape; it is a non-visual historic consideration. That said, there are many LBs whose significance is founded on historic associations that are not reflected in their physical appearance or surroundings. The appellant's submissions on the relevance of the Prebend to the heritage interest of the 5 LBs and CA were deftly put. However, whilst I recognise the Prebend is now a matter of historic record rather than a physical manifestation, it is of historic interest and as such contributes to the heritage interest of these HAs.

Halloughton Manor Farmhouse, Pigeon Cote, Granary and Stable

35. Although listed separately, these buildings are part of the same complex. Halloughton Manor Farmhouse (HMF) is listed as Grade 2*, the Pigeon Cote, Granary, Stable and Barn are listed as Grade 2. HMF, was originally the Prebendal House constructed in the 13th Century with additions and alterations during the medieval, post medieval and 19th century. At the core of this building is a 3-storey tower largely constructed of coursed rubble with ashlar dressings with the later addition of a pitched pantile roof and brick gables. A substantial part of the frontage elevation of the tower is obscured by what appear to be late 19th century single-storey extensions.

36. The Pigeon Cote, Granary, Stable and Barn were constructed during the 18th and 19th centuries as the farmstead expanded. The Pigeon Cote, Granary and Stable, a 2-storey building, constructed in red brick with a pantile roof. Located at the core of the complex, views of the building are restricted to the upper storey: the Pigeon Cote. Added to the complex in the 19th century, the Barn albeit it has some decorative elements, is a large functional red brick building with a pantile roof abutting Bridle Farm Road[3] (BFR).

37. At Grade 2* HMF is a HA of the highest significance and at Grade 2 the Pigeon Cote, Granary, Stable and Barn is acknowledged as less than the highest significance[4]. The heritage interest of these buildings is architectural and historic. In the case of HMF, the tower is an example of a medieval tower house albeit it has been altered and extended over the years. The historic interest of the Pigeon Cote, Granary, Stable and Barn lies is the physical demonstration of the development and expansion of the agricultural economy, in the 18th and 19th centuries. Whilst the Prebend is now a matter of historic record rather than a physical manifestation, HMF was the prebendary house, which adds to its historic interest.

38. Given its serpentine nature, the settings of these assets is confined, largely to a short stretch of BFR. Other than from the south and south-west and largely limited to HMF itself there are few, if any, views of this complex of buildings from the solar farm site and its surrounding landscape. Any that may be obtained are limited by topography or heavily obscured by existing woodland and hedgerow and are no more than fleeting glimpses. Thus, medium to long range views do not contribute to the interest of these HAs. Whilst historically, initially, through the Prebend and after its abandonment, the wider agricultural surroundings, including parts of the solar farm site formed part of the setting of HMF, in that produce from the land passed through and was stored on the complex, that link no longer exists. Thus, the contribution that historic link makes to the significance of these assets is limited.

39. Drawing all the above together, given the degree of separation between the solar farm site and these HAs and the nature of existing and proposed screening, the development would result in no harm to the architectural interest of these HAs. That said, given the association with the Halloughton Prebend, I consider there would be some limited harm to the historic interest of these HAs albeit it would fall within the category of less than substantial harm and at the lowest end of that spectrum.

Church of St James

40. Although parts date from the 13th century, the church was substantially rebuilt in the late 19th century under the direction of Ewan Christian an English architect noted for the restoration of Southwell Minster, Carlisle Cathedral, and the design of the National Portrait Gallery. The church, Grade 2 listed, is constructed in course rubble with some ashlar detail. The church is simple in form comprising a nave, chancel, modest windows, and decoration from the 14th, 17th, and 19th centuries. The frontage to BFR is defined by a random

[3] The street map for Halloughton does not show road having a name. The appellant's submitted documentation variously refers to the village street as either Bridle Farm Road or Cotmoor Lane. More than one document refers to it as Bridle Farm Road and for the purposes of this decision, I have adopted Bridle Farm Road.
[4] Framework paragraph 200.

stone wall backed by several evenly spaced mature trees and the church is set well back into a well-defined plot.

41. The heritage interest of the church is architectural and historic. The architectural interest is grounded in it being a good example of a late Victorian Parish Church. The historic interest relates to its association with HMF and its role as the medieval Prebendal church and the association with Ewan Christian. The churchyard setting with its ubiquitous yew tree and location next to an orchard and agricultural fields immediately to the north adds to the church's heritage interest.

42. It was clear from my extensive walks before and after the inquiry that the church is not experienced from the public footpaths that cross and go around the proposed solar farm nor from any of the fields that would make up the solar farm or its surroundings. Given the deep setback from the road, the church is mainly experienced from a limited stretch of BFR. Whilst there would in wintertime heavily filter views of a limited number of panels, the way the heritage interest of the church is experienced would not be changed. That said, given the association with the Halloughton Prebend, there would be some limited harm to the historic interest of this HA, albeit it would fall within the category of less than substantial and at the lowest end of that spectrum.

Barn at Bridle Road Farm

43. The barn is a large functional 2-storey red brick building with limited decorative detail and a steep pantile roof built in the 18th century. The farmstead at Bridle Road Farm is tight knit, with the barn, farmhouse and other vernacular buildings forming a courtyard comprising areas of grass and hardstanding. Heritage interest derives from its vernacular architecture and as an example of historic agricultural development. Again, the Prebend, adds to the historic interest of this HA.

44. Views of the barn are from BFR and the public footpath 186/3/1 that runs from the farm entrance, through the yard and branches of to the south-east. Views from BFR are limited due to its serpentine nature. The main area where the barn is experienced is from several points on the public footpath where the farmstead dips in and out of view. In views closer to the farmstead some panels would be seen in the same view as the barn. That said, glimpses of some panels over the roof of the barn would have a limited impact on its heritage interest. That said, given the association of the village with the Halloughton Prebend, there would be some limited harm to the historic significance of this HA, albeit it would fall within the category of less than substantial and at the lower end of that spectrum.

Halloughton Conservation Area

45. Halloughton CA was designated in 1972 and is primarily focused on the linear form of the village core and several adjoining fields. The character, appearance and heritage of the CA is largely derived from its sunken serpentine form giving it an enclosed and intimate character, the historic buildings, the open approaches to the village core from the east and west, boundary walling and grass verges. Whilst the agricultural land beyond the CA boundary, does contribute to the interest of the CA, this is, in my view, of less importance than the contribution of the various HAs and features described above. There are few views out towards the solar farm from the CA

and across it to the CA, resulting in only limited change to some views of the wider rural area and of the CA. In this context, the solar farm would have no material impact on the character and appearance of the CA.

46. The only element of the proposal to fall within the CA would be the vehicular access from BFR some 45 to 50m from the junction with the A612 Highcross Hill and a short length of access track running through an area of semi-mature woodland. Whilst this area of BFR forms the entrance to the CA, it is a wide engineered junction with extensive visibility splays that makes a limited contribution to the character of the CA. The start of the CA experience is from where BFR approaches and passes the church and HMF leading into the serpentine and intimate route to the west. During the relatively short construction period, the access and its use would have an impact on the appearance of the CA. However, on completion, the character and appearance of the access would revert to that of an agricultural access of which there are several within the wider CA. Therefore, any harm would be limited and of a short duration.

47. Given my conclusions on the effect of the proposal on the various LBs within the CA, the relevance of the Prebend and the impact of the proposed access, there would be some limited harm to the historic interest of this CA, albeit it would fall within the category of less than substantial and at the lower end of that spectrum.

Brackenhurst Hall Complex

48. Brackenhurst Hall as a complex has 4 Grade 2 listed elements. These are (1) Brackenhurst Hall, Coach House, Orangery and Garden Wall; (2) the Gateway and Railings; (3) the Lodge and (4) Garden Walls and Potting Sheds located some 100m to the north-east of the Hall. The Hall and its surrounds are part of the Nottingham Trent University Campus. Since the land was acquired by the University the facilities have been extensively extended to include student accommodation, lecture, and administrative buildings, some of which have been added recently and are interspersed to the north and west of the HAs.

49. Constructed in the early 19th century, the Hall is a substantial building that has been extensively remodelled during the late 19th century by its various owners. The Hall and its adjacent HAs have architectural and historic interest as, an example of a large 19th century country estate house and the former home of Reverend Thomas Coats Cane and the birthplace of Field Marshall Viscount Allenby. There is as far as I am aware no functional, historic, or physical relationship between the Hall and the appeal site. There are only limited glimpses of the upper parts of the Hall's tower from eastern part of the site. In terms of its setting, where it is appreciated this is entirely located within its grounds and to the east and south.

50. Whilst the Hall and its associated assets may be an example of a 19th century estate, the appeal site makes no contribution to its setting and significance. Moreover, the setting and significance of the Hall and its associated HAs have been significantly eroded and compromised by the development of the University campus. Some of which are bland functional structures and others "in your face" modern. In this context, the proposed solar farm would result in no harm to the heritage interest of these assets.

South Hill House

51. South Hill House is 2-storey red brick house constructed at the beginning of the 19th century and now forms part of the Nottingham Trent University Campus. The building is Grade 2 listed and has architectural and historic significance as a high status former farmhouse. There appears to be no historical, physical, or functional relationship with the appeal site or its surrounds. Whilst the main facade is orientated to the south, the building is heavily screened from views from the appeal site by dense tree and hedge planting and mostly experienced from the adjacent main road. Given the above, the proposed solar farm would result in no harm to the heritage interest of this asset.

Other Considerations

Renewable Energy

52. The Government recognises that climate change is happening through increased greenhouse gas emissions, and that action is required to mitigate its effects. One action being promoted is a significant boost to the deployment of renewable energy generation. The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. Recently, the Government committed to reduce emissions by 78% compared with 1990 levels by 2035. The Clean Growth Strategy 2017 anticipates that the 2050, targets require, amongst other things, a diverse electricity system based on the growth of renewable energy sources.

53. A material consideration in the determination of planning proposals are National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. Whilst NPSs EN-1 and EN-3 do not specifically refer to solar generated power they reiterate the urgent need for renewable energy electricity projects to be brought forward. Draft updates to NPSs EN-1 and 3 identify that, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farming provides a clean, low cost and secure source of electricity.

54. The December 2020 Energy White Paper (WP) reiterates that setting a net zero target is not enough, it must be achieved through, amongst other things, a change how energy is produced. The WP sets out that solar is one of the key building blocks of the future generation mix. In October 2021, the Government published the Nett Zero Strategy: Build Back Greener where under Key Policies it explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable generation such as solar.

55. The development has a capacity of some 49.9Mw, generating a significant amount of electricity from a clean, renewable source. This would provide for a reduction of approximately 20,690t[3] of CO_2 emissions annually and meet the energy needs of approximately 12,000 homes. The lpa acknowledges that this is a substantial benefit that attracts significant weight. There are no physical constraints limiting early development of this site and a grid connection offer is in place. As such, the scheme could make an early and significant contribution to the objective of achieving the statutory Net Zero

target set for 2050 and the commitment to reducing emissions by 78% compared with 1990 levels by 2035. Given this imperative, this benefit attracts significant weight.

Ecology and Biodiversity.

56. Subject to the implementation of appropriate mitigation, neither Natural England (NE) nor the Nottinghamshire Wildlife Trust, object to the proposal. The SoCG confirms that, the proposal would not conflict with the relevant sections of CS Policy 12 and LP Policy DM5.

57. The appellant provided an updated BNG assessment of the proposed Biodiversity Management Plan. The mitigation includes additional tree/hedgerow planting and the long-term management of existing trees/hedgerows, sowing a species rich grassland beneath the panels and the provision of bat and bird boxes around the site.

58. The BNG Metric is a tool for measuring and accounting for nature losses and gains resulting from development or changes in land management. The appellant's Metric 2 calculation identifies a net gain of 37%[5] in habitat units and 24% in hedgerow units. Based on the Metric 3 calculation, there would be a net gain of 92% in habitat units and 32% in hedgerow units. The lpa's assessment[6] disputes the extent of the total loss of other neutral grass land placing this at some 7ha whereas the appellant calculates a loss of some 1ha. That said, based on the 7ha figure, the lpa calculates that the net gain would be some 73% in habitat units.

59. Notwithstanding the difference in the figures, the lpa acknowledges that Metric 3 provides a more accurate calculation of BNG. The increase from the Metric 2 figure would result in a significant benefit. The context for the lpa when ascribing weight to this benefit is, that ecological mitigation, management, and enhancement reflects common practice and accords with local and national planning policy, it is a by-product of the development and there would be an overall loss of arable agricultural land for crop production. On this basis, the weight the lpa attaches to BNG is moderate/significant. The appellant submits that significant weight should be attached to the acknowledged BNG. Whilst BNG will be a requirement of the Environment Act 2021, the minimum requirement is currently set at 10%. Thus, even acknowledging that the assessment starts from a low base in terms of the ecological value of the site, a gain of some 73%, is substantial and a benefit that attracts significant weight.

Access and Highway Safety

60. Most of the traffic generated would occur during the construction period with deliveries being made by heavy goods vehicles (HGV). Over the 26-week construction period, delivery traffic generation would equate to some 6 vehicles or 12 movements per day. Up to 80 construction workers would be onsite at any one time and depending on their origin most would be transported to the site by minibus. Post construction it is anticipated that the site would be monitored remotely with limited occasional visits of between 10 and 20 vehicles per annum. I have no reason to dispute these figures or consider them to be unrealistic.

[5] Percentages have rounded up to the nearest whole number.
[6] Carried out for the lpa by an Ecological Consultant from Via East Midlands.

61. Vehicular access would be from BFR, some 45 to 50m from the junction with the A612 Highcross Hill. BFR is a no through road and there would be no need for site traffic to enter the built-up area of the village. The access has been designed to accommodate HGV traffic and visibility to the east and west is acceptable. The immediate road network has a good safety record with no personal injury accidents reported in the vicinity of the site access or the junction with Highcross Hill in recent years. The junction of BFR and Highcross Hill, has adequate visibility to the north and south and it could accommodate the nature and level of traffic generated by the proposal without a material impact on highway safety. Nottingham County Council (NCC) as Highway Authority and the lpa have, subject to the imposition of conditions, no objection to the proposal on highway safety or traffic generation grounds. Drawing the above together, the proposal would not have an unacceptable effect on the safety and free flow of traffic.

Flooding & Drainage

62. In line with the Framework, CS Policy 9, AD&M Policy DM5 and SNP Policy E2 seeks to steer development away from areas of high flood risk and ensure that proposals manage surface water run-off with Sustainable Drainage Systems (SuDS). Whilst the site is located within Flood Zone 1, a low risk flood area, areas downstream of the site have experienced flooding. Following an independent Flood Risk Assessment (FRA), the Environment Agency and NCC, the Lead Local Flood Authority, have no objection to the proposal subject to the imposition of an appropriate condition.

63. The FRA is a robust assessment, which forms the basis for a SuDs compliant system, the details of which would be covered by a condition. Whilst the extent of potential betterment is not quantified, the lpa acknowledges there is potential for betterment and accepts that the development would not adversely impact on flooding or drainage. In this regard, the proposal would accord with the Framework and development plan policies.

Agricultural Land

64. Framework paragraph 174 indicates that decisions should recognise the economic and other benefits of best and most versatile (B&MV) agricultural land. PPG[7] defines B&MV agricultural land as Grades 1, 2 and 3a indicating that agricultural land quality is a factor when assessing proposals. These considerations include, whether the use of any agricultural land is necessary and whether a proposal allows for continued agricultural use. AD&M Policy DM8 indicates that proposals resulting in the loss of B&MV agricultural land, will be required to apply a sequential approach to site selection and demonstrate environmental or community benefits that outweigh the loss.

65. The lpa accepts that site is Grade 3b and is not B&MV agricultural land or that it was necessary to consult NE. Moreover, given the assessment was carried out by a suitably qualified professional and the results conform with the NE MAGIC database, the lpa did not consider it necessary to undertake its own analysis given the grading was. That approach is not unreasonable.

66. The SoCG notes that, the land would continue in agricultural use through sheep grazing, that as a time-limited scheme, other than for the electricity

[7] Natural Environment Paragraph 001 Ref ID 8-001-20190721 & Renewable & Low carbon Energy Paragraph 013 Ref ID 5-013-20150327.

substation, it would not result in the permanent loss of agricultural land and there are no suitable alternative brownfield sites to accommodate the scale of the development. In terms of site selection, one of the elements is the availability of a grid connection. Here, the site is crossed by overhead power lines providing access the national grid easily and economically.

67. NE's Agricultural Land Classification Map shows the site to be located within an area identified as Grade 3 land i.e., good to moderate quality agricultural land. Whether the site is Grade 3a - good quality or Grade 3b – moderate quality can only be determined by site and soil examination. The appellant, using an appropriately qualified agricultural assessor, undertook a comprehensive site and soil assessment that included 98 sample locations involving the excavation of 3 trial pits and augur samples based on one sample per hectare. Assessment of the samples combined with other relevant factors contained in the guidance concludes that the site falls within Grade 3b.

68. Objectors submit that the report is deficient in that it that it does not account of the presence of Grade 2 – very good quality land in the locality, include a consideration of economics or any account of the application of husbandry. This last point is regarded as important, given that maize, a cereal crop dependent on good soil condition, has been grown locally.

69. The Grade 2 land shown on the NE Classification Map is some distance to the north of the site and is not indicative of the potential quality of the appeal site. Experience indicates that soil quality can vary dramatically over a small area and obtaining a clear differentiation between grades can only be achieved through site and soil examination.

70. The NE classification notes that Grade 3b land can produce moderate yields of cereal crops. Thus, the reference to maize being grown is not, on its own, and indication that the land falls to be considered as B&MV. There is no indication as to the extent of the yield achieved. Moreover, as I understand it, yield data and financial assessment of the farm business are explicitly excluded from the classification methodology. This is because, unlike site and soil examination, it is not possible to make allowances for variables such as management skill, levels of input and short term weather factors.

71. It is suggested that the net value of the solar farm should be measured in terms of national energy production and security against the net value of arable crop production and UK food security. Given that agricultural land is a finite commodity and food security is equally important as energy security, superficially this appears to reasonable. However, in my experience, this is not something that an individual appellant or lpa could realistically or reasonably undertake for any one proposal. Even if it is possible to undertake such an assessment, it strikes me it is one that would have to be carried out at a national level and involve high level political decisions/choices that are outside the remit of an individual decision maker in a planning appeal.

72. Drawing all this together, the appellant has undertaken a robust and appropriate agricultural land classification assessment that shows the land falls outside the definition of B&MV agricultural land. Only a very small proportion of the site would be permanently lost from agricultural use and the remainder would continue to be used for agriculture in the form of sheep grazing. There is no evidence that the minor, permanent loss, and the change from arable to pasture farming would unacceptably affect the viability

of the individual holding. Accordingly, the proposal would not conflict with the objectives of the Framework or AD&M Policy DM8.

Issue 3 – Planning Balance

73. A material consideration is the time limited nature of the proposal. I acknowledge that 40 years is a long time and materially longer than many references to the life of a solar farm in national and industry guidance where 25 years appears. However, I am aware that technical advances have improved the longevity of solar panels. Accordingly, given the contribution the Government expects solar generated electricity energy to make to the national energy supply, it would be unreasonable to limit the life of a solar farm to an arbitrary figure based on older and less efficient equipment. That said, I recognise that the proposed 40-year life of the solar farm is significantly more than a generation and I accept that a child born today in the village would reach middle age by the time to solar farm would be decommissioned. Thus, in coming to my conclusion I have these factors/concerns uppermost in my mind.

74. Both national and development plan policy recognise that large scale solar farms may result in some landscape and visual impact harm. However, both adopt a positive approach indicating that development can be approved where the harm is outweighed by the benefits. This is a planning judgement. Here, through a combination of topography, existing screening and landscape mitigation, the adverse effect on landscape character and visual impact would be limited and highly localised. Moreover, as the existing and proposed planting matures, adverse effects, would be progressively mitigated and once decommissioned there would be no residual adverse landscape effects. Rather the scheme would leave an enhanced landscape consistent with the objectives of development plan policy and the SPD. In these circumstances, whilst there would be some localised harm to landscape character and some visual harm in conflict with the relevant development plan policies, the imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the limited harm.

75. Sections 66 and 72 of The Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged. Section 66 requires the decision maker to pay special regard to the desirability of preserving LBs, their settings, and any architectural features they may possess. Section 72 requires the decision maker to pay special attention to the desirability of preserving or enhancing the character or appearance of a CA.

76. Whether a proposal results in substantial or less than substantial harm to the significance of a HA, Framework Paragraph 199 requires the decision maker to attach great weight to its conservation. Framework paragraph 200 says that where a proposal would lead to less than substantial harm to the significance of a HA, this harm is to be weighed against the public benefits of the proposal.

77. The proposal would result in less than substantial harm at the lower/lowest end of that spectrum to the heritage significance of several HAs albeit that harm would be temporary until the solar farm was decommissioned. In relation to the CA as a whole, the proposal would, on balance, preserve its character and appearance. In this context, recognising the great weight that is required to be attached to the conservation of a HA, I consider the

imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the temporary and less than substantial harm to the HAs involved.

78. Drawing the above together, I conclude the proposal would make a material and early contribution to the objective of achieving the decarbonisation of energy production and that to allow the proposed solar farm would not conflict with the objectives of relevant development and national planning policy when read as a whole. Accordingly, and having taken all other matters into account, the appeal is allowed.

Conditions

(The numbers in brackets refer to the conditions listed in Annex A)

79. A list of conditions, including 5 pre-commencement conditions, were agreed by the parties. The solar farm is required for a period of 40 years with the DNO Substation retained permanently. Conditions are necessary to confirm the extent of the temporary period, to provide for removal of the solar farm when the permission expires or if it ceases to operate (2, 3 4 & 5). In the interests of certainty, a condition listing the approved plans is imposed (6).

80. In the interests of the appearance of the area, conditions and pre-commencement conditions relating to, the finish of the solar panels, ancillary structures, details of tree and hedgerow planting, the protection of retained trees/hedgerows including areas identified on the margins of the site, implementation of landscape mitigation and external lighting are reasonable and necessary (7, 8, 9, 10, 11 & 16 & 18). In the interests of protecting living conditions, conditions specifying construction hours and limits on noise generation are reasonable and necessary (12 & 24).

81. In the interests of enhancing and protecting biodiversity, conditions and pre-commencement conditions relating to a Biodiversity Management Plan, the submission of details relating to the protection of Great Crested Newts, the timing of vegetation clearance and external lighting are all reasonable and necessary (13, 14, 15, 17, & 18). In the interests of highway safety, conditions relating to the construction of the access and compliance with a Construction Management Plan are reasonable and necessary (19 & 20). The site potentially contains archaeological remains and conditions to provide for appropriate site works and recording are reasonable and necessary (21 & 22). In the interests of water management and the flood mitigation, a condition relating to surface water management is reasonable and necessary (25).

George Baird

Inspector

ANNEX A – SCHEDULE OF CONDITIONS

1. The development hereby permitted shall not begin later than 3 years from the date of this permission.

2. The planning permission hereby granted shall be for a temporary period only, to expire 40 years and 6 months after the first export date of the development, except for the DNO substation, which will remain on the site in perpetuity. Written confirmation of the first export date shall be provided to the local planning authority within one month after the event.

3. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

4. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.

5. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.

6. The development hereby permitted shall not be carried out except in complete accordance with the following approved plans reference:

   P18-2917_02 – Rev E - Site Location Plan (deposited 8th January 2021).
   HLG-01-2001 Rev 01 - Indicative WPD and Customer Compound Layout.
   HLG-01-2002 Rev 01 - Indicative WPD and Customer Compound Elevations.
   BHA_665_03 - Tree Protection Plan – Highways Access.
   P18-2917 Figure 1 Rev A - Site Access Visibility Splays.
   JBM-HALLOU-SD-02 - Typical Fence, Track & CCTV Details.
   JBM-HALLOU-SD-03 - Typical Trench Section Details.
   JBM-HALLOU-SD-04 - Typical Inverter Substation Details.
   JBM-HALLOU-SD-05 - Typical Spares Container Details.
   JBM-HALLOU-SD-06 Rev A - Typical Battery Storage Systems Details.

JBM-HALLOU-SD-07 Rev A - Typical Customer Switchgear Details.
P18-2917_12 Rev M - Site Layout and Planting Proposal.
Typical PV Table Details 3P Rev A - Typical PV Table Details (x 3).
Typical PV Table Details Rev A - Typical PV Table Details (x 6).
P18-2917 Figure 2 Rev A - Swept Path Analysis: Proposed Site Access 15.4m Articulated Vehicle.

7. Notwithstanding the approved plans contained in Condition 6, prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.

8. No works or development shall take place until the local planning authority has approved in writing the full details of the tree, shrub, and hedgerow planting (including its proposed location, species, size and approximate date of planting) and details of tree planting pits including associated irrigation measures, tree staking and guards. The landscaping scheme should be based on the Species List for the Mid Nottinghamshire Farmlands Landscape Character Type included within the Newark and Sherwood Landscape Character Assessment.

9. The approved landscaping scheme shall be carried out within the first planting season following the date when electrical power is first exported ("first export date"). If within a period of 7 years from the date of planting any tree, shrub, hedgerow, or replacement is removed, uprooted, destroyed, or dies then another of the same species and size of the original shall be planted at the same place.

10. Notwithstanding the submitted details, no works or development shall take place until an Arboricultural Method Statement and scheme for protection of the retained trees/hedgerows has been agreed in writing with the local planning authority. This scheme shall include:

a. a plan showing details and positions of the ground protection areas.
b. details and position of protection barriers.
c. details and position of underground service/drainage runs/soakaways and working methods employed should these runs be within the designated root protection area of any retained tree/hedgerow on or adjacent to the application site.
d. details of any special engineering required to accommodate the protection of retained trees/hedgerows (e.g., in connection with foundations, bridging, water features, hard surfacing).
e. details of construction and working methods to be employed for the installation of access tracks within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
f. details of timing for the various phases of works or development in the context of the tree/hedgerow protection measures.

All works/development shall be carried out in accordance with the approved arboricultural method statement and tree/hedgerow protection scheme.

11. The following activities must not be carried out under any circumstances:

a. no fires to be lit on site within 10 metres of the nearest point of the canopy of any retained tree/hedgerow on or adjacent to the proposal site.
b. no equipment, signage, fencing etc shall be attached to or be supported by any retained tree on or adjacent to the application site.
c. no temporary access within designated root protection areas without the prior written approval of the local planning authority.
d. no mixing of cement, dispensing of fuels or chemicals within 10 metres of any retained tree/hedgerow on or adjacent to the application site.
e. no soakaways to be routed within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
f. no stripping of topsoil(s), excavations or changing of levels to occur within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
g. no topsoil, building materials or other to be stored within the root protection areas of any retained tree/hedgerow on or adjacent to the application site.
h. no alterations or variations of the approved works or protection schemes shall be carried out without the prior written approval of the local planning authority.

12. Except for emergency works, construction works on the site shall not take place outside 0800 hours to 1800 hours Mondays to Fridays and 0800 hours to 1400 hours on Saturdays and at no time on Sundays or Bank Holidays.

13. The development hereby permitted shall be carried out in strict accordance with the pre, post and during construction mitigation, enhancement and management measures outlined within the Biodiversity Management Plan (V2 09/07/2020 by Avian Ecology). For the avoidance of doubt, this shall include compliance with the Ecological Mitigation Measures set out in Section 3, the Ecological Enhancement Measures in Section 4, and the Habitat Management Measures in Section 5 in addition to the Management Schedule set out in Section 7. Save for the installation of the bird boxes (which should be installed in the autumn, September to November) the Wildlife Enhancement Measures should be installed in accordance with the timescales embodied within the management schedule following the cessation of construction works. The Biodiversity Management Plan shall be implemented for the lifetime of the development.

14. The development hereby permitted shall be carried out in strict accordance with the Ecological Assessment Report V2 09/07/2020 (including Appendices 2, 3 and 4) by Avian Ecology. For the avoidance of doubt, this shall include the pre-construction survey work and/or mitigation measures as summarised in Table 5.1. The measures shall be undertaken in accordance with the timescales embodied within the report.

15. Prior to the commencement of development, a methods statement of Reasonable Avoidance Measures (RAMs) for Great Crested Newts (GCN) shall be submitted to and approved in writing by the local planning authority. All works shall thereafter be carried out in accordance with the approved details. If RAMs are not sufficient to safeguard GCN, proof of a Low Impact Class Licence or full European Protected Species Mitigation License from Natural England (whichever is applicable), supported by a detailed Method Statement shall be submitted to and approved in writing by the local planning authority.

16. Prior to the commencement of development, a Scheme for the retention, ongoing maintenance, and replacement of any trees and/or hedgerows which die within the areas indicated with green notation on "Areas of Existing Planting" which are within the land edged in blue and red (drawing number P18-2917_30) shall be submitted to and approved in writing by the local planning authority. The approved Scheme shall be implemented in accordance with the approved details until the solar farm hereby approved is decommissioned.

17. No tree works or vegetation clearance shall take place during the bird nesting period (beginning of March to end of August inclusive) unless a precautionary pre-start nesting bird survey has been carried out by a qualified ecologist/ornithologist and the findings have been submitted to and approved in writing by the local planning authority.

18. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details of the lifetime of the development.

19. No part of the development hereby permitted shall otherwise commence until the access to the site has been completed (as shown on approved plan ref. P18-2917 Figure 1A) and surfaced in a bound material for a minimum distance of 10m behind the edge/extent of the public highway and the crossing of the highway and footway verge is available for use, in accordance with details to be first submitted to and approved in writing by the local planning authority.

20. Development shall take place in strict accordance with all the mitigation measures set out in the Construction Traffic Management Plan (July 2020) by Pegasus Group. For the avoidance of doubt, this shall include i. that deliveries shall not take place outside 1000 hours to 1600 hours or 1800 to 2000 hours and at no time on Sundays or Bank Holidays; ii. compliance with the mitigation measures details at Section 7 in the Construction Traffic Management Plan (July 2020).

21. No development shall take place until an archaeological Written Scheme of Investigation has been submitted to and approved in writing by the local planning authority. This scheme shall include the following:

    1. an assessment of significance and proposed mitigation strategy (i.e., preservation by record, preservation in situ or a mix of these elements).
    2. a methodology and provisional timetable of site investigation and recording.
    3. provision for site analysis.
    4. provision for publication and dissemination of analysis and records.
    5. provision for archive deposition and
    6. nomination of a competent person/organisation to undertake the work.

    The scheme of archaeological investigation must only be undertaken in accordance with the approved details.

22. The archaeological site work must be undertaken only in full accordance with the approved Written Scheme of Investigation. The developer/site operator shall notify the local planning authority of the intention to commence at least 2 working weeks before the start of archaeological work to facilitate adequate monitoring arrangements. No variation to the methods and procedures set out in the approved Written Scheme of Investigation shall take place without the prior written consent of the local planning authority.

23. The post-investigation assessment and final report must be completed in accordance with the programme set out in the approved Written Scheme of Investigation and shall include provision for analysis, publication, dissemination of results, submission of the final report to the local planning authority and Nottinghamshire HER and deposition of the archive being secured.

24. The rating level of sound emitted from any fixed plant and/or machinery associated with the development shall not exceed a rating level of 35 dB LAeq,15 minute at the nearest sound-sensitive premises. All measurements shall be made in accordance with the methodology of BS4142 (2014) (Methods for rating and assessing industrial and commercial sound) and/or its subsequent amendments. Where access to the nearest sound-sensitive property is not possible, measurements shall be undertaken at an appropriate location and corrected to establish the noise levels at the nearest sound sensitive property.

25. No part of the development hereby permitted shall commence until a detailed surface water drainage scheme based on the principles set out in the approved Calibro Flood Risk Assessment (FRA) ref. BR-629-007 dated 2 July 2020, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details prior to completion of the development. The submitted scheme shall:

1. provide detailed design (plans, network details and calculations) in support of the surface water drainage system required to manage runoff from the proposed building associated with the substation in accordance with the approach discussed in Section 7 and presented in drawing BR-629-0007-100_02 Surface Water Drainage Proposals (Appendix D of the FRA).
2. provide detailed design (plans and calculations) in support of the proposed bunded storage areas and associated cut-off swales proposed to reduce flow in the Potwell Dyke as presented in Section 6.3 of the FRA.
3. provide a maintenance schedule for the attenuation basin and bunded storage areas to ensure their performance over the lifetime of the development.
4. provide a maintenance schedule to ensure run-off from solar panels is managed to reduce any detrimental impacts on the natural formation of the agricultural land beneath and around the panels.

ANNEX B – APPEARANCES & DOCUMENTS

FOR THE APPELLANT

Thea-Osmund Smith of Counsel, instructed by Paul Burrell, Executive Director, Pegasus Group.

She called:

Paul Burrell BSc (Soc Sci) Hons, Dip UP, MRTPI.
Executive Director, Pegasus Group.

Andrew Cook BA (Hons) MLD, CMLI, MIEMA, CENV.
Executive Director, Pegasus Group.

Laura Garcia BA (Hons) MCIfA.
Associate Heritage Consultant, Pegasus Group.

FOR THE LOCAL PLANNING AUTHORITY

Ruchi Parekh of Counsel, instructed by Newark and Sherwood District Council.

She called:

Adam Partington, BA (Hons), MSc.
Director, Locus Consulting Limited.

Cathy Gillespie, BSc, Dip LM, CMLI, Assoc RTPI.
Head of Environmental Management and Design, VIA East Midlands Limited.

Honor Whitfield, BSc (Hons) MSc, MRTPI.
Planning Officer, Newark and Sherwood District Council.

INTERESTED PERSONS

Professor M McCaskill	-	Local Resident.
Professor S Bamford	-	Local Resident.
Ms H Hanmer	-	Local Resident.
Ms B Cast	-	Honorary Secretary, Thoroton Society of Nottinghamshire.
Mr B Haigh	-	Chairman, Southwell Civic Society.

DOCUMENTS SUBMITTED TO THE INQUIRY

Doc 1 - Statement by Professor McCaskill.
Doc 2 - Statement by Professor Bamford & Email dated 13/12/2021.
Doc 3 - Statement by Ms B Cast, Thoroton Society of Nottinghamshire.
Doc 4 - Statement by Mr B Haigh, Southwell Civic Society.
Doc 5 - Agreed Landscape Summary Comparison Schedule.
Doc 6 - Agreed Landscape & Visual Impacts Summary Comparison Schedule.
Doc 7 - Biodiversity Net Gain Note & Metric 3 Schedule dated 8 December 2021.
Doc 8 - Agreed list of suggested conditions.
Doc 9 - Email dated 13 December 2021, Appellant's agreement to pre-commencement conditions.

Doc 10 - Revised Biodiversity Net Gain calculation using Biodiversity Metric 3.

DOCUMENTS SUBMITTED FOLLOWING THE ADJOURNMENT OF THE INQUIRY

Doc 11 - Submission by Professors McCaskill & Usherwood on the Environmental Statement.
Doc 12 - Submission by Mr Struggles on behalf of the Southwell Civic Society on the Environmental Statement.
Doc 13 - Appellant's response to submissions on the Environmental Statement.
Doc 14 - Lpa comment on the revised Biodiversity Net Gain Metric 3 Statement.
Doc 15 - Appellant's response to lpa's Biodiversity Net Gain Metric 3 Statement.

Department for Levelling Up,
Housing & Communities

Our ref: APP/Y1138/W/22/3293104
Your ref: 19/01679/MFUL

Paul Burrell
Pegasus Group
Querns Business Centre
Whitworth Road
Cirencester
GL7 1RT

5 December 2022

Dear Sir

TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY JBM SOLAR PROJECTS 2 LTD
LAND EAST OF LANGFORD MILL AND TYE FARM, LANGFORD, DEVON
APPLICATION REF: 19/01679/MFUL

This decision was made by Minister of State for Housing and Planning, the Rt Hon Lucy Frazer KC MP, on behalf of the Secretary of State

1. I am directed by the Secretary of State to say that consideration has been given to the report of Phillip J G Ware BSc DipTP MRTPI, who held a public local inquiry commencing on 14 June 2022 into your client's appeal against the decision of Mid Devon District Council to refuse your client's application for planning permission for the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure, in accordance with application Ref. 19/01679/MFUL, dated 2 October 2019.

2. On 18 May 2022, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be allowed, and planning permission granted subject to conditions.

4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, and agrees with his recommendation. He has decided to allow the appeal. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

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

Email: PCC@levellingup.gov.uk

Matters arising since the close of the inquiry

5. A list of representations received by the Secretary of State since the close of the inquiry is at Annex A. Copies of these letters may be obtained on request to the email address at the foot of the first page of this letter.

6. On 10 November 2022, the Secretary of State wrote to the main parties to afford them an opportunity to comment on and confirm the latest revision of the Proposed Layout Plan that was considered at inquiry. A list of representations received in response to this letter is at Annex A. The appellant confirmed in the representation dated 14 November 2022 that the latest revision of the Proposed Layout Plan is Rev K and provided a copy of the plan and provided detail of the difference between Rev J and Rev K of the plan. The representations were circulated to the main parties on 17 November 2022.

7. Further representations were received in response to the circulation of the representations from the appellant and Devon CPRE. The appellant, in their response of 18 November 2022, re-confirmed that the proposed site layout plan for approval is drawing number P18-1820 14 Rev K dated 16 June 2022 entitled 'Site Layout and Planting Proposals', which was submitted to the Inspector on the final day of the inquiry and explained to the inquiry in the appellant's Evidence in Chief on the final morning. Devon CPRE's response of 21 November 2022 made additional representations relating to a number of other plans that were considered at Inquiry, including reference to the withdrawal of drawing number JBM1035-101, Rev K (which was not the subject of the reference back to the main parties) and consider that no details now exist of the proposed Battery Storage facility (BESS). The two representations were circulated to all parties on 28 November 2022.

8. The Secretary of State is satisfied that the considerations in the IR are based on the latest revision of the proposed layout plan (drawing number P18-1820_14 Rev K). He further notes that the appellant confirmed in their letter of 14 November 2022 that JBM1035-101, Rev K is not a document which is for approval as it is inconsistent with later layout plans. This was also explained at the inquiry. With respect to the new issue raised by Devon CPRE regarding no details existing of the proposed BESS, this point is addressed in paragraph 19 below. The Secretary of State considers that the issues raised do not affect his decision. He is satisfied that no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties.

9. An application for a full award of costs was made by the JBM Solar Projects 2 Ltd (the appellant) against Mid Devon District Council (the Council) (IR8). This application is the subject of a separate decision letter.

Policy and statutory considerations

10. In reaching his decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case the development plan consists of the Mid Devon Local Plan 2013-2033 (2020) and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP). The Secretary of State considers that relevant development plan policies include those set out at IR21.

12. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as those documents listed at IR23-24, IR26 and IR107.

13. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the proposals, or their settings or any features of special architectural or historic interest which they may possess.

Emerging plan

14. Mid Devon District Council has begun a review of the current Mid Devon Local Plan adopted in 2020 with consultation on the 'Plan Mid Devon 2023-2043 Regulation 18 Issues Paper' taking place from January to March 2022.

15. Paragraph 48 of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given the early stage of the plan the Secretary of State has not afforded it any weight.

Main issues

Effect of the proposal on the character and appearance of the landscape

16. For the reasons given at IR112-126 and 155, the Secretary of State agrees with the Inspector that in landscape terms a solar farm of this size would have some adverse landscape character effect and further agrees that due to topography and screening this would be very limited and would be mitigated increasingly as planting matures (IR121). The Secretary of State agrees that the area is well endowed with extensive tree and hedge cover which limits views to short to medium range, and the opportunity for sequential views is limited (IR122). The Secretary of State agrees that the overall visual effect of the proposal would maintain the quality of these brief views, and any very limited adverse effect would be offset by new planting (IR123). For the reasons given, the Secretary of State agrees with the Inspector that overall the proposal would cause some very limited and highly localised visual effects, which would be progressively mitigated by additional planting (IR155). He further agrees that the development would therefore not conflict with Local Plan policies DM1, DM2 or S9, nor with the CNP or the Framework (IR126). For the reasons given, the Secretary of State agrees with the Inspector and affords the landscape and visual effects very limited weight against the proposal (IR155).

The effect on Langford Court – a designated heritage asset

17. For the reasons given at IR127-134, the Secretary of State agrees with the Inspector that given the degree of separation between the appeal site and Langford Court, and the nature of existing and proposed screening, the appeal site makes no contribution to the setting and significance of Langford Court (IR134). He further agrees the proposal would therefore accord with Local Plan policies S9, DM2, DM25, and with the Framework (IR134). The Secretary of State agrees with the Inspector and affords the effect on Langford Court neutral weight in the planning balance (IR154).

The effect on and potential loss of agricultural land

18. The Secretary of State notes that the Agricultural Land Classification of the site was disputed by Devon CPRE, although they did not put forward any technical evidence on land classification. He further notes that neither of the reports submitted by the appellant suggested that any of the appeal site was Best and Most Versatile (BMV) agricultural land. For the reasons given at IR135-139, the Secretary of State agrees with the Inspector that based on the unchallenged evidence of the appellant, the highest some parts of the site could aspire to is 3b, and it is most likely to be lower than that. He further agrees that the loss of this land, even if it were a permanent and total loss, would not receive policy protection (IR137). The Secretary of State agrees with the Inspector that there is nothing to demonstrate that sheep grazing would be unlikely to occur, and this approach forms part of the proposal in line with national guidance (IR138). For the reasons given, the Secretary of State agrees with the Inspector that the proposal would not result in a harmful loss of agricultural land and that it would not conflict with Local Plan policy DM2, S1 or S9, or with the Framework (IR139). The Secretary of State affords the effect on and potential loss of agricultural land neutral weight in the planning balance.

The safety of the Battery Storage facility (BESS)

19. For the reasons given at IR140-147, the Secretary of State agrees with the Inspector that there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance (IR147). He therefore agrees with the Inspector in affording the safety of the BESS neutral weight in the planning balance (IR154). In reaching this conclusion, he has taken account of Devon CPRE's representation of 21 November 2022, which raised concerns that, following withdrawal of drawing number JBM1035-101, Rev K by the appellant, no details exist of the proposed BESS. In respect of this point, the Secretary of State agrees with the Inspector's conclusions at IR145.

Other matters

20. For the reasons given at IR148-151, the Secretary of State agrees with the conclusions of the Inspector on the other matters raised by objectors.

The benefits of the proposal

21. For the reasons given at IR156, the Secretary of State agrees with the Inspector that the scheme is for a renewable energy proposal which is fully in accordance with the economic, social and environmental dimensions set out in the Framework and that the scheme has strong national and local policy support (IR156). The Secretary of State affords the production of electricity significant weight in favour of the proposal.

22. For the reasons given at IR157, the Secretary of State agrees with the Inspector that the financial investment and the direct and indirect jobs during the construction phase, with a smaller number of jobs when the development is operational, would be a benefit of the scheme. No evidence has been put forward of where the benefits of the financial investment would accrue, and the Secretary of State affords the economic benefits moderate weight in favour of the proposal.

23. For the reasons given at IR157, the Secretary of State notes that the Inspector considers that the acknowledged benefit of the additional planting, which would remain after the end of the limited period, should be afforded significant weight and that the unchallenged

Biodiversity Net Gain (BNG) is a further substantial benefit. The Secretary of State considers that the additional planting proposed would contribute to the overall BNG and therefore collectively affords the additional planting and BNG significant weight.

Planning conditions

24. The Secretary of State has given consideration to the Inspector's analysis at IR152-153, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 56 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 56 of the Framework and that the conditions set out at Annex B should form part of his decision. Following receipt of representations from the main parties on the latest revision of the Proposed Layout Plan that was considered at inquiry, the Secretary of State is satisfied that the recommended conditions set out at the end of the IR, in particular conditions 3 and 15, should refer to the 'Proposed Layout Plan, drawing number P18-1820_14, Rev K'.

Planning balance and overall conclusion

25. For the reasons given above, the Secretary of State considers that the appeal scheme is in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

26. Weighing in favour of the proposal is the production of electricity which is afforded significant weight; the economic benefits which are afforded moderate weight; and the additional planting and BNG, which are together afforded significant weight.

27. Weighing against the proposal are the very limited landscape and visual effects which together are afforded very limited weight.

28. Overall, the Secretary of State considers that the accordance with the development plan and the material considerations in this case indicate that permission should be granted.

29. The Secretary of State therefore concludes that the appeal be allowed, and planning permission granted subject to conditions.

Formal decision

30. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure, in accordance with application ref. 19/01679/MFUL, dated 2 October 2019.

31. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the Town and Country Planning Act 1990.

Right to challenge the decision

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

33. A copy of this letter has been sent to Mid Devon District Council and Devon CPRE, and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

M A Hale

Mike Hale
Decision officer

This decision was made by the Minister of State for Housing and Planning, the Rt Hon Lucy Frazer KC MP, on behalf of the Secretary of State, and signed on her behalf

Annex A Schedule of representations

SCHEDULE OF REPRESENTATIONS

General representations

Party	Date
JBM Solar (the Appellant)	14 November 2022
Helen Hitt	29 November 2022
Ian & Kim Wood	30 November 2022
HB & PR Chattey	30 November 2022

Representations received in response to the Secretary of State's letter of 10 November 2022

Party	Date
Pegasus Group on behalf of the Appellant	14 November 2022
Devon CPRE	14 November 2022
Mid Devon District Council	16 November 2022
Pegasus Group on behalf of the Appellant	18 November 2022
Devon CPRE	21 November 2022

Annex B List of conditions

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

2. The permission hereby granted shall be limited to a period of 40 years (with the exception of the DNO Substation which is to be retained on the site in perpetuity) from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within 14 days of the event occurring.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:
   - Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group.
   - Gantry Site Elevations, drawing number P2763-150-03, Rev O, prepared by G2 Energy.
   - DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy.
   - DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy.
   - Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy.
   - Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
   - Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar.
   - Control Room Elevations, drawing number JBM1035-209, prepared by JBM Solar.
   - Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar.
   - Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar.
   - Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar.
   - 132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar.
   - Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar.
   - Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar.
   - Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar.
   - CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar.
   - Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar.
   - PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy.
   - Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy.
   - Proposed Layout Plan, drawing number P18- 1820_14, Rev K, prepared by Pegasus Group.
   - P18-1820 Figure 2 Primary Site Access Visibility Splay (CTMP), prepared by Pegasus Group.
   - P18-1820 Figure 4 Swept Path Analysis B3181 to Main Site Access 15.4m Articulated HGV (CTMP), prepared by Pegasus Group.

- P18-1820 Figure 5 Swept Path Analysis Area A to Areas B & C 10m Rigid Vehicle (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 7 Swept Path Analysis Area A to Area C 15.4m Artic HGV (CTMP), prepared by Pegasus Group.
- In general accordance with P18-1820 Figure 6 Area B Indicative Access Design (CTMP) and P18-1820 Figure 8 Area C Access Indicative Improvements Including Swept Path Analysis 15.4m Artic HGV (CTMP).
- Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.

4. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

5. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.

6. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.

7. The Solar PV Panels hereby permitted shall not be erected until samples of the materials to be used in the construction of the solar panel array have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved materials and retained as such thereafter.

8. Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.

9. Prior to the commencement of the proposed development, the site access roads shall be formed in a sound bound material for the first 20.00m back from its junction with the public highway and drained to prevent no surface water onto the public highway. The site access roads shall be hardened, surfaced, drained and maintained thereafter hardened, surfaced, drained and maintained.

10. Prior to the commencement of the proposed development, visibility splays shall be provided, laid out and maintained for that purpose at the primary site access where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43.0 metres in a southern direction and as identified on the access plan in the other direction.

11. Visibility splays shall be provided, laid out and maintained for that purpose at the other site accesses in accordance where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 33.00 metres in on coming direction and 33.00 metres to the centre line in the offside direction.

12. No other part of the development hereby approved shall be commenced until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.

13. No development shall take place until off site highway condition surveys have been undertaken and the details submitted and approved in writing by the Local Planning Authority.

14. No development shall take place until:

    EITHER

    i) A programme of archaeological work has been carried out in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

    OR

    ii) A construction methodology for the development that avoids any below ground impact within the area of Archaeological sensitivity in the vicinity of the 7th/8th century iron furnace has been submitted to and approved in writing by the Local Planning Authority.

    The development shall be carried out in accordance with the approved scheme (under either part i) or part ii) or such other details as may be subsequently agreed in writing by the Local Planning Authority.

15. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted documentation (below) has been submitted to and approved in writing by the Local Planning Authority:

a) The Biodiversity Management Plan by avian ecology v4 (Dated 20/07/2020), has been submitted to and approved in writing by the Local Planning Authority.

b) The Biodiversity Enhancement Note and Addendum Note Dated 3/12/2020)

c) The updated Site Layout Plan (drawing number P18- 1820_14, Rev K)

Notwithstanding the details included in the above documentations, the details shall include the details to be submitted including planting plans, specification of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Ecological mitigation and enhancement measures shall be implemented in accordance with the detailed scheme.

16. The Solar PV Panels hereby permitted shall not be erected until details, on a suitably scaled plan, of the soft landscape works have been submitted to, and approved in writing by, the local planning authority. The details to be submitted shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing. The development shall not be carried out other than in accordance with the approved details.

17. All approved landscaping shall be carried out in the first planting and seeding season following the erection of the panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014 or any subsequent re-enactment.

18. The Solar PV Panels hereby permitted shall not be erected until the full details of the works to the hedges including species adjacent to the residential properties, as shown on Figures 11 and 12 of the Glint and Glare Study Page Power Ltd v 4 dated 16th August 2019, have been submitted and approved in writing by the Local Planning Authority. The works shall then be carried out in the first planting season after the written approval is received and thereafter retained and maintained.

19. The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained for the life of the development.

20. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report v5 prepared by Calibro, and issued on 30th November 2020, including the level for floodplain compensation outlined in paragraph 7.6.6 of the FRA. The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements detailed within the Flood Risk Assessment. The approved measures shall thereafter be retained for the life of the development.

21. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.

22. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority.

    The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise; vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development; manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways.

    The following specific details should also be included in respect to highway safety:

    a) The timetable of the works;

    b) Daily hours of construction;

    c) Any road closure;

    d) Hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays; 9.00am to 1.00pm Saturdays, and no such vehicular movements shall take place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;

    e) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

    f) The compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

    g) Areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

    h) The means of enclosure of the site during construction works;

    i) Details of wheel washing facilities and road sweeping measures with the respective obligations;

    j) The proposed route of all construction traffic exceeding 7.5 tonnes;

k) Details of the amount and location of construction worker parking;

l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

23. No development shall take place until a Landscape and Ecological Management Plan (LEMP) is submitted and approved in writing by the Local Planning Authority. The LEMP shall provide details of the following:

a) Retained Ecological and Landscape features;

b) Proposed Habitat Ecological and Landscape Features;

c) Habitats and Landscape Management Measures;

d) Monitoring and Review of Plan.

24. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.

The Planning Inspectorate

Report to the Secretary of State for Levelling Up, Housing and Communities

by Phillip J G Ware BSc DipTP MRTPI

an Inspector appointed by the Secretary of State

Date 5 September 2022

TOWN AND COUNTRY PLANNING ACT 1990

MID DEVON DISTRICT COUNCIL

APPEAL BY JBM SOLAR PROJECTS 2 LTD

Inquiry held on 14 – 17 June 2022

Land east of Langford Mill and Tye Farm, Langford, Devon

File Ref: APP/Y1138/W/22/3293104

File Ref: APP/Y1138/W/22/3293104
Land east of Langford Mill and Tye Farm, Langford, Devon

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by JBM Solar Projects 2 Ltd against the decision of Mid Devon District Council.
- The application Ref 19/01679/MFUL, dated 2 October 2019, was refused by notice dated 23 September 2021.
- The development proposed is the construction of ground-mounted solar PV panels to generate up to 49.9MW (site area 60.78 ha) and battery storage facility together with all associated works, equipment and necessary infrastructure.

Summary of Recommendation: The appeal be allowed, and planning permission granted subject to conditions.

Procedural matters

1. A Screening Opinion was obtained from the Council in January 2019 confirming that the proposal fell within category 3a of Schedule 2 as described in the Regulations. The Screening Opinion considered that, given the nature of the proposal, whilst there may be effects on the environment, none of these are considered to constitute significant effects which cannot be mitigated against by the proposed application. As such, the proposal is not EIA development. There is no reason to disagree with that Opinion.

2. The Council refused planning permission for the proposal in September 2021[1]. The reasons for refusal related to landscape impact, the effect on a heritage asset and the loss of agricultural land[2]. The description of the proposal on the planning application form did not refer specifically to the generating capacity, but this was obviously the subject of discussions and was referenced on the refusal notice (and is used above). All parties to the Inquiry dealt with the matter on that basis.

3. On 15 March 2022 Devon CPRE[3] (CPRE) were given Rule 6 status.

4. By emails dated 31 March 2022[4] and further clarified on 27 April 2022[5], the Council confirmed that the authority was conceding the appeal on all grounds and would not be providing any evidence.

5. A virtual Case Management Conference (CMC) was held on 25 April 2022 to discuss arrangements for the Inquiry. The CMC was attended by the appellant, the Council and CPRE.

6. The appeal was recovered for decision by the Secretary of State on 18 May 2022. The reason for recovery was that the proposal was of major significance for the delivery of the Government's climate change programme and energy policies.

1

2 CD A51
3 Formerly The Campaign to Protect Rural England, now 'The Countryside Charity'
4 CD C14
5 CD C15

7. The Inquiry sat for three days, commencing on 14 June 2022. An accompanied visit was undertaken to properties adjoining the site on 17 June 2022, after which a further unaccompanied visit was undertaken to agreed viewpoints around the area.

8. At the Inquiry an application for costs was made by JBM Solar Projects 2 Ltd (the appellant) against Mid Devon District Council (the Council). This application is the subject of a separate Report.

The site and the surrounding area

9. The appeal site comprises two parcels totalling some 61 ha of agricultural land to the east and north-east of the village of Langford[6]. Within and around the appeal site are existing field boundaries, hedgerows and vegetation. The landscape is generally undulating, falling to the River Weaver, which runs from the north-east to the south-west across the site, although there are a few steep slopes within the site.

10. There is an unnamed road running in a north to south direction close to the western boundary of the appeal site.

11. The wider area is overwhelmingly rural and undulating in character, with sporadic housing and small settlements. It is open countryside in both policy terms and when viewed on the ground, and is not allocated for development. The area is not subject to any statutory designations related to landscape, ecology or historical value.

12. Langford Court lies to the south of the site. It is a Grade II* farmhouse dating from the early 16th-century. No party argued that there was any effect on the other heritage assets in the wider area[7].

The proposal

13. The proposal is for the construction of solar photovoltaic panels laid out in rows on an east-west axis facing south. They would be orientated 15 degrees from the horizontal to maximise efficiency. The maximum height of the panels will not exceed 3m.

14. The application refers to the generation of "..up to 49.9MW for a temporary period of 40 years from the date of the first export of electricity".

15. Various plant and other equipment and access tracks will be located around the site, including inverter cabins. The battery storage facility (BESS) would be located in the south-eastern corner of the site. The BESS facility would largely comprise battery units within shipping containers, a storage container and an inverter cabin and a DNO substation.

16. The proposal includes a 2m high deer fence around the edge of the site. This would include badger/small mammal friendly access points. There would be 4m high pole mounted CCTV security cameras along the perimeter.

[6] Location plan at LVIA Figure 1. CD A7.
[7] Set out at CD A12B

17. Three access points are proposed – two into the southern side of the site and a third into the north-western area. There are no public footpaths within the appeal site.

18. The solar farm would be unmanned and remotely controlled. The appellant's position is that once constructed the solar farm would require infrequent visits for the purposes of maintenance or cleaning. Such work would typically amount to 10-20 visits per year.

19. At the end of the 40-year operational lifespan of the solar farm it is estimated that decommissioning would take around six months. The site would be restored back to full agricultural use with all equipment and below ground connections removed (with the exception of the Distribution Network Operator (DNO) substation). Landscape enhancement measures which form part of the appeal scheme would remain.

Planning policy

20. The development plan comprises the Mid Devon Local Plan 2013-2033 (2020) (LP)[8] and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP)[9].

21. The LP policies referenced in the Council's decision notice were:

- Policy S1 – which sets out broad Sustainable Development Priorities.
- Policy S9 – which aims to sustain the distinctive quality, character and diversity of the area's environmental assets, whilst minimising the impact of development on climate change.
- Policy S14 – which provides that, outside settlements, development should preserve and enhance the character of the countryside.
- Policy DM1 – which requires high quality design.
- Policy DM2 – deals with Renewable and Low Carbon Energy. It provides that the benefits of renewable and low carbon energy development will be weighed against its impact. Proposals will be permitted where they do not have significant adverse impacts on the character, amenity and visual quality of the area, including cumulative impacts. Proposals must demonstrate that impacts are or can be made acceptable in relation to landscape character and the character and setting of heritage assets.
- Policy DM18 – which supports and deals with rural employment development.
- Policy DM25 – which sets a presumption in favour of preserving or enhancing all designated heritage assets and their settings.

22. The CNP was not referenced in the Council's decision notice. The parties agree that it is supportive of the increased use of renewable energy, subject to controlling the visual impact of installations.

[8] CD E1
[9] The majority of the site falls within the area of the CNP

23. The Solar PV Developments in the Landscape SPD (May 2016) (SPD) was referenced in the Council's reasons for refusal[10]. The parties agree that it is a material consideration.

24. At the local level, the Mid Devon Landscape Character Assessment (2011) is a material consideration in the determination of the appeal[11].

25. In terms of national planning policy and guidance, the National Planning Policy Framework (NPPF) and National Planning Practice Guidance (NPPG) are material considerations.

26. A number of other national guidance and policy documents were referred to by the parties, all of which are agreed to be material considerations. In particular:

- National Policy Statement for Energy (EN-1) (2011). (A draft EN-1 was published in September 2021.)
- National Policy Statement for Renewable Energy Infrastructure (EN-3) (2011). (A draft EN-3 was published in September 2021.)
- UK Government Solar Strategy (2014).
- Written Ministerial Statement on Solar Energy: protecting the local and global environment (2015).
- Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (2021).
- Managing Significance in Decision-Taking in the Historic Environment. Historic England Good Practice Advice (2015).
- The Setting of Heritage Assets Historic England Good Practice Advice in Planning 3 (2017).

Agreed matters between the appellant and the Council

27. A Statement of Common Ground (SOCG) has been concluded between the appellant and the Council[12]. Various background matters such as the characteristics of the appeal site and the surrounding area, and the policy position are set out. The following main matters are agreed (other matters are also set out in the SOCG):

- There are no previous relevant planning applications on the site.
- The proposal was not considered to constitute EIA Development having regard to the Town and Country Planning (Environmental Impact Assessment) Regulations 2017. As such, an Environmental Statement was not required.
- The site is in open countryside in policy terms, outside any settlement boundary.

[10] CD E5
[11] CD E7
[12] CD C9

- The application was recommended for approval, but was refused following a Members' site visit.
- LP policies S9 and DM2 allow for renewable energy development where there is an acceptable local impact, balanced with the wider sustainability benefits of such installations.
- The CNP is supportive of the increased use of renewable energy, subject to controlling the impact of such installations.
- The EN-1 and EN-3, together with the draft EN-1 and draft EN-3, are material considerations. These set out how the energy sector can help deliver the national climate change objectives.
- There is no requirement for the appellant to demonstrate need for the proposal.
- The proposal is a low carbon, renewable energy source that would contribute towards meeting national renewable energy targets.
- The proposal would provide no more than 49.9MW of electricity, which is equivalent to meeting approximately the annual needs of in excess of 10,000 houses.
- Substantial weight should be attached to the benefit of renewable energy production.
- The proposal would result in a substantial public benefit of £40,000,000 in financial investment, would support between 70 and 80 direct and indirect jobs during the construction phase, and a smaller number of jobs when the solar farm is operational.
- The officer's report acknowledged that the proposal would have a moderate/minor impact on the landscape. Existing tree growth, mature hedgerows and generally flat topography help to mitigate the development.
- In terms of general visual amenity, the opportunity to observe the proposal is very limited.
- There was no residential amenity reason for refusal.
- Historic England did not raise a formal objection to the proposal[13].
- The Council has never offered evidence that the proposal would cause any harm to the significance of Langford Court. In any event, were there to be such less than substantial harm this would be outweighed by public benefits.
- In terms of operational safety the proposed installation can be suitably managed outside the planning process.
- The original Agricultural Land Classification Report (ALC)[14] (dated October 2019) confirmed that the site constitutes a total of 15no. fields of Grade 3b, 1no. field of Grade 4 and 1no. field of Grade 5 Agricultural Land. The

[13] CD B11
[14] CD A9

updated ALC[15] shows that the entirety of the site comprises Grade 4 agricultural land. It is agreed that the site comprises very poor quality agricultural land.

- The solar panels would be secured to the ground with steel piles with limited soil disturbance, which means that the panels can be removed in the future with no permanent loss of agricultural land quality.

- The grazing of animals between and under the panels would allow for continued agricultural use during the 40 year operation of the solar farm.

Agreed and disagreed matters between the appellant and CPRE

28. A separate SOCG has been concluded between the appellant and CPRE[16]. As well as agreeing various background matters similar to those agreed with the Council, this SOCG records agreement on the following main matters (other matters are set out in the SOCG):

- The site is in open countryside in policy terms.
- LP and CNP policy allow for renewable energy development where the local impact is acceptable.
- There is no requirement for need to be demonstrated.
- National energy policy is a material consideration.
- Trees and hedgerows, along with generally flat topography, help to mitigate the overall scale of the development.
- Historic England did not raise a formal objection to the proposal.
- Any harm to the setting of Langford Court must be seen in the context of the newer agricultural buildings.

29. The main matters which are in dispute between the appellant and CPRE are (other matters are in the SOCG):

- The level of harm on the landscape character and the extent of the visibility of the site.
- Whether sheep grazing will occur and whether maintenance of the panels will be necessary.
- Whether harm would occur to the setting of Langford Court.
- The adequacy of the ALC reports and the level of impact on agricultural land.
- Whether the BESS is properly described, and whether it is beneficial for this to be sited with the solar farm.
- Whether the BESS would give rise to risk of fire and explosion.

[15] CD C7
[16] CD C10

- How the annual reduction CO2 is calculated and whether a whole life carbon assessment is necessary.

- Whether there would be a considerable loss of food production.

The case for the appellant

30. This section is based substantially on the closing submissions[17], together with the evidence at the Inquiry.

Background

31. Climate change is considered by many to be the greatest threat faced by humanity. The Government's 2021 Net Zero Strategy[18] points to stark consequences already being felt and stresses the internationally agreed consensus that things could get much worse. At the local level, the Council declared a climate change emergency in 2019.

32. The existence of the climate change issue which is rarely contentious at planning appeals. But at the start of the Inquiry Dr Bratby (for Devon CPRE) stated that he does not accept that there is a climate change emergency, has not seen evidence to suggest that this is the case, and stated that he does not accept that the consequences of global warming will be negative. That position obviously influences the entirety of the CPRE evidence. Dr Bratby agreed that he is asking the Secretary of State to make a finding in conflict with Government policy and that he would do the same faced with any greenfield solar scheme in Devon. He has similar in principle objection to any BESS system.

33. In answer to questions from the appellant and the Inspector, Dr Bratby confirmed that his views do not reflect the approach of CPRE nationally, an organisation which describes itself as "a passionate advocate for climate action" that has "clearly stated our support for renewable energy"[19]. It was stated that Devon CPRE took a decision earlier in the year to reject the national CPRE position.

Landscape character and appearance

34. National and LP policies S9 and DM2 renewable energy policies adopt a supportive approach towards renewable energy, and provide that development will be approved where any harm would be outweighed by the benefits. Draft NPS EN-3 also makes it clear that any harm must be set in context of the time limited nature of solar schemes[20]. However, although the Council accepts that there is support for renewable facilities in the open countryside and has confirmed that there is no in principle objection to the proposal in this location, it has not allocated any land for renewable energy developments[21].

35. The proposal is a large solar farm on an unallocated greenfield site. It needs to be the size proposed in order to deliver its substantial energy benefits. The

[17]Doc 5
[18] CD D17 page 14
[19] CD C16 Appendix 1
[20] CD D4-B
[21] CD C9 paragraph 8.5

appellant has always acknowledged there will be some landscape harm – but this does not mean that the scheme should be refused. The particular features of the appeal site and its surroundings, including its topography and enclosure, mean that the adverse landscape and visual impacts are limited and highly localised.

36. The only professional landscape evidence before the Inquiry was that of Mr Cook for the appellant[22], which should be read together with the appellant's Landscape and Visual Impact Assessment[23]. CPRE has provided no landscape evidence, other than to say that it upholds the Council's now conceded objection on landscape grounds – the only CPRE witness did not hold any landscape qualification and has not carried out any separate assessment.

37. The Devon Landscape Character Assessment (LCA)[24] identifies distinctive characteristics of this landscape and provides that the strategy should be to reinforce field patterns through restoration and management of characteristic hedgerows, and to manage and expand wet grasslands along watercourses to help prevent downstream flooding. It seeks the extension of species rich meadows and grasslands through appropriate grazing and traditional land management regimes. This is evidently achieved by this proposal.

38. There would be an inevitable adverse change in the existing land cover of the site. Aside from the presence of a 132kv overhead line and pylons the proposal would reduce the existing sense of openness and cause some landscape harm – although this would be fully reversed on decommissioning. There would be no physical effect on public rights of way, some notable positive landscape effects and a moderate beneficial effect on the tree resource. The existing tree cover would be retained and there would be new tree planting including a woodland copse. There would be a major beneficial effect on hedgerows with an additional 1.2 planted and a moderate beneficial effect on watercourses and waterbodies due to the incorporation of a sustainable urban drainage system with a series of small balancing basins and swales. Overall, there would be a beneficial effect on landscape elements within the site, and the effect on openness would be reversed after 40 years[25].

39. In terms of landscape character all parties accept that this is not a valued landscape in NPPF terms and that it is not designated for its landscape beauty[26]. The National, East Devon, and Mid Devon Character Areas beyond the site would be unchanged with the proposed solar farm in place and the site would be fully restored (with the exception of the DNO substation)[27]. The baseline value, sensitivity, and susceptibility of the land is dealt with by the appellant[28] and no other party has provided an alternative analysis.

40. CPRE relied on the Council's 'Solar PV Developments in the Landscape Supplementary Planning Document' (2016) ("SPD")[29], which refers to high

[22] CD C11B
[23] CD A7
[24] CDE6-B
[25] CD C11-B para 4.12
[26] CD C10 6.10, CD C9 8.23
[27] CD C9 8. CD C10 6.11
[28] CD C11-B
[29] CD E5, CD C12 paras 11/12

sensitivity of the landscape to large scale solar development. But the SPD ascribes the same sensitivity to a very large area and includes the caveat against it being "*interpreted as a definitive statement of the suitability of a certain location for a particular development*"[30]. It therefore provides a very limited understanding of any individual site. The appellant has assessed the features of this particular site against each of the criteria in the SPD. Using these criteria a medium value, susceptibility and sensitivity is ascribed and the landscape is described as "*quite unremarkable*" in landscape character terms[31]. There is a strong sense of visual enclosure as a result of hedges and tree cover, there is a modern field pattern, and the site accommodates pylons and overhead cables.

41. The appellant's assessment of the magnitude of change, which is the only one before the Inquiry, finds a medium magnitude of change to the site itself. But the general agricultural character of the fields would remain.

42. By combining medium sensitivity with medium magnitude of change, the uncontested evidence is that there would be a moderate adverse effect on the site for the life-time of the scheme and no change to the wider landscape.

43. In relation to visual impact, due to the low profile of the panels, the low level topography, and the existing tree and hedgerow cover, the visibility from the surrounding area would be very limited. The Council and CPRE agree that these factors mitigate visual impact[32]. The Council also agrees that view from surrounding Public Rights of Way is "*very limited*"[33] with only a very short section of a footpath to the south of the site from Langford Green where an appreciation of the scheme could be gained.

44. All other viewpoints are taken from highways locations – the network in the area comprises a number of narrow, hedgerow-lined unclassified roads. Viewpoints are generally not from the lanes themselves, but from gated accesses on the side of the road. One exception is the unclassified road between Plymtree and Langford which passes adjacent to the site. From a few short sections of that road, users could see some solar panels in adjacent fields, but even these views are limited by hedgerows.

45. The selection of the viewpoints is not controversial. Most of the viewpoints (six of the nine) will have a negligible visual effect, and the remaining three will have a minor-moderate or moderate effect (viewpoints 2, 5 and 7). These are the viewpoints for which photomontages have been prepared[34]. Viewpoint 5 was a particular concern for CPRE – but though small elements of the solar farm would be distinguishable in the mid-ground amongst the tree and hedge cover, it would be largely obscured by intervening topography and vegetation, such that the magnitude of change is only low overall.

46. CPRE was initially concerned that the BESS had been left out of the photomontages. However the entire proposal - including the BESS, substation,

[30] CD E5
[31] CD C11-B paras 5.15-5.16
[32] CD C10 para 6.9, CD C9 para 8.20
[33] CD C9 para 8.26
[34] CD A7 and CD C11-B paras 6.14-6.48

and fencing has been modelled[35]. This was explained in detail at the Inquiry and can be appreciated on site. In addition the viewpoints are from August 2019, and there has subsequently been notable growth of the existing vegetation.

47. Overall, the visual effect of the proposal would be minor and localised. There has never been a residential amenity objection although a number of private views would change. Given the position of the solar panels and the distances and intervening vegetation, this is acceptable.

Heritage – Langford Court

48. The only expert heritage assessment before the Inquiry was that from the appellant, which concludes that there would be no harm to Langford Court. The building is a 16th century farmhouse that was enlarged and remodelled in the 17th century and restored extensively after a fire in the 1990s. It is common ground that it has a range of heritage interests, in particular historic, architectural and archaeological, and that its primary significance is embodied in its physical form. The proposal would not touch the physical fabric or form of the building.

49. The setting contributes to the significance of the asset, but to a lesser degree than the physical fabric. The part of the setting from which the asset derives significance comprises the historically associated gardens, the modern eastern gardens and lake, and the areas of the historically associated contiguous landholding visible from the asset. The most important views are from the gardens and across the lake to the house. The proposal would not affect any of these features, areas or views.

50. Turning to the heritage significance of the wider setting, the first stage in the analysis must be to assess the contribution the appeal site currently makes to significance. While the appeal site may be visible from Langford Court, that is not the test. Visibility between an asset and a given area is not enough to engender a contribution to heritage significance. In the wider landscape, views that do not illustrate architectural or historic interest, and do not allow the significance of an asset to be appreciated, are merely incidental views that neither contribute nor detract from heritage significance. Support for this approach can be derived from the Court of Appeal in *Catesby Estates Ltd. v Steer* [2018] EWCA Civ 1697[36], which emphasised that if a proposal is to affect the setting of a listed building "*there must be a distinct visual relationship of some kind between the two …. which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape*."

51. In this case, the historic documentary evidence demonstrates that the appeal site was not part of the consolidated contiguous historic landholding experienced in conjunction with the asset in the mid 19th-century. There is a small amount of historic coincidence of ownership, but this was at some distance from the main landholding, and does not survive today. While there are also distant and partially screened views to Langford Court from the appeal site, the architectural and historic interest of the house cannot be readily understood in those views. The appeal site has only filtered intervisibility with the asset, with views largely

[35] CD C16 paras 3.4-3.7
[36] CD I1

screened by topography and vegetation. None of these views are of any particular significance, and they have experienced notable change already in the 20th century, including the construction of more modern buildings close to the Court.

52. The easterly views in which the proposal would be visible do not appear to have been historically designed, as demonstrated by the former presence of a range of outbuildings (now removed). The landscape in this direction contains elements of modern infrastructure in the form of two lines of large pylons.

53. Turning to the position of CPRE, it is noted that the original comments from that organisation did not object on the basis of heritage harm. The only witness for CPRE had no heritage expertise and provided no heritage evidence. But CPRE continued to assert that there would be heritage harm to Langford Court. In particular the concern appeared to focus on the BESS – however the BESS area including the gantries would be obscured. As to visibility of the BESS in views to the asset, photomontage of viewpoint 7 demonstrates that the area will not be prominent, and the glimpsed view of Langford Court from that location where co-visibility is possible does not reveal historic significance.

54. Overall while the solar panels would be visible from some views, the appeal site does not contribute to the significance. CPRE implied that Historic England (HE) also found a level of harm, but that is not correct. HE identified the potential for harm, but deferred to the assessment of the Council's heritage consultee (who appears to have confused visibility and harm), and stated that HE need not be consulted again[37]. HE did not visit the site, and does not appear to have had access to historic mapping that could allow an understanding of the historic connection (or rather lack of) between the asset and the appeal site.

55. The proposals cause no heritage harm, and as such are compliant with all relevant law, policy and guidance, including section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, which requires special regard to be paid to the desirability of preserving listed buildings and their settings.

Agricultural land

56. An Agricultural Land Classification Report (ALC) (2019)[38] was submitted with the application and identified a range from grade 3b to 5 land). With rebuttal evidence (to CPRE) the appellant submitted an updated ALC (2022)[39]. The appellant explained why this was done - partly because such reports had evolved significantly since the original report and the new report included improved accuracy, format, and detail[40].

57. The updated ALC found that that the appeal site comprises Grade 4 quality land. The Planning Practice Guidance defines Best and Most Versatile (BMV) agricultural land as Grades 1, 2 and 3a, and therefore the proposal would not result in the loss of any BMV land. This is agreed with the Council[41].

[37] CD B11 and CD C9 para 8.32
[38] CD A9
[39] CD C7
[40] CD C16 Appendix 2
[41] CD C9 paras 8.57-8.58

58. CPRE has not provided any alternative ALC or review of the methodology of either ALC. Their only aim was stated to be to "*cast doubt*" on the appellant's assessment[42].

59. The Council and appellant agree that the proposal complies with local and national policy[43]. Although there would be inevitable change over the 40 year lifetime of the scheme, much of the site will remain in agricultural use as pasture throughout.

60. CPRE has raised concerns about the feasibility of sheep grazing during the operational period, suggesting that herbicide application and heavy machinery would still be required to manage the grass. In fact 95% of the site will remain accessible for vegetation growth and will be able to support wildlife and agricultural activity[44]. This is in line with BRE Agricultural Good Practice Guidance for Solar Farms (2014)[45], which provides guidance and case studies (including successful sheep grazing at other Devon solar farms), and demonstrates that the sheltered area under the panels forms a microclimate which allows vegetation to establish successfully and which the sheep enjoy for shade and rain protection. The equipment required to maintain the panels is likely to be substantially lighter than the agricultural machinery that currently accesses the land.

61. There would be long term benefits of the scheme in terms of the quality of the soil, as shown in the Assessment of Impact on Agricultural Land and Soils Report[46]. Once the scheme was operational, much of the soil would be under perennial cover with no ploughing and only non-intensive grazing. This would lead to a soil which would be less vulnerable to wind and water erosion.

Battery storage

62. The provision of the BESS was not a matter to which the Council objected when it was in overall opposition to the scheme. As was made clear at the Inquiry CPRE regard the provision of the BESS as a fundamental objection to the scheme – but this is not opposition to this specific BESS but to the principle of battery storage - which it considers to be a risk to local communities and to the environment generally. CPRE acknowledged that this position is not supported in national policy or guidance[47].

63. The point of the BESS is to provide flexibility and security for the energy system, storing off-peak energy and deploying it during peaks throughout the day[48]. This should be given positive weight in the planning balance. Three recent policy statements explain national policy:

    - The British Energy Security Strategy explains that the Government will encourage "*all forms of flexibility*" in the energy system and will develop

[42] Dr Bratby in EIC and XX
[43] CD C9 paras 8.58 and 8.62
[44] CD C16 Appendix 2 and paras 2.13-2.15
[45] CD C16 Appendix 3
[46] CD C8
[47] Dr Bratby in xx
[48] CD C 11-D Figures 1 and 2

policy to enable investment in "*sufficient large-scale, long-duration electricity storage*". It sets out support for solar that is co-located with other functions, including storage, to maximise land use efficiency[49].

- Draft NPS EN-1 highlights that storage has "*a key role*" to play in achieving net zero, and that it is needed to reduce costs and increase the reliability of the electricity system by storing surplus in times of low demand and supplying electricity when demand is higher[50].
- The Net Zero Strategy makes it clear that as we rapidly decarbonise energy systems, we must also provide flexibility in order to integrate renewables and balance their intermittency. Doing so will involve pursuing innovative solutions, including new storage technologies.[51]

64. With that background the appellant provided extensive technical evidence[52]. The benefits of BESS were set out and it was explained that this approach will be critical to reaching a secure low carbon energy system. The benefits include:

- Enabling the integration of intermittent renewables into the electricity system by creating a more balanced grid.
- Increasing efficiency (conventional generators can only supply power, whereas BESS can both charge and discharge).
- Replacing carbon-heavy generators and reducing fossil fuel pollutants.
- Ensuring security of supply and reducing blackout exposure, due to BESSs' fast response to supply/demand gaps.
- Co-location, which was supported by the Examining Authority at Cleeve Hill,[53] facilitates sharing of grid and generation infrastructure leading to significant construction and operation efficiencies, load shifting and reduced transmission.

65. In terms of safety the appellant has explained that BESS is not an inherently unsafe technology, that it operates in large scale installations up and down the country, and that their safety is controlled by a number of non-planning regulatory regimes. Conversely CPRE has only pointed to one utility-scale incident in the UK, a lithium ion battery fire in Liverpool in 2020[54]. However CPRE accepted that all the national policy support for BESS was published after that incident and safety technology. Gas detection sensors which prevent thermal runaway by detecting faults early have moved on greatly since 2020.

66. The chemistry of the batteries in this scheme here has not yet been decided, and the final choice will depend on progress in technology. This is in line with the approach at Cleve Hill[55].

[49] CD D18
[50] CD D3-B paras 3.3.24-3.3.25
[51] CD D17, para 43
[52] CD C11-D and CD C16
[53] CD I4-A 5.6.1
[54] CDH4 and CD C11-D
[55] CD I4-A and CD I4-B para 4.172

Summary of benefits of the scheme and planning balance

67. The scheme is a renewable energy project with carbon savings – especially important in the light of the energy security crisis. There is a presumption that such schemes should be allowed where impacts can be made acceptable. This matter is of substantial weight, as was found in the decision at Halloughton[56]. The following policies, along with the agreed lack of any requirement on the appellant to demonstrate need, are wholly supportive:

- The Energy White Paper (2020) sets out that achieving net zero rests on a "*decisive shift*" away from fossil fuels to clean energy and describes solar as a "*key building block*" of the future energy generation mix[57].

- The NPPF has a presumption in favour of renewables and states that the planning system should support the transition to a low carbon future in a changing climate, by supporting renewable and low carbon energy and associated infrastructure.

- Draft NPS EN-1 (2021) states that wind and solar are the lowest cost ways of generating energy and that a secure, reliable, net zero system in 2050 is likely to be composed "*predominantly*" of wind and solar[58].

- Draft NPS EN-3 (2021) describes solar as "*a key part*" of the government's strategy for low-cost decarbonisation of the energy sector and renewables as an "*essential*" element of the transition to net zero[59].

- Net Zero Strategy establishes that the UK will be powered entirely by clean energy by 2035 (infrastructure needs to be deployed at an "*unprecedented scale*"), with the Government forecasting a 40-60% increase in demand over the same period[60].

- The British Energy Security Strategy (2022) anticipates a five-fold increase from the current 14GW of solar capacity in the UK by 2035[61].

- LP policy S9 supports renewable energy generation development where the impacts are satisfactorily addressed[62], and policy DM2 represents a further presumption in favour of renewable energy proposals, provided any adverse effects on character, amenity or the visual quality of the area are not significant[63]. The CNP is supportive.

68. The proposed solar farm in this case would generate substantial savings of carbon dioxide emissions during its anticipated lifetime (approx. 25,321 tonnes of

[56]CD I16
[57] CD D12 page 46
[58] CD D3-B paras 3.3.21
[59] CD D4-B paras 2.47.1 and 1.1.1
[60] CD D17 pages 98 and 102
[61] CD D18
[62] CD C9 para 8.6
[63] CD C9 para 8.7

CO_2 per annum will be avoided). It would power 10,369 typical Mid Devon homes annually with clean energy – this is a standard calculation derived from using government figures for carbon emissions and the energy capacity of the scheme[64].

69. The scheme has the further substantial benefit of providing a Biodiversity Net Gain of 179.25% in area derived units and 9.82% in linear derived units[65] - well beyond mitigation or any policy requirement. A gain of 73% was considered substantial in the Halloughton case. This includes more than 1km of planting of native species trees and hedgerow; the provision of bird, bat, and dormouse boxes; and the provision of hectares of species rich meadow and grassland[66].

70. The scheme would generate significant economic benefits in the form of around £40,000,000 in financial investment, between 70 and 80 jobs during the construction phase, and a smaller number of jobs when the solar farm is operational[67]. The scheme would contribute up to £2,700,000 gross value added to the economy and business rates would be paid to the Council of around £190,000 p.a.

71. Overall the proposal accords with the development plan and is supported by further material considerations. There are no material considerations which indicate permission should be refused. Conflict with part of a policy does not necessarily mean conflict with the whole policy and should not automatically be considered a conflict with the development plan as a whole.

72. The LP includes a presumption in favour of renewable energy proposals where there is an acceptable local impact. The key question in terms of development plan is whether the impacts of the scheme are acceptable. In terms of landscape and visual effects, whilst there would be some adverse effect on landscape character and visual amenity, these would not be significant, would be localised, and would be reversible.

73. In heritage terms the proposed scheme will cause no harm to the significance of Langford Court through changes to its setting. Even if, contrary the expert evidence, a degree of less than substantial heritage harm was found, any limited harm would be substantially outweighed by the public benefits of the scheme, in accordance with NPPF and LP policies.

74. The site does not comprise BMV and though there would be some loss of general agricultural land during the operation of the scheme, with arable uses precluded during the lifetime of the scheme and approximately 5% of the overall site taken up with solar infrastructure, but pastoral uses could continue throughout, and a full return to farming is possible in 40 years. The loss would be minimal and reversible.

75. The scheme accords with development plan policies and the key renewable energy policy benefits far outweigh any adverse impact. Therefore, in accordance with the NPPF, planning permission should ordinarily be approved

[64] CD C16
[65] CD C6
[66] CD A18 – C and CD A27-C
[67] CD C9 para 8.13

without delay. There are also no material considerations that indicate that permission should be refused. The main objections by CPRE to the principle of solar and of BESS are not specific to this scheme and are unsupported by any policy.

76. Although not required, the detailed technical evidence supports the national approach and has demonstrated the clear benefits of both solar and BESS technology. No technology is ever risk free, but any risks can be appropriately mitigated, and a condition is proposed to do that in line with the NPPF.

77. Even if, contrary to the evidence, it was found that there were a conflict with the development plan, then it is clear that this is a case where the benefits are so substantial that material considerations indicate that permission should nonetheless be granted: they clearly and demonstrably outweigh any harm. There are also a number of neutral matters: setting of the heritage asset; residential amenity; highways and transport; and noise. All technical matters have been resolved: highways, drainage, and flood risk.

The case for CPRE

78. This is based in part on CPRE's closing submissions[68], but as this did not cover all aspects of the objection, parts related to heritage and landscape are also drawn from evidence.

79. It was CPRE Devon's position that there is no definition of a climate emergency and that no evidence has been produced to lead to the conclusion that there is a serious climate change issue. CPRE Devon referenced and agreed with the work of Sir David Mackay, which included the position that the idea of renewables powering the UK as an "appalling delusion"[69]. The proposal for a solar farm and BESS would be unreliable, harmful to the stability of the grid and would lead to increasing electricity prices.

Lack of information

80. As the appellant accepts, the precise design of the solar farm is not known and the design and performance of the solar panels has not yet been specified. The proposal was based on documents which are now outdated, as is the principle of the BESS. But this is not an outline application. It is not acceptable that the Council and the public should be asked to give – in the words of CPRE national policy – 'carte blanche' to the appellant to construct a huge, complex and risk-sensitive installation such as this without providing any detailed information about what it will be made of or what its precise output will be.

81. The two solar cell and module manufacturers mentioned to date – Longi and Jinko – are both on the list of manufacturers identified as profiting from the Chinese government's forced labour programme[70]. According to UK government policy (January 2021)[71] it is the appellant's responsibility to ensure that no products of slavery appear in their supply chain.

[68] Doc 4
[69] CD C12 paras 3/4
[70] Sheffield Hallam University & the Helena Kennedy Centre for International Justice (not submitted)
[71] Not amplified or submitted

82. The question of detailed design applies particularly to the BESS, because of the very real risks associated with large-scale lithium-ion battery arrays.

Safety of the BESS

83. The appellant acknowledges the theoretical risk of thermal runaway leading to explosion or severe fire, but does not acknowledge the actual risk, stating simply that no-one would invest millions of pounds in a technology that was dangerous, and that anyway the as-yet-unspecified safety systems which would be in place would snuff out any potential conflagration in the short interval between initial failure and the onset of thermal runaway. That approach is not good enough.

84. Other BESS operators– who have presumably thought that they had adequate safety systems and a protected investment – have experienced severe failures in their BESS systems[72]. Yet no detailed design has been produced, no provision for on-site cooling water has been specified, and no discussions have been held with the Devon & Somerset Fire & Rescue Service regarding these very real risks.

Carbon emissions

85. Another area in which information is lacking is in the assessment of the proposed array's effect on carbon emissions. The appellant has produced some formulaic figures regarding the emissions from other electricity generating sources which would be theoretically obviated by this array. But there is no analysis of the carbon emissions of the manufacture, construction and whole-life operation of the array. This would be needed to present an accurate net benefit assessment of carbon emissions.

Landscape effect

86. There is also a significant discrepancy between the appellant's LVIA and that produced by the independent local consultancy David Wilson Partnership, which concluded a major adverse impact on the landscape.

87. The Council's Solar PV Developments in the Landscape Supplementary Planning Document' (2016) (SPD)[73] identifies the site in Landscape Character Area DCA12 (Clyst Lowland Farmlands) and in Landscape Character Type LCT3E (Lowland Plains). This has a high sensitivity to very large solar farms.

88. The proposal would be a major development that would result in the introduction of uncharacteristic elements into the rural, farmed landscape. It is inevitable that there would be substantial landscape and visual effects as a result.

89. Field 13 would include 21 arrays of solar panels and the 100m by 40m battery storage facility consisting of 13 industrial containers containing the batteries, six inverters, one spare parts container, one customer container, one control room, one client substation, one DNO substation and an array of gantries 25m by 10m and up to 10m in height. This would have a major adverse impact on the landscape. The photomontage shows arrays of solar panels, but the industrial facilities forming the battery facility at the south end of field 13 are not shown.

[72] CD C12 Para 42 onwards
[73] CD E5, CD C12 paras 11/12

90. It is concluded that the adverse impact on the landscape is a valid reason for refusal and should be given great weight in the planning balance.

The effect on Langford Court

91. The appellant's Heritage Statement concludes that there will be no harm to any heritage assets, including the Grade II* Langford Court. Historic England disagreed with this conclusion and requested that the Council's heritage specialist made an independent assessment of the setting of Langford Court, to judge the level of potential harm that might be caused to its setting and whether that harm could be avoided or minimised to an acceptable level[74].

92. The Council's Conservation Officer was critical of the appellant's Heritage Statement, highlighted some of its shortcomings and considered the impact that all of the industrial infrastructure in the battery storage area would have on the views into and out from Langford Court and its setting. He concluded that "The heritage assessment of the Grade II* building has failed to take into account the long views of the building which relate to the experience of the asset. The proposal would result in registerable harm to the significance and setting of Langford Court which must be given considerable weight and importance by statute and be contrary to the NPPF and Policy DM27."

93. The adverse impact on the Grade II* Langford Court must be given great weight in the planning balance.

Loss of agricultural land

94. Much importance is placed by the appellant on the lack of BMV on the site. But there is no independent report, and a discrepancy in the appellant's studies.

95. The appellant's 'Agricultural Land Classification' report by Davis Meade (October 2019), parcelled the land into three sites consisting of 17 enclosures. The result of that study was that 14 enclosures were grade 3b, two were grade 4 and one was grade 5. The report was not detailed and the findings were not independently verified before permission was refused. The appellant subsequently submitted a report by Amet Property (February 2022) – the purpose of this report (which concluded that all of the site was grade 4) is not known.

96. There is a clear difference between the appellant's two assessments. And neither Davis Meade nor Amet Property have significant expertise in Agricultural Land Classification. Davis Meade describes itself as a "specialist in property and land sales" and Amet Property is a real estate agency. The reports by Davis Meade and Amet Property are unreliable. In view of the fact that the site has been used for both grazing and arable CPRE believe that much of the land is grade 3a. Independent verification should have been carried out.

97. The site may not all be BMV, but it is the sort of land which, coupled with Devon's mild climate and high rainfall, produces high quality grass and fodder, which in turn results in the production of the finest quality meat and dairy products in the world.

[74] CD B11

98. The appellant claims that the land may continue to be grazed by sheep with the solar panels in place. It is the experience of CPRE members that this does not happen - grass grown in the shade is poor quality and difficult to manage. The grass would need mowing at least twice a year, with the application of herbicides. The solar panels would need cleaning, also probably twice a year. Heavy machinery is required to carry out these maintenance activities, resulting in soil compaction. After 40 years of these maintenance activities and following decommissioning, the soil would be in a very poor condition.

99. Devon CPRE and CPRE nationally are committed to opposing large-scale solar sites on valuable and productive farmland which should be used to meet urgent food production needs at a time of rising food insecurity, as well as fulfilling its role as potentially the foremost means of sequestering carbon.

The case for residents appearing at the Inquiry

100. Mrs J Jones read her email/statement on the appeal. Public opinion has been side-lined by the process – in particular she drew attention to the fact that permission had been refused by the Council on a 7:3 vote, and this should not have been overturned. There are already two solar farms in the area, and there should not be another.

101. Ms C Winteson expressed her opposition to the proposal, and in particular did not agree with the appellant's statement that there was a need for the development.

102. Mr R Smith has objected to the proposal on a number of occasions. The development would not generate power when it was needed and would take land out of agricultural production. Solar generation should take place on the roofs of commercial buildings. The BESS element of the proposal was a fire risk, exacerbated by the lack of water on site.

Written representations

103. A number of objections were lodged to the proposal at the application[75] and appeal stages. In addition to the main issues considered in this report, a number of other concerns were raised. These include a loss of trees, harm to wildlife, the loss of prime agricultural/grazing land, harm to human health as a result of radiation, harm to highway safety, noise nuisance during construction and during operation, noise and disturbance, flood risk and surface water run-off.

Conditions

104. A discussion was held at the Inquiry between the appellant and the Council regarding potential conditions if planning permission were to be granted. CPRE took part in these discussions on a without prejudice basis. These conditions are discussed below.

[75] CD A47A

Inspector's conclusions

[Numbers in square brackets denote source paragraphs]

Policy and guidance context

105. The development plan comprises the Mid Devon Local Plan 2013-2033 (2020) (LP) and the Cullompton Neighbourhood Plan 2020-2033 (2021) (CNP) [20,21, 22]. No party has suggested that these plans are out of date, and both deal with the considerations raised by this appeal.

106. The relevant policies are largely raised in the Council's former reasons for refusal, prior to its decision not to contest the appeal and are set out above [4].

107. The NPPF and National Planning Practice Guidance (NPPG) are clearly material considerations, as accepted by the parties. The parties agreed that a range of other national policy and guidance documents are material considerations. In particular the parties made reference to the National Policy Statements (NPS) for the delivery of major energy infrastructure, and to the emerging updates [27, 28].

Agreed matters

108. There are two Statements of Common Ground (SOCG) which have been concluded respectively between the appellant and the Council [27], following its decision not to contest the appeal, and between the appellant and Devon CPRE [28]. These provide useful background to the main considerations in this case.

109. The key agreed matters are as follows (where CPRE have not agreed this is indicated):

- The site is in open countryside in policy terms, outside any settlement boundary.
- LP policies S9 and DM2 allow for renewable energy development where there is an acceptable local impact, balanced with the wider sustainability benefits of renewable energy.
- The CNP is supportive of the increased use of renewable energy, subject to controlling the impact of such installations.
- National energy policy is a material consideration.
- There is no requirement for the appellant to demonstrate need for the proposal.
- Trees and hedgerows, along with generally flat topography, would help to mitigate the overall scale of the development.
- The proposal is a low carbon, renewable energy project that would contribute towards meeting national renewable energy targets. (This is not agreed by CPRE.)

- Substantial weight should be attached to the benefit of renewable energy production. (This is not agreed by CPRE.)

- In terms of operational safety the installation could be suitably managed outside the planning process. (This is not agreed by CPRE.)

- The site comprises poor quality agricultural land. (This is not agreed by CPRE.)

Main considerations

110. Based on the evidence, policy, and the areas of dis/agreement, the main considerations in this case are:

- The effect of the proposal on the character and appearance of the landscape
- The effect on Langford Court - a designated heritage asset
- The effect on and potential loss of agricultural land
- The safety of the Battery Storage facility (BESS)

111. It should be additionally noted that Devon CPRE made it clear that they do not agree with the existence of a climate emergency or that climate change is a proven problem [79]. Particularly given the agreed national and local policy context, this matter is dealt with briefly below.

The effect of the proposal on the character and appearance of the landscape

112. It is important to note that the only expert evidence on landscape matters presented to the Inquiry was that from the appellant, and no contrary expert evidence was given.

113. Bearing in mind the extent of the site and the coverage of the proposal (though not necessarily its general height above ground) it is inevitable that a large scale solar farm such as this is likely to cause a degree of landscape harm. With that background, and given the policy support for solar energy, both national and local policy take a positive approach in principle towards solar development, providing that schemes will be approved where the harm would be outweighed by the benefits of a development. The extent of any harm to the landscape must therefore be assessed.

114. National policy, whilst recognising the intrinsic character and beauty of the countryside, does not seek to protect all countryside from development. The focus is more on the protection of valued landscapes. However this term is not precisely defined in the NPPF, although reference is made to statutory status or identification in the development plan. In this case the parties agree that the site does not form part of a valued landscape and there is no reason to disagree.

115. Turning to the existing character of the area, the Devon Landscape Character Assessment sets out distinctive characteristics of the area's landscape [37]. The strategy is to reinforce field patterns through the restoration and management of characteristic hedgerows, and to the management and

expansion of wet grasslands along watercourses. It looks to extend species rich meadows and grasslands through appropriate grazing and traditional land management regimes.

116. From the evidence to the Inquiry – almost exclusively from the appellant – and from the extensive site visit, the key elements of the existing landscape are the rolling topography, rural land use, the presence of trees and boundary hedgerows and small watercourses. Taking these elements together the site and the surrounding area has no more than a medium landscape value and medium sensitivity to change.

117. In coming to that view it is noted that the Solar PV Developments in the Landscape SPD [23, 40, 87] locates the site in Landscape Character Area DCA12 (Clyst Lowland Farmlands) and in Landscape Character Type LCT3E (Lowland Plains). This is stated to have a high sensitivity to very large solar farms. However, as will be explained below, this wide designation is of limited assistance in assessing the effect of this specific proposal in this location.

118. All parties agree that the proposal would have no significant harmful effect on the wider surrounding landscape. Any effect would therefore be very localised.

119. The BESS and related facilities, along with fencing and CCTV installations, would certainly have an effect on the landscape. More so than the solar panels themselves which, even allowing for their wide coverage, have a limited height and relatively slender design. There would be no change to the characteristic rolling topography arising from the scheme.

120. About a hundred metres of hedge would be removed to provide access, and this would obviously diminish this important element of the landscape. But this would be more than compensated for by filling gaps with indigenous shrubs and hedgerow planting. The appellant's uncontested estimate is that there would be a net gain of some 1.2kms [38] and this would mitigate the landscape effect of the proposal and would be a significant benefit. The effect on watercourses would also be slightly beneficial.

121. Overall in landscape terms, it is self-evident that a solar farm of this size would have some adverse landscape character effect. However, due to topography and screening this would be very limited and would be mitigated increasingly as the planting matures. After decommissioning there would be no residual adverse landscape effects, but rather the remaining benefit of the landscape mitigation.

122. Turning to visual effects, it is relevant to note that no particularly important or protected views have been suggested by the Council at any stage. All the agreed viewpoints were visited, as well as a number of others around the site, and the visual effects of the development would be very limited. The area is well endowed with extensive tree and hedge cover which limits views to short or medium range, and the opportunity for sequential views is limited.

123. The views which can be achieved are only snapshots. Many of the lanes and footpaths in area are enclosed by hedges and/or banks, and in most cases an observer would have to divert from the road/path to obtain a fleeting view from a field gate. The overall visual effect of the proposal would maintain the quality

of these brief views, and any very limited adverse effect would be offset by new planting.

124. It is noteworthy that, in terms of residential visual amenity, no party has contended that any properties close to the proposal would be so affected such that the properties would be rendered unattractive places in which to live.

125. Two matters are of note before concluding on this matter.

- Firstly CPRE alleged in writing that the viewpoints and photomontages produced by the appellants had deliberately omitted the BESS and related facilities [89]. But the detail of the photomontages was explained and put to the CPRE witness at the Inquiry, who accepted that they were accurate. The relevant views were observed on site, and it is clear that the photomontages are comprehensive.

- Secondly the Council's Solar PV Developments in the Landscape SPD, which CPRE emphasised [87], is of limited assistance in considering a particular proposal. The document identifies a very wide area as being highly sensitive to large scale solar proposals, without differentiating between geographical areas. The document importantly includes a caveat against it being "*interpreted as a definitive statement of the suitability of a certain location for a particular development*". In line with this caution it would be inappropriate to place too much reliance on the SPD in relation to this particular site, and the detailed analysis which has been put forward by the appellant is to be preferred.

126. Overall, the proposal would cause some very limited landscape and visual effects, but this would be mitigated by the additional planting which is integral to the proposal. The development would therefore not conflict with LP policies DM1, DM2 or S9, nor with the CNP or the NPPF.

The effect on Langford Court

127. Two matters are of note before considering this topic.

- Firstly the only expert evidence on heritage matters presented to the Inquiry was that from the appellant, and no alternative evidence was given. The original objection from CPRE did not include any allegation of heritage harm, and the only witness for CPRE at the Inquiry did not have any heritage expertise and/or qualification. Their approach seemed to focus on the effect of the BESS, although it was accepted by CPRE at the Inquiry that the BESS area would not be visible.

- Secondly, contrary to the statement from CPRE, Historic England did not raise a formal objection to the proposal [27]. Rather they identified the potential for harm, albeit without a site visit or access to historic mapping. It is true that the Council's Conservation Officer considered that there would be intervisibility between Langford Court and the appeal proposal, and therefore harm. But even if a view exists this does not equate to harm to significance. All this is in the context that the overall recommendation of Council officers was to grant permission, and that the subsequent refusal is no longer defended.

128. Langford Court is a 16th century farmhouse that was enlarged and remodelled in the 17th century and restored extensively after a fire in the 1990s. It is Listed Grade II*. The parties agree that the asset has a range of heritage interests, particularly historic, architectural and archaeological, but that its main significance is embodied in its physical form. All the evidence to the Inquiry and from the site visit emphasised the importance of the physical form of the building itself [48, 49]. The proposal is set some way from the building and its immediate surroundings and would not touch its physical fabric or form, so any potential for harm would be indirect.

129. The setting of an asset is the surroundings in which it is experienced and, although often expressed with reference to visual considerations, the way in which an asset is experienced in its setting is also influenced by an understanding of the historic relationship between places.

130. In this case the contribution made by elements of the setting to its significance comprise the historically associated gardens, the modern eastern gardens and lake, and the areas of the historically contiguous landholdings visible from the asset. The most important views are from the gardens and across the lake to the house, as these are the least harmed by the modern agricultural buildings nearby on the farm. Further afield the undulating topography and vegetation reduce the contribution made by setting to the significance.

131. The appellant's detailed historic evidence clearly demonstrates that the appeal site was not part of the consolidated contiguous landholding which might have been experienced in conjunction with the asset in the mid 19th-century or earlier. There was a small amount of historic coincidence of ownership, but at a distance from the main landholding, and this does not survive today [51].

132. The proposal would not affect any features or views. Looking further afield there are few, if any, views of Langford Court and its more immediate surroundings from the solar farm site. Any fleeting glimpses that might be obtained are limited by topography or are heavily obscured by existing woodland and hedgerow. The architectural and historic interest of the house cannot be readily understood in those views. The appeal site has only filtered intervisibility with the asset, with views largely screened by topography and vegetation. None of these views are of any particular significance, and they have experienced notable change already in the 20th century with the construction of modern buildings.

133. While the appeal site might be just visible from Langford Court, that is not the test and does not equate to a contribution to heritage significance. A view that does not illustrate architectural or historic interest and does not allow the significance of an asset to be appreciated is merely an incidental view that neither contributes to nor detracts from heritage significance.

134. In conclusion, given the degree of separation between the appeal site and the asset and the nature of existing and proposed screening, the appeal site makes no contribution to the setting and significance of Langford Court. The proposal would therefore accord with LP policies S9, DM2, and DM25, and with the NPPF.

The effect on agricultural land

135. National policy in the NPPF states that decisions should recognise the economic and other benefits of Best and Most Versatile (BMV) agricultural land. This is defined as grades 1, 2 and 3a of the Agricultural Land Classification. LP policy DM2 adopts the same approach towards the protection of BMV land. The Planning Practice Guidance also considers whether the use of agricultural land is necessary and whether a proposal allows for continued agricultural use.

136. With this background the main area of dispute between the appellant and CPRE is the classification of the appeal site. The appellant's original 2019 Land Classification Report identified a mix of Grades 3b, 4 and 5, whilst the updated report shows the entirety of the site as comprising Grade 4 agricultural land. In terms of national and local policies it is of little consequence which report was more accurate in that neither suggested that any of the appeal site was BMV. The appellant convincingly explained why the update had been considered necessary [56, 95].

137. The position of CPRE was that the reports should have been independently verified – although the Council considered that the first report had been undertaken by a suitably qualified professional. The view of CPRE, who did not put forward any technical evidence on land classification, was that both the appellant's reports were unreliable and that neither of the report's authors had significant expertise in land classification [96]. However the appellant convincingly explained the background of the reports' authors. CPRE maintained (without evidence) that much of the land is grade 3a [96]. Based on the unchallenged evidence of the appellant, it is clear that the highest some parts of the site could aspire to is 3b – and it is most likely to be lower than that. On that basis, the loss of this land, even if it were a permanent and total loss, would not receive policy protection.

138. CPRE also argued that even were the land not considered to be BMV it could produce high quality grass and fodder. But it is agreed between the appellant and the Council that the majority of the land would continue in agricultural use for sheep grazing during the operation of the solar farm [27]. In addition, at the end of the limited period, the majority of the site would revert to potential agricultural use. CPRE stated, without evidence, that sheep grazing below and between solar panels does not happen and that the grass beneath is poor quality and compacted [98]. Overall, there is nothing to demonstrate that sheep grazing would be unlikely to occur, and this approach forms part of the proposal in line with national guidance [60].

139. Overall the proposal would not result in a harmful loss of agricultural land. It would not conflict with LP policy DM2, S1 or S9, or with the NPPF.

The safety of the proposed BESS

140. The issue of the safety of the proposed BESS was never a matter which was of concern to the Council in its planning considerations. For that reason it was not a reason for refusal even before the authority changed its stance.

141. The safety of the BESS was raised by CPRE in its evidence as a major source of concern [83, 84]. It became clear from that the evidence and from answers in cross-examination the CPRE's concern was founded on opposition to battery

storage systems in general, which they consider to be a risk to local communities and to the environment generally, and was only related to this proposal to a limited extent. CPRE acknowledged at the Inquiry that their approach is not supported by policy or guidance at any level.

142. The appellant submitted extensive evidence on this matter, including that from an expert in the field, who explained the benefits and operation of BESS systems [64]. The rationale for a BESS system is to provide flexibility for the grid, storing off-peak energy and deploying it during peaks. Co-location with the solar farm is sensible in terms of economies of scale and minimising land take. The convincing evidence, supported by numerous policy references, was that BESS is a critical element in reaching a secure low carbon energy situation. This position is wholly in line with national policy.

143. CPRE was particularly concerned with the safety of such a system, and pointed in particular to two instances of catastrophic failure of such systems [84]. However the appellant correctly pointed out that these events, one of which was in the UK, were some time ago, and gave uncontested evidence to the effect that BESS technology and safety measures had moved on since those events [65]. Perhaps most tellingly, it is clear that national policy and guidance supporting that technology was produced subsequently – no doubt in full awareness of the incidents. This was accepted by CPRE.

144. From the evidence it is clear that this is not untested technology and although the detail of the systems is doubtless still evolving, there is very little to suggest that there is a substantial risk of thermal runaway leading to explosion or fire.

145. There was criticism from CPRE that no detail of the BESS has been fixed at this stage and the chemistry of the batteries has not yet been decided [80-82]. However in the context of evolving technology, this is not an unreasonable approach, and the proposal considered at the Inquiry is for solar panels to generate up to 49.9MW and a battery storage facility. It is reasonable that the final choice of technology will be fixed later.

146. Underlying all these matters is the fact that other regimes operate in this field to regulate the safe operation of such installations. National policy is clear that the focus of planning decisions should be on whether a proposal is an acceptable use of land, rather than the control of processes where these are subject to separate regimes. Planning decisions should assume that these regimes will operate effectively.

147. For the above reasons there is nothing in relation to the safety of the BESS which should weigh against the proposal in the planning balance.

Other matters raised by objectors

148. CPRE contested the appellant's approach to the effect of the scheme on emissions and suggested that a whole life carbon assessment is necessary [85]. However the appellant has produced evidence regarding the emissions from other electricity generating sources which could be obviated by this proposal [64]. This, coupled with the national policy approach, is sufficient to lend support to the sustainability credentials of the proposal.

149. As referenced above, Devon CPRE made it clear that they do not agree with the existence of a climate emergency or that climate change is a proven problem.

At the Inquiry it was made clear that this was a local decision of Devon CPRE and did not reflect national CPRE policy. No evidence was submitted regarding the reasons for Devon CPRE's position, and it was stated that the local branch would not be producing its own policy. The Council declared a climate change emergency locally in 2019 and it is Government policy that the UK will need to be entirely powered by clean energy by 2035. Devon CPRE is therefore at odds with the local and national position. In any event, decisions on land use planning matters must be taken in the light of the development plan and other material considerations including national policy.

150. Devon CPRE stated that the solar cell manufacturers mentioned to date are on a list of companies profiting from the Chinese government's forced labour programme [81]. This list was not submitted nor was the government policy to which CPRE referred. In any event, even if this were a land use planning matter, this level of detail is not part of the appeal proposal.

151. Local residents also raised concerns on a number of grounds, most of which relate to the main considerations above. In addition, there was concern that the solar panels would not generate power when it was needed. However that would be addressed by the BESS. Other matters, particularly suggested traffic and disturbance during the construction phase, could be addressed by conditions.

Conditions

152. Before and during the Inquiry the appellant, the Council and Devon CPRE cooperated (without prejudice) in a discussion of potential conditions to be considered if permission were granted.

153. These agreed conditions (including those with pre-commencement requirements), with only minor typographical alterations, are appended to this report. For simplicity the reason for each condition is included beneath the condition.

Planning balance

154. Three of the main considerations discussed above are neutral in the overall planning balance, for reasons already explained. These are the heritage issue, the effect on agricultural land and the safety of the BESS.

155. The only matter potentially causing an element of harm is the effect on the landscape, which is unsurprising given that national and local policy recognise that large scale solar farms may result in some landscape and visual harm. But in this instance the topography, existing screening and landscape mitigation lead to very limited and highly localised landscape and visual effects, and these would be progressively mitigated by additional planting. These factors lead to the conclusion that the proposal would not conflict with local or national policy.

156. The scheme is for a renewable energy proposal which is fully in accordance with the economic, social and environmental dimensions of sustainable development set out in the NPPF. In addition EN-1 and subsequent draft policies state that the Government is committed to cutting greenhouse gas emissions and need for a move away from fossil fuel and towards renewable sources of energy production is supported. The scheme therefore has strong national and local policy support. This matter weighs very heavily in favour of the proposal.

157. Added to this is the unchallenged substantial benefit of £40,000,000 in financial investment, and the provision of between 70 and 80 direct and indirect jobs during the construction phase, with a smaller number of jobs when the development is operational. In addition the acknowledged benefit of the additional planting, which would remain after the end of the limited period, should be accorded significant weight. The unchallenged Biodiversity Net Gain is a further substantial benefit [69].

158. In dealing with this appeal the time limited nature of the proposal is a material consideration. Obviously 40 years is a long time and longer than some references to the life of a solar farm in national and industry guidance. However in this case the factors weighing in favour clearly outweigh the very limited negative factors, and consideration of the potential benefit of a limited period is unnecessary.

159. Overall, the conclusion that the appeal is in accordance with policy and that planning permission should be granted.

160. However, it might be considered by the decision maker that the very limited landscape effect of the proposal is not mitigated by the positive landscape factors, and that there is a conflict with some elements of policy. Under these circumstances it is considered that the importance of addressing climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh any very limited harm.

Recommendation

161. It is recommended that the appeal be allowed and planning permission be granted subject to conditions.

P. J. G. Ware
Inspector

Recommended Conditions and Reasons

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

   Reason: As required by statute.

2. The permission hereby granted shall be limited to a period of 40 years (with the exception of the DNO Substation which is to be retained on the site in perpetuity) from the date when electricity is first exported from the solar panels to the electricity network (The First Export Date). Written notification of the First Export Date shall be given to the Local Planning Authority within 14 days of the event occurring.

   Reason: As sought by the application.

3. The development hereby permitted shall be carried out in accordance with the following approved plans:
   - Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group.
   - Gantry Site Elevations, drawing number P2763-150-03, Rev O, prepared by G2 Energy.
   - DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy.
   - DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy.
   - Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy.
   - Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
   - Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar.
   - Control Room Elevations, drawing number JBM1035-209, prepared by JBM Solar.
   - Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar.
   - Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar.
   - Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar.
   - 132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar.
   - Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar.
   - Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar.
   - Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar.
   - CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar.

- Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar.
- PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy.
- Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy.
- Proposed Layout Plan, drawing number P18- 1820_14, Rev K, prepared by Pegasus Group.
- P18-1820 Figure 2 Primary Site Access Visibility Splay (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 4 Swept Path Analysis B3181 to Main Site Access 15.4m Articulated HGV (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 5 Swept Path Analysis Area A to Areas B & C 10m Rigid Vehicle (CTMP), prepared by Pegasus Group.
- P18-1820 Figure 7 Swept Path Analysis Area A to Area C 15.4m Artic HGV (CTMP), prepared by Pegasus Group.
- In general accordance with P18-1820 Figure 6 Area B Indicative Access Design (CTMP) and P18-1820 Figure 8 Area C Access Indicative Improvements Including Swept Path Analysis 15.4m Artic HGV (CTMP).
- Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.

Reason: In the interests of clarity.

4. If the solar farm hereby permitted ceases to operate for a continuous period of 12 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment, except for the DNO Substation, shall be submitted within 6 months of the end of the cessation period to the local planning authority for its written approval. The scheme shall make provision for the removal of the solar panels and associated above ground works approved under this permission. The scheme shall also include the management and timing of any works and a traffic management plan to address likely traffic impact issues during the decommissioning period, an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats, and details of site restoration measures.

   Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

5. Within 6 months of the cessation of the export of electrical power from the site, or within a period of 39 years and 6 months following the first export date, a Scheme for the decommissioning of the solar farm and its ancillary equipment, except for the DNO substation, and how the land is to be restored, to include a programme for the completion of the decommissioning and restoration works, shall be submitted to and agreed in writing by the local planning authority.

   Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

6. The solar farm and its ancillary equipment, except for the DNO substation, shall be dismantled and removed from the site and the land restored in accordance with the approved Scheme and, in any event shall be removed within a period of 40 years and 6 months following the first export date.

   Reason: To ensure the removal of the equipment and decommissioning in the interests of the character of the area.

7. The Solar PV Panels hereby permitted shall not be erected until samples of the materials to be used in the construction of the solar panel array have been submitted to, and approved in writing by, the local planning authority. Development shall be carried out in accordance with the approved materials and retained as such thereafter.

   Reason: To control the appearance of the development in the interests of the character of the area.

8. Prior to their erection on site details of the proposed materials and finish including colour of all solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.

   Reason: To control the appearance of the development in the interests of the character of the area.

9. Prior to the commencement of the proposed development, the site access roads shall be formed in a sound bound material for the first 20.00m back from its junction with the public highway and drained to prevent no surface water onto the public highway. The site access roads shall be hardened, surfaced, drained and maintained thereafter hardened, surfaced, drained and maintained.

   Reason: In the interests of highway safety.

10. Prior to the commencement of the proposed development, visibility splays shall be provided, laid out and maintained for that purpose at the primary site access where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of the public highway (identified as Y) shall be 43.0 metres in a southern direction and as identified on the access plan in the other direction.

    Reason: In the interests of highway safety.

11. Visibility splays shall be provided, laid out and maintained for that purpose at the other site accesses in accordance where the visibility splays provide inter-visibility between any points on the X and Y axes at a height of 0.60 metres above the adjacent carriageway level and the distance back from the nearer edge of the carriageway of the public highway (identified as X) shall be 2.40 metres and the visibility distances along the nearer edge of the carriageway of

the public highway (identified as Y) shall be 33.00 metres in on coming direction and 33.00 metres to the centre line in the offside direction.

Reason: In the interests of highway safety.

12. No other part of the development hereby approved shall be commenced until the access, parking facilities, commercial vehicle loading/unloading area, visibility splays, turning area and access drainage have been provided and maintained in accordance with details that shall have been submitted to, and approved in writing by, the Local Planning Authority and retained for that purpose at all times.

    Reason: In the interests of highway safety.

13. No development shall take place until off site highway condition surveys have been undertaken and the details submitted and approved in writing by the Local Planning Authority.

    Reason: In the interests of highway safety.

14. No development shall take place until:

    EITHER

    i) A programme of archaeological work has been carried out in accordance with a written scheme of investigation (WSI) which has been submitted to and approved in writing by the Local Planning Authority.

    OR

    ii) A construction methodology for the development that avoids any below ground impact within the area of Archaeological sensitivity in the vicinity of the 7th/8th century iron furnace has been submitted to and approved in writing by the Local Planning Authority.

    The development shall be carried out in accordance with the approved scheme (under either part i) or part ii) or such other details as may be subsequently agreed in writing by the Local Planning Authority.

    Reason: To ensure that any potential archaeology is investigated and that no damage is caused to any archaeological interests.

15. No development shall take place until a detailed scheme of ecological mitigation and enhancement measures, in accordance with the recommendations of the submitted documentation (below) has been submitted to and approved in writing by the Local Planning Authority:

    (a) The Biodiversity Management Plan by avian ecology v4 (Dated 20/07/2020), has been submitted to and approved in writing by the Local Planning Authority.

(b) The Biodiversity Enhancement Note and Addendum Note Dated 3/12/2020)

(c) The updated Site Layout Plan (drawing number P18- 1820_14, Rev K)

Notwithstanding the details included in the above documentations, the details shall include the details to be submitted including planting plans, specification of species, sizes, planting centres, number and percentage mix and details of seeding or turfing.

Ecological mitigation and enhancement measures shall be implemented in accordance with the detailed scheme.

Reason: In the interests of biodiversity in the area and to ensure that enhancements forming part of the proposal are approved and implemented.

16. The Solar PV Panels hereby permitted shall not be erected until details, on a suitably scaled plan, of the soft landscape works have been submitted to, and approved in writing by, the local planning authority. The details to be submitted shall include planting plans, including specifications of species, sizes, planting centres, number and percentage mix, and details of seeding or turfing. The development shall not be carried out other than in accordance with the approved details.

    Reason: In the interests of the character of the area and to ensure that the planting which forms part of the scheme is carried out.

17. All approved landscaping shall be carried out in the first planting and seeding season following the erection of the panels, and any plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species. All landscape works shall be carried out in accordance with the guidance contained in British Standards 8545: 2014 or any subsequent re-enactment.

    Reason: In the interests of the character of the area and to ensure that the planting which forms part of the scheme is carried out and maintained.

18. The Solar PV Panels hereby permitted shall not be erected until the full details of the works to the hedges including species adjacent to the residential properties, as shown on Figures 11 and 12 of the Glint and Glare Study Page Power Ltd v 4 dated 16th August 2019, have been submitted and approved in writing by the Local Planning Authority. The works shall then be carried out in the first planting season after the written approval is received and thereafter retained and maintained.

    Reason: In the interests of the character of the area.

19. The development hereby approved shall not be brought into use until the surface water drainage arrangements have been provided in full, in accordance with details which shall previously have been submitted to and approved in writing by the Local Planning Authority. The approved measures shall thereafter be retained for the life of the development.

    Reason: To ensure that the scheme is properly drained.

20. The development hereby permitted shall be carried out in accordance with the approved Flood Risk Assessment (FRA) report v5 prepared by Calibro, and issued on 30th November 2020, including the level for floodplain compensation outlined in paragraph 7.6.6 of the FRA. The mitigation measures shall be fully implemented in accordance with the timing/phasing arrangements detailed within the Flood Risk Assessment. The approved measures shall thereafter be retained for the life of the development.

    Reason: To avoid flood risk.

21. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site unless precise details of any lighting are first submitted to and approved in writing by the local planning authority. The lighting shall be installed and thereafter maintained in accordance with the approved details for the lifetime of the development.

    Reason: To avoid excessive lighting in the interests of the rural character of the area.

22. Prior to the commencement of development a Construction Environmental Management Plan (CEMP) shall be submitted to and approved in writing by the Local Planning Authority.

    The CEMP shall identify the steps and procedures that will be implemented to minimise the creation and impact of noise; vibration, dust and waste disposal resulting from the site preparation, groundwork and construction phases of the development; manage Heavy/Large Goods Vehicle access to the site. It shall include details of the hours of operation and measures to be employed to prevent the egress of mud, water and other detritus onto the public and any non-adopted highways.

    The following specific details should also be included in respect to highway safety:

    (a) The timetable of the works;

    (b) Daily hours of construction;

    (c) Any road closure;

(d) Hours during which delivery and construction traffic will travel to and from the site, with such vehicular movements being restricted to between 8:00am and 6pm Mondays to Fridays; 9.00am to 1.00pm Saturdays, and no such vehicular movements shall take place on Sundays and Bank/Public Holidays unless agreed by the Local Planning Authority in advance;

(e) The number and sizes of vehicles visiting the site in connection with the development and the frequency of their visits;

(f) The compound/location where all building materials, finished or unfinished products, parts, crates, packing materials and waste will be stored during the demolition and construction phases;

(g) Areas on-site where delivery vehicles and construction traffic will load or unload building materials, finished or unfinished products, parts, crates, packing materials and waste with confirmation that no construction traffic or delivery vehicles will park on the highway for loading or unloading purposes, unless prior written agreement has been given by the Local Planning Authority;

(h) The means of enclosure of the site during construction works;

(i) Details of wheel washing facilities and road sweeping measures with the respective obligations;

(j) The proposed route of all construction traffic exceeding 7.5 tonnes;

(k) Details of the amount and location of construction worker parking;

(l) Photographic evidence of the condition of adjacent public highway prior to commencement of any work.

Reason: To minimise all forms of pollution in the surrounding area.

23. No development shall take place until a Landscape and Ecological Management Plan (LEMP) is submitted and approved in writing by the Local Planning Authority. The LEMP shall provide details of the following:

a) Retained Ecological and Landscape features;

b) Proposed Habitat Ecological and Landscape Features;

c) Habitats and Landscape Management Measures;

d) Monitoring and Review of Plan.

Reason: In the interests of the appearance and ecology of the area.

24. Development of the battery storage compound shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP must prescribe for measures to facility safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement

battery cells both to and from the authorised development. The Local Planning Authority must consult with the Health and Safety Executive and the Devon Fire and Rescue Service before approving the BSMP. The BSMP must be implemented as approved.

Reason: To ensure that the battery storage compound is constructed and operated in a safe manner.

_____End of conditions_____

APPEARANCES

JBM SOLAR PROJECTS 2 LTD

Thea Osmund-Smith of Counsel, instructed by Paul Burrell, assisted by Odette Chalaby	
She called:	
Gail Stoten BA(Hons) MCIfA FSA	Heritage Executive Director, Pegasus Planning Group
Greg Triantafyllidis MSc MIET	Technical Director, JBM Solar
Andy Cook BA(Hons) MLD CMLI MIEMA CENV	Joint Head of the Environmental Planning Division, Pegasus Group
Paul Burrell BSc(Soc Sci) Hons DipUP MRTPI	Executive Director, Pegasus Group

DEVON CPRE and RESIDENTS GROUP (Rule 6 party)

Dr Philip Bratby BSc PhD ARCS M Nuc I	Trustee and energy spokesman Devon CPRE

MID DEVON DISTRICT COUNCIL (Conditions session only)

Angharad Williams BSc(Hons), MSc, MRTPI	Development Management Manager

INTERESTED PERSONS

Jan Jones	Local resident
Roland Smith	Local resident
Cora Winterson	Local resident

INQUIRY DOCUMENTS

Doc 1	Appellant's opening statement
Doc 2	Photos of solar farm (CPRE)
Doc 3	Viewpoint 7 photomontages (Appellant)
Doc 4	CPRE's closing statement
Doc 5	Appellant's closing statement

CORE DOCUMENTS

Core Documents are available at:
https://www.dropbox.com/sh/bujdo61by2mg5k5/AABkT_B8VmKEI7jimCvnKPD3a?dl=0

A – Planning Application		
A1		Application Form, including Ownership Certificates
A2	A	Covering Letter, prepared by Pegasus Group, dated 2nd October 2019
	B	Covering Letter, prepared by Pegasus Group, dated 7th December 2020
A3		Planning Statement, prepared by Pegasus Group, dated October 2019
A4		Design and Access Statement, prepared by Pegasus Group, dated October 2019
A5		Statement of Community Involvement, prepared by Pegasus Group, dated October 2019
A6		Construction Traffic Management Plan, prepared by Pegasus Group, dated October 2019
A7		Landscape and Visual Impact Assessment (LVIA), prepared by Pegasus Group, dated August 2019
A8		Arboricultural Impact Assessment, prepared by Barton Hyett Associates, dated August 2019
A9		Agricultural Land Classification Report, prepared by Davis Meade, dated October 2019
A10		Geophysical Survey Report, prepared by Magnitude Surveys, dated October 2019
A11		Glint and Glare Assessment, prepared by PagerPower, dated August 2019
A12	A	Heritage Statement, prepared by Pegasus Group, dated December 2019
	B	Heritage Statement Addendum, prepared by Pegasus Group, dated December 2019 and accompanying Covering Email from Simon Chamberlayne
A13		Interim Report on the Results of an Archaeological Trench Evaluation, prepared by AC Archaeology, dated November 2019
A14	A	Flood Risk Assessment and Drainage Strategy, prepared by Calibro, dated 21st July 2019
	B	Flood Risk Assessment Revision 04, prepared by Calibro, dated October 2019
	C	Flood Risk Assessment Revision 05, prepared by Calibro Consulting, dated November 2020
A15		Letter Responding to Environment Agency, prepared by Calibro, dated 2nd December 2019
A16		Technical Note – Response to DCC Objection: Langford Solar Farm

		(Rev01), prepared by Calibro, dated 2nd February 2021
A17		Ecological Impact Assessment, prepared by Grassroots Ecology, dated October 2019
A18	A	Biodiversity Management Plan (v2), prepared by Avian Ecology, dated January 2020
	B	Biodiversity Management Plan (v3), prepared by Avian Ecology, dated March 2020
	C	Biodiversity Management Plan (v4), prepared by Avian Ecology, dated July 2020
A19	A	Technical Note: Ecology – Response to Council Comments, dated 9th January 2020
	B	Technical Note 2: Ecology – Updated Response to Council Comments, dated 11th March 2020
A20		Addendum Note: Biodiversity Enhancements – New Scrape Enhancements, prepared by Avian Ecology, dated 3rd December 2020
A21		Breeding Bird Survey Report, prepared by Avian Ecology, dated July 2020
A22		Email from Simon Chamberlayne, Pegasus Group, dated 14th April 2020 including Officer Report Examples where solar farms have been approved within Flood Zones 3: • Stroud Local Planning Authority (Planning Ref. 14/1800/FUL) • Bristol City Council (Planning Ref. 15/00502/F) • Newark and Sherwood Council (Planning Ref. 19/01408/FULM)
A23		Site Selection Note, dated 1st March 2021
A24		Alternatives to Langford Solar Farm Site, dated 3rd March 2021
A25		Leaflet Distributed to Planning Committee by Applicant, dated March 2021
Drawings		
A26		Site Location Plan, drawing number P18- 1820_18, Rev B, prepared by Pegasus Group
A27	A	Proposed Layout Plan, drawing number P18- 1820_14, Rev E, prepared by Pegasus Group
	B	Proposed Site Layout Plan, drawing number P18-1820_14, Rev J
	C	Proposed Site Layout Plan, drawing number P18-1820_14, Rev J – With Field Numbers (no other changes)
A28		PV Layout, drawing number JBM1035-101, Rev J, prepared by JBM Solar
A28	A	PV Layout, drawing number JBM1035-101, Rev K, prepared by JBM Solar
A29		Side Elevation Layout, drawing number JBM1035-201, Rev A, prepared by JBM Solar
A30		Control Room Elevations, drawing number JBM1035-209, prepared

		by JBM Solar
A31		Customer Cabin Elevations, drawing number JBM1035-210, prepared by JBM Solar
A32		Central Inverter Elevations, drawing number JBM1035-203, prepared by JBM Solar
A33		Switchgear Elevations, drawing number JBM1035-204, prepared by JBM Solar
A34		Spare Parts Building Details, drawing number JBM1035-212, prepared by JBM Solar
A35		CCTV Pole Details, drawing number JBM1035-213, prepared by JBM Solar
A36		Deer Fence Details, drawing number JBM1035-214, Rev A, prepared by JBM Solar
A37		Road Cross Section, drawing number JBM1035-216, prepared by JBM Solar
A38		Cable Trench Cross Section, drawing number JBM1035-215, prepared by JBM Solar
A39		132kVa Compound, drawing number JBM1035-220, prepared by JBM Solar
A39	A	132kVa Compound, drawing number JBM1035-220, Rev A, prepared by JBM Solar
A40		Client Substation (in 132kVa Compound and Site), drawing number JBM1035-222, prepared by JBM Solar
A41		Client Substation Elevations, drawing number P2763-(02)-25-01-0, Rev 0, prepared by G2 Energy
A42		Battery Container Elevations, drawing number P2763-(03)-25-01-0, Rev 0, prepared by G2 Energy
A43		DNO Substation Elevations, drawing number P2763-(01)-25-01-0, Rev 0, prepared by G2 Energy
A44		DNO Substation Plan, drawing number P2763(01)-25-01-0, Rev 0, prepared by G2 Energy
A45		PCS Inverter Elevations, drawing number P2763-(04)-25-01-0, Rev 0, prepared by G2 Energy
A46		Langford Battery Park (Gantry Site Elevations), drawing number P2763-150-03, Rev 0, prepared by G2 Energy
Committee Reports		
A47	A	Committee Report 31st March 2021
	B	Committee Report Updates 31st March 2021
A48	A	Committee Report 14th July 2021
	B	Committee Report Updates 14th July 2021
A49		Committee Report 18th August 2021
A50	A	Committee Report 22nd September 2021
	B	Committee Report Updates 22nd September 2021

Decision Notice		
A51		Decision Notice, dated 23rd September 2021
B – Application Consultation Responses		
B1		Blackdown Hills AONB, dated 5th November 2019
B2	A	Brandich Town Council, dated 21st October 2019
	B	Brandich Town Council, dated 30th July 2020
B3		Clyst Hydon Parish Council, dated 14th November 2019
B4	A	Conservation Officer, dated 18th November 2019
	B	Conservation Officer, dated 21st January 2020
B5	A	Cullompton Town Council, dated 25th October 2019
	B	Cullompton Town Council, dated 17th July 2020
B6		Devon County Council Flood Risk Management, dated 4th February 2021
B7	A	Environment Agency, dated 30th October 2019
	B	Environment Agency, dated 31st January 2020
	C	Environment Agency, dated 21st December 2020
	D	Environment Agency, dated 22nd December 2020
B8		Exeter Airport, dated 21st October 2019
B9		Flood and Coastal Risk Engineer, dated 29th January 2021
B10		Highway Authority, dated 25th October 2019
B11		Historic England, dated 4th November 2019
B12	A	Historic Environment, dated 18th February 2021
	B	Historic Environment Team, dated 17th October 2019
	C	Historic Environment Team, dated 16th December 2019
B13		Kentisbeare Parish Council, dated 16th October 2019
B14	A	Lead Local Flood Authority, dated 23rd October 2019
	B	Lead Local Flood Authority, dated 30th October 2020
B15		Natural England, dated 18th October 2019
B16		Plymtree Parish Council, dated 7th November 2019
B17		Public Health, dated 10th October 2019.
B18		RSPB, dated 15th October 2019
B19		Willand Parish Council, dated 18th November 2019
B20	A	CPRE, dated 28th October 2019
	B	CPRE, dated 14th November 2019
	C	CPRE, dated 7th January 2020
	D	CPRE, dated 21st May 2020
	E	CPRE, dated 10th May 2021
	F	CPRE, email dated 24th May 2021
B21		David Wilson Partnership, dated November 2019

C – Planning Appeal		
C1		Planning Appeal Form dated 17th February 2022.
Statements of Case		
C2		Appellant
C3	A	CPRE
	B	CPRE Addendum
C4		LPA Statement of Case
C4 – A		LPA Statement of Case, updated 12th May 2022
Additional Documents Submitted as part of Appeal		
C5		Additional Planting Inset Plan, drawing number P18-1820_24, dated 2nd February 2022.
C6		Biodiversity Net Gain Metric 3.0 Report and Calculation Tool Spreadsheet, prepared by Avian Ecology, dated 9th February 2022
C7		Updated Agricultural Land Classification Report, prepared by Amet Property, dated February 2022
C8		Assessment of Impact on Agricultural Land and Soils, prepared by Amet Property, dated February 2022
Statements of Common Ground		
C9		Statement of Common Ground with LPA
C10		Statement of Common Ground with CPRE.
Proofs of Evidence		
C11	A	Appellant Planning Proof of Evidence
	B	Appellant Landscape Proof of Evidence
	C	Appellant Heritage Proof of Evidence
	D	Appellant Technical Proof of Evidence
C12		CPRE Proof
Conditions		
C13		Draft List of Conditions
Correspondence		
C14		Email from Angharad Williams, dated 31st March 2022, confirming that the LPA concede reasons for refusal
C15		Email from Angharad Williams, dated 27th April 2022 on the Council's changing position
Rebuttals		
C16		Appellant's Rebuttal to CPRE

D - National Planning Policy, Guidance and Legislation		
D1		National Planning Policy Framework (July 2021)
D2		National Planning Practice Guide *(Electronic Version only)*
D3	A	Overarching National Policy Statement for Energy (EN-1) (July 2011)
	B	Draft National Policy Statement for Energy (EN-1) (September 2021)
D4	A	National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)
	B	Draft National Policy Statement for Renewable Energy Infrastructure

		(EN-3)
D5		UK Government Solar Strategy 2014
D6		Written Ministerial Statement on Solar Energy: protecting the local and global environment made on 25 March 2015
D7		Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15 (February 2021)
D8		Climate Change Act 2008
D9		Climate Change Act (2050 target amendment) Order 2019
D10		Clean Growth Strategy published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017
D11		UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019
D12		Energy White Paper: Powering our Net Zero Future published in December 2020
D13		UK Government press release of acceleration of carbon reduction to 2035, dated April 2021
D14		The latest version of the 'Digest of United Kingdom Energy Statistics', July 2021
D15		UK Energy Statistics Press Release published by the Department for Business, Energy & Industrial Strategy, June 2020
D16		'Achieving Net Zero' published by the National Audit Office in December 2020
D17		Net Zero Strategy: Build Back Greener, dated October 2021.
D18		British Energy Security Strategy, updated 7th April 2022
D19		2021 UK Greenhouse Gas Emissions, Provisional Figures, published by Department for Business, Energy and Industrial Strategy, dated 31st March 2022
D20		Subnational Electricity Consumption, Great Britain, 2005-2020, published by the Department for Business, Energy & Industrial Strategy, dated 22nd January 2013
E – Local Planning Policy, Guidance and Documents		
E1		Mid Devon Local Plan 2013-2033
E2		Cullompton Neighbourhood Plan 2020-2033
E3		Mid Devon District Council's decision to become part of the Devon Climate Emergency Response Group, and reference to Devon County Council's declaration of a climate change emergency in May 2019.
E4		An Assessment of the Landscape Sensitivity to Onshore Wind Energy and Large Scale Photovoltaic Development in Mid Devon District, dated October 2013
E5		Landscape Sensitivity for solar PV development SPD supplementary planning document (2016)
E6	A	Devon Landscape Character Assessment – Mid Devon Character Areas
	B	Devon Landscape Character Assessment – East Devon Character

		Areas
E7		Mid Devon Landscape Character Assessment (October 2011)
F – Landscape		
F1	Guidelines for Landscape and Visual Impact Assessment 3rd Edition	
F2	Landscape Institute guidance on representative viewpoints and visualisations	
F3	National Character Area Profile: 148 Devon Redlands (2013)	
G – Heritage		
G1	Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment	
G2	Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition)	
G3	Conservation Principles: Polices and Guidance for the Sustainable Management of the Historic Environment	
G4	Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12	
H – Technical Information & Other Solar Schemes		
H1	McMicken Battery Energy Storage System Event. Technical Analysis and Recommendations. Arizona Public Service, dated July 2020.	
H2	Hambleton District Council. Scruton Solar. Agricultural Land Classification, dated November 2021	
H3	Amet Property. Agricultural Land Classification. Land at Leeming Bar, dated December 2020	
H4	Merseyside Fire & Rescue Service. Incident Investigation Team, dated September 2020	
H5	Merseyside Fire & Rescue Service. Significant Incident Report, dated September 2020	
H6	Hazardous Substances Potentially Generated in "loss of control" accidents in Li-on Battery Energy Storage Systems (BESS). Euring Dr Edmund Fordham MA PhD CPhys CEng FinstP, Professor Sir David Melville CBE CPhys FinstP, dated March 2022	
H7	Safety of Grid Scale Lithium-ion Battery Energy Storage Systems. Euring Dr Edmund Fordham, Fellow of Institute of Physics, Dr Wade Allison MA DPhil Professor of Physics Fellow of Keble College, Oxford, Professor Sir David Melville CBE FinstP Professor of Physics Former Vice Chancellor University of Kent, dated June 2021	
H8	Life Prediction Model for Grid Connected Li-on Battery Energy Storage Kandler Smith, Aron Saxon, Matthew Keyser & Blake Lundstrom National Renewable Energy Laboratory. Ziwei Cao and Albert Roc SunPower Corp, dated May 2017	
H9	Solar Energy UK Briefing, Everything Under the Sun, The Facts About Solar Energy, dated March 2022	
H10	The evidence is clear: the time for action is now, article published by the IPCC, dated 4th April 2022	
H11	Combined Capacity Register	
H12	Practical Guide to Realising the Biodiversity Potential of Solar Farms, prepared by Wychwood Biodiversity and Naturesave Insurance, dated April 2022.	

H13		The Natural Capital Value of Solar (2019) Solar Trade Association
H14		Opportunities to Enhance Pollinator Biodiversity in Solar Parks, prepared by A Armstrong, dated 2021
H15		Natural Capital Best Practice Guidance, prepared by Solar Energy UK
I – Relevant Decisions, Legal Judgements and Officer Reports		
I1		Catesby Estates ltd v. Steer, EWCA Civ 1697, 2018
I2		Bedford Council v Secretary of State and Nuon Ltd [2013] EWHC 2847 (Admin)
I3		Palmer v Herefordshire Council Anr, EWCA Civ 1061 [2016].
I4	A	Examining Authority's Report of Findings and Conclusions – Cleve Hill Solar Park (reference: EN010085)
	B	Application for the Cleve Hill Solar Park Order – Decision Letter (reference: EN010085)
I5		R. (on the application of William Corbett) v The Cornwall Council [2020] EWCA Civ 508.
I6		Land North of Halloughton, Southwell, Nottinghamshire (Appeal Reference: APP/B3030/W/21/3279533)
I7		Barnwell Manor Wind Energy Ltd v East Northamptonshire District Council, English Heritage, Natural Trust, Secretary of State [2014] EWCA Civ 137
I8		Forge Field Society v Sevenoaks District Council [2014] EWHC 1895 (Admin)
I9		Mordue v Secretary of State and South Northamptonshire Council [2015] EWCA Civ 1243.
I10		S/19/1097 – Corner Copse, Swindon Borough, 49.9 MW Collocated Solar and Storage Site
I11		19/04321/STPLF – Scurf Dyke, East Riding of Yorkshire, 49.9 MW Collocated Solar and Storage Site
I12		TWC/2020/0851 – Myttons, Telford & Wrekin / Shropshire, 49.9 MW Collocated Solar and Storage Site
I13		21/00552/FUL – Bunker's Hill, Hart District Council, 49.9 MW Collocated Solar and Storage Site
I14		21/00259/FUL – Claydon, Tewkesbury Borough, 49.9 MW Collocated Solar and Storage Site
I15		20/06840/FUL – Wick Farm, Wiltshire, 49.9 MW Collocated Solar and Storage Site
I16		21/02448/FUL – Eastfields, Stratford-on-Avon DC, 25 MW Collocated Solar and Storage Site
I17		21/0465/FUL – Moreton Lane, Stroud Borough Council, 49.9 MW Collocated Solar and Storage Site
I18		20/03528/FUL – Minety, Wiltshire, 49.9 MW Collocated Solar and Storage Site
I19		21/01363/FUL – Doverdale, Wychavon District, 49.9 MW Collocated Solar and Storage Site
I20		Appeal Decision: APP/Z5630/W/18/3205282 Land opposite Chessington Sub-station, Fairoak Lane, Chessington

Department for Levelling Up, Housing & Communities

www.gov.uk/dluhc

RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand,London,WC2 2LL (0207 947 6000).

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.

The Planning Inspectorate

Appeal Decision

Hearing held on 7 February 2023

Site visit made on 7 February 2023

by Mr M Brooker DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 25 May 2023

Appeal Ref: APP/X1355/W/22/3308881
Agricultural land to the south of Murton and north of South Hetton

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Aura Power against the decision of Durham County Council.
- The application Ref DM/21/03420/FPA, dated 29 September 2021, was refused by notice dated 19 July 2022.
- The development proposed is the installation and operation of a ground mounted photovoltaic solar farm, inclusive of solar arrays, transformers, substation, landscaping, fencing, internal access tracks, access, CCTV and other associated works, for the purpose of generating and exporting renewable energy to the electricity grid network.

Decision

1. The appeal is allowed and planning permission is granted for the installation and operation of a ground mounted photovoltaic solar farm, inclusive of solar arrays, transformers, substation, landscaping, fencing, internal access tracks, access, CCTV and other associated works, for the purpose of generating and exporting renewable energy to the electricity grid network at Agricultural land to the south of Murton and north of South Hetton, SR7 9SF in accordance with the terms of the application, Ref DM/21/03420/FPA, dated 29 September 2021, and the plans submitted with it, subject to the conditions set out in the attached schedule.

Preliminary Matters

2. The parties have submitted an agreed Statement of Common Ground (SoCG) identifying areas of agreement and continued disagreement. A list of conditions, including pre-commencement conditions, is also included.

3. As agreed at the hearing, an agreement under section 39 of the Wildlife and Countryside Act 1981 to manage and maintain the land in accordance with the provisions of the Biodiversity Scheme and Management Plan for the 35-year life of the proposed development and restoration of the land afterwards, has been submitted.

Main Issue

4. The main issues are the landscape and visual effects of the scheme and whether there are other material considerations that would outweigh those effect.

Reasons

5. The Decision Notice refers to the National Planning Policy Framework (the Framework) and three policies of the County Durham Plan adopted 2020 (CDP). Policy 10 of the CDP restricts development in the countryside unless allowed for by specific policies in the plan, renewable energy projects are specifically referred in the relevant footnote to the policy, the policy also details general design principles for all development in the Countryside. Policy 33 of the CDP details that 'Renewable and low carbon energy development in appropriate locations will be supported' and that 'significant weight will be given to the achievement of wider social, environmental and economic benefits'.

6. Policy 39 of the CDP supports new development where it does 'not cause unacceptable harm to the character, quality or distinctiveness of the landscape' and refers to incorporating appropriate mitigation measures and having regard to the County Durham Landscape Character Assessment and County Durham Landscape Strategy contributing to the conservation or enhancement of the local landscape.

7. Turning to the Framework, Paragraph 174 refers to the intrinsic character and beauty of the countryside should be recognised. Specific reference is made to the protection of valued landscapes. The Framework does not define what constitutes a valued landscape. However, given that all landscapes are valued by someone at some time, the term, valued landscape must, in this context, refer to a landscape that is of greater than just open countryside.

8. The SoCG notes that 'The Appeal Site is not covered by any specific national or local landscape designations and there are no ecological designations on the Appeal Site, or on land adjoining' and that, referencing the County Durham Landscape Value Assessment (2019), the appeal site is located within an area with no landscape attribute of elevated value. The SoCG goes on to state that it is agreed between the parties that the appeal site is not considered as forming part of a valued landscape. I find no substantive reason to conclude otherwise given these facts.

9. The appeal site is described by the Council as being 'located on broad undulating open farmland.[1]' Furthermore, I saw at the site visit that there are few trees except for those located in the hedgerows found within and to the edge of the site. The area is punctuated by development including overhead powerlines, electricity substations and the settlements of Murton and South Hetton, the appeal site forming a gap between the two settlements. These features enclose the otherwise open site.

10. The appeal scheme would, in the form of the solar panels and associated infrastructure, introduce a significant element of development that would occupy the previously open farmland.

11. Paragraph 8.4 the SoCG details that 'It is agreed that the proposals would result in a high level of change to the character and appearance of the Appeal Site which would result in significant adverse effects. These effects would be localised and limited to the Appeal Site itself and immediate surrounding area'.

[1] PROOF OF EVIDENCE ON LANDSCAPE CHARACTER AND VISUAL AMENITY Stephen Laws Durham County Council

Based on the evidence before me, the discussions at the hearing and my observations at the site visit I agree.

12. The Appellant details that 'it would be impossible to site a solar array of this scale in the UK without significantly affecting the character of at least the site and immediate surroundings'[2], this statement is accepted by the Council as being 'generally correct'[3].

13. The appeal scheme includes substantive planting in the form of trees and hedgerows to the boundaries of the site and adjacent to the PRoWs. Such works are incorporated within a Biodiversity Management Plan. The proposed additional planting would increase screening of the appeal scheme and would substantially enclose and divide the site.

14. The submitted plans show and the SoCG details that "there are several Public Rights of Way (PRoW) within and around the Appeal Site. Footpaths 8 and 9 (Murton Parish) pass through the Appeal Site from west to east. These join Footpath No. 11 (Murton Parish), which runs from north to south through the Appeal Site. Bridleway Number 7 (Murton Parish) runs along the western boundary of the Appeal Site." I note the strong feelings eloquently expressed both at the hearing and in writing by local residents and the Parish Council about their attachment, active use of and value that they place on the appeal site. Evidence at the Hearing detailed that these PRoW are well used by local residents, and this was confirmed by my observations at the site visit.

15. The submitted plans show that the PRoWs would be retained in the appeal scheme, often of an enhanced width, but bound by new and enhanced hedgerows. The experience of a user of a PRoW through the site is therefore considerably changed from open to enclosed.

16. New hedgerows and tree planting would be normally considered as an enhancement to the local area as referred to by the County Durham Landscape Strategy. However, the Council asserts that the proposed planting has little regard to the existing or historic landscape pattern and as such simply screens the proposals from public footpaths and settlement.

17. It was discussed at the hearing that the appeal site and local area may at one time have been an open moor like area with views from the higher parts of the site to the surrounding area, including towards the sea and former pit sites that are important to the local community. The Council also acknowledged that pre-1946 there may have been more hedgerows on the site. On the basis of the evidence before me I am satisfied that the primary purpose of the proposed planting is to screen the proposed development and in doing so would reduce these views and divide the land into smaller compartments without reference to the historic landscape pattern, eroding the character of the area.

18. I am therefore satisfied that, with regards Policy 33 of the CDP the appeal site is an appropriate location for renewable energy development but, with regard Policies 10 and 39 of the CDP, there would nonetheless be significant adverse changes in the character of the landscape, reducing as the planting becomes established and ultimately limited to the 35-year life of the proposal with the exception of the planting that would remain. In this regard the appeal scheme is contrary to CDP Policies 10 and 39.

[2] Hawthorn Pit Solar Farm Landscape and Visual Assessment September 2021
[3] PROOF OF EVIDENCE ON LANDSCAPE CHARACTER AND VISUAL AMENITY Stephen Laws Durham County Council

Other considerations

Renewable energy generation

19. The Government recognises that climate change is happening through increased greenhouse gas emissions, and that action is required to mitigate its effects. One action being promoted is a significant boost to the deployment of renewable energy generation. The Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. The British Energy Security Strategy 2002 recognises the contribution that ground mounted solar will make to future energy needs.

20. A material consideration in the determination of planning proposals are National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. Whilst NPSs EN-1 and EN-3 do not specifically refer to solar generated power they reiterate the urgent need for renewable energy electricity projects to be brought forward. Draft updates to NPSs EN-1 and 3 identify that, as part of the strategy for the low-cost decarbonisation of the energy sector, solar farming provides a clean, low cost and secure source of electricity.

21. The December 2020 Energy White Paper (WP) reiterates that setting a Net Zero target is not enough, it must be achieved through, amongst other things, a change how energy is produced. The WP sets out that solar is one of the key building blocks of the future generation mix. In October 2021, the Government published the Nett Zero Strategy: Build Back Greener where under Key Policies it explains that subject to security of supply, the UK will be powered entirely by clean electricity through, amongst other things, the accelerated deployment of low-cost renewable generation such as solar.

22. The proposed development would have a capacity of some 49.9Mw, generating a significant amount of electricity from what is considered to be a clean, renewable source. This would provide for an increase in local 'renewable energy generation in the County by approximately 9%' and meet the energy needs of approximately 17,305 homes[4]. I understand that the site benefits from a beneficial grid connection, the absence of which can delay or prevent development. As such, the scheme could make an early and significant contribution to the objective of achieving the statutory Net Zero target, this is a material consideration and in accordance with Policy 33 of the CDP I afford it significant weight.

Ecology and Biodiversity

23. It is not at dispute between the parties that the proposed mitigation planting would increase the extent of green infrastructure and biodiversity across the site over the long term.

24. The SoCG states that in accordance with the details and assessment submitted with the planning application, the proposed development would deliver

[4] Figures as detailed in the appellant's Statement of Case – September 2022

biodiversity net gains in the form of habitat (124.23% increase) and hedgerow (136.83%), and these gains can be secured by conditions and other Agreements between the developer/owner and LPA. While I have been presented with various figures in this regard (119% and 235%), it is clear that the appeal scheme would provide significant ecology and biodiversity net gains.

25. Furthermore, a Biodiversity Management Plan has been developed for the proposals and can be secured by a Section 39 agreement. On this basis I am satisfied that the appeal scheme would provide considerable Ecology and Biodiversity gains for the site, and in accordance with Policy 33 of the CDP I afford this matter significant weight.

Planning Balance and Conclusion

26. A material consideration is the time limited nature of the proposal. I acknowledge that 35 years is a long time and materially longer than the 25 years that many earlier renewable energy schemes were limited to. However, I am aware that technical advances have improved the longevity of solar panels. Accordingly, given the contribution the Government expects solar generated electricity energy to make to the national energy supply, it would be unreasonable to limit the life of a solar farm to an arbitrary figure based on older and less efficient equipment.

27. That said, I recognise that the proposed 35-year life of the solar farm is significantly more than a generation and I accept many older residents of the area will not live long enough to see the site decommissioned. Thus, in coming to my conclusion I have had due regard to these factors and concerns.

28. Both national and policies of the CDP recognise that renewable energy developments may result in some landscape and visual impact harm. However, both adopt a positive approach indicating that development can be approved where the harm is outweighed by the benefits. This is a planning judgement. Here, through a combination of topography, existing features and landscape mitigation, the adverse effect on landscape character and visual impact would be significant but localised.

29. Moreover, as proposed planting matures adverse effects would be progressively mitigated and once decommissioned, residual adverse landscape effects would be limited to the retained and by this point established planting, these effects are substantively off set by the clear biodiversity and ecology gains that will result from the planting.

30. On balance the scheme would leave a landscape with enhanced biodiversity and ecology consistent with the objectives of development plan policy, in particular Policy 33 of the CDP. In these circumstances, whilst there would be some localised harm to landscape character in conflict with the relevant development plan policies, the imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the harm I have identified.

Conditions

31. I have considered the suggested conditions in light of the national Planning Practice Guidance and the use of planning conditions and Paragraph 56 of the Framework. The SoCG details a list of planning conditions, including pre-

commencement conditions, to be attached to any planning permission resulting from the appeal.

32. The solar farm is sought for a period of 35 years. A condition is therefore necessary to manage the life of the permission and the extent of the operation period and to provide for removal of the solar farm when the permission expires (1 and 2). In the interests of certainty, a condition listing the approved plans is imposed (3).

33. In the interests of highway safety and the environment a condition requiring the submission and adherence to a construction management plan (4) is necessary and reasonable. Similarly in the interests of the environment and highway safety conditions relating to the access track (5 and 6) are necessary.

34. In the interests of protecting living conditions a condition specifying construction hours (7) and noise (8) are reasonable and necessary. In the interests of water management and the flood mitigation, a condition relating to surface water management (9) is reasonable and necessary.

35. In the interests of the appearance of the area, conditions relating to, the finish of the solar panels, details of a landscaping scheme footpath infrastructure (10 11 and 12) are reasonable and necessary.

36. The site potentially contains archaeological remains and conditions to provide for appropriate site works and recording (13 and 14) are reasonable and necessary.

37. A condition requiring the submission the decommissioning and restoration of the site, in the event that the site is inoperative for a period of 6 months (15) is reasonable and necessary.

38. I have not included a condition requiring the developer to notify the council of the commencement of development because this is not necessary. I have incorporated the condition requiring the submission of details regarding vehicle washing facilities into the construction management plan.

Final conclusion

39. For the reasons set out above, the appeal is allowed.

Mr M Brooker

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Thea Osmund-Smith	No5 Chambers
George Wilyman BA (Hons) MA MRTPI	Aura Power Developments Ltd
Andrew Ross BSc (Hons), MA, MRTPI	Turley
Joanna Ede BA (Hons), MA, DipLD, CMLI	Turley
George Wilyman BA (Hons), MA, MTRPI	Aura Power Developments Ltd
Chloe Hood BA (Hons)	Aura Power Developments Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Stephen Laws	for Durham County Council
Chris Shields	Durham County Council

INTERESTED PARTIES:

Brian Brown	Murton Residents Action Group
Hazel Napier	Murton Parish Council
Nikola Honnor	Murton Parish Council
Robert Adcock-Forster	Murton Parish Council
Mrs Beatrice Hollins	Local Resident
Cllr Julie Griffiths	Durham County Council
Mr Gerard Mann	Local Resident

Schedule of Conditions

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

2. This consent is granted for a period of 35 years from the date of energisation of the Solar Farm to when the buildings, structures and infrastructure works hereby approved shall be removed and the land restored to its former condition in accordance with details to be submitted to and approved by the Local Planning Authority. The approved details shall then be implemented in full within 6 months of approval of those details.

3. The development hereby approved shall be carried out in strict accordance with the following approved plans:
   - Site Location Plan (Drawing No. Figure 1);
   - Site Layout Plan (Drawing No. 0016.M4.001.0.S);
   - Indicative Transformer (Drawing No. 0016.M4.014.1.A);
   - Customer Substation-Compound Layout Plan (Drawing No. Figure 5A);
   - Customer Substation-Compound Layout Elevation (Drawing No. Figure 5B);
   - Indicative Spare Parts Container (Drawing No. 0016.M4.021.3.A);
   - Typical Cable Trench Cross Section (Drawing No. 0016.E4.017.3.A);
   - Indicative CCTV (Drawing No. 0016.M4.018.4.B);
   - Indicative Track Cross Section (Drawing No. 0016.M4.018.4.B);
   - Site Entrance and Visibility Splays Overview (Drawing No. 2296.M4.038.0);
   - Indicative Hedge Gate (Drawing No. 9400.M2.037.1.0);
   - Gate and Deer Fence (Drawing No. 2259.M4.016.3.0); and
   - Indicative Footpath Measures (Drawing No. AP.13).

4. No development shall take place until a Construction Management Plan has been submitted to and approved in writing by the Local Planning Authority. The Construction Management Plan shall include as a minimum but not necessarily be restricted to the following: – A Dust Action Plan including measures to control the emission of dust and dirt during construction taking into account relevant guidance such as the Institute of Air Quality Management "Guidance on the assessment of dust from demolition and construction" February 2014;
   - Details of methods and means of noise reduction, or controlling noise impacts during construction;
   - Where construction involves penetrative piling, details of methods for piling of foundations including measures to suppress any associated noise and vibration;
   - Details of whether there will be any crushing/screening of materials on site using a mobile crusher/screen and the measures that will be taken to minimise any environmental impact.
   - Details of measures to prevent mud and other such material migrating onto the highway from construction vehicles;
   - Designation, layout and design of construction access and egress points;
   - Details for the provision of directional signage (on and off site);
   - Details of contractors' compounds, materials storage and other storage arrangements, including cranes and plant, equipment and related temporary infrastructure;

- Details of provision for all site operations for the loading and unloading of plant, machinery and materials;
- Details of provision for all site operations, including visitors and construction vehicles for parking and turning within the site during the construction period;
- Routing agreements for construction traffic;
- Details of wheel and vehicle washing facilities.
- Details of the erection and maintenance of security hoarding;
- Details of construction and decommissioning working hours;
- Waste audit and scheme for waste minimisation and recycling/disposing of waste resulting from demolition and construction works; and
- Detail of measures for liaison with the local community and procedures to deal with any complaints received.

The Construction Management Plan shall have regard to BS 5228 "Noise and Vibration Control on Construction and Open Sites" during the planning and implementation of site activities and operations.

The approved Construction Management Plan shall also be adhered to throughout the construction period and the approved measures shall be retained for the duration of the construction works.

5. Prior to the commencement of development a scheme shall be submitted to the Local Planning Authority for the improvement of the access track between South Hetton and the site, as shown on Drawing TMP Figure 1 'Indicative Route to Site' for approval in writing, unless an alternative access route is secured. The improvements to the access track shall be carried out prior to the first delivery of photovoltaic panels to the site.

6. Prior to the commencement of development a scheme for surveying the pre-commencement and post-completion condition of the route to the site shown on Drawing TMP Figure 1 'Indicative Route to Site' shall be submitted to the Local Planning Authority for approval in writing. Any remediation works required to repair damage caused by vehicles associated with the approved development shall be carried out within 12 months of the development being brought into use.

7. Construction operations shall only take place within the following hours:

    - 07.30 to 19.00 Monday to Friday
    - 07.30 to 12.00 Saturday

    No construction operations including the maintenance of vehicles and plant shall take place outside of these hours or at any time on Bank, or other Public Holidays, save in cases of emergency when life, limb, or property are in danger. The Local Planning Authority shall be notified as soon as is practicable after the occurrence of any such operations or working.

8. The rating level of noise emitted from the solar farm on the site shall not exceed the modelled noise levels confirmed within the Ion Acoustics Noise Assessment for Planning, dated 27 September 2021. On written request by the Local Planning Authority the operator shall, within 28 days, produce a report to demonstrate adherence with the above rating level.

9. The development shall be carried out in accordance with the submitted flood risk assessment ' Hawthorn Pit Solar Farm FRA and Outline Drainage Strategy' September 2021 . The mitigation measures detailed with the flood risk assessment (for example implementation of swales) shall be fully implemented prior to commencement of operations of the development being brought into use. These measures shall be retained and maintained thereafter throughout the lifetime of the development.

10. Prior to the commencement of development precise details of the colours and finishes for all buildings, fixed plant and machinery shall be agreed in writing with the Local Planning Authority and the development carried out in accordance with agreed details.

11. Prior to the commencement of development, a landscaping scheme shall be submitted for approval in writing. This scheme shall include provision for long term management for trees within the site boundary. The approved landscaping scheme shall be implemented on site in the first planting season following the development being brought into use. Any tree or shrub which may die, be removed or become seriously damaged within a period of 5 years from the first implementation of the approved landscaping scheme shall be replaced in the first available planting season thereafter.

12. Prior to the operation of the development, designs of footpath infrastructure measures in accordance with the Indicative Footpath Measures (Drawing No. AP.13) drawing shall be submitted to and agreed in writing with the Local Planning Authority. Within six months of the first operation of the solar farm, the agreed footpath measures will be implemented and retained for the lifetime of the development.

13. Prior to the commencement of development, a Written Scheme of Investigation setting out a phased programme of archaeological work in accordance with 'Standards For All Archaeological Work In County Durham And Darlington' shall be submitted to the Local Planning Authority for approval in writing. The programme of archaeological work will then be carried out in accordance with the approved Written Scheme of Investigation.

14. No part of an individual phase of the development as set out in the agreed programme of archaeological works shall be occupied until the post investigation assessment has been completed in accordance with the approved Written Scheme of Investigation. The provision made for analysis, publication and dissemination of results, and archive deposition, should be confirmed in writing to, and approved by, the Local Planning Authority.

15. In the event that the solar farm is inoperative for a period of 6 months or longer, a scheme for the restoration of the site, including the buildings, structures and infrastructure works, dismantling and removal of all elements, shall be submitted to and be approved in writing by the Local Planning Authority not later than 12 months following the last export of electricity from the site. The approved scheme shall be carried out and completed within 6 months of approval of the scheme.

End of Schedule

The Planning Inspectorate

Appeal Decision

Inquiry Held on 13-16 & 20-22 December 2022
Site visit made on 22 December 2022

by Richard McCoy BSc MSc DipTP MRTPI IHBC

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 13 February 2023

Appeal Ref: APP/H1705/W/22/3304561
Minchens Lane, Bramley, Hampshire

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Bramley Solar Ltd against the decision of Basingstoke & Deane Borough Council.
- The application Ref 20/03403/FUL, dated 30 November 2020, was refused by notice dated 21 April 2022.
- The development proposed is the installation of renewable led energy generating station, comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure, landscaping and biodiversity enhancements including a proposed Forest School, associated car parking and Nature Area.

Decision

1. The appeal is allowed and planning permission is granted for the installation of renewable led energy generating station, comprising ground-mounted photovoltaic solar arrays, battery-based electricity storage containers together with substation, inverter/ transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure and landscaping biodiversity enhancements and Nature Area at Minchens Lane, Bramley, Hampshire in accordance with the terms of the application, Ref 20/03403/FUL, dated 30 November 2020, subject to the conditions set out in the attached annex.

Procedural matters

2. Under the Town and Country Planning (Environmental Impact Assessment) Regulations 2015, the application as made to the local planning authority (LPA) was an Environmental Impact Assessment (EIA) application, accompanied by an Environmental Statement (ES)[1]. In accordance with Article 13 of the Town and Country Planning (Development Management Procedure) (England) Order 2015 (DMP), the application was publicised by display of a site notice, by way of notice in a newspaper circulating in the locality and by the publication of information on a website maintained by the LPA. The publicity and neighbour notification publicised both the original application submission and the subsequent notifiable amendment to the application (June 2021).

[1] Core Document 28

3. Further amendments to the application received in December 2021 proposed no new significant environmental impacts such that the original ES remained adequate to assess the significant effects of the development on the environment. The full ES, which comprises both the original and the addendums, was subject to formal consultation. The conclusions of the ES are noted and it is considered that the EIA process has been undertaken appropriately.

4. The Bramley Solar Farm Residents Group (BSFRG) was granted Rule 6(6) status under the provisions of the Inquiries Procedure Rules.

5. A virtual Case Management Conference (CMC) was held on 27 October 2022 to discuss arrangements for the Inquiry. The CMC was attended by the appellant, the Council and BSFRG.

6. At the CMC, the appellant confirmed that planning permission was being sought for, *the installation of renewable led energy generating station, comprising ground-mounted photovoltaic solar arrays, battery-based electricity storage containers together with substation, inverter/transformer stations, site accesses, internal access tracks, security measures, access gates, other ancillary infrastructure and landscaping biodiversity enhancements and Nature Area,* rather than the scheme as determined by the Council and set out in the Header above. To that end, it was requested that amended plans ref. Landscape and Ecology Enhancement Plan 7520_012_Rev K, Landscape Mitigation Plan 7520_014_Rev G, Planting Schedule (1 of 2) 7520_020 dated July 2022, Planting Schedule (2 of 2) 7520_021 dated July 2022, Landscape and Ecological Management Plan Version 2.3 August 2022 and Proposed Site Plan BF2.0 Revision 20 B, be substituted for the relevant plans originally submitted.

7. The substantive changes introduced by the amendments comprise a small reduction in the number of proposed solar panels to increase offset distances from public rights of way, bolstering of the planting to enhance screening, and re-purposing of the proposed Forest School to an enlarged nature area. The Council did not object to the revisions and advised that it considers that primary consideration should be given to the amended scheme as it has been consulted on and discussed at the Inquiry and is an improvement on the submitted proposal.

8. As noted above, at the time of submission to the LPA, the application proposal was subject to publication under the DMP. With regard to the revised proposal under this appeal, I heard that the appellant carried out a further consultation exercise comprising letters, site notices, a website hosting scheme details along with a copy being placed at the Council offices in August 2022. Comments were invited before 30 September 2022. An amendment to the ES[2] in respect of the proposed revisions was undertaken, dated August 2022, and its conclusions are noted.

9. Given this further consultation on the revised scheme under this appeal, and as the modifications are minor and go towards addressing the reasons for refusal, I am satisfied that dealing with the appeal on the basis of the amended plans

[2] Core Document 85

would not prejudice the interests of any party, taking account of the Wheatcroft[3] judgment. I have dealt with the appeal on this basis.

10. It was confirmed at the Inquiry, as set out in the Heritage Statement of Common Ground[4] (HSoCG), that the Council is no longer pursuing a breach of Policy EM11 of the Basingstoke and Deane Local Plan 2011-2029 (LP) in respect of archaeological impact and that it agrees with the appellant that less than substantial harm would be caused to the significance of the Grade II listed buildings at Minchin's Farmhouse, Lower Farm and Old Meadow, and to the Silchester Conservation Area. In addition, the Council confirmed that it considers that no harm would arise to the significance of the Scheduled Late Iron Age oppidum and Roman town of Calleva Atrebatum and associated features from the proposal as a development within their settings, that the known archaeological remains within the appeal site are not demonstrably of equivalent status to a scheduled monument and that potential harm to the significance of any archaeological remains can be mitigated to an acceptable level, secured by means of a suitably worded condition attached to any grant of planning permission.

11. I have dealt with the appeal on this basis although having regard to the concerns raised in representations from the BSFRG and other interested parties, I go on to deal with a number of these issues below under Main Issues and Other Matters.

Main Issues

12. I consider the main issues to be the effect of the proposal on the character and appearance of the surrounding area, and the effect of the development proposed on the significance of nearby heritage assets, including below ground archaeology, the Scheduled *Late Iron Age oppidum and Roman town of Calleva Atrebatum and associated features,* the Grade II Listed Minchens Farmhouse and Buildings at Lower Farm and Old Meadows, and the Silchester Conservation Area.

Reasons

Background

13. The appeal site extends to around 85ha spread across 6 no. irregularly shaped fields. Situated between Bramley and the hamlet of Three Ashes, it stands around 1.5km from both Silchester and Little London to the northwest and west respectively. Currently used as arable farmland, the fields are mainly enclosed by hedgerows, hedgerow trees, woodland, and woodland belts, and are intersected by areas of woodland, treelines and watercourses. In addition, part of the site is traversed by overhead power lines which extend from the nearby Bramley Substation. Also adjacent to the site are Bramley Frith Wood (Ancient Woodland within which is located Bramley substation), Davnage Copse, Withy Copse (Ancient Woodland) and Little Holdens Copse (Ancient Woodland).

14. The site contains undulating land, the highest point being within Field 6. A number of public rights of way (PRoW) cross the site with PRoW 15 (which forms part of the Silchester Trail and the Camino Inglés to Santiago pilgrimage route) extending northwest to southeast through Fields 1 and 2 to connect with

[3] Bernard Wheatcroft Ltd v SSE [1982] HC
[4] Core Document 217

Bridleway No 7 (part of the Brenda Parker Way) which in turn extends along the southern boundary of Field 2. PRoW 16 also traverses the site along the northern perimeter of Field 2 to adjoin Bramley Road. Further to the east is the Mortimer - Bramley railway line.

15. Proposed is a renewable led energy generating station with an operational period of up to forty years, comprising ground mounted photovoltaic solar arrays installed across five of the six fields. It would generate up to 45MW for distribution to the national grid via the nearby Bramley Substation. The south facing Solar Photovoltaic (PV) panels would be ground mounted onto anti-reflective frames made of galvanized steel or aluminium, fixed to the ground by a combination of concrete feet and pile driven posts to below ground depths of around 2 - 2.5m. They would be tilted at between 15-30 degrees, have anti-reflective coatings and would be laid out in rows with gaps of approximately 2-6m between each row and mounted at a height of approximately 0.8m from the ground rising up to 3m at the highest edge and to 3.5m in areas of flood risk. They would cover a site area of around 22 hectares.

16. In addition, a battery storage facility would be created to store energy at times of low demand and release this to the grid when demand is higher or solar irradiance is lower. This would comprise the siting of twenty battery storage containers within a compound of approximately 25m by 26m.

17. There would be associated infrastructure comprising:
    - sixteen inverter/transformer stations distributed evenly about the solar arrays housed within green metal containers measuring 12m x 2.4m and 2.9m high, which would sit on legs above a 300m deep gravel sub-base,
    - compacted internal crushed stone tracks (between approximately 3.5 - 6m wide) to allow vehicular access between fields,
    - access points from Minchens Lane utilising an existing farm track to enter into Field 6 and to the north from Bramley Road into Fields 1, 2 and 4,
    - 2.0m high security deer type fencing and gates to enclose the site and potentially allow sheep to graze securely within each field,
    - security and monitoring CCTV/infra-red cameras mounted on fence posts 2.4m tall along the perimeter of the Site to provide 24-hour surveillance,
    - a combination of over-ground and underground cabling to connect the panels, inverters/transformer stations and battery storage facility to the proposed on-site substation and control room,
    - a security-fenced enclosed substation and switchgear compound located on land to the south-west of the site, measuring 12.5m x 5.5m and 4.2m high, which would sit on legs above a 300mm deep gravel sub-base, and
    - landscape planting, biodiversity enhancements, surface water attenuation measures, creation of a nature area and a connection to public right of ways by providing a new 600m permissive path providing an off-road route for part of the Brenda Parker Way and linking into PRoW 16 to take pedestrians off of a section of Bramley Road.

Character and appearance

18. The National Planning Policy Framework (NPPF) in recognising the intrinsic character and beauty of the countryside, does not seek to protect all countryside from development, rather focusing on the protection of valued landscapes. However, this term is not precisely defined. The proposal is

located in countryside which has not been given protection through a designation such as Area of Outstanding Natural Beauty (AONB) or National Park status, or through local planning policy. The nearest such designation, the North Wessex Downs AONB is located around 6km to the southwest.

19. While I note the strong feelings expressed both at the Inquiry and in writing by the BSFRG and the interested parties, regarding the esteem within which the local landscape is held, this of itself is not sufficient to elevate it beyond other countryside locations. In this case, the Council and the appellant agree that the appeal site is not a valued landscape for the purposes of paragraph 174 of the (NPPF) and nothing I heard at the Inquiry or observed during my visit would cause me to take a contrary view.

20. Whilst not a designated valued landscape, Natural England's National Character Assessment places the appeal site within the Thames Basin Heath National Character Area (NCA) 129. This large area serves to set the wider landscape context being a patchwork of small to medium sized fields with a legacy of historic hunting forests which include veteran trees, ancient woods and hedgerows, and parklands.

21. The Hampshire Integrated Character Assessment, Hampshire County Council 2012, provides an assessment of regional landscape character. The appeal site lies across two character areas. These are 2b North Hampshire Lowland Mosaic and 2c Loddon Valley and Western Forest of Eversley. The former is characterised by a rounded, organic landscape pattern with pockets of predominantly arable farmland and regular fields defined by a strong structure of hedgerows and shaw woodlands, while the latter has a high proportion of arable land, with woodland (often ancient) being a significant landscape component.

22. At the local level, the Basingstoke and Deane Landscape Assessment (2021) places the site within two local character areas (LCA). Field 1 is located within the North Sherborne Character Area (LCA 4) and the remainder of the site is within the Loddon and Lyde Valley Character Area LCA 6). Both areas contain patchworks of mixed farmland and woodland within a low lying and gently undulating landform. The character areas also have varying degrees of tranquillity, with the quietness of the North Sherborne Character Area disrupted by settlements, such as Bramley, the main roads and the railway.

23. Turning to the fields which comprise the appeal site, Field 1 consists of a large arable field adjacent to PRoW 15. Field 2 which contains the pylons has views from Bramley Road, PRoW 15 and PRoW 16 Brenda Parker Way. Field 3 is a small, flat area of scrubby grassland not scheduled for any PV panels. Field 4 consists of a large triangular arable field adjacent to Oliver Lane and National Cycle Route (Sustrans) 23. Open views exist across this field to the higher ground. Field 5 is a small, irregular arable field with hedgerows on all sides. Field 6 consists of a large arable field adjacent to PRoW 15. The substation and battery storage facility are proposed to be located on the southern boundary of this field.

24. From the evidence presented to the Inquiry and from what I observed on the extensive site visit, the landscape character around the appeal site is very much defined by a gently undulating landform of arable fields with hedgerow boundaries, framed by a wooded backdrop of Bramley Frith Wood, Davnage Copse, Withy Copse and Little Holdens Copse which are adjacent, and in some

cases, extend into to the site. The appeal site itself is permeated by a row of electricity pylons and criss-crossed by PRoWs, including the Brenda Parker Way and Camino Inglés to Santiago long distance footpaths/pilgrimage route. Taking all of these elements together, the appeal site and surrounding landscape is of a medium landscape value and has a corresponding medium sensitivity to change.

25. In this regard, the appellant submitted a Landscape and Visual Impact Assessment, including a Zone of Theoretical Visibility (ZTV) which was supplemented by updated visualisations submitted at the Inquiry. It is clear from the evidence that the proposed development would change the landscape character for the duration of the solar farm. However, this would, in the main, be contained within the appeal site itself during the operational life of the development with the landscape beyond remaining physically unchanged.

26. Furthermore, topography and existing hedgerow and tree cover supplemented by the additional screening to be provided in the proposed Landscape and Ecology Management Plan[5] (LEMP), would limit the overall effect of the proposal and prevent a change from an agricultural, to an industrial, landscape. The proposed landscaping measures would serve to mitigate the effects of the proposal as the planting matures and would endure after decommissioning. As such there would be no residual adverse landscape effects. These are matters that could be secured through suitably worded planning conditions as suggested by the appellant, were planning permission to be granted.

27. With the exception of infrastructure items such as the substation and battery storage unit, the proposed development would not sit heavily upon the land in terms of any need for deep or extensive foundations. There would be no material change to topography and the majority of the site would be retained in agricultural use as grazing pasture. The proposed arrangement of the arrays, their set back from the field boundaries, the existing trees and hedgerows which limit visibility, the existing presence of detracting influences such as the line of traversing pylons and the scheme of mitigation as set out in the submitted LEMP, would enable the proposal to integrate into this landscape setting.

28. Against this background, adverse effects on landscape character would be very localised (the landscape character of the wider area would prevail and remain rural) and would reduce over the lifetime of the scheme. Character area LCA4 within the immediate vicinity of the proposal would experience a moderate/slight adverse impact while character area LCA6, within the appeal site, would experience a slight adverse impact with the wider character area experiencing a slight/negligible impact.

29. Turning to consider visual impact, notwithstanding the criticism of the number of viewpoints within the LVIA, I consider that it, along with the supplementary views submitted by the appellant at the Inquiry and the viewpoints shown within the evidence of the Council and BSFRG, adequately show the impact of the proposal on a range of visual receptors within the vicinity of the proposal and the wider area. These views include seasonal changes throughout the year and at different timepoints across the lifetime of the proposed development. I took in these viewpoints during my extensive visit (both accompanied and unaccompanied) and I am content, that the ZTV as set out in the LVIA and the

[5] Core Document 30

viewpoints submitted by the parties, are representative of existing and proposed views both from within and outwith the appeal site.

30. As already stated, a proposal such as a large solar farm would be seen in the landscape and therefore is likely to result in some adverse visual effects. However, the 3m height of the panels would give them a low visual profile within the gently undulating topography. From what I observed, it would be unlikely that the proposal in its entirety would be visible from any one vantage point, given existing topography and tree and hedgerow cover, supplemented by the proposed mitigation planting. The greatest visual impacts therefore, would be within close proximity of the site with any longer distance views likely to take in certain parts of the proposed development, often with the existing power infrastructure of pylons and overhead lines also on view.

31. Concerns were raised regarding the impact of the proposal on the recreational users of the PRoWs. In this regard, I note that there have been paths through Bramley and Silchester since at least Roman times and that these paths are an important resource to the local community. It is clear from the evidence before the Inquiry and from my visit that the footpaths in the vicinity of the appeal site are well used and valued by the local community. It was pointed out that footpaths such as the Brenda Parker Way and Silchester Trail would be affected by having panels on one or both sides. It was claimed that screen planting would take a while to become established and would ultimately create a tunnelling effect. This, it is feared, would diminish the experience of being in open countryside by removing views across open fields and could dissuade the use of the PRoWs on grounds of personal safety fears.

32. However, the key paths – the Camino St James, Brenda Parker Way, and Silchester Trail – are long distance walking routes and not National Trails. They pass through very varied landscapes along their respective lengths and none appears to single out the appeal site for special mention. It is unlikely that a change in views that would occur as a result of the proposal, over short stretches of these paths would deter their recreational use.

33. All PRoWs, with the exception of a short section of the Brenda Parker Way, would have panels on one side which would be set back by around 10m. In the case of the Brenda Parker Way, in the area between Fields 1 and 2, where solar panels would be situated on both sides, the path would be set within a 70m wide planted corridor. While some may perceive this as a tunnelling effect, this would not be too dissimilar to the effect of walking along a rural lane which is lined by high hedgerows or trees. Similar effects may be seen at present where PRoWs pass through Bramley Frith Wood. I note in this regard that in their consultation responses neither the Hampshire Countryside Access officer or the British Horse Society raised concerns regarding the green corridors or the mitigation planting.

34. The proposed planting under the mitigation would take a while to mature to the point where the solar panels would be screened. Also, some views across open fields would be foreshortened by this planting, when mature. Nevertheless, views from PRoWs within the appeal site to notable landscape features beyond would remain possible and views to the appeal site would continue to take in an arable landscape with hedgerow boundaries.

35. Against this background, I consider that the greatest visual impact from the proposal would be to the Brenda Parker Way resulting in a moderate/slight

adverse impact within the appeal site. In the case of the other PRoWs the visual impact would be slight adverse. I come to this view on the basis that the proposal is of a size and scale that would assimilate into the local landscape given the existing topography, and tree and hedgerow cover, which restricts visibility. This, along with the proposed mitigation planting, would serve to greatly lessen the visual impact of the proposal.

36. To conclude on the character and appearance issue, I have found in landscape character terms that the moderate/slight adverse effects would be very localised to within a small part of the appeal site (LCA4), that the slight adverse impact would occur within the rest of the appeal site (LCA6) and the wider landscape character would experience a slight/negligible impact. In visual impact terms, I have found that the proposal would have a moderate/slight adverse impact on the Brenda Parker Way within the appeal site and a slight adverse impact on the other PRoWs. In wider visual impact terms, for the reasons given above, the effects of the proposal would be negligible. In the case of both landscape character and visual impacts, the adverse effects would be mitigated to a large extent by the proposed planting scheme.

37. LP Policy EM1 states that development will be permitted only where it can be demonstrated that the proposals are sympathetic to the character and visual quality of the area and are supported by a comprehensive landscaping scheme. LP Policy EM8 acknowledges that renewable energy projects need to have regard to the landscape and visual appearance. Similarly, Policy D1 of the Bramley Neighbourhood Plan also seeks to ensure that new development protects, complements or enhances identified character areas.

38. Accordingly, given the moderate/slight adverse effects of the proposal on the character and appearance of the area there would be conflict with LP Policies EM1 and Policy D1 of the Bramley Neighbourhood Development Plan 2011-2029. I return to this matter below under the planning balance.

Heritage

39. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (PLBCA) (the Act) states that special regard should be paid to the desirability of preserving the settings of listed buildings, where those settings would be affected by proposed development.

40. The NPPF defines the setting of a heritage asset (which includes listed buildings and conservation areas) as the surroundings in which it is experienced. The extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.

41. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight attaches to the asset's conservation; the more important the asset, the greater that weight should be. Significance can be harmed through development within an asset's setting. Historic England guidance: The Setting of Heritage Assets[6], indicates that setting embraces all of the surroundings from which an asset can be experienced or that can be experienced from or within the asset. Setting does not have a

[6] Core Document 144

fixed boundary and cannot be defined, in perpetuity, as a spatially bounded area or as lying within a set distance of a heritage asset.

42. The significance of a heritage asset is defined in the NPPF as its value to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting. Significance may be harmed by a development and it is necessary to determine the degree of harm that may be caused.

43. A HSoCG was agreed between the appellant and the Council which identified several heritage assets that would be affected by the proposal as a development within their settings. These are: the Scheduled Late Iron Age oppidum and Roman town of Calleva Atrebatum and associated features, the potential for below ground archaeology within the appeal site as identified in the HSoCG and addressed by the BSFRG as likely to be affected by the proposal, the Grade II Listed Minchens Farmhouse and Buildings at Lower Farm and Old Meadows, and the Silchester Conservation Area. While other designated and non-designated heritage assets were drawn to my attention, from my assessment, I agree with the list of affected heritage assets as identified in the HSoCG. I deal with each of them below in terms of the effect of the proposed development.

44. As already noted, the Council confirmed that it considers that no harm would arise to the significance of the Scheduled Late Iron Age oppidum and Roman town of Calleva Atrebatum and associated features from the proposal as a development within its setting. The significance of the monument is derived from its archaeological value with the visible character around it not reflective of a prehistoric or Romano-British landscape. Instead, it reflects a mainly post-medieval/modern landscape, with features contemporary with the asset either lost or contained in below ground archaeology. Its setting is therefore very much made up of the immediate agricultural surrounds of the asset and make a limited contribution to its significance.

45. The appeal site, as part of the wider landscape, contributes very little to the setting of the asset given the intervening distance, topography and planting. Accordingly, I consider that the proposal would not harm the significance of this designated heritage asset.

46. In terms of the known archaeological remains within the appeal site, from the evidence, I have no reason to disagree with the Council's assessment that they are not demonstrably of equivalent status to a scheduled monument and that potential harm to significance can be mitigated, to an acceptable level, secured by means of a suitably worded condition attached to any grant of planning permission.

47. I heard further concerns regarding potential archaeology in terms of access being prevented during the lifetime of the proposal and regarding the experience of walking the Silchester Trail, through the appeal site, towards the scheduled monument. Regarding access, the situation would be little changed to the present arrangement in terms of public access to any potential archaeology. Moreover, the suggested condition would have the effect of increasing the understanding of the archaeological potential of the site, through engaging the services of an archaeologist to carry out an investigation.

48. As for the experience on the Silchester Trail, as stated above, proposal would not harm the significance of the scheduled monument through a change to its setting. The Trail is not itself a heritage asset and the section which passes through the appeal site is not one from which the significance of the monument is appreciated. There is nothing visible from the route within the appeal site that has historic illustrative value which contributes to the heritage significance of the monument.

49. Silchester Conservation Area has two distinct parts. The larger part is centred on the village of Silchester with a much smaller outlying settlement known as The Pound also forming part of the designated heritage asset. The proposal would stand over 1km to the south of the main village and the intervening distance, topography and vegetation would mean there would be no effect on its setting. The Pound however, is situated closer to the proposal at around 140m and the proposal is likely to be visible from the southern edges of the conservation area, as shown in the submitted ZTV. I observed that The Pound is characterised by dwellings dating in the main from the 17th – 19th centuries, standing in spacious plots along a winding, countryside road. Their layout and vernacular appearance very much defines the significance of this small outlier of the conservation area.

50. The Pound is not prominent in the landscape given topography and mature vegetation, and its setting is mostly confined to the immediately surrounding fields. The appeal site lies beyond this in the hinterland of the conservation area and contributes little to its significance. Inter-visibility between the proposal and the asset would be limited as would views across the asset towards the development and vice-versa. Furthermore, mitigation planting would reduce the impact of the proposal over time and the effect of the proposed development would be fully reversed on decommissioning. As such the proposal would have a very minor adverse effect on the significance of this designated heritage asset.

51. Minchins Farmhouse is a Grade II listed building of architectural and historical significance derived from its vernacular 17th century appearance as altered in the 19th century. Its setting is very tightly defined by the narrow Minchins Lane with its tall hedgerow boundary. The wider surroundings, including part of the appeal site, afford restricted views from where it can be appreciated as a vernacular farmhouse thereby making a limited contribution to the asset's significance. The change brought about by the proposal, which would be screened by existing and proposed planting, would be reversed following decommissioning and would have a minor adverse effect on the significance of the designated heritage asset.

52. Lower Farm contains a collection of 7no. Grade II listed buildings comprising the farmhouse and associated agricultural buildings. Their significance is principally derived from their architectural and historic interest as post-medieval vernacular buildings with an agricultural function. They are experienced from the fields which surround them to the north of Bramley Road and this very much forms their setting. It makes a limited contribution to their significance. Topography and vegetation, both existing and proposed, along with the temporary nature of the proposal means that the effect of the proposal on the significance of these designated heritage assets would be very minor.

53. The Grade II listed buildings at Old Meadows comprise the farmhouse, gates, gate piers, garden urn, garden walls, a barn, a former granary and an outbuilding. Most of their significance is derived from their group value as an example of a coherent farm complex of vernacular buildings. The group stands within The Pound, part of the Silchester Conservation Area. Their setting is similar to that described above for The Pound Conservation Area with the formal gardens of the settlement dwellings to the west and south, and the arable fields beyond, providing a means by which the gentrification of the farmhouse can be appreciated. This setting makes a limited contribution to their overall significance. The change brought about by the proposal, would have a very limited effect on the significance of these designated heritage assets within this setting given topography, existing and proposed planting. It would be reversed following decommissioning. This would result in a very minor adverse effect.

54. Accordingly, while the effect of the proposal on the significance of these designated heritage assets as a development within their settings would in all cases be minor, less than substantial harm would be caused to the significance of the Grade II listed buildings at Minchin's Farmhouse, Lower Farm and Old Meadow, and to The Pound (Silchester) Conservation Area. Under NPPF paragraph 202 this harm should be weighed against any public benefits of the proposal, including securing the assets' optimum viable use and this is a matter I return to below.

Other matters

55. Concerns were raised regarding a lack of detail demonstrating that alternative sites, including the use of previously developed land, was considered by the appellant. Reference was made to the advice contained in the 2015 iteration of the Planning Practice Guidance (PPG) regarding the range of factors to be considered for large, ground-mounted, solar developments. In particular, the use of greenfield sites and the preference for utilising poorer quality, ahead of higher quality, land.

56. However, the PPG states that a range of factors 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. 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. LP Policy EM8 requires proposals to demonstrate such connections, and in this case, a connection to the national grid through the nearby Bramley substation has been secured. Given the constraints on the wider distribution network this is a matter which increases the compliance of the proposal with local policy.

57. Since 2015, Parliament has declared a climate emergency[7] and the Climate Change Act 2008 (2050 Target Amendment) Order 2019 requires the achievement of net zero by 2050[8]. I was not directed to any legal or policy requirements which set out a sequential approach to considering alternative sites with developments such as the appeal proposal. Of particular relevance, LP Policy EM8 does not require the demonstration of any sequential approach

[7] Core Document 104
[8] Core Document 102

to site selection as confirmed by the Council. Accordingly, I do not consider that planning permission should be withheld on the basis of a lack of identified alternative sites being considered.

58. With regard to the use of agricultural land, Natural England's Agricultural Land Classification System (ALC) shows the site to be located within an area that contains Grade 2 land within Field 1 and the remainder as Grade 3. The submitted details include an Agricultural Land Quality Assessment. This shows that around 53% of the appeal site is Best and Most Valuable Agricultural Land (BMVAL). However, not all of this land would be covered by PV panels.

59. While the use of higher quality agricultural land is discouraged, the proposal is for a temporary period of forty years which could be secured by a condition attached to any grant of planning permission. The 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. The use of the soils for grassland under solar panels should serve to improve soil health and biodiversity and the proposed LEMP, which could be secured by a condition attached to any grant of planning permission, includes measures to improve the biodiversity of the land under and around the panels.

60. Particular concerns were raised regarding compaction during construction and decommissioning. However, the submission of a Soils Management Plan, to be agreed in writing by the LPA, is intended to minimise such impacts. This could be secured by way of a condition, as suggested by the appellant, attached to any grant of planning permission. I note that Natural England as the statutory consultee on agricultural land, raised no comments in its consultation response in this regard. Against this background, I consider that the proposal would not be harmful in respect of BMVAL and would accord with LP Policy EM8 which requires consideration of the impacts of renewable energy developments on high grade agricultural land.

61. Turning to the matter of battery storage, the 20no. proposed battery containers would enable storage of around 40MWh, being slightly less than the amount of electricity the solar farm would generate in one hour of peak operation. This is in line with the British Energy Security Strategy[9] which encourages "all forms of flexibility" in the energy system and supports solar co-located with storage to maximise efficiency. It also aligns with the strategy for achieving net zero carbon, increasing energy security and reducing energy bills. It is a means of load shifting whereby energy generated during times when demand is at its lowest could be released back to the grid at times of peak demand.

62. I have considered the effect of the proposal on landscape character and in terms of its visual impact, including the proposed battery storage facility, above. In terms of the principle, I consider that the battery storage aspect of the proposal will offer flexibility in operation and maximise energy resources in a balanced and efficient way and does not weigh against the development.

63. In flood risk and drainage terms, the Environment Agency Surface Water mapping shows the majority of the site as lying within an area at 'very low' risk of surface water flooding. There is a low risk of pluvial flooding to the eastern

[9] Core Document 115

end of Field 2, and within Field 3, given the proximity to Silchester Brook and drainage channels. Solar arrays and all associated infrastructure would be situated outside of the areas of medium to high risk with a small number within the low-risk area. These panels would be positioned so as not to impede any flood water flows with negligible displacement of floodplain storage. This has been considered acceptable by the Environment Agency and the Lead Local Flood Authority.

64. The proposal would encourage infiltration and provide surface water runoff at existing greenfield rates to ensure drainage from the scheme is similar to the existing situation. In respect of flood risk and drainage, the Environment Agency and the Lead Local Flood Authority raised no objections, subject to conditions being attached to any grant of planning permission, and I consider the proposal accords with Policies EM7 and EM8 of the Local Plan and Policy RE1 of the Neighbourhood Plan, in this regard.

65. Dealing with the effect on living conditions, firstly in terms of outlook, I observed that only Brookside Grange has a contiguous boundary with the proposal (Field 1). The dwelling stands around 18.5m from the Field 1 boundary and approximately 250m from the boundary with Field 2, at a lower level. The panels would then be further offset from these boundaries with proposed mitigation planting between the boundaries and the panels.

66. The dwelling is orientated towards Field 2 with a bedroom window facing towards Field 1. Whilst there would be views towards the solar farm particularly in winter, and there would be an awareness of the solar array, in my judgement the intervening distance, difference in levels and proposed planting would prevent a harmful change in living conditions for the occupiers of this dwelling due to any loss of outlook.

67. Reference is made within the representations to outlook effects on the dwellings at St James Park, Clappers Farm Road, Bramley Road, Park Farm, Pound Farm, Pound House, Withy Place, The Annexe, Old Meadows, Lower Farm, and Minchens House. I viewed the proposal from several of these dwellings as part of my visit to the appeal site and surrounding area. It is likely that the proposal would be seen in medium and longer views from these dwellings, varying according to season, orientation, topography and intervening planting.

68. However, I observed that for these dwellings, distance, oblique views and intervening features such as fields and public highways, either individually or in some cases in combination, would mean that the proposal would be unlikely to harmfully change the outlook for their occupiers. In which case, in terms of outlook, the proposal would accord with Policy EM10 which seeks to protect residential amenity.

69. Turning to noise disturbance, the submitted Noise Impact Assessment[10] was considered by the Council's Environmental Health Officers who raised no concerns subject to suitably worded conditions being attached to any grant of planning permission. The conditions would ensure that the solar farm generates noise no greater than the existing prevailing background level at the most sensitive period when the plant will be operated (evening, nights and weekends). From my assessment, I have no reason to disagree.

[10] Core Document 32

70. With regard to highway safety, I note that the Council's Transport Officer and the County Council's Highways Officer raised no objections to the proposal subject to suitably worded conditions being attached to any grant of planning permission. The conditions would include requiring the submission and approval of an amended Construction Traffic Management Plan and against this background the Council considers that the proposal would accord with LP Policies CN9, EN8 and EM10 and Policy T2 of the Neighbourhood Plan. From my assessment, I have no reason to disagree.

71. I heard that the occupiers of Brookside Grange enjoy private rights of access over the access track to the northeast corner of Field 1 which is proposed for access to the proposal. Be that as it may, this would be a private matter for the relevant parties to address and is not determinative to my decision.

72. A number of previous planning and appeal decisions[11] were drawn to my attention which it was claimed raised matters that were similar to those before me. However, given the site-specific characteristics of this proposal, the policy/guidance extant at the time compared to the present, the nature of the developments proposed in those other instances and the harms and benefits arising, taking this proposal on its own merits, I do not consider them to be direct comparators.

Benefits

73. The Government has recognised a climate emergency and The Climate Change Act 2008, as amended[12] sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level by 100%, Net Zero, by 2050. The Clean Growth Strategy[13] anticipates that the 2050, targets require, amongst other things, a diverse electricity system based on the growth of renewable energy sources.

74. National Policy Statements (NPS) in reiterating the urgent need for renewable energy electricity projects to be brought forward for the delivery of major energy infrastructure, recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. Draft updates to NPSs EN-1 and 3[14] identify that solar farms, as part of the strategy for the low-cost decarbonisation of the energy sector, provide a clean, low cost and secure source of electricity.

75. The December 2020 Energy White Paper[15] (WP) sets out that achieving net zero rests on a "decisive shift" away from fossil fuels to clean energy and describes solar as a "key building block" of the future energy generation mix. Moreover, The British Energy Security Strategy[16] anticipates a five-fold increase of solar capacity in the UK from 14GW to 70GW by 2035.

76. In response, the Council has adopted a Climate Emergency Action Plan[17] (2021), which builds on the 2010 Energy Opportunities Plan which recommended at least 166GWh of renewable electricity by 2020 in Basingstoke and Deane. By 2021 only around 56.2GWh of such generation had been

[11] 21/00349/FUL, APP/H1705/W/22/3301468, APP/V2635/W/14/3001281, APP/M1005/W/22/3299953
[12] Core Document 102
[13] Core Document 103
[14] Core Documents 108 and 110
[15] Core Document 105
[16] Core Document 115
[17] Core Document 119

achieved. This proposal would generate 45MW sufficient to power 11,150 homes each year with clean energy (reducing carbon dioxide emissions by around 9,381 tonnes annually).

77. There are no physical constraints limiting early development of this site and a grid connection offer is in place. As such, the scheme could make an early and significant contribution to the objective of achieving the statutory Net target set for 2050 and the commitment to reducing emissions by 78%, compared with 1990 levels, by 2035. The LPA acknowledges that this is a substantial benefit that attracts significant weight[18]. Accordingly, I give substantial weight to the generation of renewable energy and contribution to a low carbon economy and significant weight to the provision of low cost and secure energy.

78. Of further benefit is the provision of a biodiversity net gain of 100% from the proposal. This benefit would endure beyond the operational life of the proposal and would be unlikely to be realised in the absence of the proposed development, given the significant resources required. This attracts significant weight in favour of the proposal.

79. In addition, the proposal would contribute to the local economy, through the creation of construction-related jobs and the ongoing contribution to the local and wider economy (including c.£150,000 p.a. in business rates and operational management of landscape and biodiversity), as well as the wider benefits of reducing reliance on imported fossil fuels. Together with environmental benefits to water, runoff, landscape character, and sequestration of carbon in soils achieved through planting and changes in land use across the appeal site, and the provision of a new section of permissive footpath (including around 300m as an off-road alternative for the Brenda Parker Way), these matters attract significant weight in favour of the proposal.

Balance

80. NPS for Energy[19] (EN-1) advises that when 'having regard to siting, operational and other relevant constraints the aim should be to minimise harm to the landscape, providing reasonable mitigation where possible and appropriate.' It further states that a judgement is to be made as to 'whether any adverse impact on the landscape would be so damaging that it is not offset by the benefits (including need) of the project' having regard also to whether the project is temporary and/or capable of being reversed. LP Policy EM8 also includes a requirement to consider benefits against impacts of this type of development.

81. As such, both national and development plan policy recognise that large scale solar farms may result in some landscape and visual impact harm. However, these policies indicate that development can be approved where the harm is outweighed by the benefits. I note that the Council's planning and landscape officers who in recommending approval of the proposal at the application stage considered that the limited adverse impacts of the scheme would be mitigated by the proposed extensive planting and reversible nature of the proposal.

82. In my judgement, the combination of topography, existing hedgerow and trees and the enhanced planting set out in the LEMP, particularly as the planting matures, would mean that the adverse effect on landscape character and visual

[18] Council's Closing Submission, paragraph 64, Inquiry Document 20
[19] Core Document 107

impact would be limited and highly localised. Moreover, once decommissioned, there would be no residual adverse landscape effects with the enhanced landscape and biodiversity likely to endure. In which case, whilst there would be some localised moderate/slight harm in terms of landscape character and visual impact, in conflict with the relevant development plan policies, the imperative to tackle climate change, as recognised in legislation and energy policy, and the very significant benefits of the scheme clearly and decisively outweigh the moderate/slight harm, in accordance with LP Policy EM8.

83. Turning to heritage, the proposal would result in less than substantial harm to the significance of several designated heritage assets. The harm would be very minor and would be reversed once the solar farm is decommissioned. Nevertheless, where a proposal results in less than substantial harm, NPPF paragraph 199 requires great weight to be given to the conservation of the designated heritage assets. In addition, NPPF paragraph 202 makes clear that such harm is to be weighed against the public benefits of the proposal. Public benefits in respect of NPPF paragraph 202 will provide benefits that will inure for the wider community and not just for private individuals or corporations. It was not suggested that the proposal is necessary in order to secure the optimum viable use of the designated heritage assets.

84. In my judgement, the public benefits of this proposal which would contribute towards achieving net zero as part of a decisive shift away from fossil fuels, assist with increasing solar capacity in the UK from 14GW to 70GW by 2035, assist with achieving the Council's Climate Emergency Action Plan (2021), reduce carbon dioxide emissions by around 9,381 tonnes annually and provide a biodiversity net gain of 100%, are very significant and outweigh the less than substantial harm to the affected designated heritage assets, giving great weight to the conservation of each of them. The Council confirmed that in its view there was no conflict with LP Policy EM11 which seeks to conserve the Borough's heritage assets, given the outweighing benefits[20] and from my assessment I have no reason to disagree.

85. Drawing the above together, I conclude the proposal would make a material and early contribution to the objective of achieving the decarbonisation of energy production and that to allow the proposed solar farm would not conflict with the objectives of relevant development and national planning policy when taken as a whole.

Conditions

86. Before and during the Inquiry the main parties discussed (without prejudice) potential conditions to be considered were planning permission to be granted. The wording of the conditions (including those with pre-commencement requirements) was agreed between appellant and the Council. I have amended the wording where necessary having regard to the tests set out in para 56 of the NPPF and to assist with clarity. The numbers in brackets relate to the condition in the attached annex. In addition to the standard time (1) and plans (2) conditions which are necessary to provide certainty, I shall attach conditions in respect of the positioning of containers on the site (8), implementation of the LEMP (9), management of the permissive footpath (11), hard landscaping details (12), tree protection (13), external lighting (15), carrying out development in accordance with the Flood Risk Strategy (16),

[20] Council's Opening Statement, paragraph 2, Inquiry Document 5

surface water drainage (17), archaeology (18), a Construction Worker Travel Plan (19), traffic management measures (20), submission of an amended Construction Management Travel Plan (21), road condition survey (22), provision of wheel cleaning facilities (23), access details (24), noise levels (25), hours of operation (27), delivery times (28), submission of a Construction Environmental Management Plan (29) and submission of a Soils Management Plan(31).

87. The wording for these conditions was agreed with all parties and they are necessary in the interests of protecting landscape character (8, 9, 11, 12), safeguarding trees (13), protecting wildlife (15), avoiding adverse environmental impacts (16, 17), safeguarding the archaeological potential of the site (18), ensuring sustainable development (19), safeguarding highway safety (20, 21, 22, 23, 24) and safeguarding the living conditions of the occupiers of dwellings in the vicinity (25, 27, 29).

88. I shall also attach conditions in respect of the temporary nature of the development (3), the decommissioning of the development (4, 5, 6), materials and finishes (7), soft landscaping details (10), submission of a Wildlife Protection and Mitigation Plan (14), securing a post completion noise assessment (26) and the submission of a Battery Safety Management Plan. (30). These are necessary in the interests of certainty (3), securing the decommissioning of the development and the restoration of the site either at the end of the operational life or before should the use cease (4, 5, 6), protecting landscape character (7, 10, 30), protecting wildlife (14) and safeguarding the living conditions of the occupiers of dwellings in the vicinity (26).

89. However, the wording for these conditions was disputed by the parties. In the case of conditions 3 and 6, I shall refer to the *first export date of the development* rather than the *commencement of development* in line with the advice in the Draft NPS for Renewable Energy Infrastructure (EN-3)[21]. With regard to condition 4, I consider it unnecessary to refer to archaeology and soil restoration as these matters are the subject of separate conditions. Similarly, a reference to recycling and toxic materials is unnecessary both in condition 4 and condition 6 as this is covered by separate regulations[22]. As for Condition 5, it would be unreasonable to require a decommissioning method statement before the commencement of development as best practices and recycling methods are likely to considerably change during the lifetime of the solar farm. I also find it unnecessary to refer to the cessation period in condition 6 as this is covered in a separate condition.

90. Turning to condition 7, it is not necessary to refer to the position of materials and finishes as that is secured by the plans condition and in the case of condition 10, it is necessary for planting to be carried out in the first season post-completion of the development, rather than following commencement, as construction may impede planting. Furthermore, referring to a fence in condition 14 is unnecessary as the reference to *landscape feature* would cover this matter and in the case of condition 26, I consider it reasonable to ensure that where noise levels set out in other conditions are breached, it will be necessary to identify and install additional noise mitigation measures, within 3 months of an assessment being carried out. Finally, condition 30 in respect of

[21] Core Document 110
[22] Waste Electrical and Electronic Regulations

the Battery Storage facility, I considered requiring submission of details *prior to commencement* rather than *prior to the implementation* to be unreasonable as the developer may not implement the battery storage element at the same time as the solar farm.

Conclusion

91. For the reasons set out above, I conclude that the appeal should be allowed.

Richard McCoy

INSPECTOR

Annex A

Conditions Schedule

1. The development hereby permitted shall be carried out in accordance with the following approved plans:
   Existing Site Location Plan - Drawing no BF1.0
   Proposed Site Plan - Drawing no BF2.0 Revision 20 B
   PV Elevations Pile – Drawing no BF3.0 Revision 01
   Inverter/Transformer Stations - Drawing no 4.0 Revision 01
   Internal Access Road Detail – Drawing no BF5.0 Revision 02
   Fence and Gate Elevations – Drawing no BF6.0 Revision 02
   Weather Station Detail – Drawing no BF7.0 Revision 01
   Substation Elevations – Drawing no BF8.0 Revision 02
   Control Room Elevations – Drawing no BF9.0 Revision 02
   Auxiliary Transformer – Drawing no BF10.0 Revision 01
   CCTV Elevations – Drawing no BF11.0 Revision 01
   Battery Container Elevations 40ft – Drawing No BF12.0 Revision 01
   PV Elevations Ballast – Drawing no BF13.0 Revision 02
   Minchens Lane Access – Drawing no 2004-046_SK01 Revision A
   Olivers Road Vehicle Crossing – Alternative Arrangement (1/2) – drawing no SK02 Revision B
   Olivers Road Vehicle Crossing – Alternative Arrangement (2/2) – drawing no SK03 Revision B
   Landscape Mitigation Plan – Drawing no 7520_014 Revision G
   Landscape and Ecology Enhancement Plan – Drawing no 7520_012 Revision K
   Planting Schedule (1 of 2) 7520_020 dated July 2022
   Planting Schedule (2 of 2) 7520_021 dated July 2022
   Landscape and Ecological Management Plan Version 2.3 August 2022

2. The development hereby permitted shall be begun before the expiration of 3 years from the date of this planning permission.

3. The development hereby permitted shall be for a temporary period only to expire 40 years and 6 months after the first export date of the development. Written confirmation of the first export date shall be provided to the local planning authority within one month after the event.

4. If the solar farm hereby permitted ceases to operate for a continuous period of 6 months, then a scheme for the decommissioning and removal of the solar farm and ancillary equipment together with the restoration of the site shall be submitted within 6 months of the end of the cessation period to the Local Planning Authority for written approval. The scheme shall make provision for:

   - the removal of the solar panels and associated above ground works approved under this permission;
   - the management and timing of any works;
   - a traffic management plan to address likely traffic impact issues during the decommissioning period;

- an environmental management plan to include details of measures to be taken during the decommissioning period to protect wildlife and habitats;
- details of site restoration; and
- an implementation timetable.

The decommissioning of the site shall be carried out in accordance with the approved scheme.

5. Within a period of 39 years and 6 months following the first export date, a scheme for the decommissioning of the solar farm and its ancillary equipment and restoration of the site, shall be submitted for the written approval of the local Planning Authority (except in the event that Condition 4 has been triggered and decommissioning has been completed). The scheme shall incorporate the criteria set out within Condition 4 as a minimum. The decommissioning of the site shall be carried out in accordance with the approved scheme.

6. The solar farm and its ancillary equipment shall be dismantled and removed from the site and the land restored in accordance with the approved decommissioning and restoration scheme within a period of 40 years and 6 months following the first export date.

7. Notwithstanding condition 1 and prior to the commencement of the development, details of the proposed materials and finish including colour of all foundations, solar panels, frames, ancillary buildings, equipment, and enclosures shall be submitted to and approved in writing by the local planning authority. Development shall be carried out in accordance with the approved details and be maintained as such for the lifetime of the proposed development.

8. All containers on site shall be sited at ground level and no containers shall be stacked.

9. The development shall be carried out in accordance with the details contained within the Landscape and Ecological Management Plan prepared by Aardvark EM Limited dated December 2021 (document reference R009). The development shall be carried out in accordance with the approved details.

10. Notwithstanding the details contained within the Bramley Frith 7520_020 Planting Schedule 1 of 2 and the Bramley Frith 7520_021 Planting Schedule 2 of 2 (both dated July 2022), prior to the commencement of development, final soft landscaping details shall be submitted to the Local Planning Authority for approval in writing. The development shall be carried out in accordance with the approved planting schedules within the first planting and seeding season following the first export of electrical power from the site or in accordance with a timetable to be agreed. Any trees or plants which, within a period of 15 years from the date of planting, die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size and species.

11. Prior to the commencement of development, details shall be submitted to and agreed in writing by the Local Planning Authority to deliver and manage the permissive footpath through the Nature Area and Field 2. As a minimum, details shall include:

    - all surfacing details;
    - any wayfarer markers;
    - implementation timetable; and
    - details of the long-term responsibilities for management and maintenance to provide for the long term amenity of this path.

    All hard landscape works shall be carried out in accordance with the approved details.

12. Prior to the commencement of development, hard landscaping details shall be submitted to the Local Planning Authority for approval in writing. As a minimum, details shall comprise details of:

    - the seating and waste bins for the Nature Area;
    - any wayfarer markers, site interpretation boards and any other site signage;
    - the new bridge to the Nature Area for the off road section of Brenda Parker Way.

    In addition, details shall include an implementation timetable and responsibilities for management and maintenance to provide for the long term amenity of the Nature Area. All hard landscape works shall be carried out in accordance with the approved details prior to the first export of electrical power from the site or in accordance with the timetable agreed with the Local Planning Authority.

13. Notwithstanding the details submitted, no development including site preparation, temporary access construction/widening, material storage or construction works shall commence until a final scheme for tree protection, prepared in accordance with BS5837 "Trees in Relation to Design, Demolition and Construction" (or any superseding legislation) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall be informed by Arboricultural Impact Assessment (Revision A) prepared by Barton Hyett Associates Ltd dated 2021 (reference R015) and shall include the following as a minimum:

    - a tree protection plan comprising a drawing at no less than 1:500 scale showing the position of protection zones, fencing and ground protection measures to be established for retained trees;
    - a British Standard 5837 Tree Survey schedule with tree reference numbers corresponding with trees on the tree protection plan;
    - the specification for protective fencing and a timetable to show when fencing will be erected and dismantled;

- details of mitigation proposals to reduce negative impacts on trees including specifications and method statements for any special engineering solutions required and the provisions to be made for isolating such precautionary areas from general construction activities;
- details of any levels changes within or adjacent to protection zones;
- a drawing to show visibility splays in relation to trees, outlining any works to trees demonstrating how visibility splays will be achieved
- details of the surface treatment to be applied within any tree protection zones, including a full specification and method statement;
- the routing of site cabling with provisions for reducing their impact on trees to an acceptable level;
- a specification and schedule of works for any vegetation management required, including pruning of trees and details of timing in relation to the construction programme;
- provision for briefing construction personnel on compliance with the plan, including incorporation of tree protection recommendations into a construction method statement;
- provision for signage of protection zones and precautionary areas;
- details of contractor access during the construction phase;
- a tree protection mitigation plan detailing emergency tree protection and remediation measures which shall be implemented in the event that the tree protection measures are contravened.
- provision for the appointment of an arboriculturist to supervise construction activity occurring on the site. The arboriculturist will be responsible for the implementation of temporary protective measures; shall oversee the installation of approved special engineering solutions designed for trees; and shall be responsible for organising a pre-commencement meeting with the Local Planning Authority Tree Officer (contact 01256 844 844) once the temporary tree and ground protection is in place and ready for inspection.

No development or other operations shall take place other than in complete accordance with the approved tree protection scheme.

14. Notwithstanding the submitted information and prior to the commencement of development, a Wildlife Protection and Mitigation Plan shall be submitted to and approved in writing by the Local Planning Authority. The Wildlife Protection and Mitigation Plan shall be informed by Chapter 6 Mitigation and Enhancements of the Ecological Impact Assessment by BSG Ecology dated December 2021. No development or

other operations shall take place other than in complete accordance with the approved Wildlife Enhancement and Mitigation Plan. If a habitat or other landscape feature is removed or damaged in contravention of the approved plan, a scheme of remedial action, with a timetable for implementation, shall be submitted to and approved in writing by the Local Planning Authority within 28 days of the incident. The scheme of remedial action must be approved by the Local Planning Authority before practical completion of the development and implemented in accordance with the approved timetable.

15. No external lighting (other than low level lighting required on ancillary buildings during occasional maintenance and inspection visits) shall be erected/used on site. The details of any low level lighting shall be submitted to and approved in writing by the Local Planning Authority prior to commencement of development and the development shall be carried out in accordance with the approved details.

16. The development shall be carried out in accordance with the Bramley Frith Solar Farm Flood Risk and Drainage Strategy prepared by RMA Environmental dated November 2020 (Document Reference: R010). Any changes to the approved documentation must first be submitted to and approved in writing by Local Planning Authority in consultation with the Environment Agency and the Lead Local Flood Authority. Any revised details submitted for approval must include a technical summary highlighting any changes, updated detailed drainage drawings and detailed drainage calculations.

17. Prior to commencement of development, details for the long-term maintenance arrangements for the surface water drainage system shall be submitted to and approved in writing by the Local Planning Authority. The submitted details shall include:

    - Maintenance schedules for each drainage feature type and ownership.
    - Details of protection measures.

    The development shall be carried out and thereafter maintained in accordance with the approved details.

18. No development or other operations (including site preparation and any groundworks) shall commence on site until a Written Scheme of Investigation (completed by a named and professionally qualified archaeological contractor) for a programme of archaeological works has been submitted to and approved in writing by the Local Planning Authority.
    The Written Scheme of Investigation shall detail the methodology and timetable of site investigation including a preliminary archaeological trenched survey (within those areas to be affected by substantive elements of ground works such as access tracks, compounds and cabling trenches) and any subsequent archaeological mitigation (whether preservation or recording). This scheme of works shall recognise, characterise and record any archaeological potential which may exist as well as confirming the reporting process for the results.

A post-investigation assessment and final report must be completed in accordance with the programme set out in the approved Written Scheme of Investigation and shall include provision for analysis, publication, and dissemination of results. The final report must be submitted to and approved in writing by the Local Planning Authority.

19. The development shall be carried out in accordance with the Construction Worker Travel Plan (reference 2004-046/TN/07) dated April 2021.

20. No development or other operations (including site preparation and any groundworks) shall commence until full details of the permitted traffic management measures, the hours of operation and clauses to execute traffic management at the junction of Minchens Lane/The Street, including non-excavatory traffic controls have been submitted to and approved in writing by the Local Planning Authority, pursuant to an Agreement to be made under Section 278 of the Highways Act 1980 between the Developer and the Local Highway Authority.

21. Notwithstanding the submitted Construction Traffic Management Plan, prior to the commencement of development an amended Construction Traffic Management Plan shall be submitted to and approved in writing by to the Local Planning Authority. The amended Construction Traffic Management Plan will cover the following aspects:

    - Site access;
    - Construction traffic routing including a prohibition of construction vehicles using Minchens Lane north of the main site access shown on drawing titled 'Minchens Lane Access (dwg no 2004-046_SK01 Revision A) and save for arrangements to access Field 4 Oliver's Lane Vehicle Crossing drawings (Dwg no SK02 Revision B and SK03 Revision B)
    - Site compound and internal routing including details of the access between Field 1 and Field 2; the temporary bridges, extent of works to routes and proposed durations of each element;
    - Construction vehicle dimensions, number and frequency, and
    - Proposed mitigation measures.

22. No development shall take place until the scope of a road condition survey of Minchens Lane from the site access up to and including its junction with The Street has been submitted to and agreed in writing by the Local Planning Authority. The survey shall be carried out in accordance with the approved scheme prior to any works commencing on site and the findings of the condition survey shall be monitored and reported to the Local Planning Authority at least every 6 months throughout the construction period of the development and any defects or damage attributable to construction activity to be rectified by the developer at their expense within 3 months of the defect being identified.

23. No development or other operations (including site preparation) shall take place until a scheme has been submitted to and approved in writing

by the Local Planning Authority detailing the method of cleaning wheels and chassis of all HGV's, plant and delivery vehicles leaving the site and the means of keeping the site access road and adjacent public highway clear of mud and debris during site preparation and construction and for the routine inspection of vehicles before departing the site to ensure cleanliness. The scheme shall be implemented in accordance with the approved details and shall be installed and operational before any development commences and shall be retained in working order throughout the duration of the construction process.

24. Prior to commencement of any other development, the means of vehicular access to the site must be constructed in accordance with the approved plans comprising:

    - Minchens Lane Access – Drawing no 2004-046_SK01 Revision A
    - Olivers Road Vehicle Crossing – Alternative Arrangement (1/2) – drawing no SK02 Revision B
    - Olivers Road Vehicle Crossing – Alternative Arrangement (2/2) – drawing no SK03 Revision B

    No structure, erection or planting exceeding 1.0m in height shall thereafter be placed within the visibility splays shown on the approved plans. There shall be no construction traffic accessing the site via the field access to the north east corner of Field 1 from Bramley Road.

25. The cumulative rating sound level of the operational plant and equipment hereby approved as part of this development shall have an operational noise level no greater than the existing background sound level during the operational hours of the scheme hereby approved at the closest noise-sensitive receptors to the site existing at the time of approval when assessed in accordance with the methodology and guidance set out within BS4142:2014+A1:2019 (or superseding legislation).

26. Within 3 months of the first export date, a post completion noise assessment shall be carried out and submitted for approval in writing to the Local Planning Authority to verify that the cumulative rated noise level from the plant is no greater than the prevailing background sound level (as set out in Condition 25) at the most sensitive period when the plant will be operated (e.g. evening, nights and weekends). A method statement shall be submitted to and approved by the Local Planning Authority prior to the survey being undertaken. The noise assessment shall be carried out by a suitably qualified acoustic consultant/ engineer and be undertaken in accordance with BS4142: 2014-"Methods for rating and assessing industrial and commercial sound". Where the above criteria has not been met it will be necessary to identify and install additional noise mitigation measures, within 3 months of the assessment.

27. No work relating to the construction of the development hereby approved, including preparation prior to operations, shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the

hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays.

28. No deliveries of construction materials or plant and machinery and no removal of any spoil from the site shall take place before the hours of 0730 nor after 1800 Monday to Friday, before the hours of 0800 nor after 1300 Saturdays nor on Sundays or recognised public holidays

29. No development or other operations (including site preparation and any groundworks) shall commence on site until a site specific Construction Environmental Management Plan has been submitted to and been approved in writing by the Local Planning Authority. The plan must demonstrate the adoption and use of the best practicable means to reduce the effects of noise, vibration, dust and site lighting. The plan should include, but not be limited to:

    - Procedures for maintaining good public relations including complaint management, public consultation and liaison;
    - Arrangements for liaison with the Council's Environmental Protection Team;
    - All works and ancillary operations which are audible at the site boundary, or at such other place as may be agreed with the Local Planning Authority, shall be carried out only between the following hours: 0730 Hours and 1800 Hours on Mondays to Fridays and 0800 and 1300 Hours on Saturdays and; at no time on Sundays and Bank or Public Holidays;
    - Deliveries to and removal of plant, equipment, machinery and waste from the site must only take place within the permitted hours detailed above;
    - Mitigation measures as defined in BS 5528: Parts 1 and 2: 2009 Noise and Vibration Control on Construction and Open Sites shall be used to minimise noise disturbance from construction works.
    - Procedures for emergency deviation of the agreed working hours;
    - Control measures for dust and other air-borne pollutants;
    - Measures for controlling the use of site lighting whether required for safe working or for security purposes.

    The development shall be carried out in accordance with the approved details.

30. Prior to the implementation of the Battery Storage System a detailed Battery Safety Management Plan (BSMP) shall be submitted to and approved in writing by the Local Planning Authority. The development shall be carried out and operated only in accordance with the approved Battery Safety Management Plan.

31. No development or other operations (including site preparation and any groundworks) shall commence until a Soils Management Plan has been submitted to and been approved in writing by the Local Planning Authority. The plan should set out the means to be used to protect soils

during construction, operation, maintenance and decommissioning of the solar farm and battery storage such that the objectives of the Landscape and Ecological Management Plan required by Condition 9 are not compromised and crop growing agricultural operations may resume following the operational life of the solar farm and battery storage.

End of conditions

APPEARANCES

FOR THE LOCAL PLANNING AUTHORITY:

Ben Du Feu of Counsel	Instructed By: The Council Solicitor
He called:	
Karen Tipper BA (Hons), MA, MRTPI	Senior Associate, Bell Cornwell LLP
Nigel Wakefield BA (Hons) BTP/DIP LA DIP/MA UD MRTPI	Managing Director, Node Urban Design Ltd

FOR THE APPELLANT:

Thea Osmund-Smith of Counsel	Instructed by: Robert Asquith Assisted by: Odette Chalaby
She called:	
Frankie Whitaker BEng MEng MIET	Senior Engineer, ITPEnergised Ltd
R W Askew BSC(Hons) MSc F.I Soil Sci CSci	Director, Askew Land and Soil Ltd
Alister Kratt BA (Hons) FLI	Director, LDA Design Consulting
Robert Asquith MA, DIPUP, MRTPI, MCIWM	Director, Head of National Infrastructure Planning in the Planning Division of Savills (UK) Ltd
Gail Stoten BA(Hons) MCIfA FSA	Heritage Executive Director at Pegasus Planning Group

FOR THE BRAMLEY SOLAR FARM RESIDENTS GROUP:

Richard Anstis	Instructed by: Steve Spillane, Secretary, BSFRG
He called:	
Dr Ian G Bridges BSc, PhD	Retired Chief Scientific Officer for Advanta Seeds
Paul Machin BA (Combined Hons) Dip LD	Chartered Landscape Architect (retired)
Professor Michael Fulford CBE FBA FSA	Professor of Archaeology at the University of Reading
Simon Bailey BSc(Eng), CEng, MICE	Chartered Engineer (CEng)
Richard Anstis	Chartered Surveyor, Richard Anstis Consultants

INTERESTED PERSONS:

Simon Mahaffey	Local resident
Graham Wright	Silchester Parish Council
Antony Durrant	Chair, Bramley Parish Council and Ward Councillor
Chris Tomblin	Local resident
Marshall Hall	Local resident

INQUIRY DOCUMENTS

1 Notification Letters
2 Appendix 7 – Mr Wakefield Landscape Methodology
3 Silchester Trail – Guide to the Route
4 Opening Statement on behalf of the Appellant
5 Opening Statement on behalf of the Council
6 Opening Statement on behalf of the Rule 6 Party (BSFRG)
7 Mr Mahaffey – Speech to the Inquiry
8 Mr Wright – Silchester Parish Council – Speech to the Inquiry
9 Draft Conditions
10 Draft Conditions – table illustrating differences between the parties
11 Mr Mahaffey – Winter Photomontages comments.
12 Cllr Tomblin – Speech to the Inquiry
13 Appeal Decision Oakdown Farm PINS ref 3301468
14 Silchester Conservation Area Appraisal
15 Mr M Hall – Speech to the Inquiry
16 Commentary by Rule 6 on Construction Traffic Management Plan
17 Site Visit Itinerary
18 Appellant Response on Construction Management Plan.
19 Appellant draft condition 22
20 Council Closings
21 R6 Closings
22 Appellant Closings
23 Final Conditions Document

PLANS
A Updated Figure 10 and 11 and Cross Sections of Mr Kratt evidence
B Winter Photomontages
C Appendix 10 and 11 Kratt – Big Version
D New photomontage VPH – winter view Y15 v3 Middle Frame.
E New photomontage VPH – Y15 Middle Frame (big version)



Neutral Citation Number: [2021] EWCA Civ 320

Case No: C1/2020/0160

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
(PLANNING COURT)
THE HONOURABLE MR JUSTICE WAKSMAN
[2019] EWHC 3437 (Admin)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 09/03/2021

Before:

SIR KEITH LINDBLOM, SENIOR PRESIDENT OF TRIBUNALS
LORD JUSTICE PHILLIPS
and
LORD JUSTICE ARNOLD

- -

Between:

City & Country Bramshill Limited	**Appellant**
- and -	
(1) Secretary of State for Housing, Communities and Local Government	**Respondents**
- and -	
(2) Hart District Council	
- and -	
(3) Historic England	
- and -	
(4) The National Trust for Places of Historic Interest or Natural Beauty	

- -

- -

James Strachan Q.C. and **Ned Helme** (instructed by **Pinsent Masons LLP**) for the **Appellant**
Guy Williams and **Alistair Mills** (instructed by the **Government Legal Department**)
for the **First Respondent**
Ben Du Feu (instructed by **Historic England Governance and Legal**)
for the **Third Respondent**
Melissa Murphy (instructed by **Sharpe Pritchard LLP**) for the **Fourth Respondent**

Hearing dates: 1 and 2 December 2020

- -

Judgment Approved by the court for handing down

The Senior President of Tribunals:

Introduction

1. This appeal raises questions on the interpretation and application of policies in the National Planning Policy Framework ("NPPF") against the development of "isolated homes in the countryside" and on the assessment of harm and benefit to "heritage assets".

2. The appellant, City & Country Bramshill Ltd., appeals against the order of Waksman J., dated 20 December 2019, partly allowing and partly dismissing applications and appeals under sections 288 and 289 of the Town and Country Planning Act 1990 ("the 1990 Act") and section 63 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act"), which challenged the decisions of an inspector appointed by the first respondent, the Secretary of State for Housing, Communities and Local Government, on 33 statutory appeals, under sections 78 and 174 of the 1990 Act, against refusals of planning permission and enforcement notices issued by the second respondent, Hart District Council, relating to development at Bramshill Park in Hampshire. The third and fourth respondents, Historic England and the National Trust, were objectors.

3. The site, which extends to about 106 hectares, lies between the villages of Hazeley and Eversley. It was previously used as a national and international police training college. On it stands a grade I listed Jacobean mansion and various other buildings. It also contains a grade I registered park and garden. The proposed development included the conversion of the mansion to 16 apartments and the adjoining stable block to five (appeal 1), or its conversion to a single dwelling (appeal 2), or to class B1 office space (appeal 3); the construction of 235 houses in place of some of the existing buildings (appeal 4), 14 more to the south-west (appeal 5), and nine to the north of an existing lake (appeal 6); the use of 51 residential units – once occupied by staff employed at the training college – as separate dwellings (appeal 7), retaining those against which the council had taken enforcement action alleging a material change of use without planning permission (appeals 8 to 33).

4. The inspector held a long inquiry into the appeals, which ended in February 2018. In her decision letter, dated 31 January 2019, she allowed appeals 2 and 3, granting planning permission for those proposals. She also allowed appeals 15 and 17 to 33, quashing the enforcement notices in those appeals. She dismissed appeals 1, 4 to 14 and 16. In a separate decision letter dated 14 March 2019 she dismissed City & Country Bramshill's application for costs against the council. City & Country Bramshill challenged her decisions on appeals 4 to 14 and 16, and on the application for costs. Waksman J. upheld the challenges to the decisions on appeals 7 to 14 and 16. He rejected those to the decisions on appeals 4 to 6 and on costs. The appeal before us is against that part of his order. Permission to appeal was granted by Lewison L.J. on 28 February 2020.

The issues in the appeal

5. The grounds of appeal raise four principal issues: first, whether the inspector erred in law in her interpretation and application of the policy against "isolated homes in the countryside" in paragraph 79 of the version of the NPPF published in July 2018 (ground 1); second, whether she erred in her approach to "sustainability" (ground 4); third, whether,

in performing the duty in section 66 of the Listed Buildings Act and applying the corresponding policies in the NPPF, she failed to comply with a "principle" identified by this court in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061, [2017] 1 W.L.R. 411 (ground 2); and fourth, whether she erred in her approach to applying development plan policies for the protection of the historic environment, in particular policies CON11, CON12, CON17 and CON18 of the adopted local plan for Hart district (ground 3). It is also contended that the decision on the application for costs was unlawful.

The inspector's "Overall Conclusions" on appeals 4, 5 and 6

6. The inspector's decision letter runs to 433 paragraphs. Her "Overall Conclusions" on appeals 4, 5 and 6 were these (in paragraph 417):

> "417. Appeals 4, 5 and 6 would not provide appropriate sites for development being in an unsustainable location and resulting in isolated housing in the countryside. They would be harmful to the character and appearance of the area and would not preserve the special qualities of the listed buildings, their settings or the [registered park and garden ("RPG")]. These matters are not outweighed by public benefits. They would not be in accord with [local plan] policies GEN1, GEN3, GEN4, T14, CON12, CON17 and national planning policy."

The policy in paragraph 79 of the NPPF

7. Under the heading "Identifying land for homes", paragraph 72 of the July 2018 version of the NPPF stated:

> "72. The supply of large numbers of new homes can often be best achieved through planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities. Working with the support of their communities, and with other authorities if appropriate, strategic policy-making authorities should identify suitable locations for such development where this can help to meet identified needs in a sustainable way. … ."

8. In a passage headed "Rural housing", paragraphs 78 and 79 stated:

> "78. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. Planning policies should identify opportunities for villages to grow and thrive, especially where this will support local services. Where there are groups of smaller settlements, development in one village may support services in a village nearby.
>
> 79. Planning policies and decisions should avoid the development of isolated homes in the countryside unless one or more of the following circumstances apply:
> a) there is an essential need for a rural worker … to live permanently at or near their place of work in the countryside;

b) the development would represent the optimal viable use of a heritage asset or would be appropriate enabling development to secure the future use of heritage assets;
c) the development would re-use redundant or disused buildings and enhance its immediate setting;
d) the development would involve the subdivision of an existing residential dwelling; or
e) the design is of exceptional quality …".

Those two paragraphs re-appeared in the version of the NPPF published in February 2019.

9. The previous policy, in paragraph 55 of the original version of the NPPF published in March 2012, was in slightly different terms. It stated:

> "55. To promote sustainable development in rural areas, housing should be located where it will enhance or maintain the vitality of rural communities. For example, where there are groups of smaller settlements, development in one village may support services in a village nearby. Local planning authorities should avoid new isolated homes in the countryside unless there are special circumstances such as: …".

10. The interpretation of the policy in paragraph 55 of the original version of the NPPF was considered by this court in *Braintree District Council v Secretary of State for Communities and Local Government* [2018] EWCA Civ 610, [2018] 2 P. & C.R. 9. In that case I said (in paragraphs 29 to 32):

> "29. … [Under] this policy, the concept of concentrating additional housing within settlements is seen as generally more likely to be consistent with the promotion of "sustainable development in rural areas" than building isolated dwellings elsewhere in the countryside. In short, settlements are the preferred location for new housing development in rural areas. That, in effect, is what the policy says.
>
> …
>
> 31. In my view, in its particular context in paragraph 55 of the NPPF, the word "isolated" in the phrase "isolated homes in the countryside" simply connotes a dwelling that is physically separate or remote from a settlement. Whether a proposed new dwelling is or is not "isolated" in this sense is a matter of fact and planning judgment for the decision-maker in the particular circumstances of the case in hand.
>
> 32. What constitutes a settlement for these purposes is also left undefined in the NPPF. The NPPF contains no definition of a "community", a "settlement", or a "village". There is no specified minimum number of dwellings, or population. It is not said that a settlement or development boundary must have been fixed in an adopted or emerging local plan, or that only the land and buildings within that settlement or development boundary will constitute the settlement. In my view a settlement would not necessarily exclude a hamlet or a cluster of dwellings, without, for example, a shop or post office of its own, or a school or community hall or a public house nearby, or public transport within easy reach. Whether, in

a particular case, a group of dwellings constitutes a settlement or a "village" for the purposes of the policy will again be a matter of fact and planning judgment for the decision-maker. …"

and (in paragraph 38):

"38. This all seems at one with Lewison L.J.'s observation about the policy – brief as it was – in paragraph 15 of his judgment in [*Dartford Borough Council v Secretary of State for Communities and Local Government* [2017] EWCA Civ 141, [2017] P.T.S.R. 737]."

and (in paragraph 42):

"42. … To give effect to the policy in paragraph 55, the inspector was not obliged to ask himself whether the proposed development would be "functionally" isolated as well as "physically". He was required only to consider whether it would be physically isolated, in the sense of being isolated from a settlement. … ."

11. Though it was not referred to either in evidence or in argument before the inspector, the decision of this court in *Dartford Borough Council* has been relied upon by City & Country Bramshill in these proceedings. The "sole issue" in that case, as Lewison L.J. said (in paragraph 1 of his judgment), was "the meaning of "previously developed land" … as defined by the glossary" in the NPPF. In his view, the expression "[land] in built-up areas" in the definition could not mean "land *not* in built-up areas" (paragraph 9). And he saw no conflict between that definition and the policy in paragraph 55 of the NPPF (paragraph 14). He said (in paragraph 15):

"15. … [The] definition of previously developed land, in the context of the present case, takes as its starting point that the proposed development is within the curtilage of an existing permanent structure. It follows that the new dwelling within that curtilage will not be an "isolated" home. There will already be a permanent structure on the site. …".

The inspector's conclusions on the location of the proposed development

12. The first of the "main issues" identified by the inspector was "[whether] the proposals would provide appropriate sites for development having regard to planning policies that seek to control the location of new development and their sustainability credentials" (paragraph 23 of the decision letter).

13. She described the site and the buildings on it, noting that it "contains an extensive range of modern buildings … the lawful use … [being] a Residential Institution under Class C2" (paragraph 27). She also described the proposals in each of the appeals, and the relationships between one proposal and another. For example, she noted that the proposal in appeal 4 would provide 235 houses to the north-west of the mansion "utilising some of the existing buildings …" (paragraph 31), that the proposal in appeal 7 sought permission for "the use of 51 residential units on the site as C3 dwelling houses", 26 of which were the subject of the enforcement notices in appeals 8 to 33, and that "[the] buildings concerned are also included in appeal 4 for adaptation/demolition" (paragraph 35).

14. She said the council's reasons for refusal of planning permission for the development in appeals 1, 4, 5 and 6 "[related] to the alleged unsustainable location of the site by virtue of its remote position away from nearby settlements with services and facilities", and in appeal 7 "the provision of new isolated dwellings in the open countryside" (paragraph 54). She referred to the policy in paragraph 103 of the July 2018 version of the NPPF, which, she said, "seeks to focus significant development on locations which are or can be made sustainable, through limiting the need to travel and offering a genuine choice of sustainable transport modes", and the policy in paragraph 110, that "[encouragement] should be given to the effective re-use of land that has been previously developed …" (paragraph 57).

15. On the policy in paragraphs 78 and 79 of the NPPF she concluded (in paragraphs 58 to 61):

> "58. In rural areas, to promote sustainable development housing should be located where it will enhance or maintain the vitality of rural communities. Isolated homes in the countryside should be avoided unless they are to serve one of [the] identified special circumstances including where such development would represent the optimum viable use of a heritage asset or would be appropriate enabling development to secure the future of the heritage assets; or where the development would re-use redundant or disused buildings and enhance its immediate setting. [Here a footnote refers to paragraph 79 of the NPPF.]
>
> 59. Although the development plan policies relating to settlement boundaries are out of date, there is no dispute between the parties that the site is located outside any settlement area and is not in the vicinity of the boundary of any settlement. It is in the countryside.
>
> 60. Nonetheless the appellant considers that the proposals would not result in isolated homes in the countryside under the meaning given in paragraph 79 of the [NPPF]. I have taken into account the findings of *Braintree* [Here a footnote refers to the first instance judgment in *Braintree District Council*] which remain relevant to the revised [NPPF] as the text in the revision remains essentially the same. It was held in the judgement that the word isolated should be given its ordinary objective meaning of "far away from other places, buildings or people; remote". A distinction was also made in the judgement between "rural communities", "settlements" and "villages" on the one hand and "countryside" on the other. At the Court of Appeal it was agreed that the [NPPF] does not define a community, settlement or village or that a settlement or development boundary must have been fixed in an adopted or emerging local plan. It was held that it should not necessarily have any services or public transport within easy reach. Whether in any particular case a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker. [Here there is a footnote referring to this court's decision in *Braintree District Council*.]
>
> 61. In the cases before me, whilst I acknowledge that the site contains existing buildings, it is evidently not a rural community, settlement or village but rather a discrete group of buildings used in the past for a specific purpose as a residential institution centred on a historic house. It is remote from other settlements and villages and surrounded by open countryside. In my assessment residential

development in this location would result in new isolated housing in the countryside."

16. She acknowledged that paragraph 79 of the NPPF "allows for certain exceptions" (paragraph 62). But in the light of her conclusion that the proposals in appeals 4, 5 and 6 did not "represent the optimal viable use of a heritage asset or provide appropriate enabling development to secure the future of the heritage asset", she concluded that "these proposals do not fall under the special circumstances allowed by paragraph 79" (paragraph 63).

17. The development in appeal 4, the inspector said, "would extend beyond what can be considered as the curtilage of previously developed land", and this weighed against its "sustainability credentials" (paragraph 67). The proposals in appeals 5 and 6 did "not comprise the use of previously developed land" (paragraph 68).

18. On "sustainable transport", having considered the distance of the site from services and facilities (paragraphs 69 to 80), the inspector said the section 106 agreement showed "a commitment to measures that would assist in providing alternative transport modes for some of the appeals" (paragraph 81). But there was "no evidence as to how likely these particular measures would be to reduce the use of the private car". They "would provide some choice", but "this would be limited". The proposals did not "offer a genuine choice of transport modes as required by national and local policies" (paragraph 82).

19. Turning to City & Country Bramshill's contention that the development "would represent an improvement in greenhouse gas emissions in comparison to the site's previous use" (paragraph 83), the inspector said (in paragraphs 84 to 87):

> "84. The appellant contends that due to the nature of the trips that were undertaken in association with the previous use (and that could still be undertaken) it is relevant to sustainability to consider how the proposals would result in a reduction in greenhouse gas emissions due to the nature of the trips in the extant and proposed uses. I was not provided with evidence of the comparative greenhouse gas emissions of the previous and proposed uses. I was provided with information on trip rates by both main parties although the appellant acknowledges that it is not possible to define the ultimate origin and destination of trips from the former use. [Here a footnote refers to paragraph 337 of the closing submissions for City & Country Bramshill.] The appellant instead relies on the national and international nature of the former use that is alleged to have resulted in far greater emissions arising from trip lengths and international flights.
>
> 85. The Council claims that the proposals would result in more trips than the former use. This is largely due to the residential nature of the police college which did not generate regular trips off site. The Council did not provide information on trip lengths. I reach no conclusion on whether the existing or proposed uses would generate greater trip numbers as these do not assist in concluding on the relative greenhouse gas emissions arising from each as this would depend on distance and type. In addition it is likely that residents would travel abroad for holidays.

86. The offer of electric charging points to facilitate the use of electric cars would have the potential to assist in reducing greenhouse gas emissions. However, this would be reliant on individual occupants purchasing such cars and I have no evidence before me as to the likelihood or extent of this and the associated effect on greenhouse gas emissions.

87. As such I am unable to conclude that greenhouse gas emissions would be less with the appeal schemes before me as I do not have sufficient information before me. However, even if I did reach such a conclusion, this one factor would not lead me to a conclusion that the schemes would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes."

20. The inspector then returned (in paragraph 88) to the policies of the NPPF bearing on the sustainability of the site's location:

> "88. The [NPPF] should be read as a whole and seeks to direct development to locations which are or can be made sustainable, where services are accessible and where the natural environment is protected. I do not consider that the various measures proposed are of such weight to outweigh the conclusion that the site is in an inappropriate location in the countryside for new residential development, divorced from services and facilities. Appeals 4, 5, 6 and 7 would result in isolated homes in the countryside. Whilst the travel plan and proposals for electric charging points would potentially provide some choice of travel, given the lack of facilities within walking distance of the site, the distance to the bus stops and the unattractive nature of the road network to walk and cycle, the site's location is not one that is or can be made sustainable. The developments would not enhance or maintain the vitality of the local communities or result in strong and vibrant rural communities. I conclude that the site would not be an appropriate and sustainable location for housing development in Appeals 1, 4, 5, 6, and 7-33."

21. In her conclusions on the first "main issue", therefore, the inspector said the proposals in appeals 1, 4, 5, 6 and 7 to 33 "would not provide appropriate sites for housing development in respect of their location and sustainability credentials", and "would not be in accord with … the objectives of national planning policy" (paragraph 91). However, the site in appeal 2 "would be an appropriate site for a single dwelling", and that in appeal 3 "an appropriate site for offices given the fallback position". Both of those proposals were "in accord with local and national policies in this regard" (paragraph 92).

22. Later, when dealing with the ground (c) appeals against the enforcement notices, she considered the lawfulness of the uses to which the notices related (paragraphs 363 to 376).

Did the inspector misinterpret and misapply the policy for "isolated homes in the countryside" in paragraph 79 of the NPPF?

23. For City & Country Bramshill, Mr James Strachan Q.C. argued – as he did before Waksman J. – that in concluding the proposals would create "isolated homes in the countryside" the inspector misinterpreted the policy in paragraph 79 of the NPPF.

24. Mr Strachan made three main submissions. First, the inspector failed to comply with the "principle" stated by Lewison L.J. in paragraph 15 of his judgment in *Dartford Borough Council*, which was binding on her even though that case had not been mentioned at the inquiry. She did not grapple with the fact that the proposed housing would be on "previously developed land" within the curtilage of existing permanent structures, and so would not be "isolated homes in the countryside". As she was reminded in City & Country Bramshill's closing submissions, this was conceded in cross-examination by the council's witness Mr Archibald, and, for the development in appeals 4, 5 and 6, by its witness Mr Stevenson. Secondly, she failed to consider whether there was a "cluster" of dwellings forming a "settlement" on the site, as envisaged in *Braintree District Council*. There were already at least 18 residential units in lawful use as independent dwellings (those in appeals 15 and 17 to 33), and at least 17 more containing staff accommodation, which could also be used as new dwellings. So to describe the proposed new housing as "isolated homes" was not rational. The judge's analysis here (in paragraphs 40 to 42 of his judgment) was incorrect. And thirdly, the inspector also failed to consider how the housing proposed in appeal 4, with or without the additional housing in appeals 5 and 6, could rationally be regarded as the creation of "isolated homes in the countryside". The judge was wrong to suggest (in paragraphs 32 and 44 of his judgment) that the number of houses proposed was irrelevant to the question of whether the proposal was for "isolated homes". It is implicit in this court's reasoning in *Braintree District Council* that a decision-maker should consider whether the number of dwellings proposed would be sufficient to avoid "isolation".

25. Mr Strachan contended therefore that the inspector's conclusion in applying the policy in paragraph 79 of the NPPF was irrational. No reasonable decision-maker could have regarded the proposed housing as "isolated homes in the countryside". But in any event, the inspector's reasons on this "principal important controversial issue", were deficient.

26. Finally, Mr Strachan submitted that having upheld the challenge to the inspector's decision on appeal 7 and having also remitted the decisions on appeals 8 to 14 and 16 for redetermination, the judge should also have quashed the decisions on appeals 4, 5 and 6. Those other decisions had implications for the "isolated homes" issue in appeals 4, 5 and 6. If the inspector had allowed appeal 7, the use of the buildings on the site for 51 dwellings would have been lawful, as well as the residential use of the mansion itself.

27. I cannot accept those submissions. In my view, as Mr Guy Williams submitted for the Secretary of State, there is nothing in the inspector's conclusions to suggest that she misinterpreted the policy in paragraphs 78 and 79 of the NPPF, nor did she misapply it. She clearly adopted the interpretation given by this court in *Braintree District Council*. And she applied the policy reasonably and lawfully to the proposals before her. She made no error of law in either respect, and there is no reason here for the court to intervene.

28. The principles on which the court will act in a challenge to an inspector's decision on a planning appeal are well established (see *St Modwen Developments v Secretary of State for Communities and Local Government* [2017] EWCA Civ 1643, [2018] P.T.S.R. 746, at paragraph 6). The court will not be drawn into an unduly legalistic approach (see *Barwood Strategic Land II LLP v East Staffordshire Borough Council* [2017] EWCA Civ 893, [2018] P.T.S.R. 88, at paragraph 50). It will never trespass into areas of planning judgment, except to consider whether such judgment has been exercised lawfully, and it will keep in mind that the inspector appointed by the Secretary of State to make the decision will have

brought his or her own expertise to the task (see *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] UKSC 37, [2017] 1 W.L.R. 1865, at paragraph 25). Where national or development plan policy is the focus of argument, it must tell apart grounds that genuinely allege a misinterpretation of policy and those presented in that guise, which are, in truth, only a complaint about the way in which the policy has been applied (see *Hopkins Homes Ltd.*, at paragraph 26). It will read the decision letter fairly, with due tolerance for minor imperfections or infelicity. It will not expect elaborate or lengthy reasons for every conclusion, but consider "whether the interests of the applicant have been substantially prejudiced by the deficiency of the reasons given" (see the speech of Lord Bridge of Harwich in *Save Britain's Heritage v Number 1 Poultry Ltd.* [1991] 1 W.L.R. 153, at p. 167). It will keep in mind that the decision letter is directed to parties familiar with the evidence and submissions in the case (see the speech of Lord Brown of Eaton-under-Heywood in *South Bucks District Council v Porter (No.2)* [2004] UKHL 33, [2004] 1 W.L.R. 1953, at paragraph 36). It will not expect every piece of evidence, every concession made in cross-examination, and every submission of counsel to be mentioned. That would be wholly unreal.

29. I would reject the suggestion that the inspector was not entitled to apply the paragraph 79 policy to all the housing proposals before her, and not merely those to which the council was opposed on the grounds of alleged conflict with that policy. She was considering each appeal on its merits, without being confined by the council's reasons for refusal or the reasons it had given for taking enforcement action (sections 78, 79(1) and 174(2)(a) of the 1990 Act). She was entitled to apply the policy in paragraph 79 to each of the housing proposals before her. And it was appropriate to do so when she was considering, as part of her first "main issue", the sustainability of the site's location for housing. Her formulation of that issue put squarely in play, for all of the proposed housing, the policies of the NPPF bearing on the sustainability of the site's location, including the policy in paragraph 79. No unfairness or other illegality arose from proceeding as she did.

30. One must remember that the concept of "isolated homes in the countryside" is not a concept of law. It is a concept of national planning policy. It is not defined in the NPPF. It does not lend itself to rigorous judicial analysis (see the judgment of Lord Carnwath in *Hopkins Homes Ltd.*, at paragraph 26). As with many other broadly framed policies in the NPPF, its application will depend on the facts of the case, and decision-makers will have to exercise their planning judgment in a wide variety of circumstances (see the judgment of Lord Carnwath in *R. (on the application of Samuel Smith Old Brewery (Tadcaster)) v North Yorkshire County Council* [2020] UKSC 3, [2020] P.T.S.R. 221, at paragraph 39). The court's role, therefore, both in interpreting the policy and in reviewing its application, is limited (see *Hopkins Homes Ltd.*, at paragraphs 24 to 26). As Lord Reed said in *Tesco Stores Ltd. v Dundee City Council* [2012] UKSC 13, [2012] P.T.S.R. 983 (in paragraph 18), where decision-makers are required to exercise judgment in applying a policy to a given set of facts, "their exercise of their judgment can only be challenged on the ground that it is irrational or perverse".

31. Fortunately, we are not faced with having to interpret the paragraph 79 policy. That has already been done by this court in *Braintree District Council* – though for the predecessor policy in paragraph 55 of the 2012 version of the NPPF. In *Braintree District Council* the central issue in the appeal was the meaning of the expression "new isolated homes in the countryside". In this case, the contentious phrase – now in paragraph 79 – is simply "isolated homes in the countryside". In substance, however, the policy is unchanged.

32. There is, therefore, no need for any further discussion of what is meant by the concept of "isolated homes in the countryside" in this policy. The essential conclusion of this court in *Braintree District Council*, in paragraph 42 of the judgment, is that in determining whether a particular proposal is for "isolated homes in the countryside", the decision-maker must consider "whether [the development] would be physically isolated, in the sense of being isolated from a settlement". What is a "settlement" and whether the development would be "isolated" from a settlement are both matters of planning judgment for the decision-maker on the facts of the particular case. This understanding of the policy, in its context, is not disturbed by what Lewison L.J. had earlier said in *Dartford Borough Council* (at paragraph 15). His observation was obiter, as was my comment about it in *Braintree District Council* (at paragraph 38). No conflict of authority exists between the decisions in those two cases.

33. To adopt remoteness from other dwellings, instead of remoteness from a settlement, as the test for "isolated homes in the countryside" would seem inconsistent with the Government's evident intention in producing the policy in paragraph 79. It would mean, presumably, that the policy would not apply to a development of housing in the countryside – large or small – on land next to an individual dwelling remote from the nearest settlement, because although the new homes might be "isolated" from the settlement, they would not be "isolated" from existing development. It would prevent the policy from applying to the development of additional dwellings, one or two at a time, on sites next to other sporadic rural housing, again on the basis that they would not then be "isolated". It might even prevent the policy from applying to a proposal for two or more dwellings on a single, undeveloped site in the countryside, because none of them would itself be "isolated" from another dwelling, and the development as a whole would therefore not be "isolated". If this were so, only the development of a single dwelling, on its own, separate from any other dwelling already built or proposed nearby, would engage the policy. This would be hard to reconcile with the Government's aim, as policy-maker, to "promote sustainable development in rural areas".

34. The policy in paragraphs 78 and 79 of the NPPF aligns with that in paragraph 72. Their common theme is the need for the planning system to promote sustainably located housing development. Neither policy favours the unplanned and unsustainable development of housing in the countryside, away from existing settlements. As paragraph 72 indicates, it is for plan-making to achieve the "supply of large numbers of new homes" by "planning for larger scale development, such as new settlements or significant extensions to existing villages and towns, provided they are well located and designed, and supported by the necessary infrastructure and facilities". This is within the remit of "strategic policy-making authorities". It is their job to "identify suitable locations for such development where this can help to meet identified needs in a sustainable way".

35. In this case the inspector's application of the policy in paragraphs 78 and 79 was, in my view, impeccable. It shows that she understood those policies correctly. Her relevant conclusions sit within her assessment of the appropriateness and sustainability of the proposed development in this location. To get the full sense of those conclusions, one must read her assessment on this first "main issue" in its entirety. When this is done, no error of law emerges in her handling of the policy in paragraphs 78 and 79.

36. In dealing with appeals 1, 4, 5 and 6, she began by identifying the basic objection underlying the relevant reasons for refusal in the council's decision notices, namely that the

proposed development was in an "unsustainable location … by virtue of [the site's] remote position away from nearby settlements with services and facilities" (paragraph 54 of the decision letter). She then referred to the general policy background for sustainable development, including paragraphs 103 and 110 of the NPPF, which emphasise, respectively, the importance of "[focusing] development on locations which are or can be made sustainable …" and "[encouraging] … the effective re-use of land that has been previously developed …" (paragraph 57). It was with these principles in mind that she went on to apply the policy in paragraphs 78 and 79.

37. She summarised the policy accurately (paragraph 58). She recorded, as the parties had agreed, that the site was "located outside any settlement [,] … not in the vicinity of the boundary of any settlement [, and] in the countryside" (paragraph 59). She then dealt with the assertion that "the proposals would not result in isolated homes in the countryside". She confirmed that she had taken into account both the first instance judgment and the decision of the Court of Appeal in *Braintree District Council*, setting out the court's basic conclusions on the interpretation of the policy. In the light of the Court of Appeal's decision, she directed herself, rightly, that the question of "[whether], in a particular case, a group of dwellings constitutes a settlement or a village for the purposes of the policy will be a matter of fact and planning judgement for the decision maker" – a reference to paragraph 32 of the judgment (paragraph 60). It is clear, therefore, that she had in mind what had been said about the possibility of a "cluster of dwellings" being a settlement, which appears in the same paragraph of the judgment. She understood that it was for her to determine whether the group of buildings on the site was or was not a settlement.

38. She stated her findings of fact on the relevant questions, and the conclusion she had come to in the exercise of her planning judgment. The salient facts were that the site "contains existing buildings"; that it was "evidently not a rural community, settlement or village", but "a discrete group of buildings used in the past … as a residential institution centred on a historic house"; and that it was "remote from other settlements and villages and surrounded by open countryside". None of these findings are attacked in these proceedings. The conclusion based on them, as a matter of planning judgment, was equally clear: that "residential development in this location would result in new isolated housing in the countryside" (paragraph 61). And it was later repeated (in paragraphs 87 and 88). It is invulnerable in a legal challenge. Mere disagreement is not enough to unseat it.

39. Rightly, the inspector went on to consider, for each appeal, whether the proposal fell within any of the specified exceptions in the policy. Once again, she exercised her own planning judgment, concluding that no valid exception was demonstrated for the proposals in appeals 4, 5 and 6 (paragraph 63). There is no error of law in those conclusions.

40. The inspector's reasons are clear and complete. They express and explain the findings and conclusions required of her under the policy. She did not have to record all the evidence and submissions she had heard, or set out the concessions made by particular witnesses and the submissions of counsel in the light of those concessions. She had to set out her main findings of fact on the evidence before her, and state her conclusions. That is what she did.

41. It is not a valid criticism of her that she made no mention of *Dartford Borough Council*. City & Country Bramshill did not rely on that case at the inquiry, and no one else seems to have referred to it. She was aware of it – because it is touched upon in the judgment in

Braintree District Council, which she had obviously read. But she did not have to say anything about it, for it established no "principle" relevant to her assessment.

42. In summary, therefore, the findings of fact and conclusion in paragraph 61 of the decision letter were lawful findings and a lawful conclusion in the application of the paragraph 79 policy, on its true interpretation. So too were the inspector's findings and conclusions on the possible exceptions to the policy.

43. Her conclusion in paragraph 61 of the decision letter was clearly intended to apply to each of the proposals for housing, and to each dwelling proposed. It does not depend on the number of dwellings in any single part of the total scheme, or any of the permutations possible within that scheme, or the total number of dwellings capable of being provided if all the appeals were allowed. It goes for all of them, individually and together. It relates simply to "residential development in this location". Such development would, as the inspector put it, "result in new isolated housing in the countryside" – because each and all of the dwellings proposed were, as she had found, "isolated" from any settlement.

44. Each of the proposals for housing was, in her planning judgment, objectionable for that reason. From this it follows that a successful challenge against one or more of her decisions in the relevant appeals on some other ground does not invalidate her conclusion on this issue, or her decision, in any of the others. It is therefore wrong to contend, as Mr Strachan did, that the judge, having decided to quash some of the decisions, ought therefore to have quashed others as well on the basis that the outcome on this issue might have been different if the inspector had allowed those other appeals. That is a misconception.

45. Implicit in the inspector's conclusion in paragraph 61 of the decision letter is that the proposed new housing, when added to the remaining buildings on the site, would not form a settlement. This is put beyond doubt in her conclusions on the site's lack of sustainability. Despite the various measures proposed, she did not accept that the scheme would "overall comprise sustainable development" – because of the site's "isolated location … and the lack of alternative transport modes" (paragraph 87). She found that "[appeals] 4, 5, [and] 6 … would result in isolated homes in the countryside", that "the site's location is not one that is or can be made sustainable" and that "[the] developments would not … result in strong and vibrant local communities". And she concluded that "the site would not be an appropriate and sustainable location for housing development in Appeals … 4, 5 [and] 6 …" (paragraph 88) and that those proposals did not accord with "the objectives of national planning policy" (paragraph 91). It would be difficult to imagine any firmer conclusion that those proposals were in conflict with the policies of the NPPF for the location of housing development, including the policy in paragraph 79.

46. It cannot be said that in applying the paragraph 79 policy the inspector neglected the presence of the existing buildings on the site and the existing residential uses, or did not have in mind what the different consequences would be if some of the appeals succeeded and others failed. When describing the site, she referred to the "extensive range of modern buildings [,] … the lawful use … [being] a Residential Institution under Class C2" (paragraph 27). She acknowledged that it contained a "discrete group of buildings" once used as a "residential institution" and "centred on a historic house" (paragraph 61). It was on this basis that she considered whether, in its present state, the site was a settlement. She was also aware of the extent of "previously developed land" on the site, the existing residential uses, the status of those uses, and the "fall-back" on which City & Country

Bramshill relied. She referred several times to the areas of "previously developed land" (paragraphs 65, 66, 67, 68 and 89). She had regard to "the site's previous use" (paragraphs 83 and 84), and to the "extant" or "previous" or "former" uses, in contradistinction to the uses "proposed" (paragraphs 83 and 84). She referred to the "fallback position" of the extant class C2 use (paragraph 92). And when dealing with the ground (c) appeals against the enforcement notices, she had to consider the lawfulness of the uses enforced against (paragraphs 363 to 376). That she had the "fall-back" well in mind is indisputable.

47. In these circumstances it is, I think, impossible to suggest that her findings and conclusions in the application of the policy in paragraphs 78 and 79 of the NPPF were flawed because she had somehow overlooked the relationship between various proposals, or, in particular, the relationship between appeals 4 and 7 and the potential consequences of either or both of those appeals, or any others, succeeding.

48. Nor can it be suggested that if she had not gone wrong when determining appeal 7 – as the judge held she did – and had allowed that appeal, her conclusions in applying that policy might have been different. In considering the effect of the policy on the proposals, she explicitly took account of the buildings already on the site, regardless of whether they were still in active use, and this necessarily included the buildings in appeal 7 (paragraph 61). She assumed that the buildings on the site remained in place, not that any of them had been removed or replaced by new development. And when considering whether any of the proposals qualified as an exception to the policy, she referred to individual buildings on the site, including buildings that were now "disused", such as those in appeal 7 (paragraph 64). Her approach was consistent, and in my view perfectly sound.

Was the inspector's approach to sustainability unlawful?

49. Mr Strachan argued that the inspector erred in her approach to the sustainability of the development in the appeals she dismissed – in particular, by failing to take proper account of the accepted "fall-back" use of the site as a residential institution. The judge was wrong to reject this argument (in paragraphs 152 to 155 of his judgment).

50. Mr Strachan submitted that the inspector failed to see the significance of the "fall-back" for her consideration of sustainability, traffic movements and the reduction in greenhouse gas emissions (in paragraphs 82 to 87 of the decision letter). Even if she was unable to find the proposed development superior to the "fall-back" in terms of traffic congestion and greenhouse gas emissions, she should have had regard to the "fall-back" when considering whether it was "locationally unsustainable". To ignore the "fall-back" was irrational. To say she was "unable to conclude that greenhouse gas emissions would be less with the appeal schemes" because she did not have "sufficient information" was wrong. There was, in fact, a good deal of evidence on this issue, which was referred to in City & Country Bramshill's closing submissions, including Mr Archibald's concession that both the police college use and an alternative Class C2 use would be less sustainable in its generation of greenhouse gas emissions than the proposed development. The inspector gave no adequate reasons for disagreeing with relevant expert evidence. Her reference (in paragraph 87) to the "isolated location of the site" was based on her misunderstanding of NPPF policy on "isolated homes". She ought to have considered whether the perceived "lack of genuine alternative transport modes" could properly be an objection here – not only because this could also be said of the "fall-back" but also because the policy for "sustainable transport"

in paragraph 103 of the NPPF was directed to reducing congestion, which was not in issue, and greenhouse gas emissions, on which she came to no firm conclusion.

51. That argument is not cogent. I need not repeat what I have said on the previous issue, though it is also relevant here. The inspector was not legally at fault in her understanding and application of national planning policy for the location of housing development. Nor did she err when considering whether the site was "locationally sustainable".

52. Her assessment on "sustainable transport", which resulted in her conclusion (in paragraph 82 of the decision letter) that the proposed development would not provide a "genuine choice of transport modes as required by national and local policies", betrays no legal error. As the judge concluded (in paragraph 155 of his judgment), she was entitled to take the view – as she plainly did – that the reliance placed by City & Country Bramshill on its commitment to providing "alternative transport modes" did not support a different conclusion (paragraphs 81 and 82 of the decision letter). This was a reasonable and lawful exercise of planning judgment.

53. As I have said, it is clear that the inspector took account of the "fall-back" when assessing the locational sustainability of the proposed development. One sees this in her conclusion on the assertion that the development would reduce greenhouse gas emissions "in comparison to the site's previous use". She dealt with this issue even though she had concluded, applying the policy in paragraph 103 of the NPPF, that the development would not provide a choice of transport modes to reduce congestion and emissions (paragraph 83 of the decision letter). She referred to the "trips … undertaken in association with the previous use (and that could still be undertaken) …". And in assessing "sustainability", she compared greenhouse gas emissions generated by the "extant and proposed uses". But this exercise was impeded by the lack of evidence on the "former use", largely because, in spite of the "national and international nature" of that use (paragraph 84), it was not possible to ascertain the origins and destinations of trips to and from the site and calculate "relative greenhouse gas emissions" (paragraph 85), or to conclude that they would now be "less" (paragraph 87) (my emphasis). That she had the "fall-back" well in mind is also confirmed by her conclusions on the office use proposed in appeal 3. Here she twice referred to the "fall-back", comparing it with the appeal proposal. She concluded that "given the fallback position of the extant C2 use of the site … which includes B1 uses that would be comparable to the proposed use", the latter "would not be unacceptable on the grounds of its location or sustainability credentials" (paragraph 90). The site was "appropriate … for offices given the fallback position" (paragraph 92).

54. Nor can it be said that she neglected the evidence given by the council's witness Mr Archibald on which Mr Strachan relied in his closing submissions. She attached a footnote to paragraph 84 of her decision letter, referring to paragraph 337 of those submissions, which is in a passage where Mr Strachan emphasised concessions made by the council's witnesses in response to his questioning. To suggest she did not have in mind all the relevant evidence, including that given in cross-examination, and the submissions based upon it, simply because she did not refer to it all, is, I think, impossible.

55. It is quite clear, therefore, that the inspector did not ignore the existence of the "fall-back", nor did she overlook relevant evidence and submissions. She considered the "fall-back", with as much help as the parties could give her. Her references to the "previous use … that could still be undertaken" and to the "extant" and "former" use are obviously to the "fall-

back" use of the site as a residential institution. On the evidence before her, she sought to compare that use with the proposals for residential development in the appeals. Doing the best she could, she was unable to come to a reliable view on the relative effects on greenhouse gas emissions. This was a conclusion reasonably open to her, as a matter of planning judgment. It is nowhere close to irrational.

56. And anyway it was not decisive. The inspector's critical conclusion on the first "main issue" was that the site was inherently unsustainable as a location for housing. As she said, even if it had been shown that the proposed development would generate lower levels of greenhouse gas emissions than the "fall-back", this would not have led her to conclude that it "would overall comprise sustainable development due to the isolated location of the site and the lack of genuine alternative transport modes" (paragraph 87 of the decision letter). This too, as a matter of planning judgment, was a wholly reasonable conclusion.

The section 66(1) duty and relevant policy for "heritage assets"

57. Section 66(1) of the Listed Buildings Act provides:

> "66. (1) In considering whether to grant planning permission … for development which affects a listed building or its setting, the local planning authority or … the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

58. In chapter 16 of the NPPF, "Conserving and enhancing the historic environment", paragraph 190, under the heading "Proposals affecting heritage assets", urged local planning authorities to "identify and assess the particular significance of any heritage asset that may be affected by a proposal …", and to "take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal". The "Glossary" defined "Conservation (for heritage policy)" as "[the] process of maintaining and managing change to a heritage asset in a way that sustains and, where appropriate, enhances its significance". Paragraphs 193 to 196 stated:

> "193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
>
> 194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to or loss of:
> …
> b) assets of the highest significance, notably … grade I and II* listed buildings, grade I and grade II* registered parks and gardens … should be wholly exceptional.

195. Where a proposed development will lead to substantial harm to (or total loss of significance of) a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or total loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
[Four considerations were then set out, which are not relevant in this case.]

196. 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."

59. Policy CON11 of the local plan states that "[development] that would adversely affect a Scheduled Ancient Monument, other site of archaeological importance or its setting will not be permitted". Policy CON12, "Historic Parks and Gardens", states:

> "… DEVELOPMENT THAT WOULD ADVERSELY AFFECT HISTORIC PARKS AND GARDENS OR THEIR SETTINGS … WILL NOT BE PERMITTED."

Policy CON17, "Listed Buildings and Buildings of Local Interest – extension or alteration", states:

> "… PROPOSALS FOR THE EXTENSION OR ALTERATION OF LISTED BUILDINGS OR BUILDINGS OF LOCAL INTEREST, WILL NOT BE PERMITTED UNLESS:
> (i) The scale of the building is not materially changed;
> (ii) Design is appropriate to the character and setting of the building."

Policy CON18, "Listed Buildings or Buildings of Local Interest – Change of Use", states:

> "IN ORDER TO ENSURE THE PRESERVATION OF THE BUILT STRUCTURE, THE CHANGE OF USE OF A LISTED BUILDING … WILL ONLY BE PERMITTED IF IT IS IN KEEPING WITH THE BUILDING AND WILL NOT MATERIALLY AFFECT FEATURES OF HISTORIC OR ARCHITECTURAL IMPORTANCE."

60. There is ample case law on the section 66 duty. In *Barnwell Manor Wind Energy Ltd. v East Northamptonshire District Council* [2014] EWCA Civ 137, [2015] 1 W.L.R. 45 Sullivan L.J. said (at paragraph 22) that the judgment of Glidewell L.J. in *The Bath Society v Secretary of State for the Environment* [1991] 1 W.L.R. 1303 was "authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give "considerable importance and weight"". This conclusion was, he said (in paragraph 23), "reinforced" by a passage in the speech of Lord Bridge of Harwich in *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 A.C. 141 (at p.146E-G). He added (in paragraph 28) that the "general duty" in section 66(1) "applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance". *South Lakeland District Council* was a case concerning the statutory requirement – now in section 72(1) of the Listed Buildings Act – that "special attention

shall be paid to the desirability of preserving or enhancing [the] character or appearance [of a conservation area]". Lord Bridge (at p.150B-E) endorsed the observation of Mann L.J., in this court, that "[the] statutorily desirable object of preserving the character or appearance of an area is achieved either by a positive contribution to preservation or by development which leaves character or appearance unharmed, that is to say, preserved".

61. In *Jones v Mordue* [2015] EWCA Civ 1243, [2016] 1 W.L.R. 2682, Sales L.J. said (at paragraph 28):

> "28. … [The] express references by the Inspector to both Policy EV12 and paragraph 134 of the NPPF [as originally issued in 2012] are strong indications that he in fact had the relevant legal duty according to section 66(1) of the Listed Buildings Act in mind and complied with it. … Paragraph 134 of the NPPF appears as part of a fasciculus of paragraphs … which lay down an approach which corresponds with the duty in section 66(1). Generally, a decision-maker who works through those paragraphs in accordance with their terms will have complied with the section 66(1) duty. When an expert planning inspector refers to a paragraph within that grouping of provisions … then – absent some positive contrary indication in other parts of the text of his reasons – the appropriate inference is that he has taken properly into account all those provisions, not that he has forgotten about all the other paragraphs apart from the specific one he has mentioned. … ."

62. In *Palmer* it was argued that the local planning authority had failed to consider likely harm to the setting of a listed building by noise and smell from the proposed poultry sheds. Lewison L.J. said (in paragraph 5 of his judgment) that giving "considerable weight" to harm to the setting of a listed building "does not mean that the weight that the decision-maker must give to the desirability of preserving the building or its setting is uniform". It "will depend on, among other things, the extent of the assessed harm and the heritage value of the asset in question: [*Barnwell Manor*, paragraph 28; *R. (on the application of Forge Field Society) v Sevenoaks District Council* [2014] EWHC 1895 (Admin), [2015] J.P.L. 22, paragraph 49]". He went on to say (in paragraph 29) that the "clear thrust" of the officers' relevant advice to the planning committee had been that "if the [proposed] mitigation measures were put in place there would be no adverse effect on the setting of the listed building". He continued:

> "29. … I would accept … that where proposed development would affect a listed building or its setting in different ways, some positive and some negative, the decision maker may legitimately conclude that although each of the effects has an impact, taken together there is no overall adverse effect on the listed building or its setting. That is what the officers concluded in this case. … ."

The inspector's conclusions on the likely effects of the development on "heritage assets"

63. The inspector's third "main issue" was "[whether] the works and development would preserve the listed buildings and registered park and garden or their settings, or any features of historic interest which they possess" (paragraph 23 of the decision letter). In a footnote she recited section 66(1) of the Listed Buildings Act, and paraphrased paragraphs 193 and 194 of the NPPF.

64. At the inquiry, the council accepted that the local plan policies for protecting the historic environment were not wholly consistent with the corresponding policies in the NPPF. The inspector noted that there was "disagreement on the weight to be applied to policies CON11, CON12, CON17 and CON18"; that the council agreed with City & Country Bramshill that these policies were "inconsistent with the [NPPF] due to the absence of consideration of the public benefit balance where harm is identified"; but that the council, the National Trust and Historic England said they "should be given moderate weight given that their primary objective is the preservation of designated assets which is in accordance with the [NPPF] and [the Listed Buildings Act]" (paragraph 45). She continued:

> "46. Whilst the [NPPF] sets out a clear balancing exercise to be undertaken and which is absent in the relevant development plan policies, the statutory requirement … relates to the special regard the decision maker should have to the desirability of preserving the building, its setting or its special features. Whilst I find policies CON11-CON18 to lack the balancing requirement of the [NPPF], they contain the statutory requirement. Given this, I find that the policies should be given significant weight."

65. She confirmed that in considering the effects of the development on the listed buildings she had had regard to section 66(1) of the Listed Buildings Act, which, she said, "requires special regard to be had to the desirability of preserving buildings or their settings or any features of special architectural or historic interest which they possess" (paragraph 121). Although the registered park and garden did not have the same statutory protection, it was, she said, "recognised as a heritage asset" in the NPPF (paragraph 122). She described the relevant policies of the NPPF, including those in paragraphs 193 to 196:

> "122. … The [NPPF] recognises such assets as an irreplaceable resource, and states that they should be conserved in a manner appropriate to their significance, so that they can be enjoyed for their contribution to the quality of life of this and future generations. Chapter 16 of the [NPPF] sets out the approach in determining applications (or appeals) in respect of such assets. It states that when considering the impact of a proposed development on the significance of a designated heritage asset great weight should be given to the asset's conservation with the more important the asset the greater the weight [should] be. Any harm or loss should require clear and convincing justification. The [NPPF] sets out the criteria to be considered where either substantial or less than substantial harm are identified."

She referred (in paragraph 123) to a difference of approach in the relevant evidence:

> "123. Historic England and the National Trust provided their evidence on the basis that paragraphs 195 and 196 of the [NPPF] would always be engaged where any element of harm was identified. The appellant held that this was not the correct approach based on the findings of *Palmer*. The appellant's case is that an "internal heritage balance" should be carried out where elements of heritage harm and heritage benefit are first weighed to establish whether there is any overall heritage harm to the proposal. Paragraphs 195 and 196 would only be engaged where there is residual heritage harm. This should then be weighed against the public benefits of the scheme."

She then (in paragraph 124) quoted the passage I have mentioned in paragraph 29 of Lewison L.J.'s judgment in *Palmer*, and went on to say (in paragraphs 125 to 127):

> "125. In my assessment the judgement does not necessarily bring me to a conclusion that an internal heritage balance should be carried out in the manner that the appellant advocates. The case clearly involved a wholly different context and set of circumstances and the conclusions relating to harm were based on avoidance through mitigation measures rather than any assessment of whether the benefits of the development outweighed any harm. However, the judgement clearly does reinforce that a balancing exercise needs to be carried out but it does not direct the decision maker to only one method by which that should be done.
>
> 126. I note the cases that have been drawn to my attention, some of which do follow the approach advocated by the appellant and some do not. These are clearly cases where alternative approaches have been taken based on the particular circumstances of each case. Nonetheless, irrespective of these decisions, the statutory duty to preserve the building should be given considerable importance and weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*].
>
> 127. The cases before me are complex with multiple works involved. Some of the benefits to the assets are not proposed with the individual developments themselves but are put forward as a part of other developments subject to separate decisions. In this context, I have adopted a straightforward application of paragraphs 190 and 193-196 of the [NPPF]. I have firstly identified the significance of the assets. I have then assessed whether each development proposal would, of its own doing, lead to substantial or less than substantial harm to that significance. Subsequent to making this assessment of harm, I have then considered whether this harm is outweighed by the public benefits of the individual proposal and provided in other proposals subject to other decisions. Paragraph 20 of the Planning Practice Guidance "Conserving and enhancing the historic environment" (the PPG) explains what is meant by public benefits (which may include heritage benefits) and that all types of public benefits can be taken together and weighed against harm."

66. In her conclusions on appeal 4 the inspector considered the likely effects of the development on the registered park and garden and on "the setting of the various listed buildings" (paragraph 199). She concluded that it would be "harmful" both to "the visual appearance, planned design and function of the RPG" (paragraph 211) and to "the setting of all the listed buildings within the ensemble by virtue of the harm that would arise to the RPG" (paragraph 214). She considered "the harm to the significance of the setting of the listed buildings … less than substantial", and "weighed that harm against the public benefits of the proposal" (paragraph 215). There was "no dispute between the parties that the removal of modern buildings and parking areas and the re-instatement of the original link between the house and garden by re-aligning Reading Avenue would be of benefit to the RPG and the setting of the listed buildings" (paragraph 217). The college buildings were "clearly harmful to the RPG's form, layout and characteristics and to the setting of the listed buildings". The "removal of the buildings and the restoration of the park and garden would clearly be in the public interest". She gave these matters "considerable

weight". But the "dispute" lay in "the weight to be attributed to that benefit given the alternative development proposed" (paragraph 218). She judged "[the] benefits in removing buildings and re-aligning Reading Avenue … not … sufficient to outweigh the alternative and greater harm caused by developing this unspoilt part of the RPG". The "permissive path" would be "of benefit in providing access into the Bramshill estate …" (paragraph 221). The proposed "site wide management plan would be in the public interest" (paragraph 222). An appropriate "landscape and habitats management plan" would be "of clear benefit to the overall restoration of the RPG and wider ecological interests". But she did "not find that this would outweigh the harm that … would arise from the proposed development" (paragraph 223). She concluded (in paragraph 226):

> "226. I find that appeal 4 would be harmful to the RPG and the setting of the listed buildings and would not preserve their special qualities. This harm would not be outweighed by public benefits. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy."

67. A similar exercise followed for appeal 5. The inspector referred to the harm that would be caused by extending development into "open parkland", which "would result in most of the parkland being developed" (paragraph 228). The development would "intensify and extend the harms" she had identified in appeal 4. It would be "an inappropriate development … harmful to the RPG and the setting of the listed buildings". This would be "less than substantial" harm, but "at the higher end of the scale" (paragraph 229). She considered the "public benefits" in the funding of repair works to the mansion and other listed buildings and curtilage buildings. But she concluded (in paragraph 235):

> "235. … [The] public benefits of appeal 5 do not outweigh the harm that I have identified. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy."

68. In appeal 6, her approach was the same. The development would be located to the north-west of the lake, which was, she said, "one of the major features of the RPG", had "largely [survived] in its original form" and was "of historic aesthetic and architectural significance" (paragraph 236). Though it would "not destroy or remove the presence of the lake and island …", and would "not interfere with the ability of those using the RPG to continue to go on a journey along the embankment and walks that were part of the Jacobean layout of the garden" (paragraph 240), the development would "reduce the aesthetic significance of the feature and wider RPG …", and "result in the engineered embankment being less legible and thus reduce its significance". The harm would be "less [than] substantial but of the highest order" (paragraph 241). The "public benefit" would be the funding of £2 million for repairs to the mansion. As there was "an acceptable use for the mansion … which would not require cross-subsidy", the inspector saw "no justification for allowing appeal 6 with its associated harm" (paragraph 243). She concluded:

> "243. … [The] public benefits arising from appeal 6 would be clearly outweighed by its resulting harm. The proposal would not preserve the RPG or the setting of the listed buildings. It would not be in accord with Local Plan policies CON12, CON17 and national planning policy."

Did the inspector err in performing the duty in section 66(1) of the Listed Building Act and applying the policies for "heritage assets" in the NPPF?

69. Before the judge, City & Country Bramshill argued that the inspector had erred in failing to carry out a "net" or "internal" heritage balance. Only if "overall harm" emerges from the weighing of "heritage harms" against "heritage benefits" must the "other public benefits" of the development be weighed against that "overall harm" under the policy in paragraph 196 of the NPPF. Support for this submission was to be found in paragraph 29 of the judgment of Lewison L.J. in *Palmer*. The inspector should have given "great weight" to the "heritage benefits", to reflect the "great weight" that paragraph 193 of the NPPF requires to be given to the "conservation" of a designated heritage asset. This argument, however, did not impress Waksman J.. In his view, the decision in *Palmer* "did not impel [the inspector] to undertake an internal initial balancing exercise under paragraph 193". Indeed, he "would have regarded that as an error of law" (paragraph 120 of the judgment). The balancing exercise itself was "a classic application of planning judgment" (paragraph 121).

70. Mr Strachan repeated the same argument before us. Relying on the first instance decision in *Safe Rottingdean v Brighton and Hove City Council* [2019] EWHC 2632 (Admin), he submitted that the *Palmer* "principle" applies both to the statutory obligation in section 66(1) and to relevant policies in the NPPF and the development plan. The inspector failed to see this. Paragraph 193 of the NPPF required "great weight" to be given to the "conservation" of a heritage asset, including enhancement of its significance. Paragraph 196 required the likely effect on the significance of the heritage asset to be assessed, which could only be done by weighing any harm to that significance against any benefits to it. If there was no "net harm", the policy in paragraph 196 was not engaged. The definition of "Conservation (for heritage policy)" in the NPPF did not exclude "countervailing benefits". It implied that "great weight" must attach both to any harm to the significance of the heritage asset and to any enhancement of it – such as the appeal proposals would achieve. The judge was wrong (in paragraph 112 of his judgment) to distinguish *Palmer* on the basis that the "principle" relates not to "separate benefits" but only to "mitigation measures to negate the adverse effects which would otherwise arise". The "principle" in *Palmer* extends to cases in which there are separate elements of harm and benefit to the significance of a heritage asset.

71. Like the judge, I cannot accept those submissions. It is not stipulated, or implied, in section 66(1), or suggested in the relevant case law, that a decision-maker must undertake a "net" or "internal" balance of heritage-related benefits and harm as a self-contained exercise preceding a wider assessment of the kind envisaged in paragraph 196 of the NPPF. Nor is there any justification for reading such a requirement into NPPF policy. The separate balancing exercise for which Mr Strachan contended may have been an exercise the inspector could have chosen to undertake when performing the section 66(1) duty and complying with the corresponding policies of the NPPF, but it was not required as a matter of law. And I cannot see how this approach could ever make a difference to the ultimate outcome of an application or appeal.

72. Section 66 does not state how the decision-maker must go about discharging the duty to "have special regard to the desirability of preserving the building or its setting …". The courts have considered the nature of that duty and the parallel duty for conservation areas in section 72 of the Listed Buildings Act, and the concept of giving "considerable importance and weight" to any finding of likely harm to a listed building and its setting.

They have not prescribed any single, correct approach to the balancing of such harm against any likely benefits – or other material considerations weighing in favour of a proposal. But in *Jones v Mordue* this court accepted that if the approach in paragraphs 193 to 196 of the NPPF (as published in 2018 and 2019) is followed, the section 66(1) duty is likely to be properly performed.

73. As was submitted by Mr Williams, and by Mr Ben Du Feu for Historic England and Ms Melissa Murphy for the National Trust, one does not find any support for Mr Strachan's argument in those paragraphs of the NPPF. The concept in paragraph 193 – that "great weight" should be given to the "conservation" of the "designated heritage asset", and that "the more important the asset the greater the weight should be" – does not predetermine the appropriate amount of weight to be given to the "conservation" of the heritage asset in a particular case. Resolving that question is left to the decision-maker as a matter of planning judgment on the facts of the case, bearing in mind the relevant case law, including Sullivan L.J.'s observations about "considerable importance and weight" in *Barnwell Manor*.

74. The same can be said of the policies in paragraphs 195 and 196 of the NPPF, which refer to the concepts of "substantial harm" and "less than substantial harm" to a "designated heritage asset". What amounts to "substantial harm" or "less than substantial harm" in a particular case will always depend on the circumstances. Whether there will be such "harm", and, if so, whether it will be "substantial", are matters of fact and planning judgment. The NPPF does not direct the decision-maker to adopt any specific approach to identifying "harm" or gauging its extent. It distinguishes the approach required in cases of "substantial harm … (or total loss of significance …)" (paragraph 195) from that required in cases of "less than substantial harm" (paragraph 196). But the decision-maker is not told how to assess what the "harm" to the heritage asset will be, or what should be taken into account in that exercise or excluded. The policy is in general terms. There is no one approach, suitable for every proposal affecting a "designated heritage asset" or its setting.

75. This understanding of the policies in paragraphs 193, 195 and 196 reflects what Lewison L.J. said in *Palmer* (at paragraph 5) – that the imperative of giving "considerable weight" to harm to the setting of a listed building does not mean that the weight to be given to the desirability of preserving it or its setting is "uniform". That will depend on the "extent of the assessed harm and the heritage value of the asset in question". These are questions for the decision-maker, heeding the basic principles in the case law.

76. Identifying and assessing any "benefits" to weigh against harm to a heritage asset are also matters for the decision-maker. Paragraph 195 refers to the concept of "substantial public benefits" outweighing "substantial harm" or "total loss of significance"; paragraph 196 to "less than substantial harm" being weighed against "the public benefits of the proposal". What amounts to a relevant "public benefit" in a particular case is, again, a matter for the decision-maker. So is the weight to be given to such benefits as material considerations. The Government did not enlarge on this concept in the NPPF, though in paragraph 196 it gave the example of a proposal "securing [the heritage asset's] optimum viable use".

77. Plainly, however, a potentially relevant "public benefit", which either on its own or with others might be decisive in the balance, can include a heritage-related benefit as well as one that has nothing to do with heritage. As the inspector said (in paragraph 127 of the decision letter), the relevant guidance in the PPG applies a broad meaning to the concept of

"public benefits". While these "may include heritage benefits", the guidance confirms that "all types of public benefits can be taken together and weighed against harm".

78. Cases will vary. There might, for example, be benefits to the heritage asset itself exceeding any adverse effects to it, so that there would be no "harm" of the kind envisaged in paragraph 196. There might be benefits to other heritage assets that would not prevent "harm" being sustained by the heritage asset in question but are enough to outweigh that "harm" when the balance is struck. And there might be planning benefits of a quite different kind, which have no implications for any heritage asset but are weighty enough to outbalance the harm to the heritage asset the decision-maker is dealing with.

79. One must not forget that the balancing exercise under the policies in paragraphs 195 and 196 of the NPPF is not the whole decision-making process on an application for planning permission, only part of it. The whole process must be carried out within the parameters set by the statutory scheme, including those under section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") and section 70(2) of the 1990 Act, as well as the duty under section 66(1) of the Listed Buildings Act. In that broader balancing exercise, every element of harm and benefit must be given due weight by the decision-maker as material considerations, and the decision made in accordance with the development plan unless material considerations indicate otherwise (see *City of Edinburgh Council v Secretary of State for Scotland* [1997] 1 W.L.R. 1447).

80. Within that statutory process, and under NPPF policy, the decision-maker must adopt a sensible approach to assessing likely harm to a listed building and weighing that harm against benefits. Lewison L.J. was not suggesting anything else in *Palmer*. He was not seeking to establish any principle. He was saying that, in circumstances such as he was considering, a decision-maker, having considered both "positive" and "negative" effects on a listed building and its setting, "may legitimately" find there would actually be no harm. He was not saying that a decision-maker must go about the balancing of harm, if harm is found, against benefits in any particular way. There is no "*Palmer* principle" of the kind suggested by Mr Strachan. The court was simply endorsing the pragmatic and lawful approach taken by the local planning authority in the circumstances of that case. An "internal" balancing exercise was appropriate because the apprehended "harm" could be avoided through the mitigation measures proposed, and there would be "no overall adverse effect on the listed building or its setting" (paragraph 29 of Lewison L.J.'s judgment).

81. But as Waksman J. recognised here (at paragraph 111 of his judgment), "[this] is quite different from balancing an admitted or found adverse impact . . . against separate beneficial effects …". The inspector grasped this. Having correctly identified the statutory duty in section 66(1) (in paragraph 121 of the decision letter) and the relevant provisions of national policy in the NPPF (in paragraph 122), she described the parties' dispute on the correct approach (in paragraph 123). She referred (in paragraph 124) to Lewison L.J.'s judgment in *Palmer*. As she said, that case involved "a wholly different context and set of circumstances". It was a case of "avoidance [of harm] through mitigation measures". She acknowledged that "a balancing exercise [needed] to be carried out", but she also recognised that there was not "only one method by which that should be done" (paragraph 125), and there were cases "where alternative approaches have been taken based on the particular circumstances of each case". She then reminded herself that in any event "the statutory duty to preserve [a listed building] should be given considerable importance and

weight when the decision maker carries out the balancing exercise, consistent with [the judgment in *Barnwell Manor*]" (paragraph 126). All of that was correct.

82. The inspector adopted a methodical approach to the proposals before her, which, as she said, were "complex with multiple works involved", and with "benefits" to heritage assets "not proposed with the individual developments themselves but … put forward as a part of other developments subject to separate decisions". She conscientiously applied the policies in paragraphs 190 and 193 to 196 of the NPPF, first identifying "significance"; then assessing whether each proposed development would, "of its own doing", lead to "substantial" or "less than substantial harm" to that significance; then considering whether that harm was "outweighed by the public benefits", not only of the "individual proposal" itself but also "provided in other proposals subject to other decisions", bearing in mind the broad scope of "public benefits" in the relevant guidance (paragraph 127).

83. That approach cannot be faulted. In the circumstances of this case, it was the most realistic. It gave full credit to benefits that might potentially outweigh any harm likely to be caused to the heritage assets affected by the proposals. The inspector recorded her relevant findings and conclusions for each of those heritage assets. Her conclusions were based on a sequence of legally impeccable planning judgments. They reflected both a correct understanding and a lawful application of the NPPF policies, including the policy in paragraph 196. She plainly had those policies in mind, properly directed herself on them, worked through the requirements in them, and in this way – as Sales L.J. envisaged in *Jones v Mordue* (at paragraph 28) – succeeded in discharging the duty in section 66(1). Whether she could have taken another approach to performing that duty, or to applying the corresponding policies in the NPPF, is not the issue here. We need only be satisfied that the approach she did take was lawful. In my view, it clearly was.

84. I also reject the submission that the inspector failed to attach lawful weight to the benefits for heritage assets, contrary to the concept of "conservation" in the NPPF. Her approach to the question of weight, in paragraph 122 of the decision letter, was faithful to NPPF policy, and consistent with the principles in the case law. She expressly directed herself, as a general principle applicable to all the heritage assets she was dealing with, that she had to give "great weight … to the [designated heritage] asset's conservation". It was with this general self-direction in mind that she went on to undertake a proper weighting of both harm and benefits to each of the heritage assets she had to consider.

85. Having directed herself impeccably on the law and on the relevant policies, she was entitled to exercise her own planning judgment in attributing appropriate weight to the particular benefits of the proposals before her, including their benefits for heritage assets. And she did so. In paragraph 218 of the decision letter, for example, when considering appeal 4, she said she gave "considerable weight" to the removal of existing buildings and the restoration of the park and garden. She was not constrained – by statute, authority or policy, including the definition of "Conservation (for heritage policy)" in the NPPF – to give more weight than she did to any of the heritage-related benefits of the proposals, or to any other benefit. None of the conclusions she reached on heritage-related benefits was unlawful. None of them was inconsistent with the lawful performance of the section 66(1) duty, or with the reasonable and lawful application of the relevant policies in the NPPF, including the definition of "Conservation …".

Did the inspector misapply development plan policies for the historic environment?

86. The argument on this issue was that the inspector erred in giving "significant weight" to policies CON11, CON12, CON17 and CON18 of the local plan, despite it being agreed at the inquiry that they were inconsistent with NPPF policy on heritage assets because they did not provide for "public benefits" to be balanced against harm. City & Country Bramshill had said they should carry "little" weight; the council, Historic England and the National Trust, "moderate weight". No one suggested "significant weight". Mr Strachan submitted that it was unfair for the inspector to depart without warning from the parties' understanding of the issue between them. They should have had the opportunity to deal with this question knowing that she disagreed with both sides. She also misapplied the local plan policies. Those policies do not match the section 66(1) duty, or national policy. The words "will not be permitted" in policy CON12 and "will not be permitted unless …" in policy CON17 do not reflect the statutory language or the policies in the NPPF. The judge was wrong (in paragraph 129 of his judgment) to conclude that the inspector was "essentially … applying" NPPF policy when she found conflict with policies CON12 and CON17. She acknowledged (in paragraph 46 of the decision letter) that the "balancing requirement" in the NPPF was absent from those policies. But she failed to carry out any balancing exercise when considering whether the proposals were contrary to them.

87. I do not find those submissions persuasive. The absence of an explicit reference to striking a balance between "harm" and "public benefits" in the local plan policies does not put them into conflict with the NPPF, or with the duty in section 66(1). Both local and national policies are congruent with the statutory duty. The local plan policies are not in the same form as those for "designated heritage assets" in the NPPF. They do not provide for a balancing exercise of the kind described in paragraphs 193 to 196 of the NPPF, in which "public benefits" are set against "harm". But they do not preclude a balancing exercise as part of the decision-making process, whenever such an exercise is appropriate. They do not override the NPPF policies or prevent the decision-maker from adopting the approach indicated in them. They are directed to the same basic objective of preservation.

88. In performing the duty under section 66(1), the inspector was free to give such weight to the local plan policies as she reasonably judged appropriate. Indeed, she was obliged to do so. She was not bound to a particular conclusion by the evidence and submissions she had heard. The parties had a reasonable opportunity to deal with the matter at the inquiry, and they took that opportunity. No unfairness arose. The inspector acknowledged the disagreement between them on weight (in paragraph 45 of the decision letter), and she clearly had regard to their competing views when forming her own conclusion. She did not have to declare her view – or provisional view – on weight and give the parties a chance to address it, simply because she disagreed with both sides. Fairness did not compel that (see *Secretary of State for Communities and Local Government v Hopkins Developments Ltd.* [2014] EWCA Civ 470, [2014] P.T.S.R. 1145, in particular the judgment of Jackson L.J. at paragraphs 62(iv) and 75, and the judgment of Beatson L.J. at paragraphs 88 and 97).

89. The inspector's conclusion on weight, though it was not urged on her by either side at the inquiry, was nonetheless a lawful conclusion. This was a matter of planning judgment for her as decision-maker. Her conclusion was rational, and adequately reasoned. To attach "significant" weight to the local plan policies, as she did (in paragraph 46 of the decision letter), was not unreasonable. She acknowledged that those policies lacked the "balancing requirement" of the NPPF, but added that "they contain the statutory requirement". By this

she clearly meant that they embodied the objective of preserving listed buildings and their settings, in accordance with the duty in section 66(1). She was not saying she interpreted them as shutting out the balancing exercise under paragraphs 195 and 196 of the NPPF. She went on to apply that balancing exercise in the assessment that followed, and she did so meticulously. Her assessment culminated in paragraph 417 of the decision letter, with the conclusion that the harm to the listed buildings and their settings and the registered park and garden were "not outweighed by public benefits."

90. In short, the inspector did not fall into error in discharging the decision-maker's duties under section 38(6) of the 2004 Act, section 70 of the 1990 Act, and section 66(1) of the Listed Buildings Act. Her approach was not contrary to any relevant case law, including this court's decision in *Palmer*. She did not misinterpret or misapply either the local plan policies or the policies in paragraphs 193 to 196 of the NPPF. Her conclusions in applying both development plan and national planning policy for heritage assets – that the proposals in appeals 4, 5 and 6, did not accord with either – are unimpeachable.

The inspector's decision on the application for costs

91. On the application for costs made by City & Country Bramshill against the council, the inspector said (in paragraph 14 of her decision letter of 14 March 2019):

> "14. A large part of this … application is concerned with the case put to the Inquiry in respect of the merits of the proposals and the view that the position taken by the Council was unreasonable with reference to various events. I have not considered the respective positions on merits again here as a difference of view on compliance with policy or the weight to be given to material considerations are not for the costs regime. The substantive issue is whether the Council acted unreasonably at appeal, and in particular whether it defended its position on each reason for refusal with evidence, whether it acted contrary to well-established case law, and reviewed its case following the lodging of the appeals."

She went on to reject every contention of unreasonable conduct (paragraphs 15 to 21).

Should the inspector's decision on the application for costs be quashed?

92. Mr Strachan submitted that in making her costs decision the inspector relied on her decisions in the appeals. Though she did not address the merits again, her consideration of the reasonableness of the council's stance at the inquiry inevitably depended on her conclusions in the appeals themselves. Some of her decisions were quashed by the judge; others are now the subject of appeal to this court. Her errors of law in those decisions undermine her decision not to award costs to City & Country Bramshill.

93. I cannot accept those submissions. I see no reason to upset the inspector's decision on costs. She approached the application in the conventional way. Her decision did not depend on the grounds the council had relied upon in opposing the appeals having succeeded or failed when considered on their merits, but on whether they could reasonably be advanced. The decision is unsurprising. And it is also legally sound. It is not invalidated by the

outcome of these proceedings in the court below, nor cast into doubt by any of the issues raised in the appeal to this court. It was, and remains, a perfectly lawful decision.

Conclusion

94. For the reasons I have given, I would dismiss this appeal.

Lord Justice Phillips

95. I agree.

Lord Justice Arnold

96. I also agree.

Case No: C1/2013/0843

Neutral Citation Number: [2014] EWCA Civ 137
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
THE HON. MRS JUSTICE LANG
CO/4231/2012

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 18/02/2014

Before:

LORD JUSTICE MAURICE KAY
VICE PRESIDENT OF THE COURT OF APPEAL, CIVIL DIVISION
LORD JUSTICE SULLIVAN
and
LADY JUSTICE RAFFERTY

- -

Between:

BARNWELL MANOR WIND ENERGY LIMITED	**Appellant**
- and -	
(1) EAST NORTHAMPTONSHIRE DISTRICT COUNCIL **(2) ENGLISH HERITAGE** **(3) NATIONAL TRUST** **(4) THE SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT**	**Respondents**

- -
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Gordon Nardell QC and **Justine Thornton** (instructed by **Eversheds LLP**) for the **Appellant**
Morag Ellis QC and **Robin Green** (instructed by **Sharpe Pritchard**) for the **First, Second and Third Respondents**
The Fourth Respondent did not appear and was not represented

Hearing date: 23rd January 2014

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Judgment

Lord Justice Sullivan:

Introduction

1. This is an appeal against the order dated 11th March 2013 of Lang J quashing the decision dated 12th March 2012 of a Planning Inspector appointed by the Secretary of State granting planning permission for a four-turbine wind farm on land north of Catshead Woods, Sudborough, Northamptonshire. The background to the appeal is set out in Lang J's judgment: [2013] EWHC 473 (Admin).

Section 66

2. Section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act") imposes a "General duty as respects listed buildings in exercise of planning functions." Subsection (1) provides:

> "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Planning Policy

3. When the permission was granted the Government's planning policies on the conservation of the historic environment were contained in Planning Policy Statement 5 (PPS5). In PPS5 those parts of the historic environment that have significance because of their historic, archaeological, architectural or artistic interest are called heritage assets. Listed buildings, Scheduled Ancient Monuments and Registered Parks and Gardens are called "designated heritage assets." Guidance to help practitioners implement the policies in PPS5 was contained in "PPS5 Planning for the Historic Environment: Historic Environment Planning Practice Guide" ("the Practice Guide"). For present purposes, Policies HE9 and HE10 in PPS5 are of particular relevance. Policy HE9.1 advised that:

> "There should be a presumption in favour of the conservation of designated heritage assets and the more significant the designated heritage asset, the greater the presumption in favour of its conservation should be…. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, including scheduled monuments ….grade I and II* listed buildings and grade I and II* registered parks and gardens….should be wholly exceptional."

Policy HE9.4 advised that:

> "Where a proposal has a harmful impact on the significance of a designated heritage asset which is less than substantial harm, in all cases local planning authorities should:
>
> (i) weigh the public benefit of the proposal (for example, that it helps to secure the optimum viable use of the heritage asset in the interests of its long-term conservation) against the harm; and
>
> (ii) recognise that the greater the harm to the significance of the heritage asset the greater the justification will be needed for any loss."

Policy HE10.1 advised decision-makers that when considering applications for development that do not preserve those elements of the setting of a heritage asset, they:

> "should weigh any such harm against the wider benefits of the application. The greater the negative impact on the significance of the heritage asset, the greater the benefits that will be needed to justify approval."

The Inspector's decision

4. The Inspector concluded that the wind farm would fall within and affect the setting of a wide range of heritage assets [22][1]. For the purposes of this appeal the parties' submissions largely focussed on one of the most significant of those assets: a site owned by the National Trust, Lyveden New Bield. Lyveden New Bield is covered by a range of heritage designations: Grade I listed building, inclusion in the Register of Parks and Gardens of Special Historic Interest at Grade I, and Scheduled Ancient Monument [44].

5. It was common ground between the parties at the inquiry that the group of designated heritage assets at Lyveden New Bield was probably the finest surviving example of an Elizabethan Garden, and that as a group the heritage asset at Lyveden New Bield had a cultural value of national, if not international significance. The Inspector agreed, and found that:

> "…this group of designated heritage assets has archaeological, architectural, artistic and historic significance of the highest magnitude." [45]

6. The closest turbine in the wind farm site (following the deletion of one turbine) to Lyveden New Bield was around 1.3 km from the boundary of the Registered Park and 1.7 km from the New Bield itself. The Inspector found that:

[1] [ ] refers to paragraph numbers in the Inspector's decision.

> "The wind turbines proposed would be visible from all around the site, to varying degrees, because of the presence of trees. Their visible presence would have a clear influence on the surroundings in which the heritage assets are experienced and as such they would fall within, and affect, the setting of the group." [46]

This conclusion led the Inspector to identify the central question, as follows:

> "Bearing in mind PPS5 Policy HE7, the central question is the extent to which that visible presence would affect the significance of the heritage assets concerned." [46]

7. The Inspector answered that question in relation to Lyveden New Bield in paragraphs 47-51 of his decision letter.

> "47. While records of Sir Thomas Tresham's intentions for the site are relatively, and unusually, copious, it is not altogether clear to what extent the gardens and the garden lodge were completed and whether the designer considered views out of the garden to be of any particular significance. As a consequence, notwithstanding planting programmes that the National Trust have undertaken in recent times, the experience of Lyveden New Bield as a place, and as a planned landscape, with earthworks, moats and buildings within it, today, requires imagination and interpretation.
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> 48. At the times of my visits, there were limited numbers of visitors and few vehicles entering and leaving the site. I can imagine that at busy times, the situation might be somewhat different but the relative absence of man-made features in views across and out of the gardens compartments, from the prospect mounds especially, and from within the garden lodge, give the place a sense of isolation that makes the use of one's imagination to interpret Sir Thomas Tresham's design intentions somewhat easier.
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> 49. The visible, and sometimes moving, presence of the proposed wind turbine array would introduce a man-made feature, of significant scale, into the experience of the place. The array would act as a distraction that would make it more difficult to understand the place, and the intentions underpinning its design. That would cause harm to the setting of the group of designated heritage assets within it.
>
> 50. However, while the array would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the

prospect mounds, from within the moated orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres, the turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site. Moreover, the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter). Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

51. On that basis, the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield and Lyveden Old Bield, or their relationship to each other. As a consequence, the effect on the setting of these designated heritage assets, while clearly detrimental, would not reach the level of substantial harm."

8. The Inspector carried out "The Balancing Exercise" in paragraphs 85 and 86 of his decision letter.

"85. The proposal would harm the setting of a number of designated heritage assets. However, the harm would in all cases be less than substantial and reduced by its temporary nature and reversibility. The proposal would also cause harm to the landscape but this would be ameliorated by a number of factors. Read in isolation though, all this means that the proposal would fail to accord with [conservation policies in the East Midlands Regional Plan (EMRP)]. On the other hand, having regard to advice in PPS22, the benefits that would accrue from the wind farm in the 25 year period of its operation attract significant weight in favour of the proposal. The 10 MW that it could provide would contribute towards the 2020 regional target for renewable energy, as required by EMRP Policy 40 and Appendix 5, and the wider UK national requirement.

86. PPS5 Policies HE9.4 and HE10.1 require the identified harm to the setting of designated heritage assets to be balanced against the benefits that the proposal would provide. Application of the development plan as a whole would also require that harm, and the harm to the landscape, to be weighed against the benefits. Key principle (i) of PPS22 says that renewable energy developments should be capable of being

> accommodated throughout England in locations where the technology is viable and environmental, economic, and social impacts can be addressed satisfactorily. I take that as a clear expression that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided. In my view, the significant benefits of the proposal in terms of the energy it would produce from a renewable source outweigh the less than substantial harm it would cause to the setting of designated heritage assets and the wider landscape."

Lang J's Judgment

9. Before Lang J the First, Second and Third Respondents ("the Respondents") challenged the Inspector's decision on three grounds. In summary, they submitted that the Inspector had failed to:

   (1) have special regard to the desirability of preserving the settings of listed buildings, including Lyveden New Bield;

   (2) correctly interpret and apply the policies in PPS5; and

   (3) give adequate reasons for his decision.

   The Secretary of State, the Fourth Respondent, had conceded prior to the hearing that the Inspector's decision should be quashed on ground (3), and took no part in the proceedings before Lang J and in this Court.

10. Lang J concluded that all three grounds of challenge were made out. [72][2] In respect of ground (1) she concluded that:

> "In order to give effect to the statutory duty under section 66(1), a decision-maker should accord considerable importance and weight to the "desirability of preserving… the setting" of listed buildings when weighing this factor in the balance with other 'material considerations' which have not been given this special statutory status. Thus, where the section 66(1) duty is in play, it is necessary to qualify Lord Hoffmann's statement in *Tesco Stores v Secretary of State for the Environment & Ors* [1995] 1 WLR 759, at 780F-H that the weight to be given to a material consideration was a question of planning judgment for the planning authority" [39]

   Applying that interpretation of section 66(1) she concluded that:

> "….the Inspector did not at any stage in the balancing exercise accord "special weight", or considerable importance to "the

[2] [ ] refers to paragraph numbers in the judgment.

> desirability of preserving the setting". He treated the "harm" to the setting and the wider benefit of the wind farm proposal as if those two factors were of equal importance. Indeed, he downplayed "the desirability of preserving the setting" by adopting key principle (i) of PPS22, as a "clear indication that the threshold of acceptability for a proposal like the one at issue in this appeal is not such that all harm must be avoided" (paragraph 86). In so doing, he applied the policy without giving effect to the section 66(1) duty, which applies to all listed buildings, whether the "harm" has been assessed as substantial or less than substantial." [46]

11. In respect of ground (2) Lang J concluded that the policy guidance in PPS5 and the Practice Guide required the Inspector to assess the contribution that the setting made to the significance of the heritage assets, including Lyveden New Bield, and the effect of the proposed wind turbines on both the significance of the heritage asset and the ability to appreciate that significance. Having analysed the Inspector's decision, she found that the Inspector's assessment had been too narrow. He had failed to assess the contribution that the setting of Lyveden New Bield made to its significance as a heritage asset and the extent to which the wind turbines would enhance or detract from that significance, and had wrongly limited his assessment to one factor: the ability of the public to understand the asset based on the ability of "the reasonable observer" to distinguish between the "modern addition" to the landscape and the "historic landscape." [55] - [65]

12. In respect of ground (3) Lang J found that the question whether Sir Thomas Tresham intended that the views from the garden and the garden lodge should be of significance was a controversial and important issue at the inquiry which the Inspector should have resolved before proceeding to assess the level of harm.[68] However, the Inspector's reasoning on this issue was unclear. Having said in paragraph 47 of his decision that it was "not altogether clear ….whether the designer considered views out of the garden to be of any significance", he had concluded in paragraph 50 that "the turbine array would not intrude on any obviously intended, planned view out of the garden, or from the garden lodge (which has windows all around its cruciform perimeter)." It was not clear whether this was a conclusion that there were no planned views (as submitted by the Appellant) or a conclusion that there were such views but the turbine array would not intrude into them. [70] – [71].

The Grounds of Appeal

13. On behalf of the Appellant, Mr. Nardell QC challenged Lang J's conclusions in respect of all three grounds. At the forefront of his appeal was the submission that Lang J had erred in concluding that section 66(1) required the Inspector, when carrying out the balancing exercise, to give "considerable weight" to the desirability of preserving the settings of the many listed buildings, including Lyveden New Bield. He submitted that section 66(1) did not require the decision-maker to give any particular weight to that factor. It required the decision-maker to ask the right

question – would there be some harm to the setting of the listed building – and if the answer to that question was "yes" – to refuse planning permission unless that harm was outweighed by the advantages of the proposed development. When carrying out that balancing exercise the weight to be given to the harm to the setting of the listed building on the one hand and the advantages of the proposal on the other was entirely a matter of planning judgment for the decision-maker.

14. Turning to the policy ground, he submitted that Lang J had erred by taking an over-rigid approach to PPS5 and the Practice Guide which were not intended to be prescriptive. Given the way in which those objecting to the proposed wind farm had put their case at the inquiry, the Inspector had been entitled to focus on the extent to which the presence of the turbines in views to and from the listed buildings, including Lyveden New Bield, would affect the ability of the public to appreciate the heritage assets.

15. In response to the reasons ground, he submitted that the question whether any significant view from the lodge or garden at Lyveden New Bield was planned or intended was a subsidiary, and not a "principal important controversial", issue. In any event, he submitted that on a natural reading of paragraph 50 of the decision letter the Inspector had simply found that the turbines would not intrude into such significant views, if any, as were obviously planned or intended, so it had been unnecessary for him to resolve the issue that he had left open in paragraph 47 of the decision.

Discussion

Ground 1

16. What was Parliament's intention in imposing both the section 66 duty and the parallel duty under section 72(1) of the Listed Buildings Act to pay "special attention ….. to the desirability of preserving or enhancing the character or appearance" of conservation areas? It is common ground that, despite the slight difference in wording, the nature of the duty is the same under both enactments. It is also common ground that "preserving" in both enactments means doing no harm: see South Lakeland District Council v Secretary of State for the Environment [1992] 2 AC 141, per Lord Bridge at page 150.

17. Was it Parliament's intention that the decision-maker should consider very carefully whether a proposed development would harm the setting of the listed building (or the character or appearance of the conservation area), and if the conclusion was that there would be some harm, then consider whether that harm was outweighed by the advantages of the proposal, giving that harm such weight as the decision-maker thought appropriate; or was it Parliament's intention that when deciding whether the harm to the setting of the listed building was outweighed by the advantages of the proposal, the decision-maker should give particular weight to the desirability of avoiding such harm?

18. Lang J analysed the authorities in paragraphs [34] – [39] of her judgment. In chronological order they are: The Bath Society v Secretary of State for the

Environment [1991] 1 WLR 1303; South Lakeland (see paragraph 16 above); Heatherington (UK) Ltd. v Secretary of State for the Environment (1995) 69 P & CR 374; and Tesco Stores Ltd. v Secretary of State for the Environment [1995] 1 WLR 759. Bath and South Lakeland were concerned with (what is now) the duty under section 72. Heatherington is the only case in which the section 66 duty was considered. Tesco was not a section 66 or section 72 case, it was concerned with the duty to have regard to "other material considerations" under section 70(2) of the Town and Country Planning Act 1990 ("the Planning Act").

19. When summarising his conclusions in Bath about the proper approach which should be adopted to an application for planning permission in a conservation area, Glidewell LJ distinguished between the general duty under (what is now) section 70(2) of the Planning Act, and the duty under (what is now) section 72(1) of the Listed Buildings Act. Within a conservation area the decision-maker has two statutory duties to perform, but the requirement in section 72(1) to pay "special attention" should be the first consideration for the decision-maker (p. 1318 F-H). Glidewell LJ continued:

> "Since, however, it is a consideration to which special attention is to be paid as a matter of statutory duty, it must be regarded as having considerable importance and weight…… As I have said, the conclusion that the development will neither enhance nor preserve will be a consideration of considerable importance and weight. This does not necessarily mean that the application for permission must be refused, but it does in my view mean that the development should only be permitted if the decision-maker concludes that it carries some advantage or benefit which outweighs the failure to satisfy the section [72(1)] test and such detriment as may inevitably follow from that."

20. In South Lakeland the issue was whether the concept of "preserving" in what is now section 72(1) meant "positively preserving" or merely doing no harm. The House of Lords concluded that the latter interpretation was correct, but at page 146E-G of his speech (with which the other members of the House agreed) Lord Bridge described the statutory intention in these terms:

> "There is no dispute that the intention of section [72(1)] is that planning decisions in respect of development proposed to be carried out in a conservation area must give a high priority to the objective of preserving or enhancing the character or appearance of the area. If any proposed development would conflict with that objective, there will be a strong presumption against the grant of planning permission, though, no doubt, in exceptional cases the presumption may be overridden in favour of development which is desirable on the ground of some other public interest. But if a development would not conflict with that objective, the special attention required to be paid to that objective will no longer stand in its way and the

development will be permitted or refused in the application of ordinary planning criteria."

21. In Heatherington, the principal issue was the interrelationship between the duty imposed by section 66(1) and the newly imposed duty under section 54A of the Planning Act (since repealed and replaced by the duty under section 38(6) of the Planning and Compulsory Purchase Act 2004). However, Mr. David Keene QC (as he then was), when referring to the section 66(1) duty, applied Glidewell LJ's dicta in the Bath case (above), and said that the statutory objective "remains one to which considerable weight should be attached" (p. 383).

22. Mr. Nardell submitted, correctly, that the Inspector's error in the Bath case was that he had failed to carry out the necessary balancing exercise. In the present case the Inspector had expressly carried out the balancing exercise, and decided that the advantages of the proposed wind farm outweighed the less than substantial harm to the setting of the heritage assets. Mr. Nardell submitted that there was nothing in Glidewell LJ's judgment which supported the proposition that the Court could go behind the Inspector's conclusion. I accept that (subject to grounds 2 and 3, see paragraph 29 et seq below) the Inspector's assessment of the degree of harm to the setting of the listed building was a matter for his planning judgment, but I do not accept that he was then free to give that harm such weight as he chose when carrying out the balancing exercise. In my view, Glidewell LJ's judgment is authority for the proposition that a finding of harm to the setting of a listed building is a consideration to which the decision-maker must give "considerable importance and weight."

23. That conclusion is reinforced by the passage in the speech of Lord Bridge in South Lakeland to which I have referred (paragraph 20 above). It is true, as Mr. Nardell submits, that the ratio of that decision is that "preserve" means "do no harm". However, Lord Bridge's explanation of the statutory purpose is highly persuasive, and his observation that there will be a "strong presumption" against granting permission for development that would harm the character or appearance of a conservation area is consistent with Glidewell LJ's conclusion in Bath. There is a "strong presumption" against granting planning permission for development which would harm the character or appearance of a conservation area precisely because the desirability of preserving the character or appearance of the area is a consideration of "considerable importance and weight."

24. While I would accept Mr. Nardell's submission that Heatherington does not take the matter any further, it does not cast any doubt on the proposition that emerges from the Bath and South Lakeland cases: that Parliament in enacting section 66(1) did intend that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision-maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise.

25. In support of his submission that, provided he asked the right question – was the harm to the settings of the listed buildings outweighed by the advantages of the proposed

development – the Inspector was free to give what weight he chose to that harm, Mr. Nardell relied on the statement in the speech of Lord Hoffmann in Tesco that the weight to be given to a material consideration is entirely a matter for the local planning authority (or in this case, the Inspector):

> "If there is one principle of planning law more firmly settled than any other, it is that matters of planning judgment are within the exclusive province of the local planning authority or the Secretary of State." (p.780H).

26. As a general proposition, the principle is not in doubt, but Tesco was concerned with the application of section 70(2) of the Planning Act. It was not a case under section 66(1) or 72(1) of the Listed Buildings Act. The proposition that decision-makers may be required by either statute or planning policy to give particular weight to certain material considerations was not disputed by Mr. Nardell. There are many examples of planning policies, both national and local, which require decision-makers when exercising their planning judgment to give particular weight to certain material considerations. No such policies were in issue in the Tesco case, but an example can be seen in this case. In paragraph 16 of his decision letter the Inspector referred to Planning Policy Statement 22 Renewable Energy (PPS22) which says that the wider environmental and economic benefits of all proposals for renewable energy, whatever their scale, are material considerations which should be given "significant weight". In this case, the requirement to give "considerable importance and weight" to the policy objective of preserving the setting of listed buildings has been imposed by Parliament. Section 70(3) of the Planning Act provides that section 70(1), which confers the power to grant planning permission, has effect subject to, inter alia, sections 66 and 72 of the Listed Buildings Act. Section 70(2) requires the decision-maker to have regard to "material considerations" when granting planning permission, but Parliament has made the power to grant permission having regard to material considerations expressly subject to the section 66(1) duty.

27. Mr. Nardell also referred us to the decisions of Ouseley J and this Court in Garner v Elmbridge Borough Council [2011] EWCA Civ 891, but the issue in that case was whether the local planning authority had been entitled to conclude that no harm would be caused to the setting of another heritage asset of the highest significance, Hampton Court Palace. Such was the weight given to the desirability of preserving the setting of the Palace that it was common ground that it would not be acceptable to grant planning permission for a redevelopment scheme which would have harmed the setting of the Palace on the basis that such harm would be outweighed by some other planning advantage: see paragraph 14 of my judgment. Far from assisting Mr. Nardell's case, Garner is an example of the practical application of the advice in policy HE9.1: that substantial harm to designated heritage assets of the highest significance should not merely be exceptional, but "wholly exceptional".

28. It does not follow that if the harm to such heritage assets is found to be less than substantial, the balancing exercise referred to in policies HE9.4 and HE 10.1 should ignore the overarching statutory duty imposed by section 66(1), which properly

understood (see Bath, South Somerset and Heatherington) requires considerable weight to be given by decision-makers to the desirability of preserving the setting of all listed buildings, including Grade II listed buildings. That general duty applies with particular force if harm would be caused to the setting of a Grade I listed building, a designated heritage asset of the highest significance. If the harm to the setting of a Grade I listed building would be less than substantial that will plainly lessen the strength of the presumption against the grant of planning permission (so that a grant of permission would no longer have to be "wholly exceptional"), but it does not follow that the "strong presumption" against the grant of planning permission has been entirely removed.

29. For these reasons, I agree with Lang J's conclusion that Parliament's intention in enacting section 66(1) was that decision-makers should give "considerable importance and weight" to the desirability of preserving the setting of listed buildings when carrying out the balancing exercise. I also agree with her conclusion that the Inspector did not give considerable importance and weight to this factor when carrying out the balancing exercise in this decision. He appears to have treated the less than substantial harm to the setting of the listed buildings, including Lyveden New Bield, as a less than substantial objection to the grant of planning permission. The Appellant's Skeleton Argument effectively conceded as much in contending that the weight to be given to this factor was, subject only to irrationality, entirely a matter for the Inspector's planning judgment. In his oral submissions Mr. Nardell contended that the Inspector had given considerable weight to this factor, but he was unable to point to any particular passage in the decision letter which supported this contention, and there is a marked contrast between the "significant weight" which the Inspector expressly gave in paragraph 85 of the decision letter to the renewable energy considerations in favour of the proposal having regard to the policy advice in PPS22, and the manner in which he approached the section 66(1) duty. It is true that the Inspector set out the duty in paragraph 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision even if grounds 2 and 3 are not made out.

Ground 2

30. Grounds 2 and 3 are interlinked. The Respondents contend that the Inspector either misapplied the relevant policy guidance, or if he correctly applied it, failed to give adequate reasons for his conclusion that the harm to the setting of the listed buildings, including Lyveden New Bield, would in all cases be less than substantial. I begin with the policy challenge in ground 2. Lang J set out the policy guidance relating to setting in PPS5 and the Practice Guide in paragraphs 62-64 of her judgment. The contribution made by the setting of Lyveden New Bield to its significance as a heritage asset was undoubtedly a "principal controversial" issue at the inquiry. In paragraph 4.5.1 of his Proof of Evidence on behalf of the Local Planning Authority Mr. Mills, its Senior Conservation Officer, said:

> "To make an assessment of the indirect impact of development or change upon an asset it is first necessary to make a judgment about the contribution made by its setting."

Having carried out a detailed assessment of that contribution he concluded in paragraph 4.5.17:

> "In summary, what Tresham created at the site was a designed experience that was intimately linked to the surrounding landscape. The presence of the four prospect mounts along with the raised terrace provide a clear indication of the relationship of the site with the surrounding landscape."

Only then did he assess the impact of the proposed development on the setting by way of "a discussion as to the impact of the proposal on how the site is accessed and experienced by visitors."

31. In its written representations to the inquiry English Heritage said of the significance and setting of Lyveden New Bield:

> "The aesthetic value of the Lyveden Heritage Assets partly derives from the extraordinary symbolism and quality of the New Bield and the theatrical design of the park and garden. However, it also derives from their visual association with each other and with their setting. The New Bield is a striking presence when viewed on the skyline from a distance. The New Bield and Lyveden park and garden are wonderfully complemented by their undeveloped setting of woodland, pasture and arable land."

In paragraph 8.23 English Heritage said:

> "The New Bield and Lyveden park and garden were designed to be prominent and admired in their rural setting, isolated from competing structures. The character and setting of the Lyveden Heritage Assets makes a crucial contribution to their significance individually and as a group."

32. In its written representations to the inquiry the National Trust said that each arm of the cruciform New Bield "was intended to offer extensive views in *all directions* over the surrounding parks and the Tresham estate beyond" (paragraph 11). The National Trust's evidence was that "one if not *the* **Principal designed** *view from* within the lodge was from the withdrawing rooms which linked to the important Great Chamber and Great Hall on the upper two levels of the west arm of the lodge" (paragraph 12). The Trust contended that this vista survived today, and was directly aligned with the proposed wind farm site (emphasis in both paragraphs as in the original).

33. In his proof of evidence, the planning witness for the Stop Barnwell Manor Wind Farm Group said that:

> "….the views of Lyveden New Bield from the east, south-east and south, both as an individual structure and as a group with its adjoining historic garden and listed cottage, are views of a very high order. The proposed turbines, by virtue of their monumental scale, modern mechanical appearance, and motion of the blades, would be wholly alien in this scene and would draw the eye away from the New Bield, destroying its dominating presence in the landscape."

34. This evidence was disputed by the Appellant's conservation witness, and the Appellant rightly contends that a section 288 appeal is not an opportunity to re-argue the planning merits. I have set out these extracts from the objectors' evidence at the inquiry because they demonstrate that the objectors were contending that the undeveloped setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset; that the New Bield (the lodge) had been designed to be a striking and dominant presence when viewed in its rural setting; and that the lodge had been designed so as to afford extensive views in all directions over that rural setting. Did the Inspector resolve these issues in his decision, and if so, how?

35. I endorse Lang J's conclusion that the Inspector did not assess the contribution made by the setting of Lyveden New Bield, by virtue of its being undeveloped, to the significance of Lyveden New Bield as a heritage asset. The Inspector did not grapple with (or if he did consider it, gave no reasons for rejecting) the objectors' case that the setting of Lyveden New Bield was of crucial importance to its significance as a heritage asset because Lyveden New Bield was designed to have a dominating presence in the surrounding rural landscape, and to afford extensive views in all directions over that landscape; and that these qualities would be seriously harmed by the visual impact of a modern man-made feature of significant scale in that setting.

36. The Inspector's reason for concluding in paragraph 51 of the decision that the presence of the wind turbine array, while clearly having a detrimental effect on the setting of Lyveden New Bield, would not reach the level of substantial harm, was that it would not be so distracting that it would not prevent, or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield or Lyveden Old Bield or their relationship to each other.

37. That is, at best, only a partial answer to the objectors' case. As the Practice Guide makes clear, the ability of the public to appreciate a heritage asset is one, but by no means the only, factor to be considered when assessing the contribution that setting makes to the significance of a heritage asset. The contribution that setting makes does not depend on there being an ability to access or experience the setting: see in particular paragraphs 117 and 122 of the Practice Guide, cited in paragraph 64 of Lang J's judgment.

<u>Ground 3</u>

38. The Inspector said that his conclusion in paragraph 51 of the decision letter that the presence of the wind turbine array would not be so distracting that it would prevent or make unduly difficult, an understanding, appreciation or interpretation of the significance of the elements that make up Lyveden New Bield had been reached on the basis of his conclusions in paragraph 50. In that paragraph, having said that the wind turbine array "would be readily visible as a backdrop to the garden lodge in some directional views, from the garden lodge itself in views towards it, and from the prospect mounds, from within the orchard, and various other places around the site, at a separation distance of between 1 and 2 kilometres", the Inspector gave three reasons which formed the basis of his conclusion in paragraph 51.

39. Those three reasons were:

(a) The turbines would not be so close, or fill the field of view to the extent, that they would dominate the outlook from the site.

(b) The turbine array would not intrude on any obviously intended, planned view out of the garden or the garden lodge (which has windows all around its cruciform perimeter).

(c) Any reasonable observer would know that the turbine array was a modern addition to the landscape, separate from the planned historic landscape, or building they were within, or considering, or interpreting.

40. Taking those reasons in turn, reason (a) does not engage with the objectors' contention that the setting of Lyveden New Bield made a crucial contribution to its significance as a heritage asset because Lyveden New Bield was designed to be the dominant feature in the surrounding rural landscape. A finding that the "readily visible" turbine array would not dominate the outlook from the site puts the boot on the wrong foot. If this aspect of the objectors' case was not rejected (and there is no reasoned conclusion to that effect) the question was not whether the turbine array would dominate the outlook from Lyveden New Bield, but whether Lyveden New Bield would continue to be dominant within its rural setting.

41. Mr. Nardell's submission to this Court was not that the Inspector had found that there were no planned views (cf. the submission recorded in paragraph 70 of Lang J's judgment), but that the Inspector had concluded that the turbine array would not intrude into obviously intended or planned views <u>if any</u>. That submission is difficult to understand given the Inspector's conclusion that the turbine array would be "readily visible" from the garden lodge, from the prospect mounds, and from various other places around the site. Unless the Inspector had concluded that there were <u>no</u> intended or planned views from the garden or the garden lodge, and he did not reach that conclusion (see paragraph 47 of the decision letter), it is difficult to see how he could have reached the conclusion that the "readily visible" turbine array would not "intrude" on any obviously intended or planned views from the garden lodge. I am inclined to agree with Mr. Nardell's alternative submission that the Inspector's conclusion that while "readily visible" from the garden lodge, the turbine array would not "intrude" on any obviously intended or planned view from it, is best understood

by reference to his third conclusion in paragraph 50. While visible in views from the garden lodge the turbine array would not intrude upon, in the sense of doing substantial harm to, those views, for the reasons given in the last sentence of paragraph 50.

42. I confess that, notwithstanding Mr. Nardell's assistance, I found some difficulty, not in understanding the final sentence of paragraph 50 – plainly any reasonable observer would know that the turbine array was a modern addition to the landscape and was separate from the planned historic landscape at Lyveden New Bield – but in understanding how it could rationally justify the conclusion that the detrimental effect of the turbine array on the setting of Lyveden New Bield would not reach the level of substantial harm. The Inspector's application of the "reasonable observer" test was not confined to the effect of the turbine array on the setting of Lyveden New Bield. As Lang J pointed out in paragraph 57 of her judgment, in other paragraphs of his decision letter the Inspector emphasised one particular factor, namely the ability of members of the public to understand and distinguish between a modern wind turbine array and a heritage asset, as his reason for concluding either that the proposed wind turbines would have no impact on the settings of other heritage assets of national significance [28] – [31]; or a harmful impact that was "much less than substantial" on the setting of a Grade 1 listed church in a conservation area [36].

43. Matters of planning judgment are, of course, for the Inspector. No one would quarrel with his conclusion that "any reasonable observer" would understand the differing functions of a wind turbine and a church and a country house or a settlement [30]; would not be confused about the origins or purpose of a settlement and a church and a wind turbine array [36]; and would know that a wind turbine array was a modern addition to the landscape [50]; but no matter how non-prescriptive the approach to the policy guidance in PPS5 and the Practice Guide, that guidance nowhere suggests that the question whether the harm to the setting of a designated heritage asset is substantial can be answered simply by applying the "reasonable observer" test adopted by the Inspector in this decision.

44. If that test was to be the principal basis for deciding whether harm to the setting of a designated heritage asset was substantial, it is difficult to envisage any circumstances, other than those cases where the proposed turbine array would be in the immediate vicinity of the heritage asset, in which it could be said that any harm to the setting of a heritage asset would be substantial: the reasonable observer would always be able to understand the differing functions of the heritage asset and the turbine array, and would always know that the latter was a modern addition to the landscape. Indeed, applying the Inspector's approach, the more obviously modern, large scale and functional the imposition on the landscape forming part of the setting of a heritage asset, the less harm there would be to that setting because the "reasonable observer" would be less likely to be confused about the origins and purpose of the new and the old. If the "reasonable observer" test was the decisive factor in the Inspector's reasoning, as it appears to have been, he was not properly applying the policy approach set out in PPS5 and the Practice Guide. If it was not the decisive factor in the Inspector's reasoning, then he did not give adequate reasons for his conclusion

that the harm to the setting of Lyveden New Bield would not be substantial. Since his conclusion that the harm to the setting of the designated heritage assets would in all cases be less than substantial was fed into the balancing exercise in paragraphs 85 and 86, the decision letter would have been fatally flawed on grounds 2 and 3 even if the Inspector had given proper effect to the section 66(1) duty.

Conclusion

45. For the reasons set out above, which largely echo those given by Lang J in her judgment, I would dismiss this appeal.

Lady Justice Rafferty:

46. I agree.

The Vice President:

47. I also agree.

Neutral Citation Number: [2013] EWHC 2847 (Admin)

CO/9953/2012

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
THE ADMINISTRATIVE COURT

Royal Courts of Justice
Strand
London WC2A 2LL

Friday, 26 July 2013

B e f o r e:

MR JUSTICE JAY

Between:
BEDFORD BOROUGH COUNCIL

Claimant

v

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT
First Defendant

NUON UK LTD

Second Defendant

Computer-Aided Transcript of the Stenograph Notes of
WordWave International Limited
A Merrill Communications Company
165 Fleet Street London EC4A 2DY
Tel No: 020 7404 1400 Fax No: 020 7404 1424
(Official Shorthand Writers to the Court)

Mr T Cosgrove (instructed by Bedford Council Legal Department) appeared on behalf of the **Claimant**
Mr A Newcombe QC (instructed by Bond Dickinson) appeared on behalf of the **Defendant**

J U D G M E N T
(As approved by the Court)

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23. Mr Newcombe QC accepted that the meaning would have been even clearer had the words "to significance" been interpolated after "substantial harm" in that final sentence, but I agree with him that their absence does not alter the sense. The inspector clearly had in mind substantial harm to the setting. Not merely does he say that expressly, the whole appeal before him was not about physical harm.

24. At one stage I was attracted by Mr Cosgrove's submission that the inspector was falsely comparing the physical with the non-physical, and by using the formulation "something approaching demolition or destruction", he was applying a concept which was solely apt to the case of physical harm. However, this is an incorrect reading of the inspector's decision. On further analysis, I agree with Mr Newcombe that the inspector was not setting up a dichotomy. He was applying a unitary approach to a unified concept of significance. What the inspector was saying was that for harm to be substantial, the impact on significance was required to be serious such that very much, if not all, of the significance was drained away.

25. Plainly in the context of physical harm, this would apply in the case of demolition or destruction, being a case of total loss. It would also apply to a case of serious damage to the structure of the building. In the context of non-physical or indirect harm, the yardstick was effectively the same. One was looking for an impact which would have such a serious impact on the significance of the asset that its significance was either vitiated altogether or very much reduced.

26. Although Mr Cosgrove did not put his argument quite in this way, I have considered whether the formulation "something approaching demolition or destruction" is putting the matter too high in any event. "Substantial" and "serious" may be regarded as interchangeable adjectives in this context, but does the phrase "something approaching demolition or destruction" add a further layer of seriousness as it were? The answer in my judgment is that it may do, but it does not necessarily. All would depend on how the inspector interpreted and applied the adjectival phrase "something approaching". It is somewhat flexible in its import. I am not persuaded that the inspector erred in this respect.

27. Further, I consider that there is merit in Mr Newcombe's subsidiary point that Mr Cosgrove has abstained from saying what the correct test is.

28. Mr Newcombe's fallback submission was that even if the inspector erred, I should confidently conclude that the result was the same. The outcome was congruent with the statement of common ground and naturally flowed from all the evidence in the case, including, he submitted, CLOWD's less than persuasive expert evidence primarily dedicated to landscaping issues. However, if I had been against the second respondent on ground 1, I would not have concluded that the case falls within the exceptional category of case where the court could be satisfied that no reasonable inspector could have reached a different conclusion. So the first ground fails on the law rather than on discretion.

29. The claimant's second ground is substantially parasitic on ground 1, save that Mr Cosgrove submits that the inspector failed to have regard to the fourth sentence of

Neutral Citation Number: [2015] EWHC 539 (Admin)

Case No: CO/4123/2014

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: March 9th 2015

Before:

JOHN HOWELL QC
(sitting as a Deputy High Court Judge)

- -

Between :

	JANE MARGARET MORDUE	**Claimant**
	- and -	
	SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT (1) **AIDAN JONES (2)** **SOUTH NORTHAMPTONSHIRE COUNCIL (3)**	**Defendants**

- -
- -

Juan Lopez for the **Claimant**
Charles Banner (instructed by **Wilkin Chapman LLP**) for the **Second Defendant**
Defendants (1) and (3) did not attend the hearing and were not represented

Hearing dates: February 18th 2015

- -

Judgment **John Howell QC:**

1. This is an application under section 288 of the Town and Country Planning Act 1990 to quash the decision of an Inspector, Mr John Braithwaite, granting planning permission for the erection of a free-standing wind turbine and certain associated development at Poplars Farm, Wappenham in South Northamptonshire. The wind turbine would be 60m high to its hub and 86.45m high to its top blade tip.

2. The application for planning permission was made Mr Aidan Jones, the owner of Poplars Farm. He appealed to the Secretary of State for Local Government and Communities against the failure of the local planning authority, South Northamptonshire Council ("*the Council*"), to determine his application within the prescribed period. The Secretary of

State appointed the Inspector to determine the appeal.

3.The appeal was conducted by written representations. Among those who objected to the development, in addition to the Council, was Jane Margaret Mordue ("*the Claimant*"). She is the Chair of the Wappenham Wind Turbine Action Group. She was concerned among other matters with the visual impact that she feared that the wind turbine would have. She was concerned that it would dominate the landscape for miles around and affect many of the local listed buildings including the Church of St Mary in Wappenham. This is her application to quash the Inspector's decision.

4.The Inspector found that the proposed wind turbine would have a significant adverse effect on the character of the landscape up to a distance of 0.5km, and a moderate adverse impact thereafter up to 1km, from its location and that it was, therefore, in conflict with two saved policies of the South Northamptonshire Local Plan. Those policies remain part of the development plan for the area. The Inspector also found that the proposed turbine would have a negligible effect on the setting of all the listed buildings in the area other than Church of St Mary in Wappenham, a Grade II* listed building. He considered that the harm to the setting of that listed building would be more than negligible but less than substantial. Cumulatively the harm to the settings of the listed buildings in his view would be less than substantial. He found that nevertheless the proposed development would be in conflict with another of the saved policies in the Local Plan, EV12. Against that the Inspector considered that the development would make a small contribution to meeting the effects of climate change, something which is an objective in the Secretary of State's National Planning Policy Framework ("*NPPF*") and in National Policy Statements. In his view the harm that the development would cause to the landscape and heritage assets in the area was outweighed by its environmental benefits. Accordingly the Inspector considered that material considerations, namely the environmental benefits of renewable energy, indicated in this case that the determination of the appeal should be made otherwise in accordance with the development plan. He, therefore, granted planning permission for the development for a period of 25 years subject to conditions.

5.There are two grounds on which the court may quash a decision under section 288 of the Town and Country Planning Act 1990 ("*the 1990 Act*"). The court may do so if it is satisfied either (i) that the decision "is not within the powers of this Act" or (ii) that the "interests of the applicant have been substantially prejudiced by a failure to comply with any of the relevant requirements in relation to it": see section 288(1)(b) and 288(5)(b) of the 1990 Act. Mr Charles Banner, who appeared on behalf of Mr Jones, did not dispute that the Inspector was subject to a requirement to give reasons for his decision.

6.On behalf of the claimant, Mr Juan Lopez contended that the Inspector's decision falls to be quashed on four grounds. He submits (i) that the Inspector failed to apply "properly" the duty imposed by section 38(6) of Planning and Compulsory Purchase Act 2004 which required the appeal to be determined "in accordance with the [development] plan unless material considerations [indicated] otherwise"; (ii) that the Inspector failed to apply "properly" or at all the duty imposed by section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 which required him to "have special regard to the desirability of preserving [any listed] building or its setting"; (iii) that the Inspector failed to deal with the intrinsic significance of the heritage assets affected by the

proposed development and the contribution which their setting made to their significance; and (iv) that the Claimant has been substantially prejudiced by the Inspector's failure to give reasons for his decision.

THE INSPECTOR'S REPORT

7.In order to understand some of the submissions made by Mr Lopez and Mr Banner, it is unfortunately necessary to set out some parts of the Inspector's decision letter ("*DL*") extensively.

8.The Inspector identified what he considered the main issues on the appeal as:

> "first, the effect of the erection of the turbine on the character of the landscape, particularly when seen from footpaths and viewpoints in the area; second, the effect of the development on heritage assets; third, whether the development would cause any other harm; and fourth, whether the harm caused is outweighed by the environmental benefits of the renewable energy scheme."

9.In addressing the first issue, the effect of the proposed development on the character of the landscape, the Inspector analysed its character and the effect it would have. His conclusion was that

> "9. The proposed turbine development, as generally accepted by both main parties, would have a significant adverse effect on the character of the landscape up to a distance of about 0.5 kms from its location and would have a moderate adverse effect on the character of the landscape between about 0.5 and 1.0 kms from Poplars Farm. The proposed development thus conflicts with saved policies G3 and EV1 of the South Northamptonshire Local Plan."

10.In relation to the effect of the development on heritage assets the Inspector stated that:

> "10. The nearest non-residential heritage asset to the location of the proposed turbine is the Church of St Mary in Wappenham, a Grade II* listed building. The immediate setting of the Church is its churchyard, an intimate area confined by buildings and vegetation. It is unlikely that the turbine would be visible from within the churchyard. The Church is at the heart of the village and it is a prominent feature particularly from the north within the village. The turbine would be more than 1 km from the church and it is unlikely that it would be visible in the background in these village views of the church. The tower of the Church is visible from outside the village from some directions and it is possible that the tower and the turbine would be seen in the same views. However, given the distance between them the turbine would not compete with, or detract from, the landmark feature

> that is the Church tower. Nevertheless, the turbine would be a feature in the countryside setting of the Church and it would cause harm to this setting, though the harm would be less than substantial.
>
> 11. The Manor, a dwelling that is a Grade II* listed building, is situated close to the Church of St Mary in Wappenham. It is within the tight core of mainly historic development around the Church and the effect of the turbine on its setting would be negligible. The same conclusion can be reached for other listed buildings within the village. Further afield is the Church of St Botolph at Slapston, a Grade I listed building. This Church is over 2 kms from the location of the proposed turbine and, though it is located on slightly elevated ground, views towards the turbine from its immediate surroundings would be filtered by a belt of trees to the south-west. It is possible even that the turbine would not be visible from the surroundings of the Church and, despite its high sensitivity, the potential harm to its setting can only be regarded to be negligible. The same conclusion can be reached for other listed buildings in the vicinity of the Church, such as Manor Farm and an associated barn.
>
> 12. The aforementioned listed buildings are all more than 1 km from the location of the proposed turbine and no other heritage asset, listed building or registered park and garden, would be any closer. The turbine would not cause harm, greater than negligible, to the setting of any of these other heritage assets.
>
> 13. The proposed turbine would harm the setting of the Church of St Mary but the harm would be less than substantial. The turbine would have a negligible harmful effect on the settings of other heritage assets in the area. The cumulative harm to the settings of heritage assets is less than substantial. Nevertheless, the proposed development is in conflict with saved LP policy EV12."

11. The Inspector found in relation to the third main issue that the proposed development would cause no harm other than to the character of the landscape and to the setting of heritage assets.

12. In relation to the fourth issue, however, he found in terms of "environmental benefits" that "the development would make a small contribution to meeting the effects of climate change, an objective of the NPPF and of National Policy Statements." Paragraph [98] of the NPPF (to which the Inspector was to refer) states (as he was doubtlessly aware), the policy is to "recognise that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions."

13. The Inspector then turned to the balancing exercise he needed to conduct, stating that:

> "23. Paragraph 134 of the NPPF states that "Where a development proposal would lead to less than substantial harm to

> the significance of a heritage asset, this harm should be weighed against the public benefits of the proposal…". The public benefits of the proposal must also be weighed against public opposition to the proposal. In this regard over half of households in Wappenham have signed a petition against the turbine and some residents have suggested that the Localism Act 2011 and Ministerial Statements made in 2013 indicate that local opinion should be given considerable weight. Some have also pointed to paragraph 5 of Planning Practice Guidance for Renewable Energy which states that "…all communities have a responsibility to help increase the use and supply of green energy, but this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities". It is worth noting, with regard to responsibility, that some residents of the village have written in support of the proposed development of a wind turbine at Poplars Farm.
>
> 24. Paragraph 98 of the NPPF states that local planning authorities should "…not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy…". There is no quota for the production of renewable energy and the proposed development would contribute to meeting the effects of climate change. The significant adverse effect of the development on the character of the landscape is limited to a small area and no heritage asset in the area would suffer substantial harm. In this case, the harm that would be caused by the development is outweighed by its environmental benefits.
>
> 25. Saved LP policies G3, EV1 and EV12 are part of the development plan for the area. With regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004, material considerations in this case, the environmental benefits of the renewable energy development, indicate that determination of this appeal must be made other than in accordance with the development plan."

14. The Inspector's overall conclusion was that "the harm that would be caused by the development is outweighed, in this case, by its environmental benefits."

GROUND 1: FAILURE TO APPLY SECTION 38(6) OF 2004 ACT "PROPERLY"

15. The basic statutory framework governing the substantive determination of applications for, or appeals relating to, the grant of planning permission is well known. By virtue of sections 70(2) and 79(4) of the 1990 Act, regard must be had to:

> "(a) the provisions of the development plan, so far as material to the application,

> (b) any local finance considerations, so far as material to the application, and
>
> (c) any other material considerations."

Section 38(6) of the Planning and Compulsory Purchase Act 2004 ("the 2004 Act") then provides that:

> "If regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise."

16. Mr Lopez contended that the Inspector failed properly to apply the duty imposed by section 38(6) of the 2004 Act. First he submitted that Inspector had failed to recognise that "the starting point is the [development] plan which receives priority" and that "the scales do not start off in even balance": see *South Northamptonshire Council and another v Secretary of State foe Communities and Local Government and another* [2013] EWHC 11 (Admin) per HHJ Mackie QC at [20]. Secondly, in order to conduct the balancing exercise required by section 38(6) of the 2004 Act properly, so Mr Lopez submitted, the decision-maker must first decide the weight to be afforded to each and all of the conflicts that a proposed development may have with the development plan. Thus, when a development plan policy contains a number of limbs, the decision maker must identify which limbs the proposed development does not comply with and/or the weight to be attached to the failure to comply with that policy. In this case saved Policies G3 and EV1 each had several limbs but the Inspector has not identified with which the proposed development was incompatible nor has he stated what weight he has given to the failure to comply with each of those policies or policy EV12.

17. In my judgment the first complaint is misconceived. In this case the Inspector plainly had regard to the presumption that section 38(6) of the 2004 Act creates in [DL25]. Having referred specifically to that provision, he recognised that the proposed development was not in accordance with the development plan. But he nonetheless thought that material considerations, in this case the environmental benefits of renewable energy development, indicated that the determination of the appeal should be made otherwise than in accordance with that plan. That was precisely what section 38(6) of the 2004 required him to conclude before granting planning permission.

18. Section 38(6) of the 2004 Act falls to be applied in the light of the conclusions which the decision maker has reached about the development plan and other material considerations. There was no requirement for the Inspector to state anything about where the balance was to be struck before anything was put in "the scales".

19. Further there is no requirement that a decision-maker must start any statement of his reasons with section 38(6) of the 2004 Act. How any reasons provided for a decision are organised and expressed is a matter for the decision-maker. What is required is that the decision complies with the requirement which that provision imposes. As Lord Clyde put it in *City of Edinburgh v Secretary of State for Scotland* [1997] 1 WLR 1447 at

p1459h-1460d,

> "it is undesirable to devise any universal prescription for the method to be adopted by the decision-maker, provided always of course that he does not act outwith his powers. Different cases will invite different methods in the detail of the approach to be taken and it should be left to the good sense of the decision-maker, acting within his powers, to decide how to go about the task before him in the particular circumstances of each case....In many cases it would be perfectly proper for the decision-maker to assemble all the relevant material including the provisions of the development plan and proceed at once to the process of assessment, paying of course all due regard to the priority of the latter, but reaching his decision after a general study of all the material before him. The precise procedure followed by any decision-maker is so much a matter of personal preference or inclination in light of the nature and detail of the particular case that neither universal prescription nor even general guidance are useful or appropriate."

20. In my judgment Mr Lopez's second contention is an attempt to present a complaint about the reasons provided by the Inspector as a complaint about his compliance with section 38(6) of the 2004 Act. As Lord Hope stated, in *City of Edinburgh v Secretary of State for Scotland supra* at p1450f-h,

> "The only questions for the court [when reviewing compliance with this duty] are whether the decision-taker had regard to the presumption [created by the requirement it imposes], whether the other considerations which he regarded as material were relevant considerations to which he was entitled to have regard and whether, looked at as a whole, his decision was irrational.... That section... is addressed primarily to the decision-taker. The function of the court is to see that the decision-taker had regard to the presumption, not to assess whether he gave enough weight to it where there were other material considerations indicating that the determination should not be made in accordance with the development plan."

21. Mr Lopez's real complaint is that, in his reasons, the Inspector has not identified with which limb of saved Local Plan Policies G3 and EV1 the proposed development was incompatible and that he has not stated what weight he has given to the failure to comply with each of those policies or saved Local Plan policy EV12.

22. In my judgment the Inspector was under no obligation to do so. As Lord Brown of Eaton-under-Heywood stated in *South Bucks District Council and another v Porter (No 2)* [2004] UKHL 33, [2004] 1 WLR 33, at [36],

> "The reasons for a decision must be intelligible and they must be adequate. They must enable the reader to understand why the matter was decided as it was and what conclusions were reached

> on the "principal important controversial issues", disclosing how any issue of law or fact was resolved. Reasons can be briefly stated, the degree of particularity required depending entirely on the nature of the issues falling for decision...The reasons need refer only to the main issues in dispute, not to every material consideration."

23. There may, of course, be cases in which there is an issue whether, given certain findings, a proposed development will or will not be in conflict with a development plan policy or of a particular limb of it. If that is a main issue, the Inspector may need to state why he considers that there is, or that there is not, such a conflict. Here there appears to have been no issue, given the findings that the Inspector made about its impact on the landscape and heritage assets, whether the proposed development would be in conflict with saved Local Plan policies GV3 and EV1. In my judgment he was not obliged to specify which limbs of those policies the proposed development failed to comply with. (Had he been, I would have found that the Claimant has suffered no substantial prejudice in any event from the failure to do so, even if it could have been contended realistically that she was in any substantial doubt about it.)

24. I also reject Mr Lopez's submission that, whenever a proposed development conflicts with a development plan policy, a decision-maker must specify the weight accorded to each conflict and (logically by extension) to every other material consideration (including any such policy with which it may comply). That is plainly not what the requirement to provide reasons involves, even with regard to the main issues. What is required are reasons enabling the reader to understand why the matter was decided as it was and what conclusions were reached on the "principal controversial important issues", not the exact weight assigned to each consideration that may have been involved in reaching such conclusions.

25. This application, therefore, fails on Ground 1.

Ground 2: FAILURE TO COMPLY WITH section 66(1) of the Listed Buildings Act 1990 "PROPERLY" OR AT ALL

26. Mr Lopez contended that the Inspector did not comply with the duty to have special regard to the desirability of preserving the settings of the listed buildings that would be affected by the proposed development "properly" or at all. He submitted that the Inspector had applied a "simple planning balance" but that, consistently with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("*the Listed Building Act*"), a decision-maker may not balance any harm to a listed building or its setting that would result from a proposed development with the benefits of that development and grant planning permission on the basis that any such harm is outweighed by the benefits. Section 66(1) requires a strong presumption to be applied against any development that causes any harm to a listed building or its setting, something which must be given considerable importance and weight. The Inspector had not mentioned the duty imposed by section 66(1), although Mr Lopez accepted that of itself was not fatal. More significantly he had not demonstrated that he had attributed considerable weight to each of the harms to the settings of the listed buildings in the area which he found the

proposed development would cause. That was fatal: see *East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another* [2014] EWCA Civ 137, [2015] 1 WLR 137; *R (The Forge Field Society and others) v Sevenoaks DC and others* [2014] EWHC 1895 (Admin), [2015] JPEL 22; *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin); and *South Northamptonshire District Council v Secretary of State for Communities and Local Government* [2013] EWHC 11. In this case the Inspector only applied the policy in the NPPF, which is insufficient (so Mr Lopez submitted) to secure compliance with the duty under section 66(1), or at any rate he only applied the policy in paragraph [134] of the NPPF which by itself is insufficient.

27. In response Mr Banner accepted that section 66(1) of the Listed Building Act required the decision maker to afford considerable weight and importance to any harm to a listed building or its setting. But, so he submitted, that does not require any particular decision. Further the decision maker does not have to spell out or expressly state that "considerable weight and importance" has been given to the objective to which that subsection refers. What matters is whether in substance the requirement has been complied with. A challenge alleging that it has not been complied with should not become a semantic game: see *R (Residents Against Waste Site Ltd) v Lancashire County Council* [2007] EWHC 2558 (Admin), [2008] Env LR 27, at [35]-[36]. In this case, in treating the impact of the proposed development on the heritage assets as one of the main issues on the appeal, the Inspector had recognised its considerable importance. In addition, when a development plan policy embodies a particular consideration to which regard must be had, then regard to the policy will normally show that regard had been had to that consideration. In this case the Inspector plainly had regard to the relevant statutory duty as it is transposed in saved Local Policy EV12. Moreover the approach in the NPPF which the Inspector followed requires "great weight" to be given any harm to a listed building or its setting.

(i) The substantive law

28. Section 66(1) of the Listed Buildings Act provides that:

> "In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

29. As the opening words of the subsection make plain, the obligation it imposes arises when the local planning authority, or the Secretary of State (or the person appointed to determine an appeal on his behalf), is considering whether to grant planning permission. It must be complied with, therefore, as part of the same exercise that is also governed by section 38(6) of the 2004 Act.

30. Section 66(1) of the Listed Building Act requires the decision maker at least to start from the assumption that it is desirable to preserve any listed building and its setting. Preserving

them includes doing no harm to either: see *South Lakeland District Council v Secretary of State for the Environment* [1992] 2 AC 141 per Lord Bridge of Harwich at p150. It may turn out, however, that, once regard has been had to all material considerations, preserving a listed building or its setting from any harm at all should not be insisted on and that, for example, planning permission may be given for the demolition of the listed building itself (as in *Save Britain's Heritage v Number 1 Poultry Ltd and others* [1991] 1 WLR153.) Nonetheless, in approaching any such decision, section 66(1) of the Listed Building Acts requires "special regard" to be had to the desirability of preserving any listed building and its setting.

31. In *East Northamptonshire District Council and others v Secretary of State for Communities and Local Government and another* [2014] EWCA Civ 137, [2015] 1 WLR 137 ("*the East Northamptonshire case*"), the Court of Appeal held that the obligation to have "special regard" to the desirability of preserving any listed building and its setting did not mean that it should merely be given careful consideration by the decision-maker when considering whether a proposed development would cause any harm and to any harm it might cause. The Court of Appeal accepted that the decision-maker's assessment of the degree of harm to a listed building or its setting was a matter for the decision-maker's judgment. But, so it held, the weight to be given to that harm, when balancing the factors in favour of or against the grant of planning permission, was not: "a finding of harm to the setting of a listed building is a consideration to which the decision maker must give 'considerable importance and weight'": see per Sullivan LJ (with whom Rafferty and Maurice Kay LJJ agreed) at eg [19], [22] and [24].

32. Since the harm which may be caused by a development to a listed building or its setting may vary from the almost imperceptible to total destruction, the "considerable weight" that must, therefore, be assigned to any harm as a matter of law must presumably be the minimum weight that must be assigned however small any such harm may be, rather than an invariable weight to be given to any such harm regardless of its degree. The latter alternative would make no sense. The former makes some sense if section 66(1) of the Listed Building Act is to be interpreted (as the Court of Appeal has done) as requiring a specific weight to be given to any harm regardless of its degree as a matter of law (rather than as a matter for judgment in a particular case).

33. The Court of Appeal did not consider whether section 66(1) of the Listed Buildings Act 1990 also required considerable weight to be given to any positive contribution that a proposed development would make to the preservation of a listed building or its setting, however small that contribution may be.

34. In some subsequent cases section 66(1) of the Listed Buildings Act has been treated or referred to as creating a presumption. I do not propose to refer to it in that way for a two reasons.

i) A presumption can exist without requiring any particular weight to be afforded to the presumption in question. For example section 38(6) of the 2004 Act has been said to create a presumption in favour of the development plan, for example by Lord Hope in *City of Edinburgh Council v Secretary of State for Scotland supra* in the passage from his speech quoted in paragraph [20] above. But, as Lord

Clyde also emphasised in the same case, what the provision does not do is to tell the decision-maker what weight to accord either to the development plan or to other material considerations: see at pp1458h-1459a. By contrast, although the Court of Appeal in *the East Northamptonshire case* also referred to section 66(1) of the Listed Building Act as creating a presumption, the flaw it found in the decision under review was the failure to accord "considerable weight and importance" to the harm to the setting of the listed buildings affected in that case: see at [29].

ii) Secondly referring to section 66(1) of the Listed Buildings Act as creating a presumption may in some cases lead to unnecessary confusion. There can be cases in which a proposed development accords with the development plan (and there is thus a "presumption" in favour of it) but the desirability of preserving the listed building may indicate that it should be refused permission (thus creating a "presumption" against it), as, for example, in *Heatherington (UK) Ltd v Secretary of State for the Environment and another* (1994) 69 P&CR 374. Asking which presumption outweighs the other would be unnecessary and unhelpful. What section 66(1) of the Listed Buildings Act requires is that special regard is had to the desirability of preserving any listed building and its setting when determining (in accordance with section 38(6) of the 2004 Act) whether material considerations indicate that planning permission should be granted otherwise than in accordance with the development plan. On the basis of the approach in *the East Northamptonshire case*, if a proposed development would cause any harm to a listed building or its setting, considerable weight would have to be accorded to any breach of a development plan policy that such harm involved and, if that harm does not lead to such a breach, it would have to be accorded considerable weight as a consideration counting against the grant of planning permission. Referring to each provision as creating a presumption is unnecessary and does not assist in formulating the relevant legal requirements or in applying them.

(ii) The nature of the challenge in this case

35.In my judgment it is important to be clear what the nature of the present challenge is.

36.In his decision letter the Inspector found that the impact of the proposed development on the setting of a number of listed buildings was "negligible". By that he plainly meant that in each case there was some harm but that it was very small, not that it was so small as to be not worth considering. As he made plain in [DL17], he took the "negligible" harm that he had found in a number of cases, together with the harm to the setting of the Church of St Mary in Wappenham, into account in determining what "the cumulative harm to the settings of the heritage assets" in the area was, which he found was "less than substantial".

37.Mr Lopez submitted that the Inspector was required to give "considerable weight and importance" to each case in which he had found "negligible harm" to the setting of a listed building. That must be correct as a matter of logic given the decision in *the East Northamptonshire case supra* (as explained in paragraphs [31]-[32] above). Mr Lopez

did not suggest that the Inspector was required in law to give more than "considerable weight" to the "less than substantial harm" that he found that the proposed development would cause to the setting of the Church of St Mary because that harm was greater than the "negligible harm" that would caused in other cases. It would be strange if more weight is required to be given to the same harm merely because the proposed development also causes less harm to the setting of another listed building. The apparent oddity, that the same weight may be given to a more serious case of harm than to a less serious case, follows from the requirement to give a minimum weight as a matter of law, even if that weight would not have been given on the merits as a matter of planning judgment. There are other apparently odd possible results of that requirement. I refer to one in paragraph [64] below.

38. But what is significant for present purposes is that Mr Lopez disavowed any contention that no reasonable Inspector could have granted planning permission in this case having assigned at least "considerable weight" to each of the adverse impacts on the settings of the listed buildings that he found that the proposed development would cause. It follows that the Inspector's decision is consistent with his having complied with section 66(1) of the Listed Buildings Act.

39. There may, of course, be something in the reasons given by a decision-maker that shows that considerable weight was not accorded to any harm that a proposed development may cause a listed building or its setting. In *the East Northamptonshire case*, for example, the Court of Appeal appears to have considered that it could be inferred, from the fact that the Inspector said that "significant weight" was accorded to renewable energy considerations but had made no reference to the weight accorded the harm to the settings of the listed buildings in that case, that considerable weight had not been given to that harm: see at [29]. Such reasoning would appear to be inconsistent with the decision of the Court of Appeal in *O'Connor v Secretary of State for Communities and Local Government* [2013] EWCA Civ 263. In that case the Inspector had referred to the substantial weight to be given to the fact that the proposed development would be inappropriate in the Green Belt but not to the fact that he had given substantial weight to the unmet need for gypsy sites (which should have been accorded with the policy at that time of the Secretary of State) when considering whether or not to grant a temporary planning permission for such a site. The Court of Appeal refused to infer that the Inspector had failed to have regard to the policy and Laws LJ regarded the contention that the reasons were inadequate, as they had failed to say that substantial weight had been accorded to the unmet need (although they did say substantial weight have been given to the fact that the development was inappropriate in the Green Belt), as involving reading of the decision letter with "exegetical sophistication". Which approach may be preferable, however, is not something that needs to be resolved in this case as the Inspector did not state what particular weight he had assigned to any particular consideration.

40. Mr Lopez submitted that there was one positive indication that the Inspector had not complied with section 66(1) of the Listed Building Act. In [DL13] the Inspector had said that the cumulative harm to the settings of the heritage assets was less than substantial but "nevertheless" the proposed development was in conflict with saved Local Plan policy EV12. The use of the term "nevertheless" indicated, so Mr Lopez submitted, that the Inspector had not given such harm "considerable weight". In my judgment that

submission has no merit. The Inspector was merely saying in effect, notwithstanding the limited harm to the setting of the listed buildings concerned, the proposed development was still contrary to that policy. He was not then attributing weight to such harm. That would be a matter that would arise later when considering the balancing exercise involved in determining the appeal.

41. By contrast I accept Mr Banner's point that the fact that the Inspector treated the question, whether there would be any harm to any listed building or its setting, as a "main issue" indicates that he attached "considerable importance" to that matter. But that, of itself, reveals nothing about what weight he may have assigned to any such harm that he identified.

42. It follows, therefore, that there is nothing in the result or in the terms of the decision letter itself that shows that the Inspector did not give at least "considerable weight" in each case to the harm that the proposed development would cause to the setting of each of the listed buildings it would affect. Accordingly the Claimant cannot show that the Inspector in fact failed to give the considerable weight to any harm he was required to give. It is also the case that there is nothing in the decision letter which states what weight he did give in each case or cumulatively. The challenge, therefore, must be one directed at the reasons that the Inspector gave for his decision and in particular at their silence on this point.

(iii) Whether reasons given by a decision maker must demonstrate that the "considerable weight" was given to any harm to a listed building or its setting

43. In *the East Northamptonshire case* Sullivan LJ (with whom the other members of the Court of Appeal agreed stated (at [29])) that:

> "It is true that the inspector set out the duty in para 17 of the decision letter, but at no stage in the decision letter did he expressly acknowledge the need, if he found that there would be harm to the setting of the many listed buildings, to give considerable weight to the desirability of preserving the setting of those buildings. This is a fatal flaw in the decision"

44. Mr Lopez did not submit that a failure to state expressly that considerable weight had been given to each harm to the setting of all the listed buildings affected by the proposed development was of itself, despite this statement, a fatal flaw. That was perhaps understandable given repeated judicial statements, when dealing with the adequacy of reasons in planning contexts, that what matters is substance, not form, and that the court would not wish to lay down a test which meant that decision-makers have to jump through a series of verbal hoops: see eg *Heatherington (UK) Ltd v Secretary of State for the Environment and another supra* at p382; *Residents Against Waste Site Ltd v Lancashire County Council* [2007] EWHC 2558 (Admin), [2008] Env LR 27, at [29]-[31], [35], and [48]. But Mr Lopez did rely on the view expressed by Lindblom J that a decision-maker can only properly balance any harm to a heritage asset and planning benefits that a proposed development would produce "if [he] demonstrably applies" considerable weight to that harm: see *R (The Forge Field Society and others) v*

Sevenoaks District Council and others [2014] EWHC 1895 (Admin) at [49], [55], [56] (and as reported [2015] JPEL 22 at [47], [53], [54]). This formulation (similarly expressed in terms of "the presumption") was also adopted by HHJ Waksman QC in *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin) at [53]. This formulation, like that of Sullivan LJ, is one that applies to the reasons provided for a decision. A decision-maker can in fact give considerable weight to any harm to a listed building or its setting in reaching a decision (thus complying with the legal obligation imposed by section 66(1) of the Listed Building Act as interpreted by the Court of Appeal in *the East Northamptonshire case*) but fail to demonstrate in the reasons provided that that weight was applied in reaching the decision.

45.I have great difficulty in reconciling this approach (and *a fortiori* any requirement that the decision-maker must expressly state that considerable weight has been given to any harm to a listed building or its setting) with the guidance about reasons given by the House of Lords in *Save Britain's Heritage v Number 1 Poultry Limited and others* [1991] 1 WLR 153. This approach assumes that a decision, which is compatible with a requirement to give "considerable weight" to any such harm and in relation to which there is nothing to indicate that such weight has not been accorded to it, is flawed unless the reasons provided demonstrate that "considerable weight" was in fact given. In other words the decision is flawed unless the court is satisfied that silence on this point in the reasons could not conceal a flaw in the decision-making process. But, as Lord Bridge of Harwich stated in *Save Britain's Heritage* at p168b-e,:

> "this reverses the burden of proof which the statute places on the applicant to satisfy the court that he has been substantially prejudiced by the failure to give reasons. When the complaint is not of an absence of reasons but of the inadequacy of the reasons given, I do not see how that burden can be discharged….unless the applicant satisfies the court that the shortcoming in the stated reasons is of such a nature that it may well conceal a flaw in the reasoning of a kind which would have laid the decision open to challenge under the other limb of section [288]. If it was necessary to the decision to resolve an issue of law and the reasons do not disclose how the issue was resolved, that will suffice. If the decision depended on a disputed issue of fact and the reasons do not show how that issue was decided, that may suffice. But in the absence of any such defined issue of law or fact left unresolved and when the decision was essentially an exercise of discretion, I think that it is for the applicant to satisfy the court that the lacuna in the stated reasons is such as to raise a substantial doubt as to whether the decision was based on relevant grounds and was otherwise free from any flaw in the decision-making process which would afford a ground for quashing the decision."

Thus, if there was a defined issue of law for the decision-maker to resolve, for example whether the decision-maker was or was not obliged to accord at least considerable weight to any harm to a listed building or its setting (however small that harm might be), then the decision maker may have to explain how that issue had been resolved. But, absent any such defined legal issue, as Lord Brown of Eaton-under-Heywood put it (in *South Bucks District Council and another v Porter No 2* [2004] UKHL 33, [2004] 1

WLR 1953, at [36]), having referred to this and other passages in Lord Bridge's speech,

> "the reasoning must not give rise to substantial doubt as to whether the decision maker erred in law…such an inference will not readily be drawn".

Normally, therefore, the mere failure to state what weight is being given to a consideration when a material planning policy specifies what it should be does not mean that the reasons provided are inadequate: see eg *O'Connor v Secretary of State for Communities and Local Government* [2013] EWCA Civ 263 (referred to in paragraph [39] above); see also *South Somerset District Council and another v David Wilson Homes (Southern) Ltd* (1993) 66 P&CR 83 per Hoffmann LJ at p85 et seq. As Aldous LJ has said (applying the approach in planning cases), "it is not incumbent [on a decision-maker] to demonstrate in their reasons that the conclusion has been reached by an appropriate process of reasoning from the facts": *R v Criminal Injuries Compensation Board ex p Cook* [1996] 1 WLR 1037 at pp 1043, 1045, 1046; see also per Hobhouse LJ at p1051.

46. *Save Britain's Heritage supra* was a case directly concerned with the demolition of eight Grade II listed buildings in the determination of which what is now section 66(1) of the Listed Buildings Act was applicable. One of the main issues for decision by the Secretary of State was characterised by Lord Bridge (at p157f) as being whether "the merits of the proposed new building…were sufficient to outweigh whatever importance did attach to the preservation of the existing buildings. These were issues of planning policy and aesthetic judgment." The question of whether there was any minimum weight that had to be attached to the loss of each building as a matter of law was not the issue (so that the decision in *the East Northamptonshire case* is not necessarily incompatible with this characterisation of the nature of the issue). What was of relevance in that case was the Secretary of State's policy with respect to the demolition of listed buildings. Further the question that the Appellate Committee addressed was whether the Secretary of State had incorporated the substance of the Inspector's reasoning in his own reasons. The guidance given about reasons by Lord Bridge in that case, therefore, did not specifically address the question whether a decision may fall to be quashed if the reasons given for it do not demonstrate that the decision-maker has accorded the minimum weight to a consideration that he is required to give it by law (rather than by a policy) in circumstances in which there is nothing which gives rise to substantial doubt whether the decision maker has done so.

47. I can see no reason in principle, however, why there should be any special rule with regard to compliance with any such legal requirement (as opposed to any other legal requirement such as a failure to take into account a material consideration). There is a presumption that decisions are validly made, sometimes expressed in the maxim *omnia praesumuntur rite esse acta* or as the presumption of regularity. There is no reason why a requirement to give reasons should reverse that presumption, placing a burden on the person taking or defending a decision to demonstrate that it has been validly made.

48. Nonetheless, given the decision of the Court of Appeal in *the East Northamptonshire case* on this specific point in relation to section 66(1) of the Listed Building Act and subsequent

decisions that have taken it as requiring the decision-maker to demonstrate in the reasons provided that considerable weight has been given to any harm to a listed building or its setting, I do not consider that I am at liberty to depart from that approach or that, if I am, it would be appropriate for me to do so, notwithstanding the guidance in *Save Britain's Heritage* and other cases.

49. Accordingly the reasons given by a decision-maker must demonstrate that the "considerable weight" was given to any harm to a listed building or its setting.

(iv) Whether compliance with the NPPF is sufficient to demonstrate that considerable weight has been given to any harm to a listed building or its setting

50. The Secretary of State has published guidance about how the historic environment should be conserved and enhanced in plans and development control. The NPFF provides that:

> "132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional.
>
> 133. Where a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss, or all of the following apply:
>
> - the nature of the heritage asset prevents all reasonable uses of the site; and
> - no viable use of the heritage asset itself can be found in the medium term through appropriate marketing that will enable its conservation; and
> - conservation by grant-funding or some form of charitable or public ownership is demonstrably not possible; and
> - the harm or loss is outweighed by the benefit of

bringing the site back into use.

> 134. 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 securing its optimum viable use."

"Significance" in this advice (as the glossary to the NPPF states) refers to "the value of a heritage asset to this and future generations because of its heritage interest."

51. This advice recognises (in paragraph 132) that any harm or loss to the value that a listed building has by virtue of a development within its setting requires clear and convincing justification as "great weight" should be given to the asset's conservation since it is irreplaceable. The advice then distinguishes between cases in which a proposed development will lead to less than substantial harm to the value of the listed building (in paragraph 134) and other cases in which it will result in greater harm (dealt with in paragraphs 132 and 133). Where the proposed development will lead to less than substantial harm to that value (for example by development within its setting), that harm should be weighed against the public benefits of the proposal (as paragraph 134 states) but, in doing so, the requirement to give "great weight" to any harm and the need for clear and convincing justification for it (as stated at the outset in paragraph 132) remains.

52. In my judgment the correct interpretation of paragraphs 132 and 134 requires them to be read together in this manner. This was also the interpretation of them preferred by HHJ Waksman QC in *R (Hughes) v South Lakeland District Council* [2014] EWHC 3979 (Admin) at [52]-[53] and Gilbart J in *Pugh v Secretary of State for Communities and Local Government and others* [2015] EWHC 3 (Admin) at [49].

53. In my judgment, a decision-maker who follows the guidance given in paragraphs 132 and 134 of the NPPF (when dealing with a case in which the proposed development will result in less than substantial harm to the value of a listed building (for example by development within its setting) will comply with the obligation imposed by section 66(1) of the Listed Buildings Act as interpreted by the Court of Appeal in the *East Northamptonshire case*. When a proposed development will result in harm to the value of a listed building (for example by development within its setting) but that harm is less than substantial, however, then a decision maker following the guidance will give "great weight" to any such harm. Giving any such weight to any such harm must at least involve giving "considerable weight" to it.

54. Further, as the policy itself illustrates, it cannot be inferred from the fact that the decision-maker considers that the proposed development will cause less than substantial harm that he or she necessarily regards such harm as having less than "considerable weight".

55. It is true that the advice refers to the significance, that is to say the value, of a listed building, a term not found in section 66(1) itself. But that in my judgment is of no material significance. What section 66(1) is concerned with are buildings of special architectural or historic interest. Operations on a listed building that do not result in any harm or loss

to the value of a listed building will preserve what is of value in the building for conservation purposes (and indeed, in certain circumstances, such operations may enhance or better preserve it rather than harming it). Preservation of that interest is not necessarily the same as the absence of change. Similarly a development within the setting of a listed building that involves no harm or loss to the value of the listed building will preserve whatever in its setting is of value for conservation purposes.

56.In this case it is clear, from the fact that the Inspector considered whether or not the harm to the settings of listed buildings would be "less than substantial" and from his reference to paragraph 134 of the NPPF at the beginning of his consideration of the planning balance in [DL23], that the Inspector was intending to apply the guidance in that document.

57.In *R (Hughes) v South Lakeland District Council supra*, the officer's report on which the decision impugned was based had referred both to paragraphs 132 and 134 of the NPPF. In HHJ Waksman's view, however, that did not save the decision when paragraph 134 on its own was apparently being followed "unless there is clear and express recognition – and application – of" the weight required to be given to any relevant harm: see at [55]-[58]. There may, of course, be cases in which it is evident that the decision maker has misunderstood what the NPPF requires, as in *R (The Forge Field Society and others) v Sevenoaks District Council and others supra* where the officer's report stated that the test in the NPPF was whether the development would cause substantial harm or whether the harm was overriding: see [2014] EWHC 1895 (Admin) at [36], [39], [41]-[43], [55] and [59]; [2015] JPEL 22 at [34], [37], [39]-[41], [53] and [57]. Whether it is right, however, to infer that a decision-maker has failed to give effect to paragraph 132 of the NPPF (when the decision-maker has in fact set it out) merely because it is not set out again expressly later when paragraph 134 is applied, I need not consider. In this case the Inspector referred only to paragraph 134 in [DL23]. He made no reference to paragraph 132.

58.Once it is accepted that the reasons given by a decision maker must demonstrate that the "considerable weight" was given to any harm to a listed building or its setting, however, it follows that applying paragraph 134 alone is not sufficient of itself, as the application of the approach stated in that paragraph does not of itself demonstrate that the required weight has in fact been given. Normally, if an Inspector refers to a policy on a particular matter, the fact that he does not refer explicitly to the weight that some part of the policy recommends should be attributed to a consideration would not of itself give rise to substantial doubt that he has departed from that guidance: see eg *O'Connor v Secretary of State for Communities and Local Government* (referred to in paragraph [39] above). As Hoffmann LJ said in *South Somerset District Council and another v David Wilson Homes (Southern) Ltd* (1993) 66 P&CR 83 at 85,

> "The inspector is not writing an examination paper….Sometimes his statement of the policy may be elliptical but this does not necessarily show misunderstanding. One must decide…..whether it appears from the way he dealt with [the main planning issues] that he must have misunderstood a relevant policy…."

So, in that case, for example, there was no need to set out a relevant policy in extenso

and the failure to do so did not raise any substantial doubt that he may have overlooked a qualification it contained: see p86. But, as I have explained, the normal burden of proof is reversed in respect of the requirement to give considerable weight to any harm to a listed building or its setting which section 66(1) of the Listed Buildings Act has been taken to impose. Thus, in *North Norfolk District Council v Secretary of State for Communities and Local Government* [2014] EWHC 279 (Admin) a decision was quashed in which paragraph 134 of the NPPF was applied, "whatever account [the Inspector] took of the earlier advice in…paragraph 132", given that he had not shown that he had attached considerable importance and weight to the harm to the setting of the listed buildings affected: see at [65]-[73], [81]-[84].

59. It follows, therefore, that, although the Inspector considered the harm to the listed buildings affected in accordance with paragraph 134 of the NPPF, that of itself is insufficient to demonstrate that the Inspector attached considerable weight to such harm.

(v) The significance of the finding that the proposed development was contrary to saved policy EV12

60. Mr Banner submitted that when a development plan policy embodies a particular consideration to which regard must be had, then regard to the policy will normally show that regard has been had to that consideration and that in this case the Inspector plainly had regard to the relevant statutory duty as it is transposed in saved Local Policy EV12 (with which he found the proposed development to be in conflict).

61. Policy EV12 provides that:

> "When considering applications for alterations or extensions to buildings of special architectural or historical interest which constitute development the council will have special regard to the desirability of securing their retention, restoration, maintenance and continued use. Demolition or partial demolition of listed buildings will not be permitted. The council will also seek to preserve and enhance the setting of listed buildings by control over the design of new development in their vicinity, the use of adjoining land and, where appropriate, by the preservation of trees and landscape features."

In interpreting this policy regard may be had to the text explaining it: see *R (Cherkley Campaign Ltd) v Mole Valley DC and another* [2014] EWCA Civ 567 per Richards LJ at [19] and [21]. In this case that text stated that:

> "In accordance with the duty under the Planning (Listed Building and Conservation Areas) Act 1990, the Council will pay careful attention to the protection and improvement of Listed Buildings and their setting."

62. Mr Lopez did not accept that this policy accurately transposed the duty imposed by section 66(1) of the Listed Buildings Act insofar as it related to the setting of listed buildings,

contrasting the language in the first and last parts of the policy. Mr Banner invited me to read the policy in the light of the explanatory text which shows that the intention was plainly to give effect to the relevant duty, since there is no difference between "attention" and "regard" in this context: see *Heatherington (UK) Ltd v Secretary of State for the Environment and another* (1994) 69 P&CR 374 at p380.

63. In my judgment I do not need to resolve this dispute. It is scarcely credible in any event that a member of the Planning Inspectorate (who is also in this case a member of the Royal Institute of British Architects and a Member of the Royal Town Planning Institute) would not be familiar with the duty now imposed by section 66(1) of the Listed Building Act, a duty that has been in existence and central to the determination of planning applications affecting listed buildings and their settings since 1968: see section 40(3) of the Town and Country Planning Act 1968. But, even assuming that the Inspector required to be reminded of this duty and assuming that EV12 had set it out in terms, that would not be sufficient to demonstrate that he had attached considerable weight to any harm that the proposed development would cause the settings of the listed buildings affected in this case. In *North Norfolk District Council v Secretary of State for Communities and Local Government supra,* the Inspector was expressly set out the relevant duty, but that was not sufficient: see at [63(i)]. Even in those cases where the Inspector has set out the duty himself, that has not been regarded as being of itself sufficient: see eg *the East Northamptonshire case supra* at [29] (quoted in paragraph [43] above); *Heatherington (UK) Ltd v Secretary of State for the environment and another supra* at p382.

64. The problem is that the duty in section 66(1) of the Listed Buildings Act makes no reference whatever to the weight that is to be assigned to the fact that a proposed development does not preserve a listed building or its setting. That a specific minimum amount of weight, namely considerable weight, has to be assigned to that fact as a matter of law, even if less would be assigned as a matter of planning judgment, would not be self-evident to a person merely from reading the relevant enactment. Indeed, when the settings of a number of listed buildings are harmed by a proposed development, albeit in each case to a very small degree, it is possible that the accumulation of the considerable weights attaching to each such harm on its own as a matter of law might lead to a balance being struck against the development which no reasonable person would have struck as a matter of planning judgment, given the planning merits of the development and having had meticulous regard to the desirability of preserving the settings of each of the listed buildings. Knowledge of the terms of the duty cannot simply be equated, therefore, with knowledge of what the courts have held that it requires.

(vi) Conclusion

65. For the reasons given above, it follows that in this case the Inspector failed to give reasons demonstrating that he had given considerable weight to the harm to the settings of each of the listed buildings that he found would be harmed to some extent by the proposed development. Accordingly, given the reversal of the normal burden of proof inherent in the requirement to provide such a demonstration, it follows that the Claimant has suffered substantial prejudice.

GROUND 3: THE INTRINSIC SIGNIFICANCE OF THE RELEVANT HERITAGE ASSETS AND THE CONTRIBUTION TO IT OF THEIR SETTINGS

66.Mr Lopez contended that the Inspector had failed to summarise the intrinsic significance of the heritage assets affected by the proposed development and the contribution which their settings made to their significance, with the result that he had failed to approach the assessment of harm as the NPPF requires.

67. The Inspector's decision in this case assumes that any effect that the proposed development would have on the setting of any of the listed buildings in the area would detract from its value. That is why he described such an effect as involving harm to their setting. Mr Lopez has not suggested that there was any substantial dispute about that matter, much less (as Mr Banner pointed out) that it was one of the main or principal controversial issues on this appeal.

68. In my judgment the Inspector was under no obligation in the circumstances to include in his reasons a description of the particular value of each relevant listed building whose setting would be affected by the proposed development and a description of the contribution which its setting made to each. Equally I do not accept, as Mr Lopez submitted, that the Inspector was under an obligation to list each of the listed buildings within the village of Wappenham to which he was referring in the third sentence of [DL11]. The Inspector has expressed his conclusion on the extent of the harm to the settings of the listed buildings that would be adversely affected as well as his conclusion on the extent of the cumulative harm. In my judgment the Claimant has not shown that she has suffered any substantial prejudice from the manner in which the Inspector dealt with the issue of the effect of the development on heritage assets.

69. The application, therefore, fails on Ground 3.

GROUND 4: FAILURE TO PROVIDE REASONS

70. This ground adds nothing material to the first three grounds.

CONCLUSION

71. For the reasons given above, the application fails on Grounds 1 and 3.

72. I have found, however, that the Inspector failed to give reasons demonstrating that he had given considerable weight to the harm to the settings of each of the listed buildings that he found would be harmed to some extent by the proposed development and that the failure to provide such reasons has caused the Claimant substantial prejudice. The application succeeds, therefore, to that extent on Grounds 2 and 4.

73.I have reached this conclusion, as I regard myself as bound to do so in the light of *the East Nothamptonshire case* and subsequent decisions, but with reluctance, for a number of

reasons.

i) As Sir Thomas Bingham "felicitously observed" in *Clarke Homes Ltd v Secretary of State for the Environment* (1993) 66 P&CR 263 at 271-2 (as Lord Brown said in *South Bucks District Council supra* at [33]), when there is a dispute about the adequacy of the reasons given for a decision,

> "the central issue…is whether the decision of the Secretary of State leaves room for genuine as opposed to forensic doubt as to what he has decided and why. This is an issue to be resolved…on a straightforward down-to-earth reading of his decision letter without excessive legalism or exegetical sophistication."

In my judgment it is clear in this case why the Inspector decided to grant planning permission. He thought that the environmental benefits of the renewable energy development proposed outweighed its adverse impact on the landscape (which he found to be significant up to a distance of 0.5km, and moderate thereafter up to a distance of 1km, from its location) and its impact on the settings of various listed buildings (which was less than substantial in the case of the Church of St Mary, Wappenham, negligible in other cases and less than substantial cumulatively). The benefits of the development in his view indicated that planning permission should be granted otherwise than in accordance with the development plan. The Claimant and others who opposed the development may very well disagree with the judgments that the Inspector reached about the benefits and adverse impacts of the proposed development, about the balance to be struck between them and the justification for departing from the development plan. But why the Inspector decided to grant planning permission is clear. The basic purpose of the requirement to give reasons was satisfied.

ii) There is nothing in the decision letter that indicates that the Inspector gave less than considerable weight to the harm to the setting of each of the listed buildings that would be affected by the proposed development. Mr Lopez disavowed any suggestion that the decision was one that could not reasonably have been taken having given such weight to such harm. The requirement that a decision maker must "expressly recognise" that considerable weight is to be given to any harm to a listed building or its setting, or that the decision-maker must have "demonstrably" applied that weight, when striking any balance when there is nothing to indicate that he has not done so appears to me to be inconsistent for no good reason with the presumption of regularity and the general guidance from the House of Lords that the burden is on the applicant to show that any silence or lacuna in the reasons for a decision is such as to raise a substantial doubt that the decision was invalid, in a case such as this on the ground that the weight required has not been given.

iii) Further, even if a decision-maker expressly states that considerable weight is to be, or has been, given to any such harm, the reversal of the normal burden of proof may mean that such a statement may not suffice. It is, of course, insufficient merely to pay lip service to any relevant requirement, as this court

has said on a number of occasions. The logical consequence of this reversal of the normal burden of proof would be to require decision-makers, when striking any balance, to "demonstrably apply" the weight that they have said that they are giving to such harm. This may be problematic in practice. What weight can be regarded as "considerable", or as being not less than "considerable", is at least to some extent indeterminate. Moreover the weight in fact given may not be capable of being determined from the conclusion reached. Planning decisions often reflect a judgment on the balance to be struck in the circumstances between inherently incommensurable considerations, such as the need for a development and the harm to the environment, rather than the result of a calculation involving the addition and subtraction of precise weights assigned to particular considerations. A requirement that it must be demonstrated that a particular weight has been given to a particular consideration, therefore, is likely to generate exegetical sophistication in the interpretation of decision letters (and of officers' reports to local authority committees) in order to raise the possibility of a concealed error. Such a requirement may also encourage claims that further requirements need to be satisfied before it can be concluded that the reasons given *could not* conceal any error, requirements that are likely to involve excessive legalism but which will not lead to any better explanation of any decision.

74. Nonetheless, for the reasons that I have given, this application succeeds and the decision impugned is quashed.

CATESBY ESTATES LTD v STEER (HISTORIC ENGLAND AS INTERVENER)

SECRETARY OF STATE FOR COMMUNITIES AND LOCAL GOVERNMENT v STEER (HISTORIC ENGLAND AS INTERESTED PARTY)

COURT OF APPEAL (CIVIL DIVISION)

McFarlane, Lindblom and Asplin LJJ: 18 July 2018

[2018] EWCA Civ 1697; [2019] 1 P. & C.R. 5

LT Planning permission; Listed buildings; Heritage assets; Conservation areas; Buildings of exceptional historic and architectural interest; Public inquiries; Errors of law

H1 *Town and country planning—Application for planning permission—Residential development—Listed buildings—Building of exceptional historic and architectural interest—Conservation area—Refusal of permission by council—Inspector directed grant of permission—National Planning Policy Framework—Whether inspector had erred in law—"Setting" of listed building—Section 66(1) Planning (Listed Buildings and Conservation Areas) Act 1990*

H2 The appellant applied for planning permission for a housing development of up to 400 dwellings and a further housing development of up to 195 dwellings. The site of the proposed development was farmland located some 1.7 kilometres from Kedleston Hall, a grade I listed building, and 550 metres from the hall's registered park and garden and the Kedleston conservation area. The hall was widely accepted to be of exceptional historic and architectural interest. Objectors maintained that the appeal site lay within the settings of both Kedleston Hall and Kedleston Park, largely because of historic connections between the hall, park and the farmland within the surrounding estate. In refusing permission for the first scheme, the borough council asserted that the proposed development would harm the settings and significance of several heritage assets, including Kedleston Hall, contrary to government policy in paras 132 and 134 of the National Planning Policy Framework (the NPPF). It opposed the second scheme for the same reason. After a subsequent inquiry, the inspector directed that permission should be granted. In an application by the respondent under s.288 of the Town and Country Planning Act 1990, Lang J concluded [2017] EWHC 1456 (Admin) that the inspector had "adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative". The inspector had thus erred in law in his approach to the effects of the development on the setting of Kedleston Hall and had failed

to discharge his duty under s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. On appeal to the Court of Appeal:

H3 **Held,** allowing the appeal, that (i) although the "setting" of a listed building was a concept recognised by statute, it was not statutorily defined and nor did it lend itself to precise definition. Implicit in s.66 of the Planning (Listed Buildings and Conservation Areas) Act 1990, however, was that the setting of a listed building was capable of being affected in some discernible way by development, whether within the setting or outside it. Identifying the extent of the setting for the purposes of a planning decision was not a matter for the court, but was always a matter of fact and planning judgment for the decision-maker. Where it related to the effect of a proposed development on the setting of a listed building, the s.66 duty made it necessary for the decision-maker to understand what the setting was–even if its extent was difficult or impossible to delineate exactly–and whether the site of the proposed development would be within it or in some way related to it. None of the relevant policy, guidance and advice prescribed a single approach for all cases. The decision-maker must apply planning judgment to the particular facts and circumstances, having regard to the relevant policy, guidance and advice. Further, the effect of a particular development on the setting of a listed building was a matter for the planning decision-maker, subject to the principle that "considerable importance and weight" must be given to preserving the setting of a heritage asset. Unless there had been some clear error of law in the decision-maker's approach, the court should not intervene. Reading the relevant parts of the inspector's decision letter together and in their full context, the errors contended for could not be found. The judge below was wrong to conclude that the inspector simply "set to one side" the historical considerations said to be relevant to the setting of Kedleston Hall. He recognised the relevance of those considerations to the setting of the listed building, to the impact of the proposed development on that setting, and its impact on the "significance" of the listed building as a heritage asset. He did not concentrate on visual and physical factors to the exclusion of everything else. The judge below was wrong to find that the inspector "adopted a narrow interpretation of setting … inconsistent with the broad meaning given to setting in the relevant policies and guidance … before him". The inspector had understood the relevant policies and guidance correctly and had applied them lawfully in assessing the likely effects of the development in the setting of each heritage asset. He was entitled to look for a physical or visual connection as a means of establishing the extent of the setting of the listed building and his conclusion that there needed to be more of a physical or visual connection than the mere fact that the appeal site had been part of the estate of which the hall and park were the hub was not to be read as a statement of general principle but simply as a planning judgment on the particular facts. The inspector's conclusions showed a lawful approach to identifying the setting of Kedleston Hall which did not neglect historical, social and economic considerations. His relevant conclusions were unassailable.

H4 **Cases referred to in the judgment:**

East Northamptonshire D.C. v Secretary of State for Communities and Local Government [2014] EWCA Civ 137; [2015] 1 W.L.R. 45

Secretary of State for Communities and Local Government v Hopkins Homes Ltd [2017] UKSC 37; [2017] 1 W.L.R. 1865

R. (on the application of Friends of Hethel Ltd) v South Norfolk D.C. [2010] EWCA Civ 894; [2011] 1 W.L.R. 1216
R. (on the application of Miller) v North Yorkshire C.C. [2009] EWHC 2172 (Admin); [2009] 8 W.L.U.K. 230
R. (on the application of Palmer) v Herefordshire Council [2016] EWCA Civ 1061; [2017] 1 W.L.R. 411
R. (on the application of Williams) v Powys C.C. [2017] EWCA Civ 427; [2018] 1 W.L.R. 439

H5 **Legislation referred to by the Court:**
Planning (Listed Buildings and Conservation Areas) Act 1990 s.66
Town and Country Planning Act 1990 ss.78 and 288

H6 **Appeal** by Catesby Estates Ltd and the Secretary of State for Communities and Local Government from an order of Lang J dated 22 June 2017 given in the Administrative Court Planning Court. The learned judge thereby upheld an application by Mr Peter Steer under s.288 of the Town and Country Planning Act 1990 challenging the decision of an inspector appointed by the Secretary of State allowing two appeals by Catesby Estates under s.78 of the 1990 Act. The first appeal was against the refusal by Amber Valley Borough Council of an application for planning permission for a housing development on land at Kedleston Road and Memorial Road, Allestree in Derbyshire. The second appeal was against the council's failure to determine another application for a development in the southern part of the same site. The facts are stated in the judgment of Lindblom LJ.

H7 *Rupert Warren QC* (instructed by Eversheds Sutherland (International) LLP) for the appellant in the first action.
Jacqueline Lean (instructed by the Government Legal Department) for the appellant in the second action.
Nina Pindham (instructed by Richard Buxton Environmental & Public Law) for the respondent in both actions.
Emma Dring (instructed by Sharpe Pritchard LLP) for the intervener in the first action and the interested party in the second action.

JUDGMENT

LORD JUSTICE LINDBLOM:

Introduction

1 Did an inspector deciding an appeal against the refusal of planning permission err in law in his understanding of the concept of the "setting" of a grade I listed building? That is the main question in these two appeals.

2 The appellant in the first appeal is Catesby Estates Ltd.. The appellant in the second appeal is the Secretary of State for Communities and Local Government. The appeals are against the order of Lang J, dated 22 June 2017, upholding an application by the respondent, Mr Peter Steer, under s.288 of the Town and Country Planning Act 1990. Mr Steer's challenge was to the decision of an inspector appointed by the Secretary of State, in a decision letter dated 22 August 2016,

allowing two appeals by Catesby Estates under s.78 of the 1990 Act, after an inquiry held in July 2016. The first of those appeals was against the refusal by Amber Valley Borough Council of an application for planning permission for a development of housing—up to 400 dwellings and a convenience store—on a site of about 17 hectares on land at Kedleston Road and Memorial Road, Allestree in Derbyshire. The second was against the council's failure to determine another application for a development of up to 195 dwellings on about 7 hectares in the southern part of the same site. Mr Steer was an objector to the proposals, and a member of a group called Kedleston Voice, which also opposed the development. Historic England objected, and has taken part in the proceedings too.

3 The site is farmland, about 1.7 kilometres to the south-east of Kedleston Hall, which is a grade I listed building, and about 550 metres from the grade I listed Kedleston Hall registered park and garden and the Kedleston Conservation Area, whose boundary on its south-eastern side extends to the edge of the park. About 1.5 kilometres to the north of the site are the grade II* listed Kedleston Hotel and the Quarndon Conservation Area. The site itself was part of the manorial land owned by Sir Nathaniel Curzon, the first Lord Scarsdale, when, in 1761, he set about reconstructing his house and laying out the park. The land was beside the main road from Derby, by which most visitors to Kedleston Hall would arrive. From it one could see the park. And from the park there were views of the house. There were also views from the park towards Derby. In the 1960's, however, as the city expanded to the north-west, a screen of trees—the "Derby Screen"—was planted to block them. The Hall is widely acknowledged to be of exceptional historic and architectural interest. It is described by Pevsner as "one of the most magnificent apartments of the C18 in England" and "the most splendid Georgian house in Derbyshire, in extensive grounds". The park was largely the creation of the architect Robert Adam. Both the Hall and the park are now managed by the National Trust, and attract many visitors—about 120,000 in 2013.

4 Several objectors, including Historic England, maintained that the appeal site lay within the settings of both Kedleston Hall and Kedleston Park, largely because of the historic connections between the Hall and park and the farmland within the surrounding estate. In refusing planning permission for the larger scheme, the council asserted that the proposed development would harm the settings and significance of several heritage assets, including Kedleston Hall as a grade I listed building, contrary to government policy in paras 132 and 134 of the National Planning Policy Framework ("the NPPF"). It opposed the second scheme for the same reason.

The issue in the appeal

5 The single issue in the appeal is whether the inspector erred in law in his approach to the effects of the development on the setting of Kedleston Hall, thus failing to discharge the duty in s.66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 ("the Listed Buildings Act").

Section 66(1)

6 Section 66(1) of the Listed Buildings Act provides:

> "In considering whether to grant planning permission … for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses."

Government policy and guidance

7 In the "Glossary" to the NPPF a "Heritage asset" is defined as "[a] building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest …". The "Setting of a heritage asset" is defined in this way:

> "… The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral."

The definition of "Significance (for heritage policy)" is:

> "… The value of a heritage asset to this and future generations because of its heritage interest. That interest may be archaeological, architectural, artistic or historic. Significance derives not only from a heritage asset's physical presence, but also from its setting".

8 Paragraph 128 of the NPPF says that "[in] determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting". Paragraph 132 states:

> "132. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation. The more important the asset, the greater the weight should be. Significance can be harmed or lost through alteration or destruction of the heritage asset or development within its setting. As heritage assets are irreplaceable, any harm or loss should require clear and convincing justification. Substantial harm to or loss of a grade II listed building, park or garden should be exceptional. Substantial harm to or loss of designated heritage assets of the highest significance, notably scheduled monuments, protected wreck sites, battlefields, grade I and II* listed buildings, grade I and II* registered parks and gardens, and World Heritage Sites, should be wholly exceptional."

Paragraph 133 says that "[where] a proposed development will lead to substantial harm to or total loss of significance of a designated heritage asset, local planning authorities should refuse consent, unless it can be demonstrated that the substantial harm or loss is necessary to achieve substantial public benefits that outweigh that harm or loss", or four specified considerations apply. Paragraph 134 says 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 securing its optimum viable use".

9 The definition of the "Setting of a heritage asset" in the "Glossary" to the NPPF is explained in para.18a-013-20140306 of the Planning Policy Guidance ("the PPG"), under the heading "What is the setting of a heritage asset and how should it be taken into account?":

> "A thorough assessment of the impact on setting needs to take into account, and be proportionate to, the significance of the heritage asset under consideration and the degree to which proposed changes enhance or detract from that significance and the ability to appreciate it.
> Setting is the surroundings in which an asset is experienced, and may therefore be more extensive than its curtilage. All heritage assets have a setting, irrespective of the form in which they survive and whether they are designated or not.
> The extent and importance of setting is often expressed by reference to visual considerations. Although views of or from an asset will play an important part, the way in which we experience an asset in its setting is also influenced by other environmental factors such as noise, dust and vibration from other land uses in the vicinity, and by our understanding of the historic relationship between places. For example, buildings that are in close proximity but are not visible from each other may have a historic or aesthetic connection that amplifies the experience of the significance of each.
> The contribution that setting makes to the significance of the heritage asset does not depend on there being public rights or an ability to access or experience that setting. This will vary over time and according to circumstance. …".

Historic England's guidance

10 In July 2015 Historic England published a revision of the first edition of a guidance document entitled "The Setting of Heritage Assets—Historic Environment Good Practice Advice in Planning: 3" ("GPA3"). The second edition was published in December 2017. We are concerned only with the first edition, current at the time of the inspector's decision in this case. The "Introduction" to GPA3 made clear that its purpose was "to provide information on good practice", and it did "not constitute a statement of Government policy" (paragraph 1).

11 Under the heading "The extent of setting", it adopted the definition of the "Setting of a heritage asset" in the NPPF. It acknowledged that "[while] setting can be mapped in the context of an individual application or proposal, it does not have a fixed boundary and cannot be definitively and permanently described for all time as a spatially bounded area or as lying within a set distance of a heritage asset because what comprises a heritage asset's setting may change as the asset and its surroundings evolve or as the asset becomes better understood or due to the varying impacts of different proposals". It also recognized that "[a] conservation area will include the settings of listed buildings and have its own setting, as will the village or urban area in which it is situated …" (para.4). On "Views and setting", it said that "[the] contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, including a variety of views of, across, or including that asset, and views of the surroundings from or through the asset, and may

intersect with, and incorporate the settings of numerous heritage assets" (para.5). Under the heading "Setting and the significance of heritage assets", it emphasized that the contribution made by the setting of a heritage asset to its significance "depends on a wide range of physical elements within, as well as perceptual and associational attributes pertaining to, the heritage asset's surroundings" (para.9). On "Designed settings", it said (ibid.):

> "Many heritage assets have settings that have been designed to enhance their presence and visual interest or to create experiences of drama or surprise and these designed settings may also be regarded as heritage assets in their own right. Furthermore they may, themselves, have a wider setting: a park may form the immediate surroundings of a great house, while having its own setting that includes lines-of-sight to more distant heritage assets or natural features beyond the park boundary. Given that the designated area is often restricted to the 'core' elements, such as a formal park, it is important that the extended and remote elements of design are included in the evaluation of the setting of a designed landscape[.]"

12 "A Staged Approach to Proportionate Decision-Taking" was suggested, in five steps (paras 10 to 31). On "Step 1: identifying the heritage assets affected and their settings" the guidance was that "… if the development is capable of affecting the contribution of a heritage asset's setting to its significance or the appreciation of its significance, it can be considered as falling within the asset's setting" (para.13). This apparently circular proposition did not appear in the second edition of GPA3. "Step 2: Assessing whether, how and to what degree these settings make a contribution to the significance of the heritage asset(s)" would be to consider, first, "the physical surroundings of the asset, including its relationship with other heritage assets"; second, "the way the asset is appreciated"; and third, "the asset's associations and patterns of use" (para.18). For "Step 3: Assessing the effect of the proposed development on the significance of the asset(s)", the "(non-exhaustive) check-list of the potential attributes of a development affecting setting that may help to elucidate its implications for the significance of the heritage asset" included several "effects" that were not visual (para.25).

Evidence at the inquiry

13 At the inquiry, as Lang J said (in [51] of her judgment), there was "a significant body of evidence, from [Historic England], the National Trust, the Gardens Trust, the Development Control Archaeologist at Derbyshire County Council, and the experts called on behalf of the local community, Kedleston Voice, that the appeal site was part of the setting of both the Grade I listed Hall and the park, as well as the conservation area, even though the proposal would not intrude upon views to and from the Hall". The thrust of that evidence, said the judge, was that "the appeal site was part of the setting of the Hall because it had formed part of the estate, managed historically as an economic and social entity, and it remained in its historic agricultural use, with hedges and mature trees characterising the field boundaries". From the Hall and the park, "the surrounding rural context was important in preserving a sense of a parkland landscape at the centre of a managed rural estate, rather than in a suburban context". The site was on "the primary visitor route to the Hall and Park and so visitors would experience the historical narrative, and the

concentric influence of the Hall on its landscape, as they traversed the agricultural estate, then entered the enclosed, designed park and gardens, enjoying the drama of anticipation as a great English country house was revealed to them".

The inspector's decision letter

14 The inspector described the "main issue" in both appeals as "the impact either proposal would have on the landscape character of the area and on the heritage assets of Kedleston Hall, Kedleston Hall Registered Park and Garden and Kedleston Conservation Area, Kedleston Hotel and Quarndon Conservation Area" (para.4 of the decision letter). And "the matters to be covered" included "… landscape impact both in itself and also bearing in mind the historic connection with the Kedleston Hall estate, the statutory and policy background against which impacts on the heritage assets should be considered and, in the event of harm to any of those assets, the nature of the planning balance to be undertaken" (para.6).

15 Under the heading "Landscape impact", the inspector found it "difficult to dissociate landscape impact from heritage impact". It was "not unreasonable to look at landscape quality and impact in purely physical or visual terms and to consider historical value and significance separately, in the context of the impact on the Hall and Park" (para.17). He concluded that "setting aside for the moment the historical association with the Hall and Park, the appeal site exhibits no features that could qualify it as a valued landscape in the terms of paragraph 109 of the Framework" (para.21). There was, he said, "no reason why, in physical or visual terms, harm to the landscape should compel dismissal of the appeals", and "[the] question of its historical value may be addressed in relation to the settings of Kedleston Hall and its registered Park and Garden" (para.30).

16 Turning to "The settings of the heritage assets and the statutory and policy context", he began by directing himself (in para.31) on the relevant definitions and policies in the NPPF:

> "31. The definition of setting in the Framework is the "surroundings in which a heritage asset is experienced". Further, the extent of a setting "is not fixed and may change as the asset and its surroundings evolve". Setting is not itself a heritage asset but elements of a setting "may make a positive or negative contribution to the significance of an asset". And paragraphs 126-141 of the Framework make it clear that, in considering a development proposal, what has to be assessed is the effect there would be, not on the setting, but on the significance of the heritage asset concerned."

He considered the setting of each heritage asset, in turn. On the setting of Kedleston Hall he said (in paras 32 to 36):

> "32. The Council, Kedleston Voice and English Heritage (as it was then) argue that Kedleston Hall and its Park are an integral whole and that, accordingly, their settings are the same. It was also argued that the historical, social and economic connection – the appeal site being part of the estate of which the Hall and Park were the hub – brought the appeal site within the setting of the Hall. There has, though, to be more of a physical or visual connection than that, otherwise land completely remote from the Hall could be deemed within its setting. The appellant takes the view that the Park provides the setting for the Hall. That is not an unreasonable approach to take; for example, the

Historic England guidance recognises that a conservation area will include the settings of listed buildings and will have a setting of its own. That said, there are two ways to look at the setting of Kedleston Hall.

33. The planting of the Derby Screen, around 1960, brought about a very significant change. Originally, there were views out from the Hall and Park towards Derby – and, for those approaching the Hall, there would have been a first view into the Park, with a glimpse of the Hall, across the appeal site from Kedleston Road. The Derby Screen was planted to obscure the view of Allestree, development having encroached over the horizon, and the night-time glare from the increasingly large built-up area of Derby. Its planting was a deliberate decision, based on the changing surroundings, to make the Park more enclosed and inward-looking; and the Derby Screen has since been significantly extended into the Park by the National Trust. Thus, today, the appeal site forms no part of the setting of Kedleston Hall.

34. If one takes a more historical approach, however, then there was an open view where the Derby Screen now is. Moreover, the evidence suggests it was a designed view – documentary, in the references to the vista including Derby; physical, in the ditch of a sunken fence, akin to a ha-ha, which would have kept stock out (or in) without obstructing the view. The appellant argued that the sunken fence may have been a ditch predating the laying out of the Park but that does not exclude the proposition of a designed view.

35. The view was, clearly, a wide vista. The spire of Derby Cathedral is referred to as being seen in the panorama, though it could only have been seen from relatively close to the boundary of the Park, not from the Hall. The particular view to or from Kedleston Road is only a very small segment and is, from the Hall, at its very eastern extremity. There is no evidence that the view from Kedleston Road towards the Hall and Park was also part of the design; nor is it logical to draw the inference that the view towards the Hall and Park was designed simply because the view in the other direction was.

36. However, if one holds the opinion that the view both to and from Kedleston Road was a deliberate part of the design of the Park and that the Derby Screen, or part of it, could be opened out to restore that view, then the appeal site does indeed fall within the setting of Kedleston Hall."

He reached somewhat different conclusions on the setting of the registered park and garden and the Kedleston Conservation Area (in paras 37 and 38):

"37. The Registered Park and the Conservation Area are coterminous and the designations have similar purposes in mind. The Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire). The agricultural land around the Park certainly forms part of its setting in historical and cultural terms. In visual terms, what comes within the setting is less extensive. There were, and still are, places within the Park where the surrounding agricultural landscape contributes to views out; and there are places outside the Park which afford views in, not only of the Park but also, sometimes, of the Hall.

38. The appeal site may be considered to lie within the setting of the Park because of its relative proximity. There are clear views of the boundary of the Park, though it is debatable whether its trees and woodland, designed and laid out in a naturalistic manner, can actually be distinguished as such by

> anyone unfamiliar with designed parkland. The only views into the Park from or across the appeal site, or out from the Park towards it, have been obscured by the planting of the Derby Screen."

As for the setting of Kedleston Hotel, he said this (in para.39):

> "39. Kedleston Hotel stands on the site of an earlier inn but what is seen today dates from the same period as the Hall and Park and was built to cater for visitors to the Park and its Sulphur Bath. There is thus a close historic relationship between the Hotel and the Hall and Park. The appeal site lies within the setting of the Hotel in as much as it can be seen from the Hotel looking south—but the focus of views from the Hotel, in so far as there are any, is to the west and north-west, towards the Hall and Park. The Hotel is not visible, or certainly not noticeable, from the appeal site or Kedleston Road alongside it. There are views in which the Hotel and Hall can both be seen, for example from Common Hill, just west of Quarndon; from there, though, the appeal site lies in a wholly different direction, by about 90°."

and on the setting of the Quarndon Conservation Area, this (in para.40):

> "40. Quarndon Conservation Area is drawn tightly round the historic core of the village. It has relatively recent development virtually all around it. There is a significant amount of that to the south of the Conservation Area, in the direction of the appeal site. Because of this, it is debatable that the appeal site actually lies within the setting of the Conservation Area. It may be thought to do so, however, to the extent that it may be seen in winter views (when the trees are bare)."

17 He then considered the "Impact on the significance of the heritage assets", again taking each in turn.

18 As for Kedleston Hall, he began by considering the status and "significance" of the listed building itself (in paragraphs 41 to 44):

> "41. There is no doubting that Kedleston Hall, a grade I listed building, is a heritage asset of the very greatest importance. Statute requires special regard to be had to the desirability of preserving not only the building but also its setting. Any harm to the significance of the Hall must be given very great weight when considering development proposals within its setting.
>
> 42. The Derby Screen is key to any impact on the significance of Kedleston Hall. At the present time, the existence of the Screen means that the proposed development would have no impact whatsoever on the setting of the Hall. The questions to be addressed, therefore, are about the prospect of the Screen being removed or opened up and, if it were, the resultant impact of the proposed development on the significance of the Hall.
>
> 43. It is not absolutely clear that the view across the appeal site between Kedleston Road and the Hall and Park was designed. …
>
> 44. There is no debate that the Screen was planted to obscure views of Allestree and the night-time glare from the lighting of the expanding urban area of Derby. Its planting was a deliberate response to changing circumstances. It may be seen as part of the evolution of the Park. Moreover, for whatever reason, the depth of the Screen has been substantially increased by the National

> Trust so that it is now some 40m or more wide. To remove it now, or to open it up in some way, raises a number of issues, as well as being a substantial and costly task."

He then (in paras 45 to 51) discussed the possibility of the "Derby Screen" being removed, and the likely consequences of that, concluding (in paras 49 to 51):

> "49. It seemed, until late in the inquiry, that no consideration had ever been given to the removal of the Derby Screen, or to opening it up so that the Park and landscape beyond are inter-visible. The National Trust then wrote to the Council, attaching an extract from a conservation plan that had not hitherto been known to exist. However, while the letter mentions glimpses of the dome of the Hall from Kedleston Road, the extract talks only about views from the south-eastern corner of the Park and about managing and thinning the Derby Screen "to create more open woodland with permeable edges to the parkland" – not the removal of part or all of the Derby Screen and not significantly different to what is in the 2013 Conservation Plan.
> 50. Thus, it is unclear that the view from Kedleston Road was a designed view, intended to give a glimpse of the Hall; it is known that the Derby Screen was planted as a response to changing circumstances; there is no firm intention to consider removal [of] the Derby Screen; even if there were, there are a number of attendant issues that would have to be resolved; such indications as there are relate only to views from the south-eastern corner of the Park and to thinning the Screen. There is nothing to suggest that a view from Kedleston Road giving a glimpse of the Hall might at some time be restored.
> 51. On that basis, it is entirely reasonable to conclude that the appeal site does not lie within the setting of Kedleston Hall and that section 66(1) of [the Listed Buildings Act] and policy in the Framework do not come into play."

He also considered the impact of the development assuming the "Derby Screen" had been removed (in para.52):

> "52. If the issues considered above were to be resolved in favour of removing all or part of the Derby Screen to restore a view to and from Kedleston Road, a question then arises as to what would be the impact of the proposed developments. The view from Kedleston Road would be lost. It could never be more than a glimpse across open countryside, rather than a designed view through parkland, but at least it might indicate that one was nearing the Hall and Park. The view from the Hall would be little changed. The cross-section provided by Dr Hickie [one of the council's witnesses] in his evidence suggests that the land itself would be all but invisible from the Hall, though houses upon it would be seen to bring the boundary of the urban area closer to the Park. All that would represent less than substantial harm – sufficiently little, in fact, that the effect on the significance of the Hall, standing within its designed Park, would be negligible."

19 In his conclusions on the impact on the setting of the registered park and garden and the Conservation Area the inspector said (in paras 53 to 58):

> "53. There is no dispute that the Park, registered in grade I, is, like the Hall, a heritage asset of the very highest importance. There is also no dispute that the appeal site lies within the setting of the Park and the Conservation Area;

and that the harm caused to the significance of both would be less than substantial. The term 'less than substantial' does, however, cover a wide range of harm – and the question is just how great that harm would be.

54. There are two aspects to the impact on the setting of the Park – visual and historical. The Park was carefully designed and laid out in a naturalistic manner. There are (or were) designed views into the Park, with glimpses of the Hall, most notably (in the context of these appeals) from Kedleston Road between the Hotel and the Park entrances. The farmland surrounding the Park was historically part of the estate – and still is in that, while ownership may have changed, the estate is still managed from the Hall. The farmland acts as a visual setting for the Park; and that is more important than might be thought at first blush – because the Park was designed naturalistically, not in a more formal style which may not have had, or needed, a measure of continuity with its surroundings.

55. The appeal site is part of that setting. So too is the built-up area of Allestree, which stands on land formerly part of the estate. And, of course, the Derby Screen was planted around 1960 because of the incursion of Allestree (and night-time glare from Derby) into the previously rural views from the Park. Much of what is said above about the Derby Screen applies equally to the Park. There would, however, have been views south-eastwards from within the Park, whether intentionally designed or not, from the Backgrounds and from the Long Walk. In historical terms, that brings the appeal site more firmly within the setting of the Park than if there had never been any inter-visibility. …

…

58. To sum up, there would be harm to the setting of the Park from development within it – but that would be mitigated to a degree by the extent of the existing built-up area, the existing vegetation and the remaining open land between the Park and the built-up area. That also applies to views out from the Park if the Derby Screen were removed or opened out; views towards the Park would, though, be less extensive and more oblique than possible at present. In terms of the significance of the Park and Conservation Area, though, the harm would be at the lower end of 'less than substantial'."

He concluded that there would be no "material impact" on the setting of the Kedleston Hotel if the proposed development was "[appropriately] designed and landscaped", and "no harm to its significance as a grade II* listed building" (para.60). He found there would be "no harm to the significance" of the Quarndon Conservation Area (para.61).

20 That assessment was carried into the inspector's "Conclusions on the main issue" (in paras 62 to 64) and his "Overall conclusions" (in paras 79 to 89). He acknowledged that "Kedleston Hall and its Park are heritage assets of the greatest importance" and that "[any] harm to their significance must carry very great weight in the balance against the public benefits of the appeal proposals required by paragraph 134 of the Framework". There was, however, "no harm to the significance of the Hall and only very modest harm to the significance of the Park and Conservation Area". And "[even] if the Derby Screen were removed or opened out, the harm to the significance of the Hall would be very limited indeed and the harm to the Park still no more than modest". Against that harm there was "the very

great public benefit of market and affordable housing which is much needed, especially in Amber Valley but also in Derby City". This was, said the inspector, "more than sufficient to tip the balance in favour of the appeal proposals" (para.83). Applying the policy for the "presumption in favour of sustainable development" in paragraph 14 of the NPPF, there was "no doubt that the adverse impacts of either development would not significantly and demonstrably outweigh the benefits from providing much-needed housing" (para.87).

The judge's conclusions

21 Lang J said the inspector had "rejected the evidence and submissions that the appeal site was part of the setting of the Hall, despite the historic social and economic connections" ([54] of the judgment). She concluded (in [60]):

> "60. In my view, the Inspector's findings … clearly indicate that [his] focus was upon identifying a visual connection, and assessing the proposal's impact upon it. The historic social and economic connections were set to one side in this exercise. I therefore cannot accept the Secretary of State's submission that the Inspector merely formed a planning judgment that the historic social and economic factors were of insufficient weight, as there was no assessment of the weight to be accorded to them in the Inspector's decision-making process."

In the judge's view the inspector's approach to the other heritage assets "confirms that he treated the physical and visual connection as determinative" (paragraph 61). Her crucial conclusion was this (in paragraph 64):

> "64. In my judgment, although the Inspector set out the NPPF definition of setting …, he adopted a narrow interpretation of setting which was inconsistent with the broad meaning given to setting in the relevant policies and guidance which were before him … . Whilst a physical or visual connection between a heritage asset and its setting will often exist, it is not essential or determinative. The term setting is not defined in purely visual terms in the NPPF which refers to the "*surroundings in which a heritage asset is experienced*". The word "*experienced*" has a broad meaning, which is capable of extending beyond the purely visual."

The inspector's "justification for his narrow interpretation" was, said the judge, "misplaced because the term "*surroundings*" in the NPPF definition of setting does place a geographical limitation on the extent of the setting" (paragraph 67). He had "adopted an artificially narrow approach to the issue of setting which treated visual connections as essential and determinative", and "[in] adopting this approach, [he] made an error of law" (paragraph 69).

Did the inspector err in law in his understanding of the "setting" of a heritage asset?

22 Mr Rupert Warren QC, for Catesby Estates, and Ms Jacqueline Lean, for the Secretary of State, submitted that the inspector made no error of law when identifying the extent of the setting of Kedleston Hall and assessing the likely effect of the development on that setting. He took into account the relevant facts, did not misunderstand the relevant policy and guidance, and exercised his planning

judgment reasonably when applying that policy and guidance. He did not disregard historic considerations. The suggestion that he did is based on a misreading of para.32 of the decision letter. His approach there was consistent with authority, and correct. And as one can see from previous and subsequent paragraphs—in particular, paras 17, 21 and 30, where he assessed the likely effects of the development on the landscape, and paras 54, 55 and 57, where he assessed its likely effects on the settings of the other heritage assets, both with and without the "Derby Screen"—he had considerations other than the visual and physical well in mind. The idea that he simply put those considerations to one side is wrong.

23 Ms Nina Pindham, for Mr Steer, and Ms Emma Dring, for Historic England, supported the judge's analysis. They submitted that the inspector's approach was unduly narrow. In identifying the setting of Kedleston Hall and assessing the likely effects of the development on that setting, he had considered only views and the impact on views. He did not consider historical factors. When dealing with the other heritage assets, the inspector also focused on visual impacts alone. Historical factors, Ms Pindham and Ms Dring submitted, can be enough on their own to bring a site within the setting of a listed building. And that was so with Kedleston Hall. A visual connection is not necessary in every case.

24 Although the "setting" of a listed building is a concept recognized by statute, it is not statutorily defined. Nor does it lend itself to precise definition (see *R. (on the application of Williams) v Powys County Council* [2017] EWCA Civ 427, at [53] to [58]). Implicit in s.66 of the Listed Buildings Act, however, is that the setting of a listed building is capable of being affected in some discernible way by development, whether within the setting or outside it. Identifying the extent of the setting for the purposes of a planning decision is not a matter for the court, but will always be a matter of fact and planning judgment for the decision-maker. And as Sullivan L.J. said in *R. (on the application of The Friends of Hethel Ltd.) v South Norfolk District Council* [2011] 1 W.L.R. 1216, "the question whether a proposed development affects, or would affect the setting of a listed building is very much a matter of planning judgment for the local planning authority" ([32] of the judgment).

25 In *Williams*—where judgment on the appeal was given after the hearing in this case, and shortly before Lang J.'s judgment was handed down—the grant of planning permission for a wind turbine was challenged on the ground that the local planning authority had failed lawfully to consider the likely visual effects of the development on the settings of several heritage assets, including two scheduled monuments and a grade II* listed church. The only potential effects on the settings of the heritage assets in that case were visual. It was in this context that I distinguished between the "site" of a scheduled monument and its "setting", which, I said, "encompasses the surroundings within which the monument may be experienced by the eye" (para.31). I went on to say that the circumstances in which the s.66(1) duty has to be performed for the setting of a listed building will vary with a number of factors – typically, "the nature, scale and siting of the development proposed, its proximity and likely visual relationship to the listed building, the architectural and historic characteristics of the listed building itself, local topography, and the presence of other features—both natural and man-made—in the surrounding landscape or townscape", and possibly "other considerations too", depending on "the particular facts and circumstances of the case in hand" (para.53). To "lay down some universal principle for ascertaining the extent of the setting of a listed building" would be,

I thought, "impossible". But—again in the particular context of visual effects—I said that if "a proposed development is to affect the setting of a listed building there must be a distinct visual relationship of some kind between the two – a visual relationship which is more than remote or ephemeral, and which in some way bears on one's experience of the listed building in its surrounding landscape or townscape" (para.56).

26 This does not mean, however, that factors other than the visual and physical must be ignored when a decision-maker is considering the extent of a listed building's setting. Generally, of course, the decision-maker will be concentrating on visual and physical considerations, as in *Williams* (see also, for example, the first instance judgment in *R. (on the application of Miller) v North Yorkshire County Council* [2009] EWHC 2172 (Admin), at [89]). But it is clear from the relevant national policy and guidance to which I have referred, in particular the guidance in para.18a-013-20140306 of the PPG, that the Government recognizes the potential relevance of other considerations – economic, social and historical. These other considerations may include, for example, "the historic relationship between places". Historic England's advice in GPA3 was broadly to the same effect.

27 It has also been accepted in this court that the effect of development on the setting of a listed building is not necessarily confined to visual or physical impact. As Lewison L.J. said in *R. (on the application of Palmer) v Herefordshire Council* [2016] EWCA Civ 1061 (in [5] of his judgment), "[although] the most obvious way in which the setting of a listed building might be harmed is by encroachment or visual intrusion, it is common ground that, in principle, the setting of a listed building may be harmed by noise or smell". In that case the potential harm to the setting of the listed building was by noise and odour from four poultry broiler units.

28 Three general points emerge. First, the s. 66(1) duty, where it relates to the effect of a proposed development on the setting of a listed building, makes it necessary for the decision-maker to understand what that setting is—even if its extent is difficult or impossible to delineate exactly—and whether the site of the proposed development will be within it or in some way related to it. Otherwise, the decision-maker may find it hard to assess whether and how the proposed development "affects" the setting of the listed building, and to perform the statutory obligation to "have special regard to the desirability of preserving … its setting …".

29 Secondly, though this is never a purely subjective exercise, none of the relevant policy, guidance and advice prescribes for all cases a single approach to identifying the extent of a listed building's setting. Nor could it. In every case where that has to be done, the decision-maker must apply planning judgment to the particular facts and circumstances, having regard to relevant policy, guidance and advice. The facts and circumstances will differ from one case to the next. It may be that the site of the proposed development, though physically close to a listed building, has no real relationship with it and falls outside its setting, while another site, much further away, nevertheless has an important relationship with the listed building and is within its setting (see the discussion in sections 14.3, 15.2 and 15.8 of Mynors and Hewitson's "Listed Buildings and Other Heritage Assets", fifth edition). Under current national planning policy and guidance in England, in the NPPF and the PPG, the decision-maker has to concentrate on the "surroundings in which [the heritage] asset is experienced", keeping in mind that those "surroundings" may change over time, and also that the way in which a heritage asset can be

"experienced" is not limited only to the sense of sight. The "surroundings" of the heritage asset are its physical surroundings, and the relevant "experience", whatever it is, will be of the heritage asset itself in that physical place.

30 Thirdly, the effect of a particular development on the setting of a listed building—where, when and how that effect is likely to be perceived, whether or not it will preserve the setting of the listed building, whether, under government policy in the NPPF, it will harm the "significance" of the listed building as a heritage asset, and how it bears on the planning balance—are all matters for the planning decision-maker, subject, of course, to the principle emphasized by this court in *East Northamptonshire District Council v Secretary of State for Communities and Local Government* [2015] 1 W.L.R. 45 (at [26] to [29]), *Jones v Mordue* [2016] 1 W.L.R. 2682 (at [21] to [23]), and *Palmer* (at [5]), that "considerable importance and weight" must be given to the desirability of preserving the setting of a heritage asset. Unless there has been some clear error of law in the decision-maker's approach, the court should not intervene (see *Williams*, at [72]). For decisions on planning appeals, this kind of case is a good test of the principle stated by Lord Carnwath in *Hopkins Homes Ltd. v Secretary of State for Communities and Local Government* [2017] 1 W.L.R. 1865 (at [25])—that "the courts should respect the expertise of the specialist planning inspectors, and start at least from the presumption that they will have understood the policy framework correctly".

31 With those three points in mind, I believe the submissions made to us by Mr Warren and Ms Lean are correct. When one reads the relevant parts of the inspector's decision letter together and in their full context, I do not think one finds the errors contended for by Ms Pindham and Ms Dring. I cannot agree with the judge's conclusion (in [60] of her judgment) that the inspector simply "set to one side" the historical considerations said to be relevant to the setting of Kedleston Hall. He recognized the relevance of those considerations to the setting of the listed building, to the impact of the proposed development upon that setting, and its impact on the "significance" of the listed building as a heritage asset. He did not concentrate on visual and physical factors to the exclusion of everything else. In the passages I have quoted from the decision letter one can see that he was aware of the need to take into account not merely the visual effects of the development but also its effects on the historic value of the Hall, the park, and each of the other heritage assets he had to consider.

32 I differ from the judge's view (in paragraph 64 of her judgment) that the inspector "adopted a narrow interpretation of setting … inconsistent with the broad meaning given to setting in the relevant policies and guidance … before him". In my opinion he understood the relevant policies and guidance correctly, and applied them lawfully in assessing the likely effects of the development on the setting of each heritage asset.

33 He began (in para.31 of his decision letter) by directing himself on the NPPF definition of the "Setting of a heritage asset", and the content of relevant NPPF policy. He did this accurately, and there is no suggestion that he did not.

34 He then (in para.32) summarized the argument put forward by the council, Kedleston Voice and Historic England, that Kedleston Hall and its park were an integral whole, with the same setting, and, specifically, the assertion that "the historical, social and economic connection—the appeal site being part of the estate of which the Hall and park were the hub—brought the appeal site within the setting of the Hall". It was this argument he was dealing with when he said in the next

sentence that "[there] has, though, to be more of a physical or visual connection than that"—by which he clearly meant more of a physical or visual connection than the fact that the appeal site had been "part of the [Kedleston] estate …".

35 That sentence should not be taken in isolation, but must be read in its full context. When this is done, its true meaning is certain and clear.

36 In the circumstances here the inspector was, in my view, entitled to look for a "physical or visual connection" of some kind as a means of establishing the extent of the setting of this listed building. The crucial question, I think, is whether his conclusion on the need for "more of a physical or visual connection than that"—meaning more of a physical or visual connection than the mere fact that the appeal site had been "part of the estate of which the Hall and Park were the hub"—is to be read as if it were a statement of general principle, or simply as a planning judgment on the facts of this particular case.

37 In the course of argument before us, Ms Dring accepted that if it was the latter, the Secretary of State's appeal must succeed. She was, in my view, right to do so.

38 As Mr Warren and Ms Lean submitted, the expression "more of a physical or visual connection than that" conveys a relative concept, not an absolute one. The inspector was not, in my view, automatically discounting the "historical, social and economic connection" as irrelevant. He was clearly aware of the potential relevance of such a connection to the question of whether the appeal site could be regarded as lying within the setting of the listed building and to the question of whether the proposed development would affect that setting. He was not saying that land could only fall within the setting of Kedleston Hall if there was a "physical or visual connection" between them. He was simply saying that in this instance the extent of the setting of the listed building could not be determined by the fact of the "historical, social and economic connection" to which he referred. There had to be something more than this connection alone if the appeal site were to be regarded as falling within the setting of the Hall.

39 As is clear when that sentence in para.32 of the decision letter is read in its context, this was not, and was not intended to be, a statement of general principle. It represented the inspector's own exercise of planning judgment in the particular circumstances of this case. And there was a simple explanation for that planning judgment, which he gave: "otherwise", he said, "land completely remote from the Hall could be deemed within its setting". He was not confining himself merely to visual and physical considerations, as if he thought that, in principle, he could not take other factors into account. He was not adopting a false test or a false approach. He knew, as he went on to say (in para.37), that "[the] Hall and its Park were at the centre of a large estate, socially and economically, though not geographically (there was estate land in Staffordshire)". But the historic connection could not be the sole criterion for judging whether a site lay within the setting of the listed building. Land historically farmed within the estate as a whole, and belonging to that social and economic entity, might be so geographically detached from Kedleston Hall as to be "completely remote". The historic connection between the farmland of which the site of the proposed development formed part was not, in the circumstances, sufficient to bring the site within the setting of the Hall.

40 In the fourth and fifth sentences of para.32 the inspector endorsed the contention put forward by Catesby Estates: "that the Park provides the setting for the Hall"—in his view, "not an unreasonable approach to take". This was, once again, a planning judgment exercised by the inspector in the particular circumstances of this case.

He found support for it in "the Historic England guidance", which, he said, "recognises that a conservation area will include the settings of listed buildings and will have a setting of its own". Far from ignoring the advice in GPA3, he clearly had it in mind and relied on it. And it was open to him to find that the setting of Kedleston Hall as a listed building was different from the setting of the park as a registered park and garden and from the setting of the conservation area.

41 These were all reasonable conclusions for the inspector to reach on the facts, taking into account all relevant considerations, and notwithstanding the case put forward by the council, Kedleston Voice and Historic England. They show a lawful approach to identifying the setting of Kedleston Hall, which did not neglect historical, social and economic considerations.

42 But the inspector went further. He acknowledged (at the end of para.32) that there were "two ways to look at the setting of Kedleston Hall". He then set out (in paras 33 to 36) a careful description of the setting of the Hall as it has changed over time. He considered the views of the Hall originally available from across the appeal site, the evidence of a "designed view" from the Hall, and the interposition of the "Derby Screen", which, in his judgment, now prevented the appeal site from forming part of the setting of the listed building. He also considered the relevant documentary and physical evidence on views to and from Kedleston Hall, and the interruption of those views by the "Derby Screen". He was conscious of the relevance of historical considerations in forming his own conclusion on the extent of the setting of the listed building. This strengthens the conclusion that his approach was not restricted to visual and physical considerations alone, but was comprehensive and complete. I think his relevant conclusions are unassailable.

43 The same may be said of his conclusions on the impact of the proposed development on the setting of the Hall (in paras 41 to 52). Here too he grappled with the evidence on historic views, the loss of such views, and the possible implications of the "Derby Screen" being removed—unlikely as that was. Once again, his approach cannot be faulted, and his conclusions were well within the limits of lawful planning judgment. He was entitled to conclude (in para.51) that, with the "Derby Screen" in place, the appeal site did "not lie within the setting of Kedleston Hall" and that that the s.66(1) duty and corresponding guidance in the NPPF did "not come into play"; and (in para.52) that even if the "Derby Screen" were to be removed, or partly removed, the effect of the development "on the significance of the Hall, standing within its designed Park, would be negligible". Those conclusions were available to him on the evidence, and in these proceedings they are secure. They do not betray an unlawful approach, in which considerations other than the visual and physical were disregarded.

44 That the inspector grasped the concept of the setting of a listed building is demonstrated in the parts of his decision letter where he considered the settings of the other heritage assets and the likely effects of the development on each. Those passages serve to confirm the lawfulness of his approach to identifying the setting of Kedleston Hall, and of his conclusion that the potential effect of the development upon it was no more than "negligible". His approach to identifying the setting of each heritage asset he had to consider was, in my view, consistent and sound. So were his conclusions on the likely effect of the proposed development—or its lack of effect—on the setting in question and its impact—or lack of impact—on "significance". At no stage did he exaggerate the importance of physical and visual

considerations, or unduly diminish the significance of the historical, the social and the economic.

45 For example, when considering the setting of the park and the Kedleston Conservation Area, he acknowledged (in para.37) that "[the] Hall and its Park were at the centre of a large estate" and accepted that the "agricultural land around the Park certainly forms part of its setting in historical and cultural terms", though in "visual terms" the setting was "less extensive". This was to give both "historical and cultural" and "visual" considerations their place and due weight in establishing the extent of the setting of the park, and to recognize that the juxtaposition of designed parkland to the surrounding farmland created a different setting for that heritage asset from the setting of the Hall as a listed building. Historical considerations again played their part in the assessment, as well as views. But the decisive factor in the inspector's conclusion (in para.38), that the appeal site fell within the setting of the park—as was common ground—was their "relative proximity" to it and "clear views of the boundary of the Park". The Hall was further away. There was a direct visual relationship between the appeal site and the park, but not between the site and the Hall. Again, however, the "Derby Screen" had largely obstructed views in both directions—from and of the park.

46 The tenor of the inspector's conclusions on the likely impact of the development on the setting of the park and the Kedleston Conservation Area (in paras 53 to 58) is similar. As he said (in para.54), there were "two aspects to the impact on the setting of the Park—visual and historical". He considered both, and he did so impeccably. He accepted (in para.55) that the appeal site was "part of that setting", as was the built-up area of Allestree, and (in para.58) that "there would be harm to the setting of the Park from development within it", but that "[in] terms of the significance of the Park and Conservation Area, … the harm would be at the lower end of 'less than substantial'". Here too, there can be no complaint that either his approach or the conclusion he reached was unlawful.

47 His conclusions on the settings of the Kedleston Hotel as a listed building and of the Quarndon Conservation Area, though informed by the relevant historical considerations, depended mainly on the visual – the "views" to which he referred (in paras 39 and 40). Those conclusions are not vulnerable in a legal challenge. Nor do they reveal a mistaken approach to the setting of Kedleston Hall. Here again, the circumstances were different. The fact that there was, as the inspector observed (in para.39), a "close historic relationship between the Hotel and the Hall and Park" does not mean that there was any such relationship between the hotel and the farmland where the appeal site lay. The same may also be said of the Quarndon Conservation Area—"drawn tightly round the historic core of the village", as the inspector put it (in para.40). These conclusions, and his finding (in paras 60 and 61) that neither the setting of the listed hotel nor that of the conservation area would be harmed by the development, reveal no error of law. They do not suggest that he misunderstood the concept of the setting of a heritage asset. What they do show is that his approach was both consistent and correct.

Conclusion

48 For the reasons I have given, I would allow this appeal.

LADY JUSTICE ASPLIN

49 I agree.

LORD JUSTICE MCFARLANE

50 I also agree.

David Stott.

Neutral Citation Number: [2019] EWHC 2899 (Admin)

Case No: CO/1863/2019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
PLANNING COURT (LEEDS)

Date: 01/11/2019

Before :

HER HONOUR JUDGE BELCHER

- -

Between :

The Queen on the application of James Hall and Company Limited	**Claimant**
- and -	
City of Bradford Metropolitan District Council	**Defendant**
-and-	
Co-Operative Group Limited (1)	
Dalehead Properties Limited (2)	
	Interested Parties

- -
- -

Mr Killian Garvey (instructed by **Shoosmiths**) for the **Claimant**
Mr Philip Robson (instructed by **City Solicitor, City of Bradford Metropolitan Council**) for the **Defendant**

Hearing date: 22 October 2019

- -

Approved Judgment

Her Honour Judge Belcher :

1. In this matter the Claimant challenges the Defendant Council's (the "Council") decision of 28 March 2019 granting planning permission for the demolition and development of the old Haworth fire station on Station Road in Haworth (the "Site"). The development comprises the construction of an A1 food retail unit with parking and associated works (the "Approved Development"). References in this judgment to the trial bundle will be by Tab number, followed by the page number, for example [15/276].

2. I was provided with two lever arch files containing authorities, including statutory extracts and 28 cases. Prior to the hearing I had read only those parts of the authorities which I was invited to read as part of counsels' lists of essential reading. I was already familiar with some of the other authorities. At the end of counsels' submissions, they agreed that there were a number of the cases which I did not need to read prior to giving my judgment. Those were the cases in the authorities' bundle at Tabs 5, 9, 10, 12, 13, 15, 18, 20, 21, 22, 23, 25, 26, 28, 31 and 32. I was invited to read the relevant paragraphs only of the case at Tab 19, but to otherwise read the authorities in full. I confirm that I have done so. I do not consider it necessary to refer to all of those authorities in the course of my judgment, but a failure by me to mention an authority does not mean I have not read it or considered it for the purposes of this judgment.

3. The Site is adjacent to, but not within, the Haworth Conservation Area ("HCA"), and close to the Grade II listed Bridgehouse Mills. It is otherwise bordered by residential properties and railway sidings. The Claimant challenges the grant of planning permission on three grounds:

    i) that the Council's approach to the Approved Development's impact upon the HCA was flawed

    ii) that the inclusion of the tailpiece "unless otherwise agreed in writing with the local planning authority" contained in the planning conditions 3, 7, 12 and 13 was ultra vires and/or wrong in principle

    iii) that the Council failed to comply with the requirements of Paragraph 189 of the National Planning Policy Framework ("NPPF") in that the relevant Historic Environment Record ("HER") was not consulted in considering heritage impacts.

<u>The Facts</u>

4. In common with many planning authorities, the Defendant offers a pre-application advice service whereby future applicants can seek preliminary views and advice from planning officers. This enables a developer to receive an early indication as to whether a proposal is likely to be acceptable, and to identify any issues that need to be addressed prior to the submission of a planning application. In this case the Second Interested Party ("Second IP") was the applicant for planning permission.

5. The Second IP took advantage of the pre-application advice service. One of the Defendant's planning officers, Laura Eastwood was the officer allocated to deal with

the pre-application enquiry [15/275: Witness Statement of Laura Eastwood, paragraph 3]. On 31 January 2018 she wrote a letter responding to the pre-application enquiry. Under the heading "DESIGN/IMPACT ON CONSERVATION AREA AND HERITAGE ASSETS" that letter includes the following paragraphs:

> "There would be no objections to demolition of the existing fire station building, which is agreed to be of no heritage or architectural merit……
>
> The site is very open on all sides, any new built form will be highly visible. The site is adjacent to the Haworth Conservation Area.
>
> The site and existing buildings are not regarded as affecting the setting of the Grade II listed Haworth station building, but the proposed development would impact on views of the Grade II listed Bridgehouse Mills
>
> Officers consider that in order for any new structure on this site to complement its context, better analysis and subsequent respect for the prevailing character of Haworth is required. We would urge a bespoke design solution which should be harmonious to its context. An approach to design, materials that pays due respect to local context will be essential to satisfy policies DS3 and EN3 of the core strategy" [15/279B]

6. In support of its application for planning permission, the second IP submitted a Planning and Retail Statement ("PRS") dated June 2018, prepared by I D Planning. Section 6 of the PRS contains the Heritage Policy Assessment [5/104-108: paragraphs 6.1- 6.46]. At paragraph 6.5 the PRS states as follows:

> "As referred to above, the application site does not fall within the conservation area but its location adjacent to it suggests that the site forms part of the setting of the asset and therefore it is prudent to assess the proposal in respect of the setting of heritage assets."

7. The PRS refers to and applies the Historic England Guidance on assessing the setting of heritage assets [5/104: paragraph 6.6]. The assessment identifies four significant key views and assesses the impact on each significant key view as "negligible" [5/107: paragraphs 6.33 (which contains a typographical error, but which is clear from its context refers to significant key view 3), 6.36, 6.38 and 6.41]. The conclusions to Section 6 include the following:

> "In summary therefore the degree of harm to the conservation area and heritage assets is considered to be minimal" [5/108: paragraph 6.46]

The Claimant makes no complaint in respect of the methodology applied in the PRS.

8. As would be expected, the Council's Conservation Officer, Jonathan Ackroyd, was consulted in respect of the planning application. He has provided a Witness Statement which I shall consider later in this judgment. There is no contemporaneous documentary record as to any advice which he gave at the time. The officer's report ("OR") to the Area Planning Panel, which was drafted by Laura Eastwood, contains the following in respect of the consultation with conservation:

> "Conservation-the site is adjacent to but not within the Haworth Conservation Area and does not affect the setting of the grade II listed station building but may impact that of Bridgehouse Mills. The existing fire station building is of no merit and though the proposed structure would be of a similar size, scale and form to that presently on the site the cladding has an overtly industrial appearance. A bespoke solution is required which is harmonious to the context" [2/18].

That wording mirrors what is set out in the pre-application response letter of 31 January 2018 (set out in paragraph 4 above). There is no other reference to heritage assets within the OR.

9. At its meeting on 28 March 2019 the Area Planning Panel approved the application and granted planning permission including the following conditions:

> "3. The use of the premises shall be restricted to the hours from 0600 to 2300, 7 days per week including bank or public holidays unless otherwise agreed in writing by the local planning authority.
>
> 7. The servicing of the site shall be carried out in accordance with the Service Management Plan submitted to and approved in writing by the Local Planning Authority and the plan shall be retained whilst ever the use subsists. The size of vehicles servicing the site shall be limited to no larger than 10.35m rigid vehicles unless otherwise agreed in writing with the Local Planning Authority.
>
> 12. Unless otherwise agreed in writing with the Local Planning Authority, prior to construction of the development, a detailed remediation strategy which removes unacceptable risks to all identified receptors from contamination, shall be submitted to and approved in writing by the Local Planning Authority. The remediation strategy must include proposals for verification of remedial works. Where necessary, the strategy shall include proposals for phasing of works and verification. The strategy shall be implemented as approved unless otherwise agreed in writing by the Local Planning Authority.
>
> 13. Unless otherwise agreed in writing with the Local Planning Authority, a remediation verification report, including where necessary quality control of imported soil materials and clean cover systems, prepared in accordance with the approved

> remediation strategy shall be submitted to and approved in writing by the Local Planning Authority prior to completion of the development. [1/2-4]

10. The Area Planning Panel resolved to approve the planning application pursuant to the following resolution:

> "That the application be approved for the reasons and subject to the conditions set out in the Strategic Director, Place's technical report." [3/81]

Accordingly, the resolution was to grant planning permission in accordance with the conditions found in the OR. None of the conditions in the OR contained the words "unless otherwise agreed in writing by the Local Planning Authority".

Relevant Policies

11. By Section 70(2) Town & Country Planning Act 1990, in dealing with any application for planning permission the planning authority shall have regard to the provisions of the development plan, so far as material to the application and to any other material considerations. There is no dispute that The National Planning Policy Framework ("NPPF") is a material consideration for the purposes of that Section. By Section 38(6) Planning and Compulsory Purchase Act 2004, a planning application must be determined in accordance with the development plan unless material considerations indicate otherwise. There is no dispute that this extends to the Council's Core Strategy Policy EN3, which I consider further below.

12. Part 16 of the NPPF deals with "Conserving and enhancing the historic environment". "Heritage Asset" is defined in the glossary of terms in the NPPF as:

> "A building, monument, site, place, area or landscape identified as having a degree of significance meriting consideration in planning decisions, because of its heritage interest. It includes designated heritage assets and assets identified by the local planning authority (including local listing)." [21/390]

13. Insofar as relevant, Paragraphs 189 and 190 NPPF provide as follows:

> "Proposals affecting heritage assets
>
> "189. In determining applications, local planning authorities should require an applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance. As a minimum the relevant historic environment record should have been consulted and the heritage assets assessed using appropriate expertise where necessary……

> 190. Local planning authorities should identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise. They should take this into account when considering the impact of a proposal on a heritage asset, to avoid or minimise any conflict between the heritage asset's conservation and any aspect of the proposal." [21/378]

14. The following further paragraphs of the NPPF, were also cited in argument and are of relevance in this case:

> "Considering potential impacts
>
> "193. When considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.
>
> 194. Any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification……
>
> 196. Where a development proposal will lead to less than substantial harm to the significance of the designated heritage asset, this harm should be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use" [21/378-379].

15. The Council's development plan includes the Core Strategy (adopted July 2017). Policy EN3 of the Core Strategy relates to the Historic Environment. Insofar as relevant, it provides as follows:

> "The Council, through planning and development decisions, will work with partners to proactively preserve, protect and enhance the character, appearance, archaeological and historic value and significance of the District's designated and undesignated heritage assets and their settings.
>
> This will be achieved through the following mechanisms:
>
> ……
>
> C. Require that all proposals for development conserve and where appropriate, enhance the heritage significance and setting of Bradford's heritage assets, especially those elements

> which contribute to the distinctive character of the District,..." [6/119]

It then goes on to specify a number of heritage assets contributing to the distinctive character of the District including "The literary and other associations of Haworth and conservation areas of Thornton with the Bronte family." [6/119] In the explanatory text to the policy, designated heritage assets are defined as including, amongst other things, 59 conservation areas. [6/122].

16. There is no dispute in this case that the Site, being adjacent to the HCA, involves development which may affect the setting of a heritage asset. It is accepted, therefore, that Paragraphs 189-190 NPPF, and Core Strategy Policy EN3 apply in this case. It is also accepted that the NPPF is a material consideration for the purposes of any planning decision. It follows that the Defendant accepts that, in determining the application, the Council was under a duty to assess the impact upon the HCA, including its setting.

17. The Statement of Facts and Grounds in this case refers to Section 72(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. Mr Garvey, for the Claimant, accepts that Section applies only to land in a conservation area and, accordingly, that it has no application in this case.

Ground 1: Unlawful Approach to the Haworth Conservation Area

18. There is no dispute that the decision maker in this case was the Area Planning Panel, and not the Council officers. Further, there is no dispute that there is nothing within the main body of the OR which refers to or gives any consideration to the setting of the HCA. The only mention of the HCA was within the consultation section of the report where it is simply recorded that the site is adjacent to but not within the HCA [2/18; and set out in paragraph 7 above]. Accordingly, nowhere in the advice to members were the Area Planning Panel invited to consider the impact of the development on the HCA or its setting. There is no mention at all about heritage assets, no information about or assessment of the heritage assets and no indication of there being any duty to consider the HCA or its setting.

19. Mr Garvey submitted that there is nothing in the OR to assist the Area Planning Panel members, and, therefore, nothing at all to suggest the relevant duty was complied with. He submitted that any harm from development within the setting of a heritage asset triggers paragraph 194 NPPF. He submitted that there is a duty pursuant to paragraphs 190, 192 and 196 NPPF, firstly, to identify and secondly, to assess the impact of any harm. He relies upon the PRS prepared by the Second IP, and its conclusion that the proposed development was in the setting of the HCA and would cause minimal harm to the HCA. He submitted that evidences the need for the harm to be identified and assessed by the decision maker, namely by the Area Planning Panel. By reason of the absence of any mention of the need to identify any harm, or of the need to assess the impact of the harm and weigh it in the balance before making a decision on the application, Mr Garvey submitted that the result is that there was a complete failure to consider the impact upon the HCA. He submitted the failure to consider that impact was a clear error of law in that:

i) the duty to consider the HCA and its setting was not discharged

ii) the Council failed to identify and assess the particular significance of the HCA as required by paragraph 190 NPPF

iii) there was a failure to have regard to a material consideration, namely the impact upon the HCA

iv) there was a failure properly to consider and apply policy EN3

20. Mr Garvey referred me to case law which he submitted support his submission that the planning committee must consider the issues and must make the decision as to whether there is an impact on the setting of the HCA. The first was the Court of Appeal decision in *R (oao Graham Williams) v Powys County Council* [2017] EWCA Civ 427. That case concerned, amongst other matters, whether the County Council had erred in failing to perform the duty in Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have regard to the desirability of preserving the setting of a listed building. Mr Garvey relied in particular on the following passages in the judgment of Lord Justice Lindblom:

> "58. There will, of course, be cases where it is quite obvious that there is no listed building whose setting is going to be affected by the proposed development, others in which it is no less obvious that the setting of a listed building will be affected, and others again where there is doubt or dispute……. Sometimes a consultee or an objector may have raised concern about the effect the development will have on the setting of a listed building but the decision maker can properly take the view that there will be no such effect, or at least no harm. On other occasions, no such concern may have been raised, but the section 66(1) duty will be engaged nevertheless. As the judge in this case recognised, the fact that the possible effect of the proposed development on the setting of a listed building has not been identified as an issue in responses to consultation, or in representations made by third parties, does not of itself relieve a planning authority of the duty. There will also be cases where only the developer himself identifies the possibility of some change to the setting of a listed building but contends either that the change would not be harmful or that the harm would be insignificant or acceptable. Depending on the circumstances, this too may be enough to engage the section 66(1) duty, and, if it does, the decision maker will err in law in failing to perform that duty.
>
> 64. The officer said nothing in her report about the application of the section 66(1) duty to the proposed development. She mentioned policy ENV14 as one of the development plan policies relevant to the proposal, and Welsh Office Circular 61/96 as relevant national policy. But she did not apply those policies to the proposal before the committee, nor explain how they were relevant……"

> 65. In short, nowhere in the advice the members were given on this proposal was there any mention of the listed building, or of the effect the development might have on its setting, taking into account views in which both it and the proposed wind turbine would or might be visible…..
>
> 66. In my view the lack of relevant advice from the officer and of any relevant discussion at either committee meeting, was, in the particular circumstances of this case, enough to amount to an error of law….
>
> 67. The first question for the county council, inherent in section 61(1), was whether there would be an effect on the setting of the listed building, and, if so, what that effect would be. This, I think, was undoubtedly a case in which that question had to be confronted in the making of the decision, and a distinct conclusion reached……. In any event, it seems to me that in this case, without that exercise having been gone through explicitly in the officer's report so as to show that the section 66(1) duty had been heeded and performed, and also without some trace of it having been undertaken by the members in their consideration of the proposal, the court can only conclude that the county council's decision-making was, in this particular and significant respect, deficient and therefore unlawful. The county council failed to discharge its duty under section 66(1), and failed also to have regard to relevant development plan and national planning policy as material considerations."

21. Mr Garvey submitted that the situation in this case is exactly the same. There is nothing in the OR to direct the Area Planning Panel to the issue of the possible impact on the heritage asset, namely the setting of the HCA. He further submitted that there is nothing from which the court could conclude that the Area Planning Panel had assessed what, if any impact, the development might have on the setting of the HCA. Further he submitted there was no evidence that any such impact had been weighed in the balance when reaching a decision on whether or not to approve the planning application.

22. Mr Garvey also referred me to the decision of Stewart J in *Obar Camden Ltd v Camden LBC* [2015] EWHC 2475 (Admin). That case involved a challenge to planning permission based, amongst other grounds, on a failure to assess heritage impact of the proposed development, both by reference to the statutory duties under the Planning (Listed Buildings and Conservation Areas) Act 1990, and by reason of failing to comply with national policy and the relevant local development plan policy, referred to in that case as CLARPA. At paragraph 14 of his judgment Stewart J dealt with the statutory duties and concluded that there was a failure to comply with the statutory duty. He then went on to deal with the NPPF and CLARPA. At paragraph 15 he stated as follows:

> "15. As to the four other points made by C, the NPPF para 128 and CLARPA both required the applicant to describe the

> significance of any heritage assets affected including any contribution made by their setting. Nowhere in the OR is there an assessment of the significance of the heritage assets. It is submitted by C that it is not possible to come to a conclusion about harm until an assessment has been made of the significance of the asset affected. Nor were members told that the NPPF s.12 (particularly at para. 128) required the applicant to describe the significance of heritage assets affected. D accepted that the process had become "truncated" but again emphasised that officers had come to the conclusion that there was no harm and that the committee were experienced. One wonders in those circumstances why there is the requirement in CLARPA and the NPPF para. 128 as stated above. The reality is, in my judgment, that these were material considerations which were not considered and therefore the decision is flawed (cf. TCPA 1990 section 70(2); Planning and Compulsory Purchase Act 2004 section 38 (6))."

23. Counsel are agreed that Paragraph 189 of the current version of the NPPF is in the same terms as Paragraph 128 in the earlier version of the NPPF being considered by Stewart J in that judgment. Accordingly, his references to Paragraph 128 can be read as if they were references to the current Paragraph 189. Mr Garvey submitted that the same points in paragraph 15 of Stewart J's judgment apply in this case. He asked the rhetorical question: "Why have a duty but allow the Council not to do anything to discharge it?"

24. The Council has filed Witness Statements from two of its officers, Jonathan Mark Ackroyd, Senior Conservation and Design Officer[14/270-273] , and Laura Joanne Eastwood a Planning Officer [15/274-278]. In general terms the evidence from the two officers asserts that Mr Ackroyd assessed the significance of the HCA and its setting in accordance with NPPF Paragraph 190, and concluded that there was no harm to the significance of the HCA through the impact on its setting [14/271: Witness Statement of Jonathan Ackroyd, paragraph 2; 15/277: Witness Statement of Laura Eastwood, paragraph 5]. In relation to this evidence, Mr Garvey urged caution and submitted that I should disregard it as ex-post facto rationalisation. Further, in any event, he submitted that the witness evidence is irrelevant because the officers are not the decision maker, and their conclusions on these issues are irrelevant. Mr Garvey further pointed to the fact that there is nothing before the court predating the grant of planning permission which shows that any consideration was given by the Area Planning Panel, as decision-maker, to the setting of the conservation area.

25. I do not understand Mr Robson for the Defendant to dissent from the proposition that the decision maker in this instance is the Area Planning Panel and not the officers. He submitted that experienced officers can use their professional judgement to reach the conclusion that negligible or minimal harm to the HCA does not engage the policy, and, therefore, that it does not need to be included in the OR. In those circumstances, he submitted that it was sufficient for an experienced Area Planning Panel to be directed to the NPPF and policy EN3, and to be told that the Site was adjacent to but not within a conservation area. He submitted that if the Area Planning Panel felt that

was not sufficient information, they could ask for more information. He submitted that this Area Planning Panel obviously felt this was not necessary.

26. The thrust of Mr Robson's submissions was that because the council officers formed the view that there was no harm to the setting of the conservation area, that did not need to go into the OR, and the Area Planning Panel was not materially misled in any way. He sought to draw a distinction between compliance with a statutory duty and the application of policy, and he submitted that because this case concerns the application of policy, that affects the level of detail required in an officer report.

27. As set out in paragraph 7 above, the PRS reached the conclusion that the degree of harm to the conservation area and heritage assets is considered to be minimal [5/108: paragraph 6.46]. In the Detailed Grounds this is described as a finding of no material harm [17/301: heading to paragraph 39]. It is asserted in Paragraph 40 of the Detailed Grounds that had Mr Ackroyd disagreed with the conclusions of the PRS on heritage, he is perfectly capable of disagreeing with them but that instead he *"acknowledged"* the conclusions in the PRS. Mr Garvey submitted that the Detailed Grounds were trying to suggest that this conclusion in the PRS had been adopted by, and should be considered to be, the decision of the Area Planning Panel. Having taken instructions in response to a question from me, Mr Robson conceded that the PRS was not before the Area Planning Panel. Very sensibly, he did not seek to persuade me that the Area Planning Panel could be considered to have adopted the conclusion in the PRS as their own.

28. In my judgment, the evidence of Mr Ackroyd does not suggest that he *"acknowledged"* the conclusions in the PRS. At paragraph 2 of his Witness Statement, Mr Ackroyd states that he concluded at the pre-application stage that there was no harm to the significance of the conservation area through the impact on its setting. At that stage the Council was not in possession of the PRS which was produced by the Second IP having received the pre-application response letter from Laura Eastwood. In her evidence Laura Eastwood also asserts that she and her colleague (which I was told is a reference to Mr Ackroyd) concluded at the pre-application stage that the impact on the conservation area was not material [15/277: paragraph 5].

29. Mr Ackroyd goes on in his Witness Statement to say that having received the PRS, its conclusions were regarded as being comprehensive and agreeable. Based upon the submitted information and his own personal expertise, the Historic England guidance, adopted local policies and having regard for adopted character appraisals, he concluded that the principle of development would not harm the setting of the conservation area or the setting of the Grade II listed Bridgehouse Mills [14/272: paragraphs 4 and 6].

30. I have to say I have some concerns about the evidence of these officers in this respect. The conservation summary in the OR refers to the possible impact on Bridgehouse Mills but also asserts that the Grade II listed station building will not be affected. It seems surprising that the OR should address both things that will be affected in heritage terms and things that will not, but is silent as to the alleged conclusion reached by the officers that the HCA would not be affected. I regret that I am forced to the conclusion that there is some ex post facto rationalisation in this evidence. My view on this matter is reinforced by the approach of the Defendant's Detailed

Grounds which suggest that Mr Ackroyd *"acknowledged"* the PRS findings as opposed to disagreeing with them. That is carried through from the Summary Grounds of Resistance [11/168; Paragraph 30] which were of course lodged prior to the Witness Statements being made. At that stage it was the express position that Mr Ackroyd was perfectly capable of disagreeing with the conclusions had he wanted to but **instead** (my emphasis) he "acknowledged" them. The evidence of the witnesses is at odds with the instructions which were provided for the purposes of the Summary Grounds, and that gives me cause for concern. As I have also noted at paragraph 8 above, the Conservation entry in the OR is in identical terms to the pre-application response letter, which, in the absence of any documentary evidence to the contrary, suggests that no further consideration had been given to these matters.

31. Mr Garvey attacks the Defendant's case as being confused in this respect. He submitted that in the Detailed Grounds, the Defendant was saying that it agreed with the finding of minimal harm. However, they now seek to say that their officers made a positive finding that there was no material harm. He suggests the two things are different and irreconcilable. He submitted that the words "minimal harm" do not necessarily mean "no material harm" and that it would be wrong, indeed dangerous, for the court to say that any minimal harm can be discounted. He pointed to Paragraph 193 NPPF [21/378] which acknowledges three brackets of harm to heritage assets, substantial harm which is addressed in Paragraph 195 [21/379]; less than substantial harm which is addressed in Paragraph 196 [21/379], and no harm. Mr Garvey submitted that the Defendant is trying to say that minimal harm equates to no harm and does not need to be given any weight. Mr Garvey submitted that minimal harm (which by definition must be something more than no harm) falls to be considered within Paragraph 196 NPPF as less than substantial harm. In those circumstances, he submitted that Paragraph 193 NPPF required the Area Planning Panel to give great weight to that impact, whereas it failed to assess it, and therefore failed to give it any weight at all.

32. In response to this, Mr Robson relied upon the conclusions in the PRS which were that the impact in respect of each of the four key views was negligible [5/107: paragraphs 6.33, 6.36, 6.38, and 6.41]. Whilst acknowledging that the degree of harm in the conclusions section is considered to be minimal [5/108: paragraph 6.46], Mr Robson submitted that where the conclusions in respect of each of the key views is that the impact will be negligible, the harm can be nothing but also negligible. He submitted that the word "minimal" is interchangeable with "negligible" which is used throughout the PRS.

33. In response to that Mr Garvey submitted that the conclusion is one of minimal harm. There is nothing from the author of this document as to whether he uses the terms interchangeably. Mr Garvey made the point that whilst negligible might be less than minimal, the author's conclusion, having identified four instances of negligible impact, is that the impact overall is minimal. Mr Garvey submitted that whilst they might be one and the same, there is no evidence from which this court could properly conclude that is the case. He submitted that the category of less than substantial harm in Paragraph 196 NPPF is a broad spectrum and there is no reason why even a negligible harm should not fall within that bracket.

34. In my judgment the three categories of harm recognised in the NPPF are clear. There is substantial harm, less than substantial harm and no harm. There are no other grades

or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than substantial harm will cover a broad range of harm. It will be a matter of planning judgement as to the point at which a particular degree of harm moves from substantial to less than substantial, but it is equally the case that there will be a number of types of harm that will fall into less than substantial, including harm which might otherwise be described as very much less than substantial. There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF. However, in my judgment, minimal harm must fall to be considered within the category of less than substantial harm.

35. Mr Robson sought to persuade me that in his judgment in *Blackpool Borough Council v The Secretary of State for Communities and Local Government and Thomson Property Investments Ltd* [2016] EWHC 1059 (Admin), Kerr J recognised that it was only above de minimis harm that falls into the category of less than substantial. He based this on the following single sentence at Paragraph 48 of Kerr J's judgement:

> "This case was, moreover, one in which the parties appeared to be in agreement that this was a case where the harm to the heritage asset was less than substantial, but more than de minimis."

I do not accept that in acknowledging the parties agreement on that matter, Kerr J was intimating that in order to be less than substantial, harm to the heritage asset had to be more than de minimis. It simply amounts to an acknowledgement that the harm in that case was more than de minimis. I further note that in Paragraph 51 of that judgment Kerr J referred to the Inspector's finding that the proposals in question would "do little harm", adding that the inspector did not say they would do no harm. I do not consider this case assists Mr Robson's submission.

36. Mr Robson's alternative submission was that even if "minimal" in the PRS meant something material, Mr Ackroyd's evidence is that he disagreed with that and he formed the conclusion that the principle of development would not harm the setting of the HCA [14/272: paragraph 6]. I have already indicated that I have concerns about that evidence, but for the purposes of dealing with Mr Robson's submissions, I shall approach the matter as if the evidence was properly elucidatory only (untrammelled by any ex post facto justification) and, therefore, properly admissible.

37. Mr Robson submitted that this case does not involve statutory duty but rather policy as to how to assess the potential impact to the heritage assets. This he submitted affects the level of detail required in an OR. He submitted that having used their professional judgement that there was no harm to the HRA, the officers were entitled to reach the further judgement that the policies were not engaged. In those circumstances, he submitted, it was not necessary for there to be anything more in the OR than a reference to the policy because this is an informed committee.

38. In support of these submissions Mr Robson took me to a number of authorities. He first of all referred me to judgment of Lindblom LJ in *Michael Mansell v Tonbridge*

and Malling BC and Others [2017] EWCA Civ. 1314. At paragraph 42 Lindblom LJ said this:

> "The principles on which the court will act when criticism is made of a planning officer's report to committee are well settled……. The principles are not complicated. Planning officers' reports to committee are not to be read with undue rigour, but with reasonable benevolence, and bearing in mind that they are written for councillors with local knowledge…….. The question for the court will always be whether, on a fair reading of the report as a whole, the officer has materially misled the members on a matter bearing upon their decision, and the error has gone uncorrected before the decision was made. Minor or inconsequential errors may be excused. It is only if the advice and the officer's report is such as to misdirect the members in a material way - so that, but for the flawed advice it was given, the committee's decision would or might have been different - that the court will be able to conclude that the decision itself was rendered unlawful by that advice."

39. Mr Robson submitted that the Area Planning Panel in this case can be expected to understand national and local policies. He pointed to list of designated heritage assets contained in the explanatory text to Policy EN3 which lists the Saltaire World Heritage site, over 2289 listed building entries on the National Heritage List for England, 59 conservation areas, 14 historic parks and gardens, 194 scheduled ancient monuments and one historic battlefield site at Adwalton Moor, Tong. Mr Robson submitted this is a Council with significant heritage assets and that the Area Planning Panel would be well used to dealing with policies covering this area of planning law. He further submitted that given Policy EN3 is referenced in the OR, it can be expected that the Area Planning Panel was well aware of its contents and how it operated.

40. Mr Robson referred me to the judgment of Sullivan J in *R v Mendip District Council, ex parte Philippe Cyprian Fabre* [2000] 80 P & CR 500, at paragraph 102 where he stated as follows:

> "It is for the committee to decide, in the first instance, whether it has sufficient information to enable it to reach a decision one way or the other. The court can review the committee's decision on Wednesbury grounds, if it considers that no reasonable committee could have reached a decision to grant planning permission without having a particular piece of information."

Mr Robson submitted that this is an experience Area Planning Panel which was directed by the OR to the NPPF and to Policy EN3, that the OR set out that the Site was adjacent to but not within a conservation area, and that if this Area Planning Panel had felt they did not have sufficient information, they could have asked for it. He submitted they obviously felt that was not necessary.

41. Mr Robson placed particular reliance on the decision of Andrews J in *Pagham Parish Council v Arun District Council and Others* [2019] EWHC 1721 (Admin). ("*Pagham*"). Mr Robson urged me that this was a case which I should read carefully on the basis that it has close parallels to the case I have to decide. Mr Robson particularly relied on Paragraphs 60 to 65 in the judgment, and he relied on these to support his submission that it was not necessary for the OR to say that the PRS thought there would be some harm to the HCA, but that the planning officers did not agree.

42. The difficulty for Mr Robson is that he has taken those paragraphs in isolation and not in the full context of the judgment in the case. The factual position in that case is completely different. In that case the applicant produced an impact assessment which identified very slight harm in heritage terms. As is clear from paragraphs 3,5 and 6 of the judgement in *Pagham*, a 52 page OR cited the relevant passages from the NPPF and expressly considered the impact that the proposed development would have on each of a number of listed buildings situated within close proximity to the application site. The OR also summarised the views of Historic England, the statutory consultee, and correctly informed the committee that the LPA's conservation officer had raised no objection. The OR then set out the planning officer's conclusions in the following terms:

> "Therefore, it is considered that the proposed development will preserve the setting of the listed buildings surrounding the site and as such would accord with policies HER SP1, HER DM1, and HER DM4 of the Arun local plan. "

The officer added

> "It should also be considered that the proposed development makes a significant contribution to the local planning authority's housing land supply and is an allocated site within the Arun local plan. Therefore, it is considered that the public benefits of the development would outweigh any harm to the setting or significance of heritage assets in accordance with paragraphs 196 and 197 of the NPPF."

43. It is quite clear from the judgment that in *Pagham* the OR expressly addressed these issues, concluded explicitly that there was no heritage harm, and undertook the assessment looking at the benefits of development weighed against any harm to the setting or significance of the heritage assets. The criticism in the judicial review in that case was that the planning officer had materially misled the committee by not adequately summarising the views of the heritage impact assessment submitted in support of the application in which the consultant had expressed the view that there would be slight harm to the setting of a listed building which could be considered less than substantial in the context of the NPPF.

44. At paragraphs 40 and 41 of her judgment, Andrews J makes the following points

> "40. The assessment of whether any harm would be caused by the impact of the development on the heritage asset or its

> setting is likewise **a matter for the decision maker**, not the author of the HIA……
>
> 41. The evaluation of harm was ultimately a matter for the committee, having been furnished with the necessary information by the planning officer. Thus if the planning officer, having taken all relevant factors into account, was entitled to take the view that there was no harm, and therefore that the setting would be preserved, and **so advise the committee, who accepted that advice,** on the face of it the decision is unimpeachable. It cannot be said there was a failure to comply with the duty under section 66(1) or para 193 of the NPPF because there was no harm to weigh in the balance." (my emphasis added in each case)

45. The paragraphs in the judgment which Mr Robson seeks to rely on, have to be read against that factual background and in the context of those observations made by Andrews J. The relevant parts are as follows:

> "60. Thus once it is accepted (as it was, and had to be) that it was rationally open to decide that there was no harm to the wider setting of the Church, which was the conclusion of this planning officer, **and implicitly endorsed by the committee when they accepted his recommendations,** there was no legal duty on anyone within the LPA to explain why they disagreed with the contrary view that had been expressed by the consultant engaged by the applicant for planning permission.
>
> 63. The planning officer did not mislead the committee, let alone mislead it in any material respect…… He was under no obligation to say that the consultant had identified something which could be regarded as minor harm to the vistas from a different perspective but that he, the officer, disagreed with that assessment.
>
> 64. The officer then said that he considered the development would preserve the setting of all the listed buildings in the vicinity. **He furnished the committee with all they information he rationally considered would help them to decide whether they agreed or disagreed with that assessment.**
>
> 65. On the basis of the material before him, having taken all relevant information into account, the planning officer was entitled to **so advise the committee**." (my emphasis added in each case)

46. In my judgment the passages I have emphasised in the judgment of Andrews J underline the very real difficulty that Mr Robson has in this case. Mr Garvey does not dispute that a planning officer is entitled to form a view on matters relevant to the decision to be made by the decision maker, and to tell the decision maker what his or

her opinion on that matter is. That does not take the decision making process away from the decision maker. The decision maker is at liberty to adopt the planning officer's opinion or to reject it. The whole of Andrews J's judgment is predicated on advice being given to the committee and, by implication, being accepted by the committee. In my judgment that is entirely different from the situation here.

47. In his closing submissions in reply, Mr Garvey accepted that there is no obligation in an OR to address everything said by an applicant which the officer may disagree with. He said that if the OR before this court had done a proper assessment of heritage impact, and had concluded there was no harm, he would not be here. That would be on all fours with the case that Andrews J was considering in *Pagham*. In my judgment what has happened here, is that the officers have made the decision and, in effect, withdrawn it from the Area Planning Panel. By failing to make any mention of it in the OR, it cannot be said that the Area Planning Panel has, by implication, agreed with the conclusions of the officers. As is made clear in the judgment of Andrews J, the evaluation of harm was ultimately a matter for the Area Planning Panel, having been furnished with the necessary information by the planning officer. In this case the Area Planning Panel was furnished with no necessary information and was in no position to assess whether there was any harm, or to carry out the balancing exercise of any harm found against the public benefits of the development. In those circumstances, I am entirely satisfied that Ground 1 is made out.

48. By Section 31(2A) Senior Courts Act 1981, the High Court must refuse to grant relief on an application for judicial review if it appears to the Court to be highly likely that the outcome for the Claimant would not have been substantially different if the conduct complained of had not occurred. Mr Robson relied on Section 31(2A) both in the detailed grounds and in his skeleton argument.

49. In the course of argument, I indicated that it seemed to me inevitable that if I were to find Ground 1 proved, I would inevitably have concluded that a matter calling for a planning judgement by the Area Planning Panel had been withdrawn from them. Matters of planning judgement are matters for the decision makers and not for this court. The decision to assess whether there is any harm in heritage terms to the setting of the HCA inevitably involves a planning judgement, as does the balancing exercise to be carried out if it is found that there is some harm to place into the balance. In my judgment, I cannot properly conclude that the outcome for the Claimant in this case would not have been substantially different if the conduct complained of had not occurred. After I had given that indication, Mr Robson withdrew his reliance on Section 31(2A).

<u>Ground 2: The Conditions Relied Upon Were Unlawful.</u>

50. This challenge relates to the addition of the words "unless otherwise agreed in writing" (the tailpieces) in each of conditions 3,7, 12 and 13 of the conditions attached to the planning permission [1/2-4]. Mr Garvey submitted firstly, that the addition of these words was ultra vires, and secondly, that they are wrong in principle.

51. The Summary Grounds in this case were accompanied by a Witness Statement from Mark Julian Hutchinson, Area Planning Manager for the Defendant. In that Witness Statement he confirms that the OR to the Area Planning Panel did not include the tailpieces, that no further material came to the attention of the LPA between the Area

Planning Panel's resolution and the issuing of the decision notice. He states that it was a simple administrative oversight that resulted in the tailpieces being added to conditions 3, 7, 12 and 13. [11/183, paragraph 7]. In those circumstances, it is clear that the tailpieces are ultra vires having been added without any decision from the Area Planning Panel to support their inclusion.

52. Mr Robson accepted the unlawfulness of these conditions, and addressed me only on the issue of the appropriate form of relief. He referred me to the decision of Ousley J in *R (oao Midcounties Co-operative Ltd) v Wyre Forest District Council* [2009] EWHC 964 (Admin), at paragraph 74, where he rejected a submission that the tailpieces in that case should lead to the quashing of the whole planning permission. He found that severance of the offending tailpieces was sufficient.

53. Given my conclusions on Ground 1 which will lead to the quashing of this planning permission, I do not consider it necessary to go into any detail on the issue of relief the Ground 2. In any event, Mr Garvey reserved his submissions on relief pending my decision on the other Grounds. Whilst I have not heard those submissions, it would appear that if only the tail conditions were in issue, then excision would seem to be the appropriate remedy.

54. Given the Defendant's concession that the conditions are unlawfully included, I do not consider it necessary to explore the alternative challenge as to whether they are wrong in principle.

Ground 3: Failure To Have Regard To The Relevant Historic Environment Record

55. Given my conclusion in relation to Ground 1, I can deal with Ground 3 shortly. Paragraph 189 NPPF [21/378; and set out at paragraph 13 above] provides that in undertaking the heritage asset assessment, as a minimum the relevant HER should have been consulted and the heritage assets assessed using appropriate expertise where necessary. There is no dispute that the HER was not consulted in this case.

56. Mr Robson submitted that the fact that the HER has not been consulted is of no substantive consequence in this case. He relies upon Mr Ackroyd's evidence:

> "It was not felt necessary to refer to the Historic Environment Record as the applicant's statement was assessed as having properly identified and considered the heritage impacts in more detail than is included in the Historic Environment Record." [14/272: paragraph 5]

I have already indicated that I have concerns that the officers' evidence in this case does amount to ex-post facto rationalisation. There is nothing in the paperwork to suggest that this was even considered by Mr Ackroyd prior to the grant of the planning permission in this case.

57. That would not necessarily be the end of Ground 3 as Mr Robson submitted that there is no evidence that any failure to consult the HER was of any consequence to the final decision. Mr Robson told me that the HER is simply a database. When I pointed out that there was no evidence to that effect, Mr Robson submitted that the HER is a public document which the Claimant could have put before the court. That may be

right, but equally the Defendant could put this document before the court, and it is the Defendant who is seeking to argue that the failure to consult the HER is of no consequence. The Claimant's case clearly raises an issue which needs to be answered. It has not been, save by the evidence of Mr Ackroyd which, for reasons I have already given, I do not regard as sufficient.

58. In the absence of the HER having been produced in evidence, or even any evidence from an officer as to what the HER comprises, I am left with Mr Robson telling me, on instructions, that the HER is simply a database. I have no information as to what is in that database and nothing from which I could properly make any judgment as to whether the failure to consult the HTR is of no consequence to the final decision. It follows that I could not properly conclude that it is highly likely that the outcome for the Claimant would not have been substantially different if the HER had been consulted. Accordingly, Section 31(2A) Senior Courts Act 1981 has no application to this Ground of challenge. Accordingly, I find Ground 3 is also proved.

59. To summarise my conclusions, I find all three Grounds proved. I think it likely that had Ground 2 been the only successful ground, the appropriate relief would have been excision of the tailpieces, although I would have heard further submissions from Mr Garvey as to relief in those circumstances. However, given that Grounds 1 and 3 are proved, it follows that the planning permission in this case must be quashed.

The Planning Inspectorate

Appeal Decision

Inquiry held on 9-11 January 2024

Site visit made on 12 January 2024

by J Woolcock BNatRes MURP DipLaw MRTPI

an Inspector appointed by the Secretary of State

Decision date: 22nd March 2024

Appeal Ref: APP/M1595/W/23/3328712
Land to South of Marsh Farm, Fobbing, SS17 9JW

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Rayleigh Green Limited against the decision of Thurrock Borough Council (TBC).
- The application Ref: 21/01635/FUL, dated 23 September 2021, was refused by notice dated 12 June 2023.
- The development proposed is the installation of a renewable led energy generation station, comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformers stations, site access, internal access tracks, security measures, access gates, other ancillary infrastructure, grid connection cable, landscaping and biodiversity enhancements.

Decision

1. The appeal is allowed and planning permission is granted for the installation of a renewable led energy generation station, comprising ground-mounted photovoltaic solar arrays and battery-based electricity storage containers together with substation, inverter/transformers stations, site access, internal access tracks, security measures, access gates, other ancillary infrastructure, grid connection cable, landscaping and biodiversity enhancements at Land to South of Marsh Farm, Fobbing, SS17 9JW, in accordance with the terms of the application, Ref: 21/01635/FUL, dated 23 September 2021, and the plans submitted with it, as amended, subject to the conditions set out in the Schedule of Conditions attached to this decision.

Preliminary matters

2. The Inquiry sat for three days and there was an accompanied site visit on the fourth day. With the agreement of the parties, I also visited off-site locations unaccompanied. Closing submissions were in writing and the Inquiry was closed in writing on 11 March 2024.[1] TBC and the appellant agreed a Statement of Common Ground (SoCG) and an addendum was submitted regarding the updated version of the National Planning Policy Framework (NPPF) published on 19 December 2023.[2]

3. In refusing the application against officer recommendation for approval, TBC considered a revised scheme from that originally submitted with the application. The revised scheme reduced the size of the area for solar panels, along with minor amendments to the proposed planting. It is the scheme (shown on Drawing Nos. FO2.0 Rev 19 site plan and 7428_100 Rev E

[1] ID12 and ID13.
[2] CD C10 and CD C19.

Landscape Ecology Enhancement Plan) that I have used in my consideration of the appeal. Drawing No. 7428_100 Rev E depicts new ponds, an orchard, off-site hedge and diverse planting, along with natural areas, all outside the appeal site edged red.[3] These are part of wider estate biodiversity enhancements. This off-site landscaping is not the subject of any planning obligation or suggested planning condition that relates to the appeal scheme. In determining this appeal, I have given no weight to these off-site works.

4. The application was accompanied by an Environmental Statement (ES). I am satisfied that the ES reasonably complies with Schedule 4 of the EIA Regulations. In deciding the appeal, I have had regard to the Environmental Information.[4]

5. Part of the appeal scheme, comprising a section of the cable route corridor connecting to the National Grid substation at Rayleigh, falls within Basildon District. Planning permission for this development was granted by Basildon Council on 8 September 2023.[5]

6. The development plan for the locality includes the Thurrock Local Development Framework Core Strategy and Policies for Management of Development (as amended) adopted in 2015.[6] The appeal site is within the Green Belt as designated in the development plan. The parties are agreed that the proposed development would be inappropriate development in the Green Belt. I concur with that position.

7. Policy PMD6 accords with Green Belt policy in the NPPF. However, Policy CSSP4 refers to PPG2 and does not incorporate current provisions in the NPPF regarding very special circumstances.[7] I have, therefore, given more weight to the NPPF in applying Green Belt policy.

8. The National Planning Practice Guidance (NPPG) includes guidance about renewable and low carbon energy.[8] Factors to consider include encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value.

9. On 22 November 2023 Overarching National Policy Statement for Energy (EN-1) and National Policy Statement for Renewable Energy Infrastructure (EN-3) were published and laid before Parliament for approval. The Secretary of State for Energy Security and Net Zero announced in a written ministerial statement on 17 January 2024 that these had been approved and designated under the provisions of the Planning Act 2008. Given that the capacity of the proposed generation station in this appeal would be so close to the 50 megawatt (MW) threshold for a nationally significant infrastructure project (NSIP), I consider that EN-1 and EN-3 are material considerations in

[3] ID9.
[4] The Environmental Information means the environmental statement, including any representations made by any body required by the Regulations to be invited to make representations, and any representations duly made by any other person about the environmental effects of the development.
[5] Basildon Council Ref:21/01452/FULL.
[6] All references in this decision to 'Policy' and 'Policies' are to policies of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development (as amended) adopted in 2015.
[7] PPG2 is a former Green Belt policy.
[8] The NPPG includes reference to a speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013 and written ministerial statement on solar energy: protecting the local and global environment made on 25 March 2015.

determining this appeal.[9] EN-1 and EN-3 were raised at the Inquiry and were the subject of submissions by the parties.

10. The appeal site is located to the east of Fobbing and wholly within the London Area Green Belt. The village of Fobbing lies to the east of the town of Corringham. The Church of St Michael in Fobbing is a grade I listed building. I am required by Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of a listed building. The historic core of Fobbing is a designated Conservation Area. Footpath 14 traverses the appeal site in a north/south direction and Footpath 199 crosses the site east/west. Both footpaths are Public Rights of Way (PRoW). The England Coast Path lies further to the east and south of the site.

Proposed development

11. Rayleigh Green Limited has entered into a Bilateral Connection Agreement with National Grid Electricity System Operator, with a connection date of 31 October 2025, at the Rayleigh National Grid 400/33 kV Substation.[10] Solar panels generate electricity in direct current (DC), which is converted by inverters to alternating current (AC) for export to the grid. Capacity can be measured in different ways, including in terms of combined capacity of installed solar panels (in DC), or in terms of combined capacity of installed inverters (in AC). The Technical Note I requested for the Inquiry states: [11]

> "2.3 The connection allows for 57MW import and 57MW export of electricity.
>
> 2.4 Although the total export capacity is 57MW, as this is the capacity of the tertiary connection secured, the 57MW export capacity is split into two stages 49.9MW and 7.1MW. This is restricted via a contractual arrangement with National Grid.
>
> 2.5 Through splitting the connection it is designed to keep the actual built capacity of the solar farm to 49.9MW to ensure that the maximum export capacity of the project remains below the threshold for a generating station to be considered a Nationally Significant Infrastructure Project. The AC output will in practice be restricted to 49.9MW through the installed combined inverter/transformer units.
>
> 2.6 The import and export capacity of the battery energy storage system will utilise the 49.9MW and also the remaining 7.1MW of the connection."

The Planning Act 2008 specifies that if a generating station is (when constructed) expected to be a generating station whose capacity is more than 50 MW then it is defined as an NSIP.[12]

12. The design for the appeal scheme includes 99,120 panels, equating to a generating capacity of 49.5 MW, based on a panel specification of 500 Watts. The appeal scheme does not specify the capacity of the proposed inverters. With an 11.2% load factor derived from DUKES, a 49.9 MW scheme would generate 48.99 million kWh per year.[13] The proposed generation station would

[9] EN-1 paragraphs 1.2.1 and 1.2.2.
[10] ID10.
[11] CD C17.
[12] Sections 14(1)(a) and 15(2)(c) of the Planning Act 2008.
[13] ID5. DUKES is an abbreviation for the Digest of UK Energy Statistics.

operate for 40 years from the date of the first exportation of electricity from the appeal site.[14]

13. The solar panels would be up to 3m high, ground mounted on tracking frames with bifacial panels and a tracking system to follow the path of the sun. This means that their height would vary throughout the day. The arrays, apart from those in an area of archaeological interest, would be installed on posts driven into the ground. The scheme includes sixteen inverter/transformer stations housed in metal containers approximately 12m long x 2.4m wide x 2.9m high. The scheme includes a Battery Energy Storage System (BESS). Twenty-four battery storage units would be housed in metal containers of the same dimensions as the containers for the inverters/transformers. A generating substation and auxiliary switchgear area on the site, approximately 12m long x 4m wide x 4m high, would combine electricity from the transformers and batteries before transferring it to the Rayleigh Substation, which is located 7.6 km to the north-east of the proposed generation station. The electricity would enter the national grid for national use.

14. Deer fencing 2.1m high would be installed around the perimeter of the site. A higher specification of security fencing (2.4m high) is proposed around the battery storage area, along with a system of CCTV cameras. The appeal site is proposed to be accessed via an existing gated farm access from High Road, which links Fobbing with the A13 to the north.

Main issues

15. The main issues in this appeal are:

(1) The effects of the proposed development on the character and appearance of the area.

(2) The effects of the proposed development on heritage assets.

(3) Whether the harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, would be clearly outweighed by other considerations so as to amount to the very special circumstances required to justify the proposal.

Reasons

Green Belt

16. Paragraph 156 of the NPPF provides that when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development, where 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.

17. The Government attaches great importance to Green Belts and the fundamental aim of policy is to prevent urban sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. In considering applications substantial weight should be given

[14] CD C17.

to any harm to the Green Belt. The NPPF adds that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm resulting from the proposal, is clearly outweighed by other considerations.

18. The appeal scheme would be inappropriate development, which is by definition harmful to the Green Belt. The proposed panels and associated infrastructure would occupy an area that is currently open fields. The installation of 99,120 solar PV panels, sixteen inverter/transformer stations and twenty-four battery storage units, all housed in metal containers, along with a substation and auxiliary switchgear area, would result in a substantial built form that would have a significant adverse effect on the openness of this part of the Green Belt, in both spatial and visual terms. This harm would persist for the 40-year life of the proposed generation station.

19. The parties acknowledge that the proposal would result in some harm to Green Belt purpose c). I concur because the solar arrays and associated infrastructure in this context would appear as utilitarian structures that would not assist in safeguarding the countryside from encroachment. There is also agreement that the appeal scheme would not undermine Green Belt purpose a) concerning unrestricted sprawl of large built-up areas. I have no reason to find otherwise. However, there is a dispute about whether the proposed development would harm Green Belt purposes b), d) and e).

20. The solar panels and associated infrastructure would be set back some distance from the Vange suburb of Basildon, and beyond large fields to the east of Fobbing.[15] Taking into account the evidence adduced at the Inquiry and what I saw at my site visit, I am satisfied that the appeal scheme would not be perceived as development that merged Basildon with Corringham. I find no conflict with purpose b) to prevent neighbouring towns merging into one another.

21. The fact that Fobbing has a designated Conservation Area is not sufficient by itself to elevate its status as a village to a historic town. There is no conflict with Green Belt purpose d) to preserve the setting and special character of historic towns. Nor would the proposal be at odds with Green Belt purpose e) to assist in urban regeneration because of the unlikely availability of derelict or other urban land to accommodate a solar generation station of sufficient scale to utilise the available grid connection.

22. Harm to the Green Belt arises from inappropriate development, impairment of openness, and conflict with Green Belt purpose c). The following sections of this decision consider whether the appeal scheme would result in any other harm, and then has regard to other considerations, so that a balancing exercise can be undertaken to determine whether very special circumstances exist.

[15] Fobbing High Road is about 600 m from the nearest part of the appeal site that would contain solar panels and containers. The southern part of Vange is about 650 m from the appeal site.

Character and appearance

23. TBC refused the application on Green Belt grounds, but argued at the Inquiry that the appeal site is a valued landscape. NPPF paragraph 180 provides that planning decisions should contribute to and enhance the natural and local environment by, amongst other things, a) protecting and enhancing valued landscapes, and b) recognising the intrinsic character and beauty of the countryside. The NPPF does not define valued landscapes and I was referred to the Landscape Institute's Technical Guidance Note (TGN) 02/21 *Assessing landscape value outside national designations*.[16] In applying the factors in TGN 02/21 Table 1, I have considered not only the site itself and its features, elements, characteristics and qualities, but also their relationship with, and the role they play within, the site's context.[17]

24. This landscape has some natural heritage interest by reason of the local topography, reedbeds and hedgerows, but the majority of the appeal site is arable farmland. As indicated in the next section of this decision the appeal site makes some contribution to the setting of heritage assets in the wider landscape. But cultural heritage in the locality here does not add significantly to its landscape value. In terms of landscape condition, the area's overall good condition is adversely affected to some degree by the proximity of large-scale industrial infrastructure. There is some association of the area with the Peasants' Revolt because one of the leaders, Thomas Baker, was born in Fobbing.

25. This fringe landscape between marshland along the River Thames and the higher settled or wooded ridges has a particular identity, but it lacks rare or unusual features that would confer a strong sense of place or identity.[18] This is not a particularly distinctive landscape. The two PRoW across the site provide recreational opportunities to experience this landscape, which results in some community value. The area offers expansive views over the landscape, especially from higher vantage points. However, this high scenic quality is diminished to some extent by the industrial development in the wider area. The influence of the overhead power lines, transport and industrial infrastructure also detracts from appreciating the tranquillity and wildness of the wider marshland landscape. The marshes provide flood storage with some reedbeds. The area also has some landscape value as an undeveloped space between Corringham, Basildon and South Benfleet/Canvey Island.

26. Taking into account all the factors in TGN 02/21, the evidence before the Inquiry and what I experienced on site, I consider that the landscape qualities of the area do not elevate it above other more everyday landscapes. My overall judgement is that the appeal site is not part of a valued landscape for the purposes of applying NPPF paragraph 180. I turn next to the effect of the proposal on landscape character.

[16] CD C12B.
[17] The factors cited are Natural heritage, Cultural heritage, Landscape condition, Associations, Distinctiveness, Recreational, Perceptual (Scenic), Perceptual (Wildness and tranquillity) and Functional. TGN 02/21 also states that value is best appreciated at the scale at which a landscape is perceived – rarely is this on a field-by-field basis.
[18] CD C11B Appendix 6 compares the proposed development with marshland in Thurrock.

27. The area is located within NCA 81 Greater Thames Estuary.[19] In local character assessments the majority of the appeal site lies within Landscape Character Area C1. Fobbing Marshes, with part of the proposed access road within LCA B3. Fobbing Ridge Rolling Farmland / Wooded Ridge. LCA 1. Bowers and Vange Estuary Marshlands is located to the north and north-east of the appeal site.[20] A Landscape Character Assessment was undertaken in 2018, in which the Landscape Character Profiles for LCA F4 Fobbing Marshes & Haven Creek and LCA H3 Fobbing Ridge Open Undulating Farmland are generally consistent with the original Landscape Character Assessment.[21] The appeal site and surrounds is identified within the Essex Historic Landscape Character Assessment as comprising "20th century agriculture (drained reclamation C19th-20th)" and "coastal drained enclosure (Post-1950 Boundary Loss)".[22] However, these characterisations are largely reflected through the alignment of boundaries, that would not be harmed by the proposed development.

28. Key characteristics of the Fobbing Marshes LCAs include a low-lying flat and exposed landscape with a network of winding ditches, with extensive areas of grazing marsh. The absence of settlements and roads create a sense of wildness and remoteness in a large-scale landscape. Sweeping views are dominated by sky, but with a confusion of vertical structures to the south that includes London Gateway.

29. The proposed solar panels, substation, BESS and access would occupy 65.44 ha, rendering the appeal scheme a large-scale development that would, in terms of overall scale, be reasonably commensurate with the large-scale landscape in which it would be sited.[23] However, the proposed development would have a strong horizontal emphasis that would contrast with the vertical elements in the landscape, such as the pylons and industrial structures to the south of the site. The metal and glass panels, along with their regular arrangement in long rows, would be out of keeping with the character of the area. The colour and texture of the panels would not be typical of its agricultural and marshland context, and so the proposed development would introduce a discordant element into the local landscape. Mitigation planting would not have much impact on this harm to the landscape character of the area. I find that the proposal would have an adverse effect on the Fobbing Marshes LCAs of moderate significance up to 500 m from the appeal site (excluding the access), with this adverse impact reducing beyond this distance.

30. Given the proximity and characteristics of LCA 1. Bowers and Vange Estuary Marshlands, I consider that the appeal scheme would also have an adverse effect on this character area of moderate significance. LCA B3. Fobbing Ridge Rolling Farmland/Wooded Ridge and LCA H3 Fobbing Ridge Open Undulating Farmland have a lower sensitivity and with a reduced magnitude of effect the appeal scheme would, overall, have an adverse impact of minimal significance. However, some land towards the eastern boundary of these LCAs would fall within 500 m of the appeal site where the adverse landscape effect would be of moderate significance.

[19] CD F2.
[20] Thurrock Landscape Capacity Study 2005 at CD F5 and Landscape Character Assessment of Basildon 2014.
[21] CD F7.
[22] CD F10, 11 and 12.
[23] The total area of the appeal site is about 134 ha, but the layout (not accounting for undeveloped spacing between rows of panels) would occupy 65.44 ha. CD C11B Table 2.

31. Turning to visual effects, the NPPG advises that in the case of ground-mounted solar panels it should be noted that with effective screening and appropriate land topography the area of a zone of visual influence could be zero. The mostly flat landscape here provides considerable scope to screen and soften the visual impact of the proposed development.[24]

32. The proposed solar panels would be installed in Fields 1-7, 9 and 10, separated by drainage ditches and PRoW, where space would be provided for new hedgerows and landscaping.[25] These fields extend some 2.2 km north/south and up to about 1 km east/west. This elongated form of development, combined with the local topography, would make it unlikely that the whole of the appeal scheme could be seen from any single vantage point. Visual receptors would see some unscreened parts of the scheme, in combination or succession, and those moving through this landscape would experience some sequential cumulative visual effects. The appearance of the panels would also change throughout the day as they tracked the path of the sun. The proposed inverter/transformer and battery containers would have an industrial appearance and the panels would appear as utilitarian structures in this agricultural/marshland setting.

33. Visual receptors within and near to the appeal site would experience a large scale of effect that would result in an adverse visual impact of major/moderate significance.[26] It would be difficult to screen out all views of the proposed development from higher vantage points, such as Fobbing High Road.[27] However, because of the local topography only a small section of the solar panels would be visible from the grounds of the Church of St Michael. The highest part of the appeal site that would contain solar panels is within Field 1, located to the east of Whitehall Farm. The proposed 15 m wide new structure planting hedgerow along the western boundary of Field 1 would, in time, effectively screen views from the west, but not from lower vantage points to the north and east.[28]

34. It was apparent from my site visit that in views from elevated vantage points in Langdon Hills, Basildon Golf Club and Vange, the appeal scheme would be seen in the distance as part of a wide panoramic view that included the marshland, fringe development and large-scale industrial development.[29] Given the separation distance and the extent that the proposed development would contribute to the overall panorama, I consider that the appeal scheme would have a negligible visual impact in these views.

35. The flat topography would permit much of the proposed development to be effectively screened over time with new hedgerow planting and by allowing existing hedges to grow up.[30] However, the effect of this would be to screen out many of the long-distance views over the expansive agricultural and marshland landscape that are currently a significant feature of this area.[31] This

[24] The Zone of Visual Influence at Figure 6 CD C11B, includes Fobbing High Road, parts of Vange, and PRoW to the east and south of the appeal site, including those near to Wat Tyler Country Park.
[25] Field 8 would be managed for screening purposes (to adjacent PRoW) and biodiversity habitat for farmland birds.
[26] CD C11B VP01, VP02 and additional VP A.
[27] CD C11B VP06 and VP07. CD C11D Photos 1, 2, 4 and 5.
[28] CD C11B VP03 and VP09. CD C11D Photos 6, 7 and 8.
[29] CD C11B VP8 and VP10. CD C11D.
[30] The site is generally flat between 1.75 m AOD and 2.25 m AOD with the land rising in Field 1 to about 17.5 m AOD.
[31] CD C11B VP04. CD C11D Photo 3.

planting would create a more enclosed landscape, in which PRoW would be largely contained within green corridors, albeit some of which would be wide.[32] Given the local context, I disagree with the appellant's assessment about the effect of mitigation planting on the visual amenity of the area, and find that the proposal would have an adverse visual impact of major/moderate significance during the lifetime of the proposed development.[33]

36. This level of harm would not be permanent, but 40 years far exceeds what is regarded as long term.[34] Overall, I find that the proposal would have an adverse effect on the landscape resource of moderate significance and that it would have an adverse visual impact of major/moderate significance. This harm to the character and appearance of the area weighs against the proposal in the planning balance.

37. Policy CSTP23 states that TBC will protect, manage and enhance the character of Thurrock to ensure improved quality and strengthened sense of place. Part I of the policy identifies key areas where character is a key issue, which include rural landscapes and Green Belt. No evidence was adduced at the Inquiry to identify significant features for the purposes of applying part II of the policy requiring retention and enhancement of such features, or to specify any local views that contribute to a distinctive sense of place that would invoke part III of the policy. Nevertheless, the likely harm to landscape character I have identified brings the proposal into some conflict with Policy CSTP23.

38. Policy PMD2 concerning design and layout requires mitigation of negative impacts. It also sets out criteria that all development proposals must satisfy. These include that development must contribute positively to the character of the area in which it is proposed, and to surrounding areas that may be affected by it. Mitigation here has its usual meaning to moderate and make less severe adverse effects. I am satisfied that the proposal would moderate its adverse landscape and visual impact, but for the reasons set out above it would not contribute positively to the character of the area and its surrounds.

39. However, for NSIPs EN-1 notes that virtually all nationally significant energy infrastructure projects will have adverse effects on the landscape, and that all energy infrastructure is likely to have visual effects for many receptors.[35] Given that the capacity of the appeal scheme falls just below the NSIP threshold, I believe that EN-1 is a material consideration, and that its underlying aims for energy development should be given more weight in this case than any conflict with Policies CSTP23 and PMD2.

Heritage assets

40. The Church of St Michael and Fobbing Conservation Area are designated heritage assets and great weight should be given to their conservation.[36] The church lies about 680 m to the west of the appeal site on a prominent site overlooking the Thames Marshes. It was evident at my site visit that the local topography would largely limit views of the proposed development from the Churchyard to solar panels within part of Field 7. However, the church tower is

[32] Drawing No. 7428_100 revE Landscape Ecology Enhancement Plan states that the PRoW corridor to the east of Field 10 would be a minimum 55 m wide, and depicts the corridor between Fields 1 and 10 even wider.
[33] CD A19.
[34] GLVIA paragraph 5.51 at CD F1 refers to long term as ten to twenty-five years.
[35] EN-1 paragraphs 5.10.5 and 5.10.13.
[36] NPPF paragraph 205.

a visible skyline feature in the wider landscape and from many parts of the appeal site. The church tower is likely to have been used historically for navigation within the marshes. It now marks the location of the settlement on the higher ground. In this regard the setting of the church contributes to its heritage significance. The proposed development and screen planting would obscure some views towards the church tower, but given its elevation above the low level of the appeal site it would often be seen over the top of the solar panels, especially from vantage points in the east. Nevertheless, the appeal scheme would introduce modern infrastructure that would detract from what remains of the historic marshland setting of the church. I consider that this would result in less than substantial harm to the significance, through its setting, of the grade I listed building, but towards the lower end of the spectrum of less than substantial harm.

41. The Church of St Michael lies within Fobbing Conservation Area and similar considerations apply for the setting of the conservation area to that of the church. There are views out of the conservation area towards the appeal site from Fobbing High Road and part of the Recreation Ground, which lie on a ridge.[37] In addition, the conservation area includes a lower area that was a wharf giving direct access to the River Thames before the creek was dammed in 1953. The setting of the conservation area contributes to its significance in that the former creek has historic illustrative value pertaining to the siting of the settlement at this end of the ridge. The historic marshland has been altered by improved drainage and removal of creeks, but the proposed development would result in a more intrusive change to the area, that would adversely affect views to and from the conservation area and so would, to some extent, harm its setting. This would result in less than substantial harm to the significance of a designated heritage asset, but towards the lower end of the scale.

42. I have given considerable importance and weight to the harm to the significance of the grade I listed building. In the NPPF paragraph 208 balancing exercise, I consider that the less than substantial harm I have identified to the significance of the designated heritage assets here is outweighed by the public benefits that would be attributable to the renewable energy generated by the proposal. Further details about these benefits are set out later in this decision.

43. Two areas of 'redhill' salt working and two areas of anti-aircraft features remain on the appeal site. Other non-designated heritage assets here are Marsh Lane and Vange and Fobbing marshes pasture grazing areas.

44. The redhills are formed by reddish deposits from distinctive pottery types and burnt materials used in salt production in the later prehistoric, Romano-British or possibly medieval times. Their significance derives primarily from the archaeological interest of the remains. The topography indicates that salt production was undertaken at these sites, which are on higher ground adjacent to the marshes. The local topography contributes to the setting of these assets, but the remains are not now legible in the landscape, which has been drained. No panels are proposed in one redhill area, and the appeal scheme proposes the use of no-dig ballast foundations in the other. Nevertheless, minor harm would result to the significance of these assets due to the

[37] CD H6.

obstruction of views that assist in the legibility of the area as former marshland.

45. The anti-glider/aircraft features are slot trenches on the flat marshlands that have now been filled in. There is no evidence before the Inquiry to indicate that any physical remains of these trenches survive on the site. If there are such remains, then the proposed development would not have much of an impact on the assets or their setting because of the changes that have already taken place to the former marshland landscape. Any harm would be of negligible significance.

46. Marsh Lane is a medieval trackway extending down the slope from Fobbing High Road towards the appeal site. The farm it once led to has now been demolished. Its heritage value now largely lies in the indication it provides of an historic route from Fobbing into the wider marshes characterised by curvilinear boundaries and ditches. The appeal scheme would, to some extent, reduce the legibility of this wider setting to the trackway. But this would be a minor impact to a non-designated asset of minimal heritage value.

47. Vange and Fobbing Marshes is an area of former marshland that has experienced various degrees of reclamation and improved management over time, but its irregular enclosures and curvilinear boundaries are indicators of its marshland origin. Solar panels on a part of this area would make it more difficult to appreciate the significance of these sinuous boundaries and this would result in a minor level of harm.

48. Given the scale of the harm I have identified and the significance of the non-designated heritage assets in this case, it is my balanced judgement that any harm to these assets from the proposed development would not weigh much against the proposal.[38]

49. The harm I have identified would occur for the lifetime of the proposed development. Taking all these considerations into account, I consider that the appeal scheme would result in minor harm to heritage assets. I find no conflict with Policies CSTP24 and PMD4, because they provide for the appropriate protection and enhancement of heritage assets in accordance with their significance and following the approach set out in the NPPF.

Other matters

50. With the exception of a part of its north-western corner the appeal site lies within Flood Zone 3a, with a high probability of flooding. However, this area will benefit from tidal flood defences for the lifetime of the proposed development.[39] As set out in Annex 3 of the NPPF the proposed generation station is 'essential infrastructure'. The Sequential and Exception Tests apply.[40] The NPPG adds that in Flood Zone 3a essential infrastructure should be designed and constructed to remain operational and safe in times of flood.

51. I asked at the Inquiry why one of the exclusionary criteria applied in the Sequential Test was a minimum site requirement of 120 ha for a tracking system, and queried how this squared with the NPPG, which provides that considering reasonably available sites could include a series of smaller sites.

[38] NPPF paragraph 209.
[39] CD B1.
[40] TBC considers that both the Sequential and Exception Tests are passed. SoCG paragraphs 8.24 and 8.25.

However, I accept that the approach adopted by the appellant was appropriate in the circumstances that apply here, given the likely difficulties in obtaining planning permission for a number of separate sites, and the practicalities of coordinating multiple sites so as to utilise the identified grid capacity in the time period specified in the grid connection offer. I concur with the parties that the proposal satisfies the Sequential Test.[41]

52. The solar panels would be elevated 0.8m above ground level and so would not be likely to impede any surface water flow paths or displace any ponding of surface water. I am satisfied that the submitted Flood Risk Assessment demonstrates that the proposed development would not result in any increase in flood risk off-site or increase flood risk on-site.[42] Measures proposed for fluvial and tidal flooding would adequately address any groundwater flooding. The evidence before the Inquiry is that the scheme could be designed and constructed to remain operational and safe in times of flood. These are matters that could be addressed by the imposition of an appropriate planning condition. Renewable energy from the scheme would provide wider sustainability benefits to the community that would outweigh any flood risk. The proposed development complies with the Exception Test. I find no conflict with Policies CSTP27 and PMD15 concerning flood risk assessment and management.

53. There is local concern about the effects of construction vehicles on the local highway network, particularly with regard to the railway level crossing and nearby bends in High Road. However, there is no technical evidence to indicate that traffic from the proposed development would pose an unacceptable adverse effect on highway safety. The Highway Authority does not object to the proposal subject to the imposition of planning conditions.[43] I find no conflict with Policies PMD9 and PMD10 concerning the road network and transport impacts.

54. Noise from the proposed generation station could be controlled by a planning condition.[44] There is concern about glint and glare from the solar panels adversely impacting residential properties and aviation. The technical evidence does not support this view and indicates that glint and glare are matters that could be addressed by implementing an approved management plan.[45]

55. There is local concern about battery fires. However, there are no outstanding objections from Essex County Fire and Rescue Service.[46] I am satisfied that fire safety is a matter that could be reasonably addressed by implementing an up to date and approved Battery Safety Management Plan.

56. The agricultural land within the appeal site is classified as grade 3b. The proposal would not, therefore, utilise the best and most versatile agricultural land. Some agricultural activity is proposed to be continued on the land during the lifetime of the generating station by grazing between the panels. A grazing management plan could be required by imposition of a planning condition. On

[41] CD C16, ID4 and ID10.
[42] CD A9.
[43] CD B4.
[44] CD A10.
[45] CD A25.
[46] CD B3.

decommissioning of the generation station, the site would revert to agricultural use.[47]

57. The Thames Estuary and Marshes Special Protection Area (SPA) and Ramsar sites are located 3 km to the south of the appeal site. I have had regard to the submitted Habitats Regulations Assessment (HRA).[48] This found that, when applied to the project alone, a likely significant effect on the SPA and Ramsar sites cannot be ruled out. Both sites have interest features that are non-breeding birds and assemblages of waterbirds. The Ramsar site has interest features that are plant and invertebrate species. I have taken into account the consultation responses from Natural England, Essex Wildlife Trust and the Royal Society for the Protection of Birds.[49] Natural England has no objection to the amended proposal subject to a long-term ecological management plan secured by a suitably worded condition attached to any permission.

58. I am satisfied that the HRA provides sufficient information for me to undertake an Appropriate Assessment having regard to the interest features and conservation objectives for these sites.[50] The appeal scheme proposes the creation of waterbird mitigation land. The creation, management and monitoring of the waterbird mitigation land could be secured through an approved Ecological Management Plan. Subject to mitigation measures that could be secured by the imposition of appropriate planning conditions, I conclude that the proposed development, alone or in combination with other plans or projects, would not affect the achievement of the conservation objectives of the SPA and Ramsar sites, and would not adversely affect the integrity of these sites.

59. In addition to the matters dealt with elsewhere in this decision, third party written representations raised concerns about a number of other matters. These are summarised in CD C11A Appendix 4 and include; tracking panels are unreliable and are incompatible with sheep grazing, the development would be too close to homes, would result in an invasion of privacy from CCTV cameras, and have a negative impact on the mental health and well-being of local residents. The evidence adduced does not indicate, subject to the imposition of appropriate planning conditions, that these are matters that weigh against the proposal. I have taken into account all other matters raised in the written representations at the application and appeal stages.

Other considerations

60. TBC and the appellant set out in a joint statement their respective views about 'other considerations' for the purposes of undertaking the very special circumstances balance.[51] The 'considerations' listed in the joint statement are underlined in the following paragraphs.

61. Renewable energy generation and subsequent reduction in carbon emissions. The proposed generation station would supply up to 49.9 MW of electricity to the national grid. This would be the equivalent to the annual electricity needs of about 16,100 family homes in Thurrock. It is estimated that this would displace around 23,600 tonnes per annum of carbon dioxide. Paragraph 157 of

[47] CD A14 and SoCG paragraphs 8.31 and 8.32.
[48] CD A17, CD A23 and CD A24.
[49] CD B8, CD B13 and CD B14.
[50] CD C18.
[51] CD C15.

the NPPF states that the planning system should support the transition to a low carbon future in a changing climate, and support renewable and low carbon energy and associated infrastructure.

62. The associated battery storage facility would assist in balancing peak demand for electricity, providing more flexibility for the grid and the possibility of offsetting fossil fuel requirements at peak times. The co-location of a BESS would mean that the renewable energy generated could be used more effectively.[52] The scheme would be beneficial for energy security. It would help to deliver the Government's goals for greater energy independence. This adds to the weight to be given to the generation of renewable energy per se. The lack of alternative sites to take advantage of the available grid connection is a consideration that warrants some slight weight. But this is a consideration that is closely related to the overall benefits of the scheme arising from the renewable energy that would be generated.

63. The UK Government and TBC have both declared a climate emergency.[53] These declarations point to a need for the rapid delivery of renewable energy generation. By themselves such declarations do not increase the weight to be attributed to the renewable energy benefits of the proposed development. For a comparable scheme the carbon benefits would remain the same for a local authority that had not declared a climate emergency.

64. The appellant argues that utilising a solar tracking system with bi-facial panels would increase continuous electrical productivity by 20-25% when compared with fixed solar arrays, and that the use of best available technology should be given weight in its own right. But I am not convinced that this is additional weight. It would be in the commercial interests of the operator to fully use the secured grid connection capacity. Fixed panels would be a cheaper option, but it is unlikely that fixed panels occupying the same area proposed for solar panels in the appeal scheme would make effective use of the available grid connection.

65. In a transmission versus grid connection consideration additional weight is claimed for a connection directly into the National Grid rather than via the Distribution Network. While this might avoid delays in securing a connection agreement with the Distribution Network Operator, it seems to me that meeting national targets will require all available capacity within the electricity distribution network to be fully exploited, and that the circumstances that apply here should not be given additional weight.

66. Policy CSTP26 provides encouragement for opportunities to generate energy from non-fossil fuel and low-carbon sources, but adds that a proposal would be unacceptable where it produces a significant adverse impact that cannot be mitigated. The harm I have identified to the Green Belt from inappropriate development cannot be mitigated. This brings the proposal into some conflict with Policy CSTP26. The appeal scheme would not constitute Critical National Priority NSIP development for the purposes of applying EN-1.[54] However, EN-1 provides that the Secretary of State will take as the starting point for decision-making that such infrastructure is to be treated as if it has met any very

[52] The NPPG Paragraph 032 provides that storage can enable decarbonisation of the energy system through grid balancing, maximising usable output from intermittent low carbon generation, and avoiding the need for costly network upgrades and new generation capacity.
[53] CD E3.
[54] EN-1 paragraphs 4.2.4 and 4.2.5.

special circumstances test.[55] Given that the capacity of the appeal scheme falls just below the NSIP threshold, I believe that EN-1 is a material consideration, and that its underlying aims for energy development should be given more weight in this case than any conflict with Policy CSTP26.

67. The provisions of EN-1 and EN-3 do not apply a policy test to the appeal scheme. However, Section 2.10 of EN-3 provides that the Government is committed to sustained growth in solar capacity as a key part of its strategy for low-cost decarbonisation of the energy sector. It adds that solar also has an important role in delivering the Government's goals for greater energy independence and refers to *Powering Up Britain: Energy Security Plan*.[56] EN-3 cites the *British Energy Security Strategy* supporting solar that is 'co-located' with other functions, for example storage, to maximise the efficiency of land use.[57] I consider that the proposed generation station with the co-location of BESS gains support from the Government's underlying aims for solar development as expressed in EN-3. The proposal would make a cumulative contribution to meeting the target set out in the Climate Change Act 2008 [58] and gains support from the UK Government Solar Strategy 2014 [59], the Net Zero Strategy [60] and Energy White Paper [61].

68. Overall, I consider that the collective benefits from renewable energy generation with co-location of BESS and energy security advantages should be given substantial positive weight in the very special circumstances balance.

69. The Fobbing Reedbeds Local Wildlife Site (LWS) is located within the appeal site. The Vange Creek Marshes LWS borders the site on its eastern side and the Corringham/Fobbing Marsh LWS borders the site on its eastern and south-eastern sides. Subject to the imposition of appropriate planning conditions I am satisfied that the appeal scheme would not have an unacceptable adverse effect on the nature conservation interests of these or other sites of wildlife interest further afield. Turning to Biodiversity Net Gain (BNG) the proposed development includes provision of 5.8 ha of waterbird mitigation land, 2.3 ha for a farmland bird feeding area, along with grassland enhancement and carr scrub planting.

70. The scheme would result in a BNG on the appeal site of approximately 28% for habitats and 1,353% for hedgerows.[62] This could be achieved with implementation and enforcement of appropriate planning conditions. The scheme gains some support from Policies CSTP19 and PMD7, which encourage development to include measures that contribute positively to the overall biodiversity in the Borough and seek to achieve net gains where possible. I consider that the biodiversity benefits of the proposal should be given moderate weight in the very special circumstances balance.

71. Economic benefits including construction jobs, contribution to the local economy and rural diversification should be given slight/moderate weight. Paragraph 88 of the NPPF provides that planning decisions should enable the diversification of agricultural businesses. In assessing the weight to be given

[55] EN-1 paragraph 4.2.16.
[56] CD D19.
[57] CD D16.
[58] CD D6 and CD D7.
[59] CD D4.
[60] CD D15.
[61] CD D10
[62] SoCG paragraph 8.29.

to 'other considerations' for the balancing exercise that applies here, I consider that farm diversification would be largely a benefit to the local economy, and as such would not justify an allocation of separate weight in the planning balance. Nevertheless, to the extent that the scheme would contribute towards making British agriculture carbon neutral it should be awarded some positive weight.[63] But again, this is a consideration closely related to the overall benefits of the scheme arising from the renewable energy that would be generated and so could result in 'double counting' with the first 'consideration' in this section of my decision.

72. The appellant claims weight for green infrastructure enhancements that would include two green corridors through the proposed development. These enhancements, although beneficial, are intended to offset harmful impacts of the appeal scheme. They should not, in my view, be given much weight in a very special circumstances balancing exercise. The west/east corridor would incorporate a permissive path along a route that is currently used as an unofficial path. The proposed permissive path should attract no weight because it appears that the unofficial path was created because Footpath 199 is obstructed.

73. I am not convinced that soil regeneration should weigh positively in this balancing exercise. Leaving the soil undisturbed for 40 years would increase soil organic matter and benefit soil structure, but there is no evidence to indicate what effect removing solar panel foundations and other infrastructure on decommissioning would have on soil quality. Furthermore, suggested planning Condition 4 would require reinstatement of the land so that with aftercare it was of the same grade of agricultural quality as currently exists. Compliance with such a condition would not require enhancement of the soil. The proposal gains no support from Policy CSTP21, which recognises the importance of food security and ensures the protection, conservation and enhancement of agriculture, productive land and soil.

74. As an 'other consideration' to be weighed in the very special circumstances balance no weight should be given to the good design of the scheme, which I have found would result in significant harm to the character and appearance of the area.

Planning balance

75. In the planning balance that applies here the harm to the Green Belt attracts substantial weight. I consider that significant weight should be given to the harm that would result to the character and appearance of the area. Harm to the Church of St Michael attracts considerable importance and weight.[64] However, in my judgement, the overall minor harm to the heritage of the area I have identified should be given slight weight in the planning balance. Against this overall harm must be weighed the benefits of the proposed development. Chief amongst these is the significant contribution of the appeal scheme towards the generation of renewable energy and the reduction in greenhouse gas emissions, which warrants substantial weight. This, along with the weight to be given to the biodiversity and economic benefits of the appeal scheme would, in my judgement, clearly outweigh the harm I have identified.

[63] CD D21.
[64] CD I24.

Conditions

76. The appellant and TBC agreed suggested planning conditions in the event that the appeal succeeded, except for a requirement that the development be carried out in accordance with the recommendations and mitigation measures contained within the ES and schemes submitted with the application.[65] Such a condition would not meet the test for a reasonable planning condition because some of the recommendations and mitigation measures in the ES and submitted schemes do not specify with the necessary precision what would be required to comply with the condition.

77. In addition to the standard commencement condition, it would be necessary to define the permission and ensure that the development was carried out in accordance with the approved plans (Conditions 1 and 2). For the avoidance of doubt, it would be necessary to specify that the approval applied only to land within the site boundary edged red on Drawing 2033/D001.1 Revision v.k and within the administrative area of TBC, because some development is shown on the drawings outside the red line, and because the red line boundary extends into neighbouring Basildon.

78. This would be a temporary permission and reinstatement of the Green Belt site would be required after the use ceased in accordance with Policy PMD6 (Conditions 3 and 4). A separate Decommissioning Traffic Management Plan (DTMP) would be necessary as it would not be appropriate after 40 years to rely on the plan approved for construction traffic. A revised Construction Traffic Management Plan (CTMP) would need to be approved, and provision made for road surveys, in the interests of highway safety in accordance with Policy PMD1 (Conditions 5 and 7). Approval of a Construction Environmental Management Plan (CEMP) would be needed to safeguard the amenity of the area (Condition 6).

79. A Landscape and Ecological Management Plan (LEMP) would be necessary for landscape and biodiversity reasons in accordance with Policies PMD1, PMD2, PMD6 and PMD7. The July 2021 Landscape and Ecological Management Plan refers to a management programme for the site and funding arrangements, along with a monitoring programme.[66] For the avoidance of doubt it would be necessary to specify that these are matters that would need to be included in an approved LEMP (Condition 8).

80. An Ecological Management Plan requiring waterbird mitigation land would be necessary to mitigate any adverse impact on the integrity of the SPA and Ramsar sites. Given the importance of the Ecological Management Plan, no development or preliminary groundworks should commence prior to its approval, and it would need to be implemented in strict accordance with the approved details. The waterbird mitigation land would need to be created prior to the installation of any part of the proposed development. The tailpiece in the suggested planning condition, which would permit the Local Planning Authority to approve in writing deviations from the approved Ecological Management Plan, should not apply because of the possibility of unforeseen adverse impact affecting the integrity of the SPA and Ramsar sites (Condition 9).

[65] ID11.
[66] ID7 Sections 5 and 6.

81. Provision would need to be made for the remediation of any land contamination for health and safety reasons in accordance with Policy PMD1 (Condition 10). An archaeology condition in accordance with Policy PMD4 would deal adequately with local heritage considerations (Condition 11). Lighting would need to be controlled in the interests of the appearance of the area in accordance with Policies PMD1, PMD2 and PMD7 (Condition 12).

82. Implementation of an up to date Battery Safety Management Plan (BSMP) would be necessary for fire safety reasons in accordance with Policy PMD1 (Condition 13). This Policy would also apply to glint and glare, which would need to be controlled to safeguard the amenity of the area (Condition 14). For similar reasons, a noise condition would also be required (Condition 15). Securing continued agricultural use of the site by grazing would be necessary to accord with the scheme that was considered at the Inquiry (Condition 16).

83. Paragraph 8.28 of the SoCG states that planning conditions relating to managing flood risk and drainage should be included if the appeal was allowed. I concur. But no such condition was included in the suggested conditions. A planning condition would be necessary to give effect to the requirements of the Flood Risk Assessment and Drainage Strategy (Parts 1 and 2), prepared by RMA Environmental, dated July 2021 (R010) (Condition 17).[67]

84. It is the appellant's intention that the AC output of the energy generation station would be restricted to 49.9 MW through the installed combined inverter/transformer units. That would be consistent with policy for NSIPs. EN-3 states that the combined capacity of the installed inverters (measured in AC) should be used for the purposes of determining solar site capacity.[68] The capacity of the proposed inverters for the appeal scheme is unspecified. Although not suggested by the parties, I consider that it would be necessary to impose a condition requiring approval of details about the proposed inverters that included their capacity (Condition 18).

85. Some minor changes to the wording of suggested conditions would be necessary for clarity and enforceability reasons.

Conclusions

86. I find that the other considerations in this case clearly outweigh the harm that I have identified. Looking at the case as a whole, I consider that very special circumstances exist which justify the development.

87. Given my finding of very special circumstances, and subject to the imposition of appropriate planning conditions, I am satisfied that the impacts of the proposed development could be made acceptable, and that in accordance with NPPF paragraph 163 b) the scheme should be approved. The proposal complies with the NPPF taken as a whole.

88. The existence of very special circumstances for the purposes of applying the NPPF means that the proposal accords with Policy PMD6, which seeks to maintain, protect and enhance the open character of the Green Belt in Thurrock in accordance with the provisions of the NPPF. The appeal scheme would not be at odds with the part of Policy PMD6 which states that TBC will plan positively to enhance the beneficial use of the Green Belt by looking for

[67] CD A9A and B.
[68] EN-3 paragraph 2.48.7.

opportunities to, amongst other things, retain and enhance landscapes and visual amenity. Any conflict with Policies CSTP23, CSTP26 and PMD2 would not be sufficient to bring the proposal into contravention of the Thurrock Local Development Framework Core Strategy and Policies for Management of Development, when considered as a whole. I find no conflict with other relevant development plan policies and consider that the proposal accords with the development plan taken as a whole.

89. I have taken into account all other matters raised in evidence, but I have found nothing of sufficient weight to alter my conclusions. For the reasons given I conclude that the appeal should succeed.

J Woolcock

INSPECTOR

APPEARANCES

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DOCUMENTS SUBMITTED AT THE INQUIRY (ID)

ID	1	Opening Statement on behalf of the Appellant
ID	2	Opening Submissions on behalf of the Local Planning Authority
ID	3	Alfreton Appeal Ref:APP/M1005/W/22/3299953
ID	4	Further Note on Flood Risk Sequential Test
ID	5	C17 Technical Note Queries Response
ID	6	Walpole Marsh Appeal Ref:APP/A2525/W/22/3295140 and APP/V2635/W/22/3295141
ID	7	Landscape and Ecological Management Plan July 2021
ID	8	Viewpoint A
ID	9	Annotated Wider Landscaping Plan
ID	10	Offer Summary Document National Grid
ID	11	Suggested planning conditions dated 12 January 2024
ID	12	Closing submission on behalf of the Local Planning Authority
ID	13	Closing submission on behalf of the appellant

CORE DOCUMENTS (CD)

Reference		Documents and Drawings
A1	A	Thurrock Council Application Form, including Ownership Certificates
	B	Basildon Borough Council Application Form, including Ownership Certificates
A2	A	Covering Letter to Thurrock Council prepared by Enso Energy, dated 23rd September 2021
	B	Covering Letter to Basildon Borough Council prepared by Enso Energy, dated 23rd September 2021
A3	A	Planning Application Drawing Pack, prepared by Aardvark EM Limited and Cero (ROO2)
	Bi)	Site Location Plan 1 of 6, prepared by Aardvark EM Limited, dated 30th June (2033/D001.1 Rev v.i)
	Bii)	Site Location Plan 2 of 6, prepared by Aardvark EM Limited, dated 30th June (2033/D001.2 Rev v.i)
	Biii)	Site Location Plan 3 of 6, prepared by Aardvark EM Limited, dated 30th June (2033/D001.3 Rev v.i)
	Biv)	Site Location Plan 4 of 6, prepared by Aardvark EM Limited, dated 30th June (2033/D001.4 Rev v.i)
	Bv)	Site Location Plan 5 of 6, prepared by Aardvark EM Limited, dated 30th June (2033/D001.5 Rev v.i)
	Bvi)	Site Location Plan 6 of 6, prepared by Aardvark EM Limited, dated 30th June (2033/D001.6 Rev v.i)
	C	Proposed Site Plan, prepared by Enso Energy and Cero, dated 24th June 2021 (F02.0 Rev 15)
	D	Auxiliary Transformer, prepared by Cero, dated 17th March 2021 (FO10.0 Rev 01)
	E	Battery Container Elevations, prepared by Cero, dated 17th March 2021 (FO12.0 Re v01)
	F	Battery Fence and Gate Elevations, prepared by Cero, dated 4th June 2021 (FO14.0 Rev 01)
	G	Cable Trough, prepared by Cero, dated 4th June 2021 (FO15.0 Rev 01) – reference on plan FO15.0
	H	CCTV Elevations, prepared by Cero, dated 17th March 2021 (FO11.0 Rev 01)
	I	Control Room Elevations, Prepared by Cero, dated 17th March 2021 (FO9.0 Rev 01)
	J	Fence and gate elevations, prepared by Cero, dated 4th June 2021 (FO6.0 Rev 02)
	K	Internal Access Road Detail, prepared by Cero, dated 17th March 2021 (FO5.0 Rev 01)
	L	Inverter/Transformer Station, prepared by Cero, dated 17th March 2021 (FO4.0 Rev 01)
	M	PV Elevations Ballast, prepared by Cero, dated 22nd July 2021 (FO3.1 Rev 02)
	N	PV Elevations Pile, dated 22nd July 2021 (FO3.0 Rev 02)
	O	High Road Access Junction Arrangement, prepared TPA, dated 20th March 2020 (SK01 Rev C)
	P	Storage Container Elevations, prepared by Cero, dated 17th March 2021 (FO13.0 Rev 01)

	Q	Substation Elevations, prepared by Cero, dated 17th March 2021 (FO8.0 Rev 01)
	R	Weather Station, prepared by Cero, dated 17th March 2021 (FO7.0 Rev 01)
	S	Proposed Landscape and Ecological Enhancement Plan, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_100 Rev B)
	Ti)	Detailed Soft Landscaping Plan: Overview Plan, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_200 Rev B)
	Tii)	Detailed Soft Landscaping Plan 1 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_201 Rev B)
	Tiii)	Detailed Soft Landscaping Plan 2 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_202 Rev B)
	Tiv)	Detailed Soft Landscaping Plan 3 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_203 Rev B)
	Tv)	Detailed Soft Landscaping Plan 4 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_204 Rev B)
	Tvi)	Detailed Soft Landscaping Plan 5 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_205 Rev B)
	Tvii)	Detailed Soft Landscaping Plan 6 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_206 Rev B)
	Tviii)	Detailed Soft Landscaping Plan 7 of 7, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_207 Rev B)
	U	Planting Schedule, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_208 Rev B)
A4		Planning Statement, prepared by Aardvark EM Limited, dated July 2021 (ROO3)
A5		Design and Access Statement, prepared by Aardvark EM Limited, dated July 2021 (ROO4)
A6	A	Non-Technical Summary of the Environmental Statement (Part 1 of 2), prepared by Aardvark EM Limited, dated July 2021 (ROO6)
	B	Non-Technical Summary of the Environmental Statement (Part 2 of 2), prepared by Aardvark EM Limited, dated July 2021 (ROO6)
A7	A	Environment Statement- Contents Page (Part 1 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	B	Environment Statement- Chapter 1- Introduction (Part 2 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	C	Environment Statement- Chapter 2- Site and Its Environs (Part 3 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	D	Environment Statement- Chapter 3- Proposed Development (Part 4 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	E	Environment Statement- Chapter 4- Policy (Part 5 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	F	Environment Statement- Chapter 5- Assessment Methodology (Part 6 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	G	Environment Statement- Chapter 6- Landscape and Visual (Part 7 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	H	Environment Statement- Chapter 7- Biodiversity (Part 8 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)

	I	Environment Statement- Chapter 8- Cultural Heritage (Part 9 of 11), prepared by Aardvark EM Limited, dated July 2021 (R007)
	J	Environment Statement- Chapter 9- Other Considerations (Part 10 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
	K	Environment Statement- Chapter 10- Glossary (Part 11 of 11), prepared by Aardvark EM Limited, dated July 2021 (ROO7)
A8	A	Environment Statement-Appendix 1.1: TC Screening Opinion (Part 1 of 16), prepared by Thurrock Council, dated 28th July 2020 (ROO8)
	B	Environment Statement-Appendix 1.2: TC Screening Opinion (Part 2 of 16), prepared by Thurrock Council, dated 9th September 2020 (ROO8)
	C	Environment Statement-Appendix 1.3: EIA Team (Part 3 of 16), prepared by Aardvark EM Limited (ROO8)
	D	Environment Statement-Appendices 6.1 to 6.6: LVIA (Part 4 of 16), prepared by LDA Design Consulting Ltd, dated June 2021 (ROO8)
	E	Environment Statement-Appendix 6.7 LVIA- Figures 6.1 to 6.6 (Part 5 of 16), prepared by LDA Design Consulting Ltd, dated June 2021 (ROO8)
	F	Environment Statement-Appendix 6.7 LVIA- Figure 6.7.1- 6.7.10 (Part 6 of 16), prepared by LDA Design Consulting Ltd, dated June 2021 (ROO8)
	Gi)	Environment Statement-Appendix 6.7 LVIA- Part 1 Photomontages- Figure 6.8.1 (Part 7 of 16), prepared by LDA Design Consulting Ltd, dated June 2021 (ROO8)
	Gii)	Environment Statement-Appendix 6.7 LVIA- Part 2 Photomontages- Figure 6.8.2-6.8.3 (Part 8 of 16), prepared by LDA Design Consulting Ltd, dated June 2021 (ROO8)
	Giii)	Environment Statement-Appendix 6.7 LVIA- Part 3 Photomontages- Figure 6.8.4 (Part 9 of 16), prepared by LDA Design Consulting Ltd, dated June 2021 (ROO8)
	H	Environment Statement-Appendix 7.1 Findings of the Ecology Surveys (Part 10 of 16), BSG Ecology, June 2021 (ROO8)
	I	Environment Statement-Appendix 7.2 Assessment of Intervisibility (Part 11 of 16), BSG Ecology, June 2021 (ROO8)
	J	Environment Statement-Appendix 7.3 BNG Report (Part 12 of 16), BSG Ecology, June 2021 (ROO8)
	Ki)	Environment Statement- Heritage Technical Appendix 8.1 (Part 13 of 16) prepared by Headland Archaeology, dated August 2020 (ROO8)
	Kii)	Environment Statement- Heritage Technical Appendix 8.2 (Part 14 of 16), prepared by Wessex Archaeology, dated February 2021 (ROO8)
	Kiii)	Environment Statement- Heritage Technical Appendix 8.2 (Part 15 of 16), prepared by Wessex Archaeology, dated February 2021 (ROO8)
	Kiv)	Environment Statement- Heritage Technical Appendix 8.2 (Part 16 of 16), prepared by Wessex Archaeology, dated February 2021 (ROO8)
A9	A	Flood Risk Assessment and Drainage Strategy (Part 1 of 2), prepared by RMA Environmental, dated July 2021 (RO10)
	B	Flood Risk Assessment and Drainage Strategy (Part 2 of 2), prepared by RMA Environmental, dated July 2021 (RO10) March 2021
A10		Noise Impact Assessment, prepared by Inacoustic, dated July 2021 (RO11)
A11		Glint and Glare Assessment, prepared by Pager Power, dated June 2021 (RO12)

A12		Statement of Community Involvement, prepared by Alpaca Communications, dated July 2021 (RO13)
A13		Ground Investigation Report, prepared by Jomas Associates, dated July 2021 (RO14)
A14		Agricultural Land Classification, prepared by Amet Property, dated July 2021 (RO15)
Thurrock Council Re-submission 1st October 2021		
A15	A	Site Location Plan 1 of 6, prepared by Aardvark EM Limited, dated 30th September 2021 (2033/D001.1 Rev v.k)
	B	Site Location Plan 2 of 6, prepared by Aardvark EM Limited, dated 30th September 2021 (2033/D001.2 Rev v.k)
	C	Site Location Plan 3 of 6, prepared by Aardvark EM Limited, dated 30th September 2021 (2033/D001.3 Rev v.k)
	D	Site Location Plan 4 of 6, prepared by Aardvark EM Limited, dated 30th September 2021 (2033/D001.4 Rev v.k)
	E	Site Location Plan 5 of 6, prepared by Aardvark EM Limited, dated 30th September 2021 (2033/D001.5 Rev v.j)
	F	Site Location Plan 6 of 6, prepared by Aardvark EM Limited, dated 30th September 2021 (2033/D001.6 Rev v.j)
Thurrock Council Re-submission 11th October 2021		
A16		Construction Traffic Management Plan, prepared by TPA, dated June 2021 (Ref R005)
Thurrock Council Re-submission 16th March 2022		
A17		Ecology Report to Inform Appropriate Assessment, prepared by BSG, dated March 2022 (P21-948)
Thurrock Council Re-submission 5th December 2022		
A18		Technical Note on changes to BNG Calculations, prepared by BSG, dated December 2022
A19		Landscape Amendments Briefing Note, prepared by LDA Design, dated December 2022
Thurrock Council Re-submission 5th December 2022		
A20		Landscape and Ecology Enhancement Plan, prepared by LDA Design Consulting Ltd, dated July 2021 (Ref 7428_100 Rev B)
A21		Proposed Site Plan Showing Reduced Site Areas, prepared by Enso Energy and Cero, dated 13th October 2022 (F02.0 Rev 19)
A22		Proposed Site Plan, prepared by Enso Energy and Cero, dated 14th October 2022 (F02.0 Rev 19)
A23		Non-breeding Waterbird Migration Technical Note, prepared by BSG, dated August 2022
Thurrock Council Submitted 22nd February 2023		
A24		Habitat Regulation Assessment, prepared by Thurrock Council, dated February 2023
Thurrock Council Re-submission 10th May 2023		
A25		Glint and Glare Assessment with Site Survey, Mitigation and Management Plan, prepared by Page Power, dated May 2023
Committee Reports		
A26		Thurrock Council Committee Report 16th March 2023

A27		Thurrock Council Committee Report Updates 8th June 2023
A28		Basildon Council Committee Report 5th September 2023
Committee Meeting Minutes		
A29		Thurrock Council Committee Minutes 16th March 2023
A30		Thurrock Council Committee Minutes 8th June 2023
A31		Basildon Council Committee Minutes 5th July 2023
A32		Basildon Council Committee Minutes 7th September 2023
Decision Notice		
A33		Thurrock Council Decision Notice, dated 12TH June 2023
Acknowledgement Letter		
A34		Basildon Council Acknowledgement Letter 22nd October 2021
Thurrock Council Application Statutory Consultee Responses		
B1		Environment Agency, dated 2nd November 2021
B2		Essex Police, dated 10th November 2021
B3	A	Fire Brigade, dated 12th May 2023
	B	Fire Brigade, dated 18th May 2023
	C	Fire Brigade, email dated 30th May 2023
	D	Fire Brigade, dated 19th April 2023
B4	A	Highways Authority, dated 14th October 2021
	B	Highways Authority, dated 1st November 2021
B5		Historic England, dated 6th December 2021
B6		Historic Buildings, dated 21st December 2021
B7	A	Landscape, Arboriculture and Ecology, dated 10th January 2022
B7	B	Landscape, Arboriculture and Ecology, dated 8th February 2023
B8		Natural England, dated 26th January 2023
B9		Public Rights of Way, dated 2nd November 2021
B10		Specialist Archaeological Advice, dated 29th October 2021
B11		Cadent Gas Limited, dated 14th October 2021
B12		Environment Health, dated 22nd March 2022
B13		Essex Wildlife Trust, email dated 18th January 2023
B14		RSPB, dated 25th January 2023
B15		Rochford District Council, dated 10th March 2023
Planning Appeal		
Appeal Administration		
C1		Thurrock Council Pre-Notification Form dated 11th July 2023
C2		Basildon Borough Council Decision Notice dated 8th September 2023
C3		Submitted Appeal Forms, dated 31st August 2023
C4		Thurrock Council Appeal Questionnaire, dated 26th September 2023
C5	A	Neighbour Notification Letter, dated 22nd September 2023
	B	Neighbour Notification List, dated 20th September 2023
	C	Newspaper advertisement, dated 14th October 2023

Statements of Case		
C8		Statement of Case, prepared by Pegasus Group, dated August 2023
C9		Statement of Case, prepared by Thurrock Council, dated 23rd October 2023
Statement of Common Ground		
C10		Agreed Statement of Common Ground, dated 14th November 2023
Proofs of Evidence		
C11	A	Planning Policy Considerations and the Planning Balance, by Paul Burrell
	B	Landscape and Visual and Green Belt Purposes, by Ben Croot
	C	Heritage Considerations, by Gail Stoten
	D	Planning Policy Considerations and the Planning Balance, Chris Whitehouse
	E	Planning PoE: Erratum, by Christopher Whitehouse
Rebuttals		
C12	A	Planning Rebuttal Evidence, by Paul Burrell
	B	Rebuttal Landscape Proof of Evidence, by Ben Croot
	C	Heritage rebuttal, by Gail Stoten
Conditions		
C13		Draft Planning Conditions
Position Statements		
C14		Planning Policy Joint Position Statement between the Appellant and Thurrock Council
C15		Joint Position Statement between the Appellant and Thurrock Council on 'other considerations' for the purposes of NPPF Paragraph 153 (Green Belt Very Special Circumstances balance)
C16		Position Statement – Sequential and Exception Tests, prepared by the Appellant
C17		Fobbing Solar Farm – Technical Note, prepared by the Appellant
C18		Habitat Regulations Assessment – Thames Estuary RAMSAR/SPA between the Appellant and Thurrock Council
Statement of Common Ground - Addendum		
C19		Agreed Addendum to the Statement of Common Ground, dated January 2024
National Planning Policy, Guidance and Legislation		
D1		National Planning Practice Guide *(Electronic Version only)*
D2	A	Overarching National Policy Statement for Energy (EN-1) (July 2011)
	B	Overarching National Policy Statement for Energy (EN-1) (November 2023)
D3	A	National Policy Statement for Renewable Energy Infrastructure (EN-3) (July 2011)
	B	National Policy Statement for Renewable Energy Infrastructure (EN-3) (November 2023)
D4		UK Government Solar Strategy 2014
D5		Written Ministerial Statement on Solar Energy: protecting the local and global environment made on 25th March 2015
D6		Climate Change Act 2008

D7	Climate Change Act (2050 target amendment) Order 2019
D8	Clean Growth Strategy, published by the Department for Business, Energy and Industrial Strategy (BEIS) in October 2017
D9	UK Parliament declaration of an Environmental and Climate Change Emergency in May 2019
D10	Energy White Paper: Powering our Net Zero Future published in December 2020
D11	UK Government press release of acceleration of carbon reduction to 2035, dated April 2021
D12	The latest version of the 'Digest of United Kingdom Energy Statistics', July 2023
D13	UK Energy Statistics Press Release published by the Department for Business, Energy & Industrial Strategy, June 2020.
D14	'Achieving Net Zero' published by the National Audit Office in December 2020
D15	Net Zero Strategy: Build Back Greener, dated October 2021.
D16	British Energy Security Strategy, updated 7th April 2022.
D17	2021 UK Greenhouse Gas Emissions, Provisional Figures, published by Department for Business, Energy and Industrial Strategy, dated 31st March 2022.
D18	Subnational Electricity Consumption, Great Britain, 2005-2021, published by the Department for Business, Energy & Industrial Strategy, dated 22nd December 2022
D19	Powering Up Britain – Energy Security Plan (March 2023)
D20	UK Battery Strategy, published by the Department for Business & Trade (November 2023)
D21	Achieving Net Zero – Farming's 2040 goal, published by the NFU, dated September 2019
D22	FES in Five, dated July 2023
Local Planning Policy, Guidance and Documents	
E1	Saved policies of the Thurrock Borough Local Plan 2012 (adopted September 1997)
E2	Thurrock Local Development Framework Core Strategy and Policies for Management of Development (as amended) adopted January 2015
E3	Thurrock Council Climate Emergency (October 2019)
Landscape	
F1	Guidelines for Landscape and Visual Impact Assessment 3rd Edition
F2	National Character Area Profiles Greater Thames Estuary (NCA 81), dated 2014
F3	Thurrock Greengrid Strategy 2006- 2011 (2006)
F4	Thurrock Green Infrastructure Framework Plan (2007)
F5	Thurrock Landscape Capacity Study (2005)
F6	Essex Landscape Character Assessment (2003)
F7	Thurrock Integrated Landscape Character Assessment – Part 2: Landscape Character Profiles Oct 2018 (LUC)
F8	Landscape Institute Technical Guidance Note 02/21 - Assessing landscape value outside of national designations
F9	Thurrock Integrated Landscape Character Assessment – Part 1: Introductory Chapters and Appendices Oct 2018 (LUC)
F10	The Essex Historic Landscape Characterisation Project (February 2011)

F11		Figure 1: Historic Landscape Characterisation – drawing no: P23-1652
F12		The Historic Landscape Characterisation Report for Essex, Volume 4 – Appendices (February 2011)
Green Belt		
G1		Thurrock Strategy Green Belt Assessment Stages 1a and 1b, January 2019 (PBA)
G2		Thurrock Strategy Green Belt Assessment Stages 1a and 1b, January 2019 (PBA) Appendices E and F
Heritage		
H1		Commercial Renewable Energy Development and the Historic Environment Historic England Advice Note 15, dated February 2021
H2		Historic Environment Good Practice Advice in Planning Note 2: Managing Significance in Decision Taking in the Historic Environment, dated July 2015
H3		Historic Environment Good Practice Advice in Planning Note 3: The Setting of Heritage Assets (Second Edition), dated December 2017
H4		Conservation Principles: Polices and Guidance for the Sustainable Management of the Historic Environment, dated April 2008
H5		Statements of Heritage Significance, Analysing Significance in Heritage Assets, Historic England Advice Note 12, dated October 2019.
H6		Fobbing Conservation Area Appraisal, Thurrock Council, March 2007
Relevant Decisions, Legal Judgements and Officer Reports		
I1		Catesby Estates ltd v. Steer, EWCA Civ 1697, dated 18th July 2018
I2		EWHC 2847, R DCLG and Nuon UK Ltd v. Bedford Borough Council, dated 26th July 2013
I3		Application for the Cleve Hill Solar Park Order ("Cleeve Hill") reference EN010085
I4		Halloughton, Nottinghamshire APP/B3030/W/21/3279533 ("Halloughton"), solar farm and battery storage allowed on 18th February 2022
I5		Langford, Devon APP/Y/1138/W/22/3293104 ("Langford") solar farm and battery storage allowed by Secretary of State on 5th December 2022
I6		Chelmsford, Essex APP/W1525/W/22/3300222 ("Chelmsford"), solar farm and battery storage, allowed on 6th February 2023
I7		Bramley, Hampshire APP/H1705/W/22/3304561 ("Bramley"), solar & battery storage, allowed on 13th February 2023
I8		New Works Lane, Telford APP/C3240/W/22/3293667 ("Telford"), solar farm, allowed by Secretary of State on 27th March 2023
I9		Wellington, Telford APP/C3240/W/22/3308481 ("Wellington"), solar farm, allowed on 9th May 2023
I10		Scruton, Yorkshire APP/G2713/W/23/3315877 ("Scruton"), solar farm, allowed on 27th June 2023
I11	A	Larks Green, Oxford ("Larks Green"), solar farm, approved by South Gloucestershire Council on 5th January 2021 (Decision Notice)
	B	Larks Green, Oxford ("Larks Green"), solar farm, approved by South Gloucestershire Council on 4th December 2020 (Officer Report)
I12	A	Cowley Oxford ("Cowley") solar farm, approved by South Oxfordshire District Council on 11th January 2022 (Decision Notice)
	B	Cowley Oxford ("Cowley") solar farm, approved by South Oxfordshire District Council on 15th December 2021 (Officer's Report)

I13		Land at Bishop's Itchington, Stratford on Avon AP/J3720/W/22/3292589 ("Bishop's Itchington"), allowed on 1st December 2022
I14		Land at Halse Road, south of Greatworth, Northamptonshire APP/W2845/W/23/3315771 ("Copse Lodge"), solar farm, allowed on 14th November 2023
I15		R. (on the application of William Corbett) v The Cornwall Council [2020] EWCA Civ 508
I16		Land at Crays Hall Farm, Church Lane, Crays Hill, Essex APP/V1505/W/23/3318171 ("Crays Hall"), solar farm, allowed on 30th August 2023
I17		Rawfield Lane, Fairburn, Selby APP/N2739/W/22/3300623 ("Rawfield Lane"), battery storage, allowed on 1st December 2022
I18		Land to the west of the A46, Sherbourne, Warwick APP/T3725/W/23/3317247 ("Sherbourne"), solar farm, allowed on 25th September 2023
I19		Land West of Wolverhampton West Primary Substation, South Staffordshire Railway Walk, Wolverhampton APP/C3430/W/22/3292837, ("Wolverhampton Subtation"), battery storage, allowed on 16th August 2022
I20	A	Harrow Lane, Bulphan, Essex ("Harrow Lane"), approved by Thurrock Council on 21st October 2021 (Officer's Report)
	B	Harrow Lane, Bulphan, Essex ("Harrow Lane"), approved by Thurrock Council on 21st October 2021 (Decision Notice)
I21		Redhill Aerodrome Ltd v Secretary of State for Communities and Local Government and others [2014] EWCA Civ 1386
I22		Turner v. SSCLG [2016] EWCA (CIV 466)
I23		Samuel Smith R (on the application of Samuel Smith Old Brewery [Tadcaster] and others (Respondents) V North Yorkshire County Council (Appellant) [2020} UKSC3)
I24		Barnwell Manor Wind Energy Limited Vs East Northampton District Council & Ors [2014] EWCA Civ 137
I25		Wychavon DC v Secretary of State for Communities and Local Government and Butler [2008] EWCA Civ 692
I26		Palmer vs Herefordshire Council & ANR [2016] EWCA Civ 1061, dated 4th November 2016
I27		Mordue vs Secretary of State for Communities and Local Government and South Northamptonshire Council [2015] EWCA Civ 1243, dated 3rd December 2015
I28		Bedford Borough Council vs Secretary of State for Communities and Local Government and Nuon UK Ltd [2013] EWHC 2847 (Admin), dated 26th July 2013
I29		Forge Field Society vs Swindon Borough Council [2014] EWHC 1895 (Admin), dated 12th June 2014
I30		Stroud District Council vs Secretary of State for Communities and Local Government & Gladman Developments Limited [2015] EWHC 488 (Admin), dated 6th February 2015

SCHEDULE OF CONDITIONS (1-18)

1) The development hereby permitted shall begin not later than three years from the date of this decision.

2) The development hereby permitted shall be carried out in accordance with the following approved plans within the site boundary edged red on Drawing 2033/D001.1 Revision v.k and within the administrative area of Thurrock Borough Council:

2033/D001.1 Revision v.k	Site Location Plan 1 of 6
2033/D001.2 Revision v.k	Site Location Plan 2 of 6
2033/D001.3 Revision v.k	Site Location Plan 3 of 6
2033/D001.4 Revision v.k	Site Location Plan 4 of 6
2033/D001.5 Revision v.j	Site Location Plan 5 of 6
2033/D001.6 Revision v.j	Site Location Plan 6 of 6
SK01 Revision C	Access Junction Arrangement
FO3.0 REV.02	PV Elevations
FO3.1 REV.02	PV Elevations Ballast Foundation
FO4.0 REV.01	Inverter/Transformer Stations
FO5.0 REV.01	Internal Access Road Detail
FO6.0 REV.02	Fence and Gate Elevations
FO7.0 REV.01	Weather Station Detail
FO8.0 REV.01	Substation Elevations
FO9.0 REV.01	Control Room Elevations
FO10.0 REV.01	Auxiliary Transformer
FO11.0 REV.01	CCTV Elevations
FO12.0 REV.01	Battery Container Elevations 40ft
FO13.0 REV.01	Storage Container Elevations 40ft
FO14.0 REV.01	Battery Fence and Gate Elevations
FO15.0 REV.01	Cable Trough
7428_100 REV E	Landscape and Ecology Enhancement Plan
FO2.0 Rev 19	Proposed Site Plan

3) Planning permission is hereby granted for a temporary period of 40 years from the first commercial export of energy from the development hereby permitted. No later than one month following the first commercial export of energy the operator shall supply written notice to the Local Planning Authority of this event. On the 40th anniversary of the first commercial export of energy the development hereby permitted shall cease. The site shall thereafter be decommissioned in accordance with the Decommissioning Method Statement approved pursuant to Condition 4.

4) The development hereby permitted shall be removed from the site if the generation station is no longer in use or after a period of 40 years from the first commercial export of energy, whichever occurs earlier. No later than six months before the end of the 40-year period from the first commercial export of energy, or within six months of the generation

station being no longer in use, a Decommissioning Method Statement (DMS) for the decommissioning and site restoration, including a timetable for its implementation, shall be submitted for the written approval of the Local Planning Authority. The DMS shall make provision for the removal of the solar panels and associated works approved under this permission, and for the reinstatement of the land within the site so that with aftercare it is of the same grade of agricultural quality as when this permission was granted. The DMS shall include a Decommissioning Traffic Management Plan (DTMP). The DTMP shall include the number of HGV movements, routing of decommissioning vehicles and the timing of HGVs accessing the site. The DMS, as approved, shall be implemented in accordance with the approved details.

5) No construction works shall commence until a revised Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the Local Planning Authority. The revised CTMP shall include the number of HGV movements, routing of construction vehicles and the timing of HGVs accessing the site. Construction works shall only take place in accordance with the approved CTMP.

6) No construction works shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The CEMP shall contain or address the following matters:
   a) Details about the construction of any access or temporary access, and details of temporary parking requirements;
   b) Location and size of on-site compounds including the design layout of any proposed temporary artificial lighting systems;
   c) Details of any temporary hardstandings;
   d) Details of temporary hoarding;
   e) Contact details for site managers including information about community liaison including a method for handling and monitoring complaints;
   f) Wheel washing facilities;
   g) Days and hours of construction activities; and
   h) Detail outlined in the "Technical Note following consultation with Natural England" dated 19 August 2022 detailing how the timing/phasing of construction of the generation station will minimise disturbance to birds.

   Works on site shall only take place in accordance with the approved CEMP.

7) No construction works shall commence until a Road Condition Survey Plan (RCSP) has been submitted to and approved in writing by the Local Planning Authority. The RCSP shall survey the roads leading to the site before development commences and shall survey the roads within one month following the completion of construction works. Any degradation of the existing road surfaces directly due to the impact of construction of the development shall be remediated in accordance with remediation details to be included in the RCSP within three months following the completion of the construction works.

8) Prior to the commencement of development, a Landscape and Ecological Management Plan (LEMP) in accordance with the LEMP dated July 2021 (Ref: R009) shall be submitted to and approved in writing by the Local

Planning Authority. The submitted LEMP shall be based on the Landscape and Ecology Enhancement Plan (drawing ref: 7428_100 Rev E, dated June 2021) and shall include a management programme and funding arrangements for the site, along with a monitoring programme. The development shall be carried out in accordance with the approved details. Any trees or plants, which within a period of five years from the completion of the development dies, are removed or become seriously damaged or diseased, shall be replaced in the next planting season with others of a similar size or species unless the Local Planning Authority approves alternatives in writing.

9) No development or preliminary groundworks shall commence until an Ecological Management Plan setting out the details of the creation, ongoing management and monitoring of the "waterbird mitigation land", which reflects the detail outlined in the "Technical Note following consultation with Natural England", dated 19 August 2022, as shown on Drawing No. 7428_100 Rev E, has been submitted to and approved in writing by the Local Planning Authority. The waterbird mitigation land shall be created prior to the installation of any part of the development hereby permitted. The waterbird mitigation land shall be created, and thereafter retained, managed and monitored, in strict accordance with the approved Ecological Management Plan.

10) In the event that contamination is found at any time when carrying out the approved development, that was not previously identified, it must be reported in writing immediately to the Local Planning Authority. Work on site must stop and an investigation and risk assessment must be undertaken and where remediation is necessary a remediation scheme, including a timetable for its implementation, must be submitted to and approved in writing by the Local Planning Authority. Remediation shall be carried out in accordance with the approved details. Following completion of measures identified in the approved remediation scheme a verification report shall be submitted to and approved in writing by the Local Planning Authority before works can recommence.

11) No development or preliminary groundworks shall commence until a programme of archaeological investigations has been secured and undertaken in accordance with a Written Scheme of Investigation which has been submitted to and approved in writing by the Local Planning Authority. A mitigation strategy detailing the excavation/preservation strategy for any archaeological deposits shall be submitted to and approved in writing by the Local Planning Authority following the completion of this work. No development or preliminary groundworks can commence on those areas containing archaeological deposits until the completion of fieldwork, as detailed in the approved mitigation strategy. A post excavation assessment shall be submitted within six months of the completion of the fieldwork, unless otherwise approved in advance with the Local Planning Authority in writing. This shall include completion of post excavation analysis, preparation of a full site archive and report ready for deposition at the local museum, and submission of a publication report.

12) No artificial external lighting or other security measures shall be installed until a lighting and security scheme has been submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for

no permanent security lighting within the site, and that emergency lighting shall be manually operated. It shall include details about the type, quantity, height, intensity, position and direction of lighting, and usage during construction and operational phases. The lighting and security measures shall be implemented as approved and shall be retained at all times thereafter. No further lighting shall be installed without first having obtained planning permission from the Local Planning Authority.

13) Development of the battery compound and installation of the battery-based electricity storage system shall not commence until a Battery Safety Management Plan (BSMP) has been submitted to and approved in writing by the Local Planning Authority. The BSMP shall demonstrate how the operator has consulted with the Health and Safety Executive and the Fire and Rescue Service in prescribing and implementing the measures set out in the BSMP, which shall facilitate safety during the construction, operation and decommissioning of the battery storage facility, including the transport of new, used and replacement battery cells both to and from the development hereby permitted. The BSMP shall be implemented as approved. Thereafter, an updated BSMP, incorporating best practice guidance, policy and/or regulation at that time, shall be submitted to the Local Planning Authority for written approval every five years throughout the lifetime of the development. The most up to date approved BSMP shall be fully implemented at all times.

14) Development on site shall only take place in accordance with the Glint and Glare Assessment (Ref: R012 dated May 2023) and in accordance with the Glint and Glare Management Plan included in Chapter 8.

15) The cumulative rating sound level of the operational plant and equipment hereby permitted as part of this development shall have an operational noise level no greater than the existing background sound level during the operation of the scheme at the closest noise-sensitive receptors to the site as assessed in the Noise Impact Assessment (Ref: R011 dated July 2021).

16) No development shall take place until a Solar Farm Grazing Management Plan (SFGMP) has been submitted to and approved in writing by the Local Planning Authority. The scheme shall describe the methods by which grazing will be maintained throughout the lifetime of the development. The development shall be carried out in accordance with the approved SFGMP.

17) Development on site shall only take place in accordance with the Flood Risk Assessment and Drainage Strategy (Parts 1 and 2) prepared by RMA Environmental (Ref: R010 dated July 2021).

18) No development shall take place until details of the inverters, including their capacity, have been submitted to and approved in writing by the Local Planning Authority. The inverters shall be implemented as approved and shall be retained at all times thereafter.