



## Department for Communities and Local Government

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Our Ref: APP/P2365/W/15/3011997

21 January 2016

Dear Madam

### **TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78**

#### **APPEAL BY GREEN SWITCH DEVELOPMENTS:**

**TAWDSIDE FARM, 32 DEANS LANE, LATHOM, ORMSKIRK, LANCASHIRE, L40 4BL**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Richard McCoy BSc MSc DipTP MRTPI IHBC who held a site visit on 9 September 2015 in relation to your clients' appeal against the refusal of West Lancashire Borough Council to grant planning permission for the construction of a solar park, to include the installation of solar panels to generate electricity, with substations, cabins, fencing and other associated works in accordance with application ref: 2014/0791/FUL dated 22 July 2014, at Tawdside Farm, Lathom, Ormskirk, Lancashire, L40 4BL.
2. The appeal was recovered for the Secretary of State's determination on 5 August 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the proposal is significant development in the Green Belt.

#### **Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's recommendation, dismisses the appeal and refuses planning permission. A copy of the Inspector's report (IR) is enclosed. All references to paragraph numbers, unless otherwise stated, are to that report.

#### **Policy considerations**

4. In deciding this appeal, 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. In this case, the development plan comprises the West Lancashire

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Local Plan: 2012-2027 (LP), adopted in October 2013. The Secretary of State considers that relevant development plan policies include those set out in IR8.

5. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* ('the Framework') and the associated Planning Practice Guidance ('the Guidance'); the Written Ministerial Statement "Planning Update March 2015" which, amongst other matters, concerns solar energy and the protection of the local and global environment and the Habitats Regulations 2010, requiring the applicant to consider the need to prepare a Habitats Regulation Assessment.

### **Main issues**

6. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out in IR196.

### Green Belt policy

7. The Secretary of State agrees with the Inspector that due weight should be given to the LP Policy GN1 which is essentially consistent with the Framework. He notes that there is no dispute between the parties that the proposal represents inappropriate development in the Green Belt and that this would be, by definition, harmful to the Green Belt (IR197). Overall, for the reasons in IR198, the Secretary of State agrees with the Inspector that the proposal is in conflict with national policy as it relates to the Green Belt, and would therefore cause definitional harm, additional harm to openness and harm to one of the purposes of designation (safeguarding the countryside from encroachment) (IR198). He agrees with the Inspector that this weighs heavily against the proposal (IR199). He has therefore gone on to consider whether there are any material considerations which would justify a decision other than in accordance with the development plan and the Framework.

### Effect on the landscape and visual amenity of the area

8. For the reasons set out in IR200-207 the Secretary of State agrees with the Inspector that the proposal would represent a major incursion of built form into the countryside (IR204) and have a harmful effect on the local landscape character (IR205). Accordingly, he agrees that the proposal would result in significant visual harm when viewed from local vantage points (IR208).

### Impact on Best and Most Versatile Agricultural land (BMV)

9. The planning application was refused permission partly on the grounds that the applicant had failed to justify the loss of 39 hectares of BMV agricultural land, but it is now accepted that 67% of the site is of Grade 3b agricultural land, which is below BMV quality (IR209).
10. However, the Written Ministerial Statement of 25 March on solar and agricultural land said that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence, and Secretary of State notes that the Inspector did not have sufficient information to assess if alternative, non-agricultural sites in the wider Lancashire / North West England region would be suitable for a development of the size proposed (IR212 and

236). Whilst the Secretary of State acknowledges that the proposal would minimise the use of BMV land on the appeal site, it would still necessitate the use of about 13 hectares of Grade 1 agricultural land. He considers that the loss of so substantial an area of Grade 1 BMV, other than for sheep grazing, weighs against the proposal. In reaching this conclusion, the Secretary of State takes the view that 25 years is a considerable period of time and the reversibility of the proposal is not a matter he has taken into account in his consideration of whether the scheme should go ahead.

#### Impact on protected species and habitats

11. The proposal site is in close proximity to sites of international and national designation (including Natura 2000 sites such as Ramsar, Special Protection Area, Special Area of Conservation, Sites of Scientific Special Interest), and according to the Merseyside Environmental Advisory Service the appeal site may be used for feeding by Pink-footed geese and Whooper swans (IR219). The Framework and LP Policy EN2 seek to protect biodiversity by resisting development which would destroy or adversely affect wildlife habitats. The Inspector notes concerns raised by Natural England regarding the adequacy and shortcomings of the appellant's Wintering Bird Survey (WBS) and Habitats Regulation Assessment (IR220). The Inspector considers that these shortcomings have not been fully addressed and that the WBS does not provide sufficient information to enable a competent authority to undertake an assessment of the likely significant effects under the Habitats Regulations. Accordingly, the Inspector is unable to conclude that the proposal would be unlikely to have a significant effect (IR226).
12. Overall, for the reasons in IR 223-227 the Secretary of State as competent authority in this case agrees with the Inspector that the proposal is not compliant with the Habitats Regulations and conflicts with LP Policy EN2 (IR227).

#### Benefit arising from the provision of renewable energy

13. The proposal would have an installed capacity of 15.9MW, which is estimated to produce sufficient electricity to power 4,800 homes for 25 years, equating to a reduction of approximately 8,000 tonnes of CO2 emissions per year. Related to this, the proposal would assist with meeting the UK Government's target for 2020 of at least 15% of electricity to be generated by renewable sources. The Secretary of State agrees with the Inspector that the provision of renewable energy attracts significant weight in favour of the proposal (IR231).

#### Other matters

14. The Secretary of State agrees with the Inspector's assessment on the matters raised at IR228-229. For the reasons in IR 233-239, the Secretary of State agrees with the Inspector that: the temporary nature of the proposal for 25 years carries limited weight in favour of the proposal (IR 233); farm diversification adds moderate weight in favour (IR234); the intention that sheep would graze between and beneath the solar arrays carries limited weight (IR235); deliverability benefits with the scheme being capable of being installed in 12-16 weeks carry limited weight (IR237); biodiversity benefits carry limited weight (IR 238) and the interest of United Utilities Water in utilising the generated electricity (IR239) carries moderate weight.

## **Conditions**

15. The Secretary of State has considered the proposed conditions, as set out in Annex to the IR, and the Inspector's comments on them at IR242-245. He is satisfied that, subject to the changes proposed in IR 245, these conditions are reasonable and necessary and would meet the tests in paragraph 206 of the Framework and the Guidance. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing the appeal.

## **Planning balance and overall conclusion**

16. Although time limited to a period of 25 years, the proposal is nevertheless inappropriate development in the Green Belt. In addition, the reduction in openness arising from the proposal, along with the failure to safeguard the countryside from encroachment, would also be harmful to the Green Belt. The Secretary of State places substantial weight on the harm to the Green Belt.

17. The proposal would result in moderate harm to landscape character and significant harm in terms of its visual impact. Although this harm would be temporary and reversible, it would pertain for 25 years. The Secretary of State regards this as a considerable time period and he places significant weight on the harm. He also places moderate weight on the loss of 13 ha of BMV.

18. The proposal would potentially have an adverse impact on protected species and habitats and would fail to comply with LP Policy EN2 and the requirements of the Habitats Regulations. The Secretary of State places substantial weight on this non-compliance.

19. In favour of the proposal, the Secretary of State places significant weight on the renewable energy benefits of the proposal. The various benefits outlined at paragraph 14 above also lend weight in favour.

20. The Framework states that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Overall, the Secretary of State considers that the factors in favour of the proposal do not clearly outweigh the harm to the Green Belt and other harm identified. Accordingly, he concludes that very special circumstances necessary to justify the development do not exist.

## **Formal decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a solar park, to include the installation of solar panels to generate electricity, with substations, cabins, fencing and other associated works in accordance with application ref: 2014/0791/FUL dated 22 July 2014, at Tawdside Farm, Lathom, Ormskirk, Lancashire, L40 4BL.

### **Right to challenge the decision**

22. 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 six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.

23. A copy of this letter has been sent to the Council.

Yours faithfully

*Julian Pitt*

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

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# Report to the Secretary of State for Communities and Local Government

by Richard McCoy BSc MSc DipTP MRTPI IHBC

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

Date: 19 November 2015

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TOWN AND COUNTRY PLANNING ACT 1990

APPEAL BY

GREEN SWITCH DEVELOPMENTS LIMITED

against a decision of

WEST LANCASHIRE BOROUGH COUNCIL

Site visit made on 9 September 2015

Land adjacent Tawdside Farm, 32 Deans Lane, Lathom, Ormskirk, Lancashire L40 4BL

File Ref(s): APP/P2365/W/15/3011997

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**File Ref: APP/P2365/W/15/3011997**

**Land adjacent Tawdside Farm, 32 Deans Lane, Lathom, Ormskirk, Lancashire L40 4BL**

- 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 Green Switch Developments Ltd against the decision of West Lancashire Borough Council.
- The application Ref 2014/0791/FUL, dated 22 July 2014, was refused by notice dated 17 November 2014.
- The development proposed is the installation of a solar park with an output of approximately 16MW.

**Summary of Recommendation: That the appeal be dismissed.**

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**Procedural Matters**

1. The appeal was recovered for decision by the Secretary of State on 5 August 2015. The reason for the recovery was that the appeal involves proposals for significant development in the Green Belt.
2. Planning permission was refused for the following reasons:
  - 1) *The proposed development constitutes inappropriate development within the Green Belt which would be harmful to the Green Belt by definition, contrary to Policy GN1 in the West Lancashire Local Plan and the National Planning Policy Framework. In addition the proposed development has a significant adverse impact upon the openness of the Green Belt and represents encroachment into the countryside thereby conflicting with one of the purposes of including land in the Green Belt. The very special circumstances in favour of the proposed development are insufficient to outweigh this harm.*
  - 2) *The applicant has failed to demonstrate that the development of agricultural land is necessary nor has it been demonstrated that sites of lower agricultural quality are not available. Consequently the development does not comply with the sequential test set out in the National Planning Practice Guidance and therefore the proposal is not in accordance with Government guidance in this respect and is contrary to paragraph 118 of the National Planning Policy Framework.*
  - 3) *The proposed development conflicts with the National Planning Policy Framework, Policy EN2 in the West Lancashire Local Plan 2012-2027 DPD and the Conservation of Habitat and Species Regulations 2010 (as amended) in that insufficient information has been provided to demonstrate that the proposed development would not adversely affect Protected Species and Habitat.*
  - 4) *The proposed development is contrary to the National Planning Policy Framework, Policy EN2 in the West Lancashire Local Plan 2012-2027 DPD and the Conservation of Habitat and Species Regulations 2010 (as amended) in that the applicant has not provided sufficient information to demonstrate compliance with the statutory duty to assess the likely significant effects on nearby designated sites and supporting habitat.*
3. This report contains a description of the site and its surroundings, an explanation of the proposal, identification of relevant planning policies and the gist of the

submissions made in writing, followed by my conclusions and recommendation. A list of suggested conditions is appended.

### **The Site and Surroundings**

4. The appeal site is located in the Green Belt and extends to around 38.75 hectares. It comprises several agricultural fields that are currently in arable use. It is located to the east of Wanes Blades Road and to the north of Deans Lane. The River Douglas is adjacent to the northern site boundary with the River Tawd marking the western boundary. A United Utilities sewerage plant is located to the south-east of the site while dwellings are located sporadically along Wanes Blades Road and Deans Lane. A line of electricity pylons and connecting power lines cross the appeal site.

### **Planning Policy**

5. The National Planning Policy Framework (NPPF) states a presumption in favour of sustainable development at paragraph 14. Paragraph 93 of the NPPF makes clear that the provision of renewable energy infrastructure is central to the economic, social and environmental dimensions of sustainable development. Paragraph 98 states that an application for a renewable energy project should be approved if its impacts are or can be made acceptable and if material considerations do not indicate otherwise.
6. This is reflected in the Government's on-line Planning Practice Guidance (PPG) which states that increasing the amount of energy from renewable and low carbon technologies will help to make sure the UK has a secure energy supply, reduce greenhouse gas emissions to slow down climate change and stimulate investment in new jobs and businesses. It goes on to state that planning has an important role in the delivery of new renewable and low carbon energy infrastructure in locations where the local environmental impact is acceptable.
7. The PPG makes clear that there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology, and critically, the potential impacts on the local environment, including from cumulative impacts. The PPG confirms that the views of local communities likely to be affected should be listened to, and that while all communities have a responsibility to help increase the use and supply of green energy, this does not mean that the need for renewable energy automatically overrides environmental protections and the planning concerns of local communities. The PPG makes it clear that local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on landscape along with recognising that the impact can be as great in predominately flat landscapes as in hilly areas.
8. Policy GN1 of the adopted West Lancashire Local Plan 2012-2027 Development Plan Document (LP) states that development proposals within the Green Belt will be assessed against national policy and any relevant LP policies. LP Policy EN1 indicates that proposals for renewable schemes should take into consideration the character and value of the landscape, areas of natural and built heritage and the impact on local residents, land resources and ecological impacts. LP Policy EN2 seeks to preserve and enhance the Borough's natural environment.



## The Proposal

9. Proposed is the erection of a solar photovoltaic (PV) array with a total installed capacity of 15.9MW which would be decommissioned after 25 years. The site would consist of banks of solar panels arranged in a linear form, laid out in an east to west alignment, facing southwards. The array would comprise around 60,000 panels. These would be mounted on frames set around 0.8m from the ground rising to around 2.5m high, with a tilt angle of about 25 degrees. The panels would be fixed in place (with a separation distance of around 4m between each row) within frames which would be secured on piles driven into the ground to a depth of about 1.5m. At their closest point, the panels would be set back about 120m from Waness Blade Road and about 20m from Deans Lane, including an 8m set back from all site boundaries. Access would be via an existing field access off Deans Lane which would be upgraded and widened. A temporary surface within the site would be used for construction traffic after which no formal tracks are required.
10. The officer report<sup>1</sup> notes that the proposal also includes:
- 1 District Network Operator (DNO) substation measuring 8m by 4m by 3.3m. This building would be located towards the central north of the site. The substation would contain the switchgear that connects and disconnects the system along with metering equipment. The building would be operated by the DNO.
  - 1 solar farm substation measuring 3m by 3m by 2.5m. This building would be located next to the DNO substation and would be retained in the ownership of the appellant. It would incorporate the switchgear, which ensures the safety and security of the energy supplied.
  - 16 x inverter/transformer cabins each measuring 9.7m by 3m by 3.6m. These buildings will contain the equipment to convert the DC (direct current) to AC (alternating current). In addition, they will house the transformers, which raise the voltage to that necessary for connection to the electricity grid.
  - 2.4m high wire-mesh fencing around the perimeter of the site.
  - 6 CCTV cameras. These would be located around the site and would measure a maximum of 3m in height.

## The Case for Green Switch Developments Ltd

11. The appeal site lies within the Green Belt. The NPPF emphasises that 'the Government attaches great importance to Green Belts' (para 79) and advises that 'when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources' (para 91).

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<sup>1</sup> Grounds of Appeal, Appendix A1.3 paras 6.2 – 6.6

12. A number of solar farms where very special circumstances were demonstrated to exist have previously been granted within Green Belt locations throughout the UK<sup>2</sup>. The very special circumstances which are considered to apply in respect of this proposal are;
- a) The need for the UK to increase its installed renewable energy generating capacity is documented within the original Planning Statement and is highly supported within the NPPF. The NPPF clearly states that local planning authorities, when determining planning applications, should 'not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy' (para 98). Very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources' (para 91). The proposed 15.9MWp would generate sufficient electricity for 4,800 homes for 25 years, equating to a reduction of approximately 8,000 tonnes of CO2 emissions per year when compared to electricity generation using fossil fuels.
  - b) It is also worthwhile highlighting the need for renewable energy capacity within the West Lancashire area. The document 'Sub-national consumption statistics' (DECC Sept 2014) indicates that the annual domestic electricity consumption in West Lancashire was 205.5GWh/yr (industrial & commercial consumption was an additional 309.4GWh/yr, giving a total electricity consumption for West Lancashire of 514.9GWh/yr). The annual domestic electricity consumption for the North West of England was 12,176.5GWh/yr (industrial & commercial consumption was an additional 20,499.6GWh/yr, giving a total electricity consumption for the North West of England of 32,676.1GWh/yr). The UK Government target for 2020 is at least 15% of electricity to be generated by renewable sources. The need for further installed electrical renewable energy capacity within West Lancashire and the North West of England is therefore both significant and urgent.

#### SUSTAINABLE ENERGY STRATEGY 2012-2020

The 'Sustainable Energy Strategy 2012-2020' (undated) was published by West Lancashire Borough Council. The Executive Summary states; 'West Lancashire Borough Council recognises that, while climate change is an internationally important problem, we can play a significant part in tackling the issue locally. It is also recognised that, through working together to reduce carbon emissions, we can also reap many other benefits along the way', with Objective 3 seeking 'to increase renewable energy generation across the Borough'. The Strategy recognises that 'the use of low carbon technologies depends very much on the surrounding landscapes of an area and what they lend themselves to. The very nature of the landscape in West Lancashire, which is predominantly flat and open, lends itself to some technologies more than others' (para 3.2.2).

#### NORTHWEST RENEWABLE AND LOW CARBON ENERGY CAPACITY AND DEPLOYMENT

The Northwest Renewable and Low Carbon Energy Capacity and Deployment Project Report (August 2010) was prepared by LUC and SQW on behalf of the

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<sup>2</sup> Appellant's Statement of Case, para 2.4

Northwest Regional Development Agency. Within the report solar PV was considered as a 'micro-generation' technology with Lancashire having an estimated solar PV generating capacity of 238MW (Table 1) and a renewable energy generating capacity of 4,970MW, equating to 20% of the capacity for the north-west region (Table 3). The report considered that 'the successful deployment of commercial scale onshore wind and microgeneration technologies are critical to the overall growth in renewable capacity, together accounting for approximately 75% of the capacity at 2020 under the deployment scenarios presented' (para 9).

#### LANCASHIRE SUSTAINABLE ENERGY STUDY

The Lancashire Sustainable Energy Study (April 2011) was prepared as a technical report for Lancashire County Council by SQW Ltd with support by Maslen Environmental and CO2Sense. The study unfortunately largely ignored solar PV as a potential renewable energy technology (estimating the potential accessible resource within West Lancashire to be 50MW – Table 5.1) but it did acknowledge that 'the distribution networks often have limited spare capacity and may require upgrading or modifying to allow a connection' (para 3.28). The Study also recognised that some areas of Lancashire were 'constrained' by grid connection in terms of the potential for renewable energy deployment and that 'the distance between the substation and the connection point is of critical commercial relevance' (para 3.31).

#### LANCASHIRE SUSTAINABLE ENERGY STUDY – WEST LANCASHIRE RENEWABLE ENERGY POTENTIAL

The Lancashire Sustainable Energy Study - West Lancashire Renewable Energy Potential (April 2011) was prepared for Lancashire County Council by SQW Ltd with support by Maslen Environmental and CO2Sense. The Study is one of fourteen local authority specific reports undertaken for each authority in Lancashire. The Study considers solar PV under the heading of 'micro-generation' (Table 2.1) and acknowledges that such 'micro-generation' represents 33% of the potential renewable energy resource in West Lancashire (Figure 3.1) which has a total potential renewable energy capacity of 1,630MW (para 3.5). The study therefore acknowledges that micro-generation represents a potential renewable energy resource in West Lancashire of 277MW, although it does anticipate that 'the potential solar PV of West Lancashire in 2020 is 50MW consisting of 25MW from solar photovoltaics and 25MW from solar water heating' (pg 24). The appellant considers that this is a considerable underestimate because the renewable energy generating potential for solar PV farms (which are not regarded as 'micro-generation' – a term which normally applies to schemes generating less than 50kW) could actually increase the resource potential for solar PV technology significantly within West Lancashire.

One of the core planning principles of the NPPF is to encourage the generation of renewable energy. The NPPF advises that 'to help increase the use and supply of renewable and low carbon energy local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable or low carbon sources' (para 97). The appeal proposal would make a sizeable contribution to the renewable energy and low carbon aims and ambitions of West Lancashire. This merits appropriate weight

being given as the NPPF describes the delivery of renewable and low carbon energy as central to the economic, social and environmental dimensions of sustainable development (para 93). The renewable energy contribution, in itself, would assist in alleviating climate change and, with regard to Section 38(6) of the Planning And Compulsory Purchase Act 2004, is a material consideration that must be weighed against the harm that would be caused and the conflict with the development plan. The appellant therefore considers that there is significant demonstrable need for the appeal proposal and this constitutes a very special circumstance and should be attributed appropriate weight within the planning balance.

- c) The appeal proposal would generally be low in height, with solar panels being a maximum of 2.5m above ground level and, given the flat nature of the site and the surrounding landscape, it would have little visual impact. The submitted Landscape and Visual Impact Assessment<sup>3</sup> (LVIA) concluded that 'in summary, the proposed development would result in some localised landscape effects only and so would not predominantly affect the whole of the landscape character of the landscape types the site and its settings are within' (LVIA para 5.2.14). In respect of Green Belt the LVIA concluded that 'the sensitivity of the Green Belt is considered high, the magnitude of the effects would be low to negligible due to the existing vegetation, sewage works, farm buildings and electricity pylons which all screen views more than the proposed development would do; therefore the overall effects of the development on the landscape character of the Green Belt would be slight adverse to imperceptible' (LVIA para 6.1.18). The LPA's officer report acknowledges that 'the site is considered to be generally well screened by existing boundary treatments which will be further enhanced/supported by the boundary treatments proposed by the development'<sup>4</sup>. The report continues that 'I am satisfied that given the mitigating factors outlined above, the fact that the solar panels would be dark in colour and low lying, and that the associated buildings and panels would be well screened, the findings of the submitted LVIA are acceptable and I concur that the solar farm could be accommodated within the landscape without causing harm to its overall landscape character'.
- d) The proposal is temporary, it would be installed in a period of 3-4 months and, following the expiry of the 25 year operational life, the development would be decommissioned, dismantled and removed in a 1-2 month time period. There would be very little disturbance to the soil profile during construction and decommissioning. The LPA's officer report also acknowledges that 'the proposal has been made for a temporary period (25 years) and therefore the identified harm to the Green Belt would be temporary and reversible'<sup>5</sup>. The temporary nature of solar farm developments has been confirmed in a number of solar farm planning appeal decisions including: APP/D0840/A/14/2212340; APP/D0840/A/14/2213745; APP/Z6950/A/14/2213400; APP/000Y1138/A/13/2203766; and APP/D3315/A/13/2203242. The temporary nature of the proposal could easily be controlled by planning condition as

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<sup>3</sup> Bound Folder entitled Original Appeal Documents

<sup>4</sup> Grounds of Appeal Appendix A1.3 para 6.37

<sup>5</sup> Grounds of Appeal Appendix A1.3 para 6.27

advised in the PPG and the planning guidance published by the Building Research Establishment<sup>6</sup>.

- e) The proposal would result in no permanent loss of agricultural land, agricultural activities would continue throughout the site during the life of the proposal (the requirement to prepare, submit and implement a Land Management Plan could be imposed by planning condition), the land would be given a period of rest from intensive agricultural activities and the proposed solar farm would contribute to agricultural diversification and ongoing investment. The diversification benefits of such development were recognised in a recent planning appeal decision (Treswarrow Farm, Trelights, Port Isaac, Cornwall PL29 3TN (APP/D0840/A/14/2213107)) in which the Inspector acknowledged that the proposed development 'has to be seen in the context of farm diversification that will support the overall farm business'<sup>7</sup>. The development of a solar farm would provide far greater economic security than many other forms of agricultural diversification. The financial subsidy available is provided for 20 years and is guaranteed as an index-linked stream of income for this entire period, or as long as the solar farm is operating – while also allowing continued agricultural use of the land and biodiversity improvements. The NPPF seeks to 'promote the development and diversification of agricultural and other land-based rural businesses' (para 28).
- f) The proposal has been designed in a manner which would enable the land beneath the solar panels to be grazed by sheep in accordance with guidance published by the Building Research Establishment which states that 'in order to facilitate grazing within the solar farm it is advised that solar panels are positioned at least 700mm above ground level and all cabling etc is suitably protected'<sup>8</sup>. The management of the grass sward using sheep grazing would also comply with guidance contained within the recent BRE document 'agricultural good practice guidance for solar farms'<sup>9</sup>.
- g) A site search has been undertaken which considers the availability and suitability of alternative sites within West Lancashire Borough. The conclusion of this site search can be ascertained from Figure 2.1<sup>10</sup>. Within this Figure the boundary of the appeal site is highlighted in red and the electricity grid corridor is shown using pink and hatched blue lines. The Figure illustrates the limited number of potential sites within West Lancashire for a ground mounted solar farm and the lack of potential roof space. It is also noted that almost 100% of rural West Lancashire is designated as Green Belt, with the north-west of the Borough also being designated as a Flood Warning Area. The West Lancashire Local Plan confirms that 'all land outside settlements in West Lancashire is either Green Belt, or is designated as Protected Land' (para 5.10). Any alternative site for a ground mounted solar farm within West Lancashire would therefore also be very likely to be located within the Green Belt. While it may be possible to install large scale roof mounted solar PV installations within the urban area a recent appeal inspector acknowledged

<sup>6</sup> Grounds of Appeal, Appendix 2.1 pg 18 para s

<sup>7</sup> Grounds of Appeal, Appendix A2.13 para 16

<sup>8</sup> Grounds of Appeal, Appendix A2.1 para d

<sup>9</sup> Grounds of Appeal, Appendix A2.2 p2

<sup>10</sup> Appellant's Statement of Case p10

that 'although smaller scale proposals for solar panels on roofs can be found in both urban and rural areas the much larger scale of a commercial solar farm with its higher output levels makes it less likely that it can be accommodated in an urban area'<sup>11</sup> and any alternative renewable energy proposals are likely to be required as well as, and not instead of, this proposal.

- h) The electrical 'grid' network is also shown on Figure 2.1. There is a connection to the national electricity transmission network (the 'grid') available adjacent to the appeal site. The availability of an affordable grid connection represents a significant contributory factor when identifying a suitable site for such a proposal. Any renewable energy facility seeking to utilise this available grid connection is likely to be located within the Green Belt as grid connection costs increase significantly with distance, as confirmed within the Lancashire Sustainable Energy Study (para 3.31).
  - i) A wildflower meadow would be created throughout the site in accordance with guidance published by the Building Research Establishment (BRE), 'Biodiversity Guidance for Solar Developments'<sup>12</sup> (April 2014), which clearly states that 'solar farms present an excellent opportunity for biodiversity'. This is echoed by the guidance published by the Bumblebee Conservation Trust<sup>13</sup>, 'recommendations for creating habitat sensitive to bumblebees on a solar farm' (undated) which advises that 'there are potentially many opportunities for managing land on solar parks to benefit bumblebee species and other wildlife'. The Natural England Technical Information Note<sup>14</sup> (TIN101) 'solar parks: maximising environmental benefits' (Sept 2011), acknowledges that, in terms of flower-rich grassland, 'grazing is best and sheep or goose grazing is likely to be more suitable than cattle grazing, which is unlikely to be practical'. The document 'solar parks – opportunities for biodiversity' published by the German Renewable Energies Agency<sup>15</sup> (Dec 2010) also advises, in terms of sheep grazing beneath solar panels, that 'this gentle, extensive form of site maintenance can create valuable, species-rich habitats of the kind currently in danger of disappearing either through the increasing use of mono-cropping or because of a lack of maintenance'.
13. In addition to the above factors the appeal site is bordered to the south-east by the Wigan Wastewater Treatment Works (WwTW), operated by United Utilities. United Utilities have indicated that they would be interested in an electrical connection with the proposal, utilising generated electricity to power the WwTW with surplus electricity being exported to the 'grid'. Discussions are ongoing between the appellant and United Utilities regarding this particular matter.
14. It is considered that the very special circumstances identified above outweigh the inappropriate nature of the proposal and that, on this basis, the development is compliant with LP Policy GN1 and the NPPF.
15. The planning application sought consent for a temporary period of 25 years. The application was accompanied by an Agricultural Land Classification (ALC) Report

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<sup>11</sup> Grounds of Appeal, Appendix A2.14, para 13

<sup>12</sup> Grounds of Appeal, Appendix 2.3 p1

<sup>13</sup> Grounds of Appeal, Appendix 2.4

<sup>14</sup> Grounds of Appeal, Appendix 2.5

<sup>15</sup> Grounds of Appeal, Appendix 2.6 para 1.1

prepared in accordance with the Ministry of Agriculture, Fisheries and Food (MAFF) guidelines. The ALC Report, which was accepted by Natural England, confirmed that the appeal site consists of 67% grade 3b (moderate) agricultural land, 22% grade 3a (good) agricultural land and 11% grade 2 (very good) agricultural land. The LPA's report also acknowledges that 'the Council accepts the conclusions reached by the applicant in this respect'. The NPPF defines land in grades 1, 2 and 3a as being the best and most versatile (BMV) agricultural land (p50).

16. The Overarching National Policy Statement for Energy EN-1 confirms that 'applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5) except where this would be inconsistent with other sustainability considerations' (paragraph 5.10.8). This matter is also raised within the NPPF and the 'planning guidance for the development of large scale ground mounted solar PV systems' published by the BRE National Solar Centre<sup>16</sup> (November 2013).
17. The Agricultural Land Classification plan for West Lancashire<sup>17</sup> clearly shows that the majority of the agricultural land within the Borough represents Grade 1 (excellent) or Grade 2 (very good) agricultural land. While this plan shows the appeal site as Grade 1 agricultural land the ALC assessment for the appeal site, which was undertaken in accordance with MAFF guidelines and accepted by Natural England and the LPA, confirmed that 67% of the appeal site did not in fact constitute BMV agricultural land. The ALC plan for the West Lancashire area demonstrates that the appeal site consists of the lowest grade agricultural land available within the West Lancashire area, ie all other agricultural land within the West Lancashire area is of an equal, or (more likely) better, ALC quality. The appeal site, which consists of 67% grade 3b agricultural land, has sought to minimise the impact of the proposal on high grade agricultural land and is therefore consistent with the NPPF and the PPG.
18. While the LPA's reason for refusal makes explicit reference to the need for a 'sequential test' the NPPF does not require the undertaking of such a test. This has been confirmed within a number of recent solar farm planning appeal decisions<sup>18</sup>. Natural England were consulted in respect of the original planning application and commented on agricultural land quality, advising that 'a detailed survey has been carried out by the applicants. This has been briefly reviewed and we have no reason to doubt the findings based on the information presented'.
19. There are considered to be a significant number of agricultural benefits associated with the proposal. While these benefits have been discussed above they may be summarised as;
  - a) Planning permission has been sought for a temporary period of 25 years. The development would be easy to install and remove. There would be very little disturbance to the soil profile during construction and decommissioning. There would be no permanent loss of agricultural land, agricultural activities would

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<sup>16</sup> Grounds of Appeal, Appendix A2.1, page 7, section c

<sup>17</sup> Grounds of Appeal, Appendix A2.15

<sup>18</sup> Appellant's Statement of Case, paragraph 2.12

- continue throughout the site during the life of the proposed solar farm, the land would be given a period of rest from intensive agricultural activities.
- b) The proposal would contribute to agricultural diversification and ongoing investment.
  - c) The proposal has been designed in a manner which would enable the land beneath the solar panels to be grazed by sheep, retaining the land in agricultural use throughout the life of the proposal. The land would therefore be used for multiple functions; agriculture, energy and biodiversity. The NPPF advises that planning should 'encourage multiple benefits from the use of land in urban and rural areas, recognising that some open land can perform many functions (such as wildlife, recreation, flood risk mitigation, carbon storage, or food production)' (para 17).
20. The NPPF advises that LPAs 'should take into account the economic and other benefits of the best and most versatile agricultural land' (para 112). The proposal is compliant with this. The NPPF also states that 'where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality' (para 112). The proposal, by minimising the use of best and most versatile agricultural land and using land of the poorest agricultural quality available within this area, would be compliant with this element of the NPPF.
21. The PPG advises that 'where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays' (para 013). The PPG also refers 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. In this speech the Minister clearly states that 'when solar farms are not on brownfield land, you must be looking at low grade agricultural land which works with farmers to allow grazing in parallel with generation...'. The proposal uses the lowest grade agricultural land available within West Lancashire, within connectivity distance to the 'grid', and is therefore considered to be compliant with these considerations.
22. In a recent appeal decision in respect of the development of a 12.5MW solar farm on agricultural land at Westerfield Farm, Carterton, Oxfordshire, OX18 3PA<sup>19</sup> (APP/D3125/A/14/2214281) (allowed on 1 December 2014) the Inspector commented in respect of the PPG that 'it does not preclude development on greenfield land but it suggests that the use of agricultural land should be shown to be necessary, that poorer quality land is used in preference to higher quality land and that it allows for continued agricultural use and improved biodiversity. In those regards the site has been assessed as of Grade 3b (moderate) agricultural quality and thus is of poorer quality than 'best and most versatile' Grade 1, 2 or 3a land which the NPPF at paragraph 112 requires to be taken into account for its economic and other benefits'. In respect of the alternative development of solar PV on factories or car parks the appeal decision states that 'they are likely to be of a smaller scale and they would in any event remain available for other proposals. It can be expected that the Council would know

<sup>19</sup> Grounds of Appeal, Appendix 2.17 para 39



what brownfield land is available .....but there is no evidence before me that non-agricultural brownfield land of comparable scale and suitable for solar energy is available ..... or that there is any local policy to identify such land for renewable energy or to direct development towards it'.

23. The proposal has also been designed in a manner which would facilitate its easy installation and subsequent decommissioning and removal from the site following the expiration of the temporary time period. There would therefore be no permanent and irreversible loss of any agricultural land. The LPA's report states that 'it is accepted that the site would remain available for limited agricultural use and potential biodiversity improvements could be made' (para 6.54) and that 'there are grazing opportunities during the lifetime of the development and there would be no permanent loss of agricultural land due to its restoration after the proposal's 25 year duration' (para 6.55). The reversibility of such development has also been accepted within a number of recent solar farm planning appeal decisions<sup>20</sup>.
24. This matter is also accepted within the LPA's delegated decision report which states that 'it is acknowledged that there are grazing opportunities during the lifetime of the development and there would be no permanent loss of agricultural land due to its restoration after the proposal's 25 year duration'. The LPA is therefore not objecting to the proposal on the basis of the loss of agricultural land, as it accepts that such loss would not arise. Indeed the second reason for refusal makes no reference to the loss of agricultural land and instead simply refers to its use.

#### *Refusal reasons 3 & 4*

25. Correspondence was held with Natural England in 2014 regarding the location of the appeal site in relation to internationally designated sites. Such correspondence resulted in the need to undertake detailed wintering bird surveys and a Habitats Regulations Assessment (HRA) in order to determine the likely significant effect of the proposal on qualifying features of the designated sites. Methods employed to undertake further assessments are summarised below and presented in detail within the wintering bird survey report<sup>21</sup> and Habitats Regulations Assessment<sup>22</sup> for the appeal site.

#### WINTERING BIRD SURVEYS

26. Wintering bird survey methods were based upon, and adapted from, generic wintering bird monitoring methods given in Gilbert et al. (1998). This involved a monthly visit to the appeal site between October 2014 and March 2015 thereby encompassing the peak winter period. The survey visits consisted of:
- pre-dawn and post-dusk vantage point surveys to record movements of Whooper swan *Cygnus cygnus*, Bewick's swan *C. columbianus* and Pink-footed goose *Anser brachyrhynchus* on or immediately adjacent to site;
  - systematic walkovers of the site recording all bird species observed or heard and approximate numbers recorded, and;

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<sup>20</sup> Appellant's Statement of Case, paragraph 2.18

<sup>21</sup> Grounds of Appeal, Appendix A2.18

<sup>22</sup> Grounds of Appeal, Appendix A2.19

- a wider area search of up to a 5km radius of the appeal site to locate flocks of swans and geese.

## HABITATS REGULATIONS ASSESSMENT

27. Habitats Regulations Assessments (HRA's) of projects can be broken down into three discrete stages, each of which effectively culminates in a test. The stages are sequential, and it is only necessary to progress to the following stage if a test is failed. The stages are:

### Stage 1 – Likely Significant Effect Test

This is essentially a risk assessment, typically utilising existing data, records and specialist knowledge. The purpose of the test is to decide whether 'full' Appropriate Assessment is required. The essential question is: "Is the project, either alone or in combination with other relevant projects and plans, likely to result in a significant [adverse] effect upon European sites?" If it can be demonstrated that significant effects are unlikely, no further assessment is required.

### Stage 2 – Appropriate Assessment

If it cannot be satisfactorily demonstrated that significant effects are unlikely, a full "Appropriate Assessment" will be required. In many ways this is analogous to an Ecological Impact Assessment, but is focussed entirely upon the designated interest features of the European sites in question. Bespoke survey work and original modelling and data collation are usually required. The essential question here is: "Will the project, either alone or in combination with other relevant projects and plans, actually result in an adverse effect upon the integrity of any European sites, without mitigation?" If it is concluded that adverse effects will occur, measures will be required to either avoid the impact in the first place, or to mitigate the ecological effect to such an extent that it is no longer significant. Note that, unlike a standard Ecological Impact Assessment, compensation for adverse effects (i.e. creation of alternative habitat) is not permitted at the Appropriate Assessment stage.

### Stage 3 – Imperative Reasons of Overriding Public Interest (IROPI) Test

If a project will have a significant adverse effect upon a European site, and this effect cannot be either avoided or mitigated, the project cannot proceed unless it passes the IROPI test. In order to pass the IROPI test it must be objectively concluded that no alternative solutions exist. The project must be referred to the Secretary of State on the grounds that there are Imperative Reasons of Overriding Public Interest as to why the plan should nonetheless proceed.

For the purposes of this proposal, stage 1 has been completed. The results of the wintering bird surveys have been used to assess the likely significant effect of the proposal both in isolation and in combination with other relevant projects and plans in West Lancashire.

## HABITATS REGULATIONS ASSESSMENT

28. In carrying out a HRA it is important to determine the various ways in which the project in question can impact on European sites by following the pathways along which development can be connected with those sites, in some cases many

kilometres distant. Briefly defined, pathways are routes by which a change in activity associated with a development can lead to an effect upon a European site. Due to the nature of the appeal site and the lack of previous study/surveys undertaken on solar farm sites it is important to highlight the possible implications that the proposed works may have on such pathways.

29. Details of the pathways used to undertake this HRA are provided in Appendix A2.19 of the Grounds of Appeal. These were:

- effects of solar farms on wintering birds;
- effects of disturbance on wintering/migrating birds;
- direct landtake; and
- disturbance – mechanical/abrasive damage.

30. Based on the above pathways an assessment of likely significant effects was undertaken for the Appeal Proposal in isolation and in combination with plans and projects within West Lancashire.

#### LIKELY EFFECTS OF PROPOSED DEVELOPMENT CONSIDERATIONS IN ISOLATION FROM OTHER PLANS AND PROJECTS

31. Table 2.1<sup>23</sup> provides a detailed assessment of the likely significant effects of the proposal when each of the above pathways is considered in isolation from other plans and projects in West Lancashire.

#### 'IN COMBINATION' CONSIDERATION OF OTHER PLANS AND PROJECTS

32. The possible impacts associated with the proposal will be small and localised, therefore only those plans or project types which are considered likely to have similar impacts upon qualifying features of designated sites are considered within the HRA:

- West Lancashire Local Plan - Policy EN1: Low Carbon Development and Energy infrastructure;
- Sustainable developments in West Lancashire.

The following sections discuss these in further detail.

#### *West Lancashire Local Plan*

33. The West Lancashire Local Plan 2012-2027 does not appear to consider proposals for solar energy. Policy EN1: Low Carbon Development and Energy infrastructure aims to achieve 15% of energy consumption from renewable sources by 2020. This policy indicates that such energy sources will primarily come from wind farms. However, the Local Plan provides no indication of key areas to be allocated for such development. The effects of future wind farm development in relation to this policy when considered in combination with the proposal have therefore been omitted from this HRA.

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<sup>23</sup> Appellant's Statement of Case, paragraph 2.30

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*Sustainable development in West Lancashire*

34. The document 'wind turbines, sensitive Bird Populations and Peat Soils: a spatial planning guide for onshore wind farm developments in Lancashire, Cheshire and Greater Manchester and Merseyside' (RSPB 2008) specifically highlights wind farms but also notes solar farms and biomass energy crops as developments that may have a negative effect upon qualifying features of the designated sites. Therefore, a search of the West Lancashire planning portal has been completed which has highlighted the presence of a number of solar farm projects which are at various stages of the planning application process. These projects have been considered in combination with the potential effects of the proposal and are displayed in Table 2.2<sup>24</sup>. At the time of writing this HRA the West Lancashire Planning Portal did not highlight the presence of any wind farms or biomass facilities. These have therefore been omitted from the in combination assessment.
35. Of the 6 proposed solar farms located within West Lancashire, 4 of these proposed are located beyond the boundaries of the sensitivity areas for all 3 qualifying features of the designated sites. In addition, 2 proposed solar farm sites are located within sensitivity areas for Whooper swan and Pink-footed goose, however these are located over 10km from the appeal site. The West Lancashire planning portal did not provide any wintering bird information for these sites. It is therefore not possible to compare the value of such areas for wintering birds in comparison to the proposal. However, given the location of these proposed solar farm sites (either beyond the boundaries of bird sensitivity areas or located over 10km from the appeal site it is considered highly unlikely that the effect of proposed solar farms in West Lancashire in combination with the proposal would have a negative effect upon the qualifying features of the designated sites.
36. In addition to the above, online review of existing wind farm developments indicates that there are no existing wind farm developments within sensitivity areas for Whooper swans, Pink-footed geese and Bewick's swans. Therefore, such developments are unlikely to act in combination with the proposal. In combination effects can therefore be screened out as being (the appellant stated "likely" in the Statement of Case but I take them to have meant "unlikely") to have a significant effect on the integrity of the designated sites.

**ECOLOGY CONCLUSION**

37. The proposal has been assessed as being highly unlikely to have a significant negative effect upon the above designated sites either in isolation or combination with relevant plans and projects within West Lancashire. It is therefore considered that the proposal can proceed without the requirement for further assessment or mitigation measures which relate to qualifying features of the designated sites.

**BENEFITS OF THE PROPOSAL**

38. There are considered to be a significant number of planning benefits associated with the proposal. These benefits are highlighted below;

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<sup>24</sup> Appellant's Statement of Case p27

- a) Renewable energy benefits – i) generate sufficient electricity from a renewable resource to meet the needs of 4,800 homes for 25 years and reducing CO2 emissions by approximately 8,000 tonnes per annum. ii) Contributing towards West Lancashire and UK renewable energy and CO2 emission reduction targets.
  - b) Agricultural benefits – i) There would be no permanent loss of agricultural land. ii) Agricultural activities would continue throughout the site during the life of the proposed solar farm. iii) The land would be given a period of rest from intensive agricultural activities. iv) The proposed solar farm would contribute to agricultural diversification and ongoing investment.
  - c) Biodiversity benefits – i) Establishment of a wildflower meadow. ii) Reptile refuge and insect habitats. iii) Additional hedgerow planting is proposed.
  - d) Deliverability benefits – i) There is a willing landowner. ii) The site is available and deliverable. iii) There is an available 'grid' connection. iv) The development would be installed within a 12-16 week period.
39. It is considered that these benefits are considerable and should be attributed appropriate weight in the planning balance for the proposal.

#### THIRD PARTY REPRESENTATIONS AND CONSULTEE RESPONSES

40. It is considered that the above evidence addresses the concerns and comments raised by third parties and consultees.

#### CONCLUSION

41. An extensive site search has been undertaken by the appellant in order to identify a suitable site for a large scale solar PV installation within the West Lancashire area. This site search exercise has evaluated a number of constraints, including Green Belt, grid connection, agricultural land classification, flood risk areas, ecological designations, heritage assets, previously developed land and roof space. The appeal site has been identified following this site search.
42. It has been demonstrated that very special circumstances exist to warrant the proposal within this Green Belt location. The proposal would make a sizeable contribution to West Lancashire and national renewable energy and CO2 reduction targets. The proposal is clearly temporary and would result in the loss of no agricultural land. The development at the Tawdside site has been designed in a manner which would facilitate ongoing agricultural activity throughout the temporary life of the proposal. The proposal would represent a form of agricultural diversification, providing ongoing and guaranteed farm income while generating renewable energy and providing valuable biodiversity benefits. The site search indicates that available alternative sites are severely limited and any alternative site would also be located within the Green Belt. It would also be likely to occupy a site of higher grade agricultural land than the appeal site. The appeal site has a grid connection available nearby and the site is available and deliverable. The identification of the appeal site, the design of the proposed solar farm and the preparation and submission of the planning application accords with the '10 Commitments' for solar farms prepared by the Solar Trade Association<sup>25</sup>.

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<sup>25</sup> Grounds of Appeal, Appendix A3.1

It is therefore considered that the LPA's first reason for refusal has been satisfactorily addressed.

43. It has been demonstrated that the proposal is a temporary development. There would be no permanent loss of any agricultural land, agricultural activities would be ongoing throughout the life of the proposed solar farm and the proposal represents a form of agricultural diversification. The majority of the appeal site (67%) does not constitute BMV agricultural land and it is unlikely that land of a lower agricultural land classification, with an available grid connection, would be available for such development. It is therefore considered that the LPA's second reason for refusal has been satisfactorily addressed.
44. The appellant has demonstrated that the proposal would not adversely affect Protected Species and Habitat and that it would be highly unlikely to have a significant negative effect upon designated sites either in isolation or combination with relevant plans and projects within West Lancashire. It is therefore considered that the LPA's third and fourth reasons for refusal have been satisfactorily addressed.
45. It has been demonstrated that the proposal is in accordance with the NPPF and the PPG. The benefits and need for the proposal have been clearly established, the site selection process has been outlined and no realistic, or more favourable, alternative site(s) for the temporary development have been proposed - by any party. It is considered that the demonstrable benefits of the proposal weigh considerably in its favour and outweigh any temporary and reversible constraints. Planning policy sets a clear message; a presumption in favour of sustainable development.

### **The Case for Lancashire Borough Council**

46. As the site is within the Green Belt the Council considers the main appeal issues to be:
- whether the installation of a solar park represents inappropriate development in the Green Belt;
  - the impact of the proposed development on openness and the purposes of including land in the Green Belt;
  - if the development is inappropriate whether the harm caused by reason of inappropriateness and any other harm to the Green Belt is clearly outweighed by other considerations so as to amount to very special circumstances;
  - the impact of the development on agricultural land;
  - the impact of the development on protected species and habitat; and
  - the impact of the development on nearby designated sites and supporting habitat.

#### *Inappropriate development*

47. Under LP Policy GN1, as a development within the Green Belt, the provisions of the NPPF need to be followed to assess the proposed installation of a solar park. The NPPF states that the Government attaches great importance to Green Belts (paragraph 79). The fundamental aim of Green Belt policy is to prevent urban

sprawl by keeping land permanently open. The essential characteristics of Green Belts are their openness and their permanence and the Green Belt serves five purposes (paragraph 80 of the NPPF). In this case, the purpose relating to the safeguarding of the countryside from encroachment is a valid consideration. Paragraph 89 of the NPPF advises that the construction of new buildings is inappropriate development unless the new buildings are considered to fall within a list of exceptions. Solar farms and their associated infrastructure are not amongst the types of development identified as appropriate in the Green Belt. Therefore, the proposal is inappropriate development, which by definition is harmful to the openness of the Green Belt and contrary to the NPPF. In paragraph 87 the NPPF re-iterates that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Paragraph 88 advises that when considering any planning application, substantial weight should be given to any harm to the Green Belt. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations.

48. The appellant appears to agree that the proposed solar park is inappropriate development by quoting NPPF paragraph 91 and then putting forward what are considered to be very special circumstances in respect of the appeal proposal.
49. An essential characteristic of Green Belts is their openness (paragraph 79 of the NPPF) and this concept has been helpfully clarified in a number of appeal decisions<sup>26</sup>. Openness is the concept of freedom from development and is an absolute test. The development (operational or use) is there or it is not.
50. The proposed scheme will introduce an expansive array of structures across land, which is currently open and free from development except for the 2 towers and connecting power lines running over the western fields. As described by the Planning Inspector for a 25ha 36,000 solar panels solar farm appeal in Wiltshire in May 2015<sup>27</sup> (paragraph 10): *The proposed scheme would therefore introduce a development of industrial appearance into an otherwise agricultural landscape for what would be at least a generation.* This comment reflects similar observations made by the Planning Inspector for an up to 8MW solar farm (18.4 ha site) appeal in the Green Belt in Chorley<sup>28</sup> in November 2014 (paragraph 6): *Solar panels are engineered products that have an industrial appearance. They are not, inherently, products that fit into a countryside environment.* In addition at paragraph 9 he adds: *Their industrial appearance would be alien in this countryside location...* His judgement can be similarly applied in that on the scale proposed the solar panels, if installed on the site, together with the equipment and infrastructure, including the number of buildings required, access tracks and the 2.4m high wire mesh fencing that would surround them, would result in significant encroachment into the countryside. This would have a negative effect on, and reduction of, the openness. Taking account of the rural character of the surroundings, this material impact on the openness would also be contrary to one of the five purposes of the Green Belt, that being to safeguard the countryside from encroachment.

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<sup>26</sup> Statement of Case, Appendix IX

<sup>27</sup> APP/Y3940/A/14/2228679

<sup>28</sup> APP/D2320/A/14/2222025

51. Further to the above, the appellant's visual amenity considerations do not deal with openness. The Council did not refuse the scheme due to the visual impact on the landscape character of the area. As referred to above, openness is not a visual matter. The proposal would result in encroachment into the countryside and this intrusion would not be negated once the scheme becomes operational as it would remain. In addition, any buffers surrounding the site cannot negate the encroachment which will be caused by virtue of the physical and continued presence of the development. It may be temporary in the long-term, but it will be present for a generation. It is pertinent to cite the Planning Inspector's observations on this matter in the abovementioned Chorley decision ( paragraph 25), given they are equally applicable for the current appeal (see paragraph 2.6(d) of the grounds of appeal): *The solar farm would be removed, in accordance with a condition if planning permission was to be granted, 25 years after it is brought into use. The land would also be restored to its original appearance and would not become classified as being previously developed land. 25 years, however, is about a third of a person's lifetime and is the span of a generation. Furthermore, there is no guarantee that planning permission would not be granted, after 25 years, for the replacement of the solar panels for a further 25 year period. Very little weight is therefore given to the reversibility of the scheme.* Also, a solar farm would take the site out of arable use for the proposal's 25 year duration.

52. Given the above, the proposed development would be inappropriate development in the Green Belt and so conflicts with the NPPF and LP Policy GN1. NPPF paragraph 87 states: *inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.* Paragraph 88 states that substantial weight be given to any harm to the Green Belt and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations.

*Very special circumstances*

53. As the proposal is found to be inappropriate development, it must be assessed in terms of the very special circumstances put forward by the appellant to justify the scheme. There is no accepted definition of very special circumstances and whether they exist in a particular case will be a matter of judgement for the decision-maker based upon the facts that have been presented by the appellant. The appellant's case for very special circumstances centres on renewable, agricultural, biodiversity and deliverability benefits.

*Renewable energy policy background*

54. In addition to LP Policy EN1, the Ministerial Statement of March 2015 to the House of Commons, giving a planning up-date, is worth noting up front in relation to solar energy, as it reinforces existing guidance. That is, the focus for growth in the solar photovoltaic strategy is on domestic and commercial roof space and previously developed land. The reforms to the permitted development rights to encourage the take up of much larger scale solar power generation (solar photovoltaic) on non-domestic buildings came into force on the 15th April 2015. It is worth quoting the statement with its concentration on protecting high quality agricultural land: *The NPPF includes strong protections for the natural and historic environment and is quite clear that local councils when considering*



*development proposals should take into account the economic and other benefits of the best and most versatile agricultural land... Yet, some local communities have genuine concerns that when it comes to solar farms insufficient weight has been given to these protections and the benefits of high quality agricultural land. As the solar strategy noted, public acceptability for solar energy is being eroded by the public response to large-scale solar farms which have sometimes been sited insensitively..... Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land. Protecting the global environment is not an excuse to trash the local environment. When we published our new planning guidance in support of the framework, we set out the particular factors relating to large scale ground mounted solar photovoltaic farms that a local council will need to consider. These include making effective use of previously developed land and, where a proposal involves agricultural land, being quite clear this is necessary and that poorer quality land is to be used in preference to land of a higher quality..... We are encouraged by the impact the guidance is having but do appreciate the continuing concerns, not least those raised in this House, about the unjustified use of high quality agricultural land. In light of these concerns we want it to be clear that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence. Of course, planning is a quasi-judicial process, and every application needs to be considered on its individual merits, with due process, in light of the relevant material considerations.*

55. In November 2008, the Climate Change Act was published. This created a new legal framework for the UK to achieve a mandatory 80% cut in the UK's CO<sub>2</sub> emissions and other greenhouse gases by 2050. The UK Renewable Energy Strategy (2009) set a Government target of 15% of the country's energy to come from renewable sources by 2020. It is interesting to note the actual solar capacity figure for April 2015 was 6.562 GW, already 55% of the 2020 target, not the 3.61 estimate shown by Wiki. The growth of large scale solar farms in the UK has been rapid, exceeding all expectations. Figures from DECC for Solar Photovoltaics Deployment, updated on the 28th May 2015, show Total Solar Capacity (TSC) for the UK is already much greater than earlier estimates. From the fourth quarter of 2014 to the end of the 1st quarter 2015 the TSC jumped by 26 per cent to 6.521GW and 460 sites, as developers strove to commission sites before the Renewables Obligation certificates (ROC) scheme ended on the 31st March 2015. The monthly growth in April 2015 was a more modest 0.6 per cent.
56. National planning and energy policy is supportive of renewable and low carbon energy infrastructure. Paragraph 6 of the NPPF makes it clear all the policies (paragraphs 18 to 219) constitute the government's view on the meaning of sustainable development giving effect to the 12 core principles, none of which have any priority over the others. A balance has to be struck noting schemes must be determined in accordance with the development plan unless material considerations indicate otherwise. Therefore, at the heart of the NPPF is the presumption in favour of sustainable development. The 3 dimensions to sustainable development: are economic, social and environmental. In terms of the environmental role, the planning system is required to contribute *to protecting and enhancing our natural, built and historic environment; and, as part of this, help to improve biodiversity, use natural resources prudently,*

*minimise waste and pollution, and mitigate and adapt to climate change including moving to a low carbon economy.*

57. Section 10, paragraphs 93 to 108, of the NPPF contains the policy to meet the challenge of climate change, flooding and coastal change. Paragraph 93 states: *Planning plays a key role in helping shape places to secure radical reductions in greenhouse gas emissions, minimising vulnerability and providing resilience to the impacts of climate change and supporting the delivery of renewable and low carbon energy and associated infrastructure. This is central to the economic, social and environmental dimensions of sustainable development. One of the core planning principles stated in paragraph 17 of the NPPF is to support the transition to a low carbon future in a changing climate, taking full account of flood risk and coastal change, and encourage the reuse of existing resources, including conversion of existing buildings, and encourage the use of renewable resources (for example by the development of renewable energy).*
58. Paragraph 97 of the NPPF lists a number of ways in which to help increase the use and supply of renewable and low carbon energy and confirms that local planning authorities should recognise the responsibility on all communities to contribute to energy generation from renewable and low carbon sources. Paragraph 98 of the NPPF advises that when determining planning applications, local planning authorities should: *Not require applicants for energy development to demonstrate the overall need for renewable or low carbon energy and also recognise that even small scale projects provide a valuable contribution to cutting greenhouse emissions; and Approve applications, unless material considerations indicate otherwise, if its impact are (or can be made) acceptable.*
59. The Renewable and Low Carbon Energy Chapter of the PPG sets out a number of factors that need to be considered by local planning authorities in determining applications for large-scale solar farms. At ID: 5-013-20140306 the particular planning considerations that relate to large scale ground-mounted solar photovoltaic farms are set out. It states that *the deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively.*
60. Paragraph ID 5-007 of the PPG states *the need for renewable or low carbon energy does not automatically override environmental protections.* Also, local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on the landscape and recognises that *the impact can be as great in predominately flat landscapes as in hilly or mountainous areas.* Furthermore, *cumulative impacts require particular attention, especially the increasing impact that wind turbines and large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases.*
61. Paragraph ID: 5-008 of the PPG advises: *distance of itself does not necessarily determine whether the impact of a proposal is unacceptable. Distance plays a part, but so does the local context including factors such as topography, the local environment and near-by land uses.* The PPG at paragraph ID 5-010 says that *Renewable energy developments should be acceptable for their proposed location.*

62. The National Planning Statement for Energy 2011 – Overarching National Policy Statement for Energy (EN-1) sets out the national policy for energy infrastructure. At paragraph 2.2.6 it states that *the UK needs to wean itself off a high carbon energy mix: to reduce greenhouse gas emissions and to improve the security, availability and affordability of energy through diversification*. Paragraph 1.4.1 states: *EN-1 is part of a suite of NPSs issued by the Secretary of State for Energy and Climate Change. It sets out the Government's policy for delivery of major energy infrastructure. A further five technology-specific NPSs for the energy sector cover: fossil fuel electricity generation (EN-2); renewable electricity generation (both onshore and offshore) (EN-3); gas supply infrastructure and gas and oil pipelines (EN-4); the electricity transmission and distribution network (EN-5); and nuclear electricity generation (EN-6). These should be read in conjunction with this NPS where they are relevant to an application*. Therefore, also note the Planning Inspector's comment in the land at Littles Farm, Kent 13th June 2014 appeal<sup>29</sup> (paragraph 6): *Given that it is not specific to solar farms and is primarily of relevance to decisions on schemes of national significance I have not given significant weight to the section of National Policy Statement EN-3 quoted by the appellant. To my mind the more up to date Planning Practice Guidance, specifically concerning solar farm schemes being determined by local authorities, is of much greater pertinence*.
63. The UK Solar PV Strategy (2014) sets out 4 guiding principles for solar PV, the 3<sup>rd</sup> of which states, amongst other things, that solar PV should be appropriately sited with proper weight being given to environmental considerations such as landscape and visual impact.

*Assessment of very special circumstances*

*Need*

64. The need to increase renewable energy sources is paramount and is the key to a low carbon future. Appropriate sites in local areas have a role to play in meeting national targets for the generation of energy from renewables, as set out in the EU Renewable Energy Directive. Therefore, a proposal to generate 15.8MW would make a measurable contribution to the region's renewable energy targets. The NPPF makes it clear that even small-scale projects provide a valuable contribution to cutting greenhouse gas emissions. However, national guidance (UK Solar PV Strategy and ministerial statements) advises that solar development needs to be appropriately sited and applications for such developments should only be approved if material considerations do not dictate otherwise and if impacts are, or could be made, acceptable (NPPF paragraph 98). By virtue of paragraph 91 of the NPPF, it is clear that renewable energy projects are not prohibited in the Green Belt, but rather it is a matter of balancing the benefits they would bring against any harm they could cause. Whilst it is accepted that the proposed development has the potential to make a material contribution towards securing the wider environmental, social and economic benefits advocated by the Government's sustainable development strategy and this benefit should be attributed significant weight in the consideration of very special circumstances, this must be set against the harm by reason of inappropriateness, loss of openness and conflict with one of the Green Belt

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<sup>29</sup> APP/V2255/A/14/2212592

purposes (encroachment in the countryside). This harm is considered to be significant and in accordance with the NPPF needs to be given substantial weight.

*Need and potential/other sites*

65. Although quoting the NPPF's paragraph 98, which states local planning authorities should not require applicants to demonstrate overall need for renewable or low carbon energy, the appellant argues that there is a demonstrable need for the appeal proposal which should be given appropriate weight as very special circumstances in the planning balance. He also considers solar farms could increase the resource potential significantly in West Lancashire, but does not appear to consider the constraints introduced by the fact the Borough is washed over by Green Belt except for some settlements and protected land. In acknowledging the latter fact, the appellant attempts to justify the proposal by stating the limited number of potential sites within the Borough means any alternative site would probably be located in the Green Belt. Nevertheless, it should be noted the need for renewable energy developments is not Borough specific and the Green Belt designation indicates other non-Green Belt locations should be the first consideration.

*Other sites*

66. The appellant is correct in that a large part of the Borough is designated as Green Belt and it is accepted that land within the Green Belt is, due to its very nature of being largely open and free from development, attractive to the solar industry. However, the assertion that "no other sites within the Borough can be considered more appropriate" is not evidenced by the appellant in the sense that no information has been submitted to prove this. For example, while the appellant has discounted urban areas for a development of this size, no consideration of brownfield land or industrial sites has been presented. The PPG at paragraph ID 5-013 advises *focussing large scale solar farms on previously development and non-agricultural land, provided it is not of a high environmental value*. The PPG also makes reference to a speech by the Minister for Energy and Climate Change, Greg Barker, to the solar panel industry at the Large Scale Solar Conference on the 25th April 2013. In this speech, Greg Barker said *for larger deployments, brownfield land should always be preferred*. This was reinforced by the 25th March 2015 ministerial up-date quoted in paragraph 4.16 above. There is no Government guidance on what is a reasonable search area and therefore the Council cannot attach significant weight to this element of the appellant's case for very special circumstances as no evidence has been submitted to confirm that brownfield sites or industrial sites have been considered, both within and outside of the Borough. As a matter of interest, there is a current application<sup>30</sup> on a Green Belt site adjacent to the Burscough Industrial Estate (the site of a former World War Two naval airfield) near where the appellant's company is located.

*Visual impact v openness*

67. In terms of the impact on the Green Belt character, the visibility or otherwise of the development within its surroundings does not negate harm caused to the openness of the Green Belt as the concept of openness is not dependant on

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<sup>30</sup> Appendix X111A Council's Statement of Case (the schedule of which up-dates the information in Table 2.2 on page 27 of the Appellant's Statement of Case)

public views. As already stated, the solar farm will have a considerable impact on the openness of the Green Belt with the solar arrays, size and number of associated buildings and security fencing. The size of the site is extensive and much of it would be covered by built form. Not only would the solar arrays have a strong physical presence on the site, but the associated infrastructure is substantial. The supporting infrastructure may be required, but does add to the adverse impact and reduction of openness. The associated buildings have substantial dimensions with the 16 inverter cabins each being almost 10m in length. Therefore, the impact on openness would be substantial, particularly given the rural characteristics of the appeal site. Although not a visual assessment this can be illustrated from surrounding higher land, such as Parbold Hill<sup>31</sup>, from where the extent of the impact of the development on the openness of the Green Belt would be evident as would the encroachment into this area of open countryside. The residents' group also submitted views from higher land at the application stage on the 3rd November 2014<sup>32</sup>. It is acknowledged this was in relation to harm to the landscape and loss of visual amenity, rather than impact on openness.

#### *Diversification*

68. As regards rural diversification this is advocated by the NPPF at paragraph 28. The NPPF advises that rural diversification should be used to support economic growth in rural areas by creating jobs and prosperity. Whilst the Council is not convinced the proposed development represents 'diversification' in the spirit of the policy, it is appropriate to consider the economic impacts of the development. There is no evidence the solar farm will lead to any significant or long term benefits to the local rural economy and employment opportunities would be short-lived during the construction period. Following this it would be limited to a maintenance company (as evidenced by the submitted transport statement) and would probably be undertaken by persons already employed. Furthermore, the borough is not characterised by livestock farming and it raises questions whether the introduction of sheep would itself be true diversification. Sheep grazing seems to be the default 'agricultural' use proposed in combination with solar arrays for most such applications. There is no evidence it would produce additional income (presumably the farmer would need to provide accommodation for the sheep or lease the grazing to another farmer to avoid this requirement). Also, there is no evidence the income generated from the use of the land as a solar farm would benefit the local area. The appellant advises that United Utilities is interested in an electrical connection. Firstly, the generated electricity is fed into the national grid so the benefit to the sewerage works raises questions how it could be sourced directly. Secondly, United Utilities has submitted a screening opinion to provide a 3MW solar farm for their own use. Therefore, little weight can be given to any diversification, given the lack of evidence it would contribute to the promotion of a strong rural economy in the locality.

#### *Temporary*

69. The solar farm may be temporary in the long-term, but it will be present for a generation. It is pertinent to cite the Planning Inspector's observations on this

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<sup>31</sup> Appendices IB and XIV Council's Statement of Case

<sup>32</sup> Appendices IB and XV Council's Statement of Case

matter in the abovementioned Chorley decision: *The solar farm would be removed, in accordance with a condition if planning permission was to be granted, 25 years after it is brought into use. The land would also be restored to its original appearance and would not become classified as being previously developed land. 25 years, however, is about a third of a person's lifetime and is the span of a generation. Furthermore, there is no guarantee that planning permission would not be granted, after 25 years, for the replacement of the solar panels for a further 25 year period. Very little weight is therefore given to the reversibility of the scheme.* This is equally applicable in relation to the current appeal and calls into question if the temporary nature of the development can be considered as a very special circumstance, given it is cited for most wind turbine and solar farm applications.

#### *Enhancements and deliverability*

70. As regards the biodiversity and landscape enhancements, these do not require planning permission for inappropriate development to be implemented, although they are encouraged by the PPG. Therefore, they cannot be considered as very special circumstances. The same conclusion is made in relation to deliverability; a nearby grid connection and the 3 to 4 month installation period, given these aspects are probably common to all such proposals.
71. On balance and in respect of this particular proposal, the Council is of the opinion that the identified harm to the Green Belt by reason of inappropriateness, the loss of openness and conflict with the purpose of safeguarding the countryside from encroachment is significant and such that cannot be outweighed by the matters advanced by the appellant to comprise very special circumstances. Therefore and in accordance with paragraph 88 of the NPPF, very special circumstances are not found to outweigh the identified harm to the Green Belt. Therefore, the proposal would be contrary to LP Policies GN1(b) and GN3(1)(iv) and paragraph 17 and sections 7 and 9 of the NPPF.

#### *Loss of agricultural land*

72. Paragraph 111 of the NPPF encourages the effective use of land by reusing brownfield land provided that it is not of high environmental quality. Also, paragraph 112 indicates that significant development of agricultural land should be shown to be necessary and, where this is demonstrated, areas of poorer quality land should be used in preference to that of a higher quality.
73. Paragraph 13 of the PPG sets out particular planning considerations that relate to solar development. The first 2 factors are: *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; 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.*
74. The PPG also makes reference to a speech by the Minister for Energy and Climate Change, Greg Barker, to the solar panel industry at the Large Scale Solar Conference on the 25th April 2013. In this speech Greg Barker said *for larger deployments, brownfield land should always be preferred* and went on to add *we*

*need to be careful that we do not over-incentivise large-scale ground-mounted projects in inappropriate places – I am thinking of greenfield agricultural land and where solar farms are not on brownfield land, you must be looking at low grade agricultural land. In addition, Nick Boles in his oral statement in the House of Commons on the 29th January 2014 stated that where significant development is necessary on agricultural land, the NPPF is equally clear that local planning authorities should seek to use areas of poorer quality in preference to that of higher quality. Where land is designated at a relatively high grade it should not be preferred for the siting of such developments. This was reinforced by the 25th March 2015 ministerial up-date.*

75. Furthermore, the UK Solar PV Strategy: Part 2 of April 2014 sets out the Solar Trade Association's (STA) Solar Farms: 10 Commitments, the 1<sup>st</sup> of which is that focus will be on non-agricultural land or land which is of lower agricultural quality. The explanation advising: *Land use - ideal siting of a solar farm should consider: 'Ground-mounted solar should ideally utilise previously developed land, brownfield, contaminated land, industrial land and preferably agricultural land of classification 3a, 3b, 4, and 5 (in most instances avoiding use of the "Best and Most Versatile" cropland where possible). Land selected should aim to avoid affecting the visual amenity of landscapes, maintaining their natural beauty, and should be predominantly flat, well screened by hedges, tree lines, etc., and not unduly impact upon nearby domestic properties or roads.'*.....The 'Best and Most Versatile' (BMV) land is presently defined as Grades 1, 2 and 3a (which can best deliver future crops for food and 'non-food' uses such as biomass, fibres, pharmaceuticals etc). However, such land is not always farmed, and may be used simply for pasture or set aside. Land may benefit from being 'rested' or from active plant or wildlife habitat development. Under guidance of an agronomist, it is easy to revert back to agricultural use from energy generation, without altering the BMV status of the land, unlike housing or commercial development. Examples of possible exceptions to such land use rules (developers should note the policies set out in the NPPF and supplementary guidance):

- *Large farms with a high volume of electricity self-consumption e.g. cold storage plant.*
- *Where the farmer can demonstrate that land quality is lower than the ALC, or is no longer usable for agricultural crops, or was never cropped.*
- *In areas where all the land is of higher quality and it would be considered unreasonable to exclude development on these grounds alone (for example, in Lincolnshire and Cambridgeshire it is hard to avoid land which has a designated high grade, whereas Cornwall has lots of low grade land compared with the rest of the country).*
- *For enhanced environmental benefits, e.g. protection of peat land or soil resting.*
- *Where sites have a combination of grades, part of which are higher than grade 3a and 3b.*
- *For reasons of national interest (e.g. MOD land).*

The SLA does not explain why grade 3a is considered to be acceptable for such development when it is acknowledged as falling within the BMV category, so there is a contradiction in this advice. Also, there is no explanation why sites with a combination of grades could be an exception to its land use rules. The other examples are self-explanatory. It should be noted the Solar Trade Association's 10 commitments have been updated (February 2015) from that submitted by the appellant, i.e. the 8<sup>th</sup> commitment now reads: *We will offer investment opportunities to communities in their local solar farms where there is local appetite and where it is commercially viable.*

76. It is therefore clear that the emphasis from Government is to steer large scale solar arrays towards previously development or non-agricultural land. Where the use of agricultural land is necessary, best and most versatile land (BMV) should be avoided and if BMV land is to be used, this should be the last resort and it must be robustly demonstrated that it is justified.
77. The Agricultural Land Classification of England and Wales provides a framework for classifying land according to the extent to which its physical or chemical characteristics impose long-term limitations on agricultural use. The principal physical factors influencing agricultural production are climate, site and soil. These factors together with interactions between them form the basis for classifying land into one of five grades, Grade 1 land being of excellent quality through to Grade 5 land of very poor quality. Grades 1, 2 and 3a are considered to be the BMV.
78. In terms of Defra's Agricultural Land Classification (ALC) map of England and Wales, the appeal site is classified as Grade 1. However, these maps were created over 30 years ago and have never been up-dated. Natural England is, by virtue of the Town and Country Planning (Development Management Procedure) (England) (Order) 2015, a statutory consultee in respect of the use of BMV land. This organisation acknowledges that current available data on land grading is, in some cases out-dated, and land under consideration for development may require a site specific, up-dated survey to establish its grade (Natural England Technical Information Note TIN049). Consequently, the appellant undertook an ALC survey which grades none of the site as Grade 1, but rather concludes that the north and east part of the site is grade 3b (67%), with the west and south side as grade 2 (10.5%) and 3a (22.2%). Based on these findings just nearly 33% of the land has been identified as BMV agricultural land.
79. Natural England has confirmed that the information held by the Local Planning Authority is quite broad brush in nature and not suitable for site specific decision-making, as it has a minimum map unit size of about 80ha. It also pre-dates the subdivision of grade 3 land. In addition, Natural England has confirmed that they have no reason to doubt the findings submitted by the appellant. Due to the level of information held by the Local Planning Authority and the advice received from Natural England, together with the specialist expertise held by the author of the submitted ALC statement, the Local Planning Authority has no option but to accept the conclusions reached by the appellant in this respect. The appellant did not agree to funding an independent consultant to verify the findings, as had been the case for the Butcher's Lane solar farm application/appeal (2014/0601/FUL, W/15/3002667), which was recovered by the Secretary of State on the 8th June 2015.



80. In accordance with the NPPF and PPG, the 1<sup>st</sup> question to ask is whether or not the use of agricultural land is necessary. This exercise should demonstrate that no suitable brownfield land or non-agricultural land is available within a reasonable search area. There is no national or local guidance when defining a study area and each case should be considered on its own merits taking into account both planning and operational constraints. The PPG at paragraph ID 5-003 confirms that *whilst local authorities should design their policies to maximise renewable and low carbon energy, there is no quota which the Local Plan has to deliver*. Therefore, there is no need to site renewable energy development in a particular local authority in order to meet a local green energy quota. Subsequently, there is no reason why a search area cannot extend beyond the borough boundaries.
81. In any event, the appellant has not provided details of a search for alternative sites. Whilst the company would appear to have dismissed the Borough's urban areas, there is no consideration of brownfield sites within the Green Belt or industrial areas both within the Borough and a reasonable distance outside of it. Consequently, the appellant has not demonstrated the use of agricultural land is necessary.
82. About 33% of the appeal site has been identified as BMV land. The PPG requires poorer quality land to be used in preference to higher quality land. The appellant has failed to demonstrate that sites with a lower agricultural land classification have been considered. Appendix XVIII<sup>33</sup> contains 12 appeals (considered between February 2014 and March 2015) where the loss of agricultural land had been identified as an issue (there may be others). None relate to sites in the Green Belt and all are for sites located in the south of the United Kingdom.
83. The PPG also requires proposals for solar development to allow for the continued agricultural use where applicable and/or encourages biodiversity improvements around the arrays. The appellant has stated that *permission is sought for a temporary period of 25 years..., during which time the site will continue to be used for agricultural purposes including if desired by the landowner the grazing of sheep*. The problems relating to temporary use are set out above. Enhanced boundary treatments are offered, including replacement hedgerows where necessary, which may contribute to biodiversity in the local area. However, evidence of compliance with this part of the PPG is limited and not very convincing. Furthermore, as stated above, the borough is not characterised by livestock farming and it raises questions whether the introduction of sheep would itself be true diversification. Sheep grazing seems to be the default 'agricultural' use proposed in combination with solar arrays for most such applications. There is no evidence it would produce additional income or that the income generated from the use of the land as a solar farm would benefit the local area. As regards the biodiversity improvements, these do not require inappropriate development to be implemented, although they are encouraged by the PPG (paragraph 4.34 above).
84. To summarise, given the findings of the appellant in respect of ALC, the Local Planning Authority has no option but to accept that 67% of the site has a land classification of grade 3b. However, the proposed development does not comply

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<sup>33</sup> Council's Statement of Case

with the NPPF or the PPG in that the appellant has failed to demonstrate the use of agricultural land is necessary or that the use of a lower grade of land was explored in relation to the 3<sup>rd</sup> of the site which is recognised as BMV land. There are grazing opportunities, but as regards permanent loss this is not really ensured. After a generation has passed an application could be submitted to extend the development period even if the development is conditioned to be in place for only 25 years. The latter is a long time and circumstances and technology could be very different, so there is no guarantee the land would be restored to a wholly agricultural use. However, these are additional factors to be considered as set out in paragraph ID 5-013 of the PPG and do not detract from the fact the use of agricultural land must still be shown to be necessary with poor quality land being used in preference to higher quality land.

#### *Biodiversity/ecology*

85. The NPPF seeks to protect biodiversity by resisting development which would destroy or adversely affect important wildlife habitats. In particular paragraph 118 states that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying a set of principles which includes the following:

- *if significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused;*
- *proposed development on land within or outside a Site of Special Scientific Interest likely to have an adverse effect on a Site of Special Scientific Interest (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of Sites of Special Scientific Interest;.....;*
- *the following wildlife sites should be given the same protection as European sites:*
  - *potential Special Protection Areas and possible Special Areas of Conservation*
  - *listed or proposed Ramsar sites, and*
  - *sites identified, or required, as compensatory measures for adverse effects on European sites, potential Special Protection Areas, possible Special Areas of Conservation and listed or proposed Ramsar sites.*

Paragraph 119 states: *The presumption in favour of sustainable development does not apply where development requiring appropriate assessment under the Birds or Habitats Directives is being considered, planned or determined.*

86. LP Policy EN2 confirms that the Local Planning Authority is committed to ensuring the protection and enhancement of the Borough's biodiversity and will have regard to international, national and local conservation sites when making planning decisions.

*Internationally and nationally designated sites*

87. The appeal site is located in an area which is known to have the potential to support sensitive birds, such as Pink Footed Geese. On this basis it is identified as being either within, or in close proximity to, a European designated site (also commonly referred to as a Natura 2000 site). Therefore, the proposed development has the potential to affect its special features. European sites are afforded protection under the Conservation of Habitats and Species Regulations 2010 (as amended) (the 'Habitat Regulations'). The appeal site is also in close proximity to the Martin Mere Special Protection Area (SPA), a European site, which is also listed as Martin Mere Ramsar Site and notified at a national level as Martin Mere, Burscough Site of Special Interest (SSSI). It is also in close proximity to the Sefton Coast Special Area of Conservation (SAC), Ribble and Alt Estuaries SPA and Ramsar, which are European designated sites<sup>34</sup>. These are notified at national level as Sefton Coast SSSI and Ribble Estuary SSSI. These are primarily concerned with their value as habitat for overwintering birds.
88. At the time of determining the application, the Council was a competent authority for the purposes of the Habitat Regulations. In considering the European site interest, regard must be had for any impacts the proposed development may have. Regulations 61 and 62 of the Habitat Regulations set out a series of steps and tests, which should be followed in assessing whether a development could potentially affect a European Site. These steps are commonly referred to as the 'Habitats Regulations Assessment' process. A Preliminary Ecological Appraisal was submitted at the application stage. This covered a 2km search radius, but did not include any statutory designated sites and discounted any potential impact on 3 identified non-statutory designated sites within that area. It was contended that the site was not a European designated one, because it falls outside of an RSPB alert area for Pink Footed Geese (a qualifying feature of a European site) and its location outside of this alert area indicates the site has been assessed by RSPB to be a sufficient distance from designated sites to ensure that works within it are unlikely to have any negative effects. Therefore, the appellant concluded that a Habitats Regulations Assessment was not required. However, the site's proximity to European designated sites has been outlined above.
89. In addition, the appellant showed, through the submission of the Lancashire Environment Record Network, that the site lies immediately adjacent to an area, which is known to provide feeding areas for Pink Footed Geese and Whooper Swans. The RSPB has confirmed this and that the site does lie outside of their alert area for these birds. However, these alert areas (which were identified prior to 2008) are those which are considered to have a high risk of impact on internationally important bird species, rather than demonstrating where sensitive birds are or are not using certain fields or showing which fields are sufficiently distanced from known roosts and feeding areas.
90. Therefore, for the consideration of the application, the appellant failed to sufficiently demonstrate the requirements of the Habitat Regulations, in respect to designated sites, had been met as a Habitat Regulations Assessment had not been submitted. The Council was unable to carry out its duty as a competent

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<sup>34</sup> Appendix XIX Council's Statement of Case

authority, as it was unable to determine the potential impact on designated sites; a qualifying feature of which is its use either directly or in a supporting capacity by over-wintering birds.

91. The officer's report for the application also included an assessment<sup>35</sup> for other birds, bats and water borne species. The conclusion was that the proposed development had failed to comply with the requirements of the NPPF to conserve and enhance biodiversity and to demonstrate the potential impact on designated sites and protected species. This is also contrary to LP Policy EN2. In addition, the appellant had failed to demonstrate adherence to the requirements of the Habitat Regulations and by doing so, had not enabled the Council to carry out its duty as a competent authority for the purposes of these Regulations.
92. For the appeal, the appellant's ecological consultant submitted a non-breeding bird survey, together with a 'shadow' habitats regulations assessment (HRA). Consequently, the Council contacted the Merseyside Environmental Advisory Service to review these documents<sup>36</sup>. The conclusions on both the 3<sup>rd</sup> and 4<sup>th</sup> reasons for refusal are in section 4 of the report: *My evidence has considered the third and fourth reasons for refusal on the grounds of insufficient information on protected species and insufficient information to demonstrate compliance with the Habitats Regulations. I have also considered the planning policy context and legislation with regard to biodiversity and ecology as they pertain to this appeal. I have clearly shown that the no ecological information has been submitted with the application or the appeal with regard to protected species, including European protected species. Consequently, the Local Planning Authority does not have sufficient information, by survey, which clarifies which species may use the appeal site or how it may be used. Further the Local Planning Authority is unable to comply with the requirements of the Habitats Directive as set out in regulation 9 of the Habitats Regulations. Therefore, it is not in a position to agree appropriate mitigation measures to ensure that the proposed development does not result in deterioration or destruction of local populations of European protected species. The onus to provide sufficient information on protected species is the appellant's. Without that ecological information, the Local Planning Authority is not in a position to consider the nature of the potential impacts, appropriate mitigation and/or compensation as advised by ODPM Circular 06/2005 or meet the requirements of LP Policy EN2. I have also considered whether or not the appellant has demonstrated "exceptional circumstances" for this matter to be dealt with by means of planning condition. As set out in my paragraph 3.1 above, the officer's report gives the appellant's view that there is no need to provide protected species survey, as the appellant intends to provide buffer zones, without being able to guarantee that works would not take place within those buffer zones, is an appropriate way forward. This approach is clearly at odds with Government guidance as set out in paragraph 3.16 above. Further, I have considered the additional information submitted by the appellant "Wintering Bird Survey and Habitats Regulations Assessment". In my opinion, neither the Wintering Bird Survey nor the shadow Habitats Regulations Assessment provide sufficient and adequate information to enable a competent authority to form a view on whether or not there would be likely significant*

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<sup>35</sup> Grounds of Appeal, Appendix A1.3 paras 6.70 – 6.74

<sup>36</sup> Detailed report is contained in Appendix XX Council's Statement of Case

*effects on European designated sites as required under Regulation 61 (Habitats Regulations).*

93. Note the similar concerns raised by Natural England<sup>37</sup> and the WWT Martin Mere letter sent to the Council on the 15th June 2015<sup>38</sup>. The latter also added: *To add some of our own experience in this field, we have found that site use by pink-footed geese cannot be effectively assessed by one visit a month, as has been the case in the ornithological survey provided by the developers. Surveys of just this one day a month would have been unlikely to record pink-footed goose use of the site. Twice weekly during peak times for the geese and once a week in mid-winter would be more appropriate for a species that changes its local feeding distribution on a daily/weekly basis. We also note that the first survey wasn't made until the 30th October and this is after the peak visitation of pink-footed geese to the area. As a result, making one survey on the 30th October to present a picture for the whole of October is, quite frankly, worthless, in terms of assessing the ornithological importance of the land in that time period.*
94. Given the above, the proposed development conflicts with the NPPF, LP Policy EN2 and the Conservation of Habitat and Species Regulations 2010 (as amended).

*Planning balance and overall conclusions*

95. The proposed development is inappropriate development in the Green Belt and accepted as such by the appellant. A balanced assessment has been carried out of the harm caused by the proposed development in terms of inappropriateness, loss of openness and conflict with one of the purposes of including land within the Green Belt, against the case for very special circumstances made by the appellant. As regards the 3 dimensions of sustainable development, the appeal scheme does include the environmental benefit of producing renewable energy. This has Government support, as it would contribute to its climate change objectives and would generate sufficient energy for 4,800 dwellings and result in the consequent savings of carbon emissions. However, the biodiversity benefit has not been demonstrated and any enhancement does not require inappropriate development to be implemented. Furthermore, the economic benefits are limited and unproven so can be given little weight in the final balance. Finally, in the social role of sustainable development major concern has been shown by the local community, who will be presenting their own objections (individually and together) to the proposed solar farm. Also, there is no direct benefit to the local area in that the generated energy goes into the national grid, so it is questioned how the sewerage farm can tap into it directly.
96. It has been concluded that in respect of this particular site, the benefits do not outweigh the identified harm to the Green Belt. Furthermore, it has been found that the appellant has failed to demonstrate the use of agricultural land is necessary and land of a lesser grade (in respect of that part of the site which has been identified as BMV) has been considered. In terms of ecology, the appellant has failed to provide sufficient and adequate information, despite the Wintering Bird Survey and the shadow Habitats Regulations Assessment submission for the appeal, to enable a competent authority to form a view on whether or not there

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<sup>37</sup> Appendix XXI Council's Statement of Case

<sup>38</sup> Appendix XXII Council's Statement of Case

would be likely significant effects on European designated sites as required under Regulation 61 (Habitats Regulations). As stated in paragraph 98 of the NPPF, and confirmed in the PPG (paragraph ID 5-005), an application for renewable energy should only be approved if the impact is (or can be made) acceptable. The impacts of the development have not been fully identified in terms of ecological interests and, therefore, the appellant has failed to demonstrate those impacts can be made acceptable. In terms of those impacts to the Green Belt that have been identified, it is concluded the substantial harm is not outweighed by very special circumstances. With respect to the loss of agricultural land it has not been demonstrated its use is necessary or that sites with lower grades are not available. For these reasons the proposed development is contrary to the NPPF, the PPG and LP Policies GN1 and EN2.

#### *Other matters*

97. On balance at the application stage the Council considered the proposal would not have an unacceptable impact upon the landscape character of the area sufficient to warrant a reason for refusal, the amenity of local residents, the conservation of heritage assets or their setting and would be acceptable in terms of highway safety and flood risk/drainage subject to the imposition of conditions. The full considerations of these matters are set out in the officer's report<sup>39</sup>.
98. As indicated above, a request for a screening opinion (2015/0608/SCR) in respect of the proposed installation of photovoltaic arrays has been received for the adjacent Wigan Wastewater Treatment Works on Deans Lane. This is intended to provide renewable electricity to the existing, operational wastewater treatment works on behalf of United Utilities. Two areas (total area of 7.8ha) have been identified by United Utilities as having good potential (3MW) for the development of a ground mounted solar array, due to their ability to accommodate this type of low scale development. The location is described in the covering letter<sup>40</sup> as an existing, industrial context with an absence of significant landscape or nature conservation designations and being at a relative distance from residential properties with boundary screening.
99. In October 2014 the Government (Environment, Food and Rural Affairs Secretary Elizabeth Truss) announced changes to the regulations for farming subsidies, which meant farmers and landowners will lose their right to claim subsidies for fields filled with solar PV arrays. The change, which came into effect from January 2015, means that farmers who choose to use fields for solar panels will not be eligible for any farm subsidy payments available through the Common Agricultural Policy for that land. Effectively, only solar farms of 5MW and below will be guaranteed the subsidy and the larger schemes will have to apply to a fund, so such monies will no longer be automatic. The Secretary of State advised this was to ensure that more agricultural land is dedicated to growing crops and food and it would also help rural communities who do not want their countryside blighted by solar farms. She said: *English farmland is some of the best in the world and I want to see it dedicated to growing quality food and crops. I do not want to see its productive potential wasted and its appearance blighted by solar farms. Farming is what our farms are for and it is what keeps our landscape*

<sup>39</sup> Appellant's Grounds of Appeal, Appendix A1.3 Paras 6.34 – 6.91

<sup>40</sup> Appendix VIII Council's Statement of Case

*beautiful. Solar panels are best placed on the 250,000 hectares of south facing commercial rooftops where they will not compromise the success of our agricultural industry. The Secretary of State added: The Department for Energy and Climate Change recently announced that renewable energy subsidies for new large-scale solar farms will end next April. This year, the Department for Communities and Local Government amended planning rules to ensure that whenever possible solar installations are not put in fields that could be used for farming. At that time there were 250 installed solar farms, with the biggest covering as much as 100 hectares.*

100. As consequence of this, given the change was consulted on earlier in 2014, the number of solar farm projects given planning permission increased by 65% in 2014, as developers rushed to secure government subsidies. This was revealed by research and reported at the beginning of April 2015 by Greg Pitcher, a Morgan Stanley financial adviser<sup>41</sup>. Analysis of government data by law firm Pinsent Masons showed 220 schemes of 5MW or greater were approved in 2014. This was up from 133 in the previous year, while just 59 were given the green light between 2010 and 2012. Pinsent Masons believes developers were keen to get schemes through the planning process to qualify for Renewables Obligation (RO) certificates before changes came into effect on the 1st April 2015. Pinsent Masons energy and planning partner Jennifer Ballantyne said: *There has been a noticeable change of pace in the solar industry as developers rush to get over the line ahead of the 1 April cut off point. Subsidy through RO is a well-trodden path compared to the Contracts for Difference regime, which creates uncertainty around project returns.*

101. National Grid has placed a holding objection as the proposal will cross a High Pressure Gas Pipeline. Certain restrictions in terms of work within an easement strip of the pipeline have been outlined<sup>42</sup>.

### *Conclusion*

102. For the reasons outlined above, the Council considers it was justified in refusing planning permission for the proposed development. On balance it is considered that the identified harm to the Green Belt by reason of inappropriateness, the loss of openness and conflict with the purpose of safeguarding the countryside from encroachment is significant and such that cannot be outweighed by the considerations put forward by the appellant. Added to this are the objections relating to the ecology of the site and its environs and the loss of agricultural land. Therefore, and in accordance with paragraph 88 of the NPPF, very special circumstances are not found to outweigh the totality of the harm to the Green Belt.

### **Written Representations**

103. The material points of the cases made by those who submitted written representations (around 130 at the application stage with additional submissions made at the appeal stage) and who are opposed to the development are, in summary: the effect on the Green Belt, biodiversity and wildlife, landscape character, heritage assets, highway safety, noise, living conditions of local

<sup>41</sup> Appendix XXIII Council's Statement of Case

<sup>42</sup> Appendix XXIV Council's Statement of Case

residents and flood risk. A letter was also received from the local MP objecting to the proposal.

104. A smaller number (5 at the application stage) wrote in support, the material points in summary being: the proposal would generate renewable energy reducing greenhouse gases, it would have a low visual impact, there would be no impact on heritage assets and it would be a reversible development.

### **The Case for Stop Hoscar Solar Farm Residents' Group**

105. An objection to the proposal was also received from Stop Hoscar Solar Farm Residents' Group (SHSFRG) claiming that despite strong opposition from the local community (130+ letters of objection and 170+ signatures by petition) objections from the neighbouring 6 Parish Councils, objection from the Member of Parliament and multiple concerns and objections raised by Lancashire Wildlife Trust, CPRE, RSPB, Wildlife and Wetlands Trust, Lancashire Civic Society and a unanimous refusal of permission by the Members of the Council's Planning Committee, the developer and the landowner have chosen to disregard such strong opposition and go to appeal.
106. It was further contended that most of the objections submitted by the public, by the Parish Councils and other organisations included concerns on the effect that this development will have on the landscape, particularly from the surrounding hills. The SHSFRG continued by stating that the loss of visual amenity is by no means limited to a small group of residents but to the thousands who drive, walk, run, cycle and visit this area every day of the year. This part of West Lancashire attracts tourists, national and world class sporting events and contributes large amounts of money to the local economy: all as a result of its landscape, views and amenity. Though rural and peaceful, this area is close enough to towns and cities and is visited frequently by urban dwellers who boat on the nearby canal and walk and cycle along the surrounding lanes and footpaths. No amount of 'sensitive planning and screening' can screen the impact of this solar farm on the low-lying land and certainly not from the hills.
107. It was pointed out that in the House of Commons oral statement of 29 January 2014 the Planning Minister, Nick Boles, stated the "The policies in the NPPF are clear that there is no excuse for putting solar farms in the wrong places. Applications for renewable energy development, such as solar farms, should be approved only if the impact, including on the landscape – the visual and the cumulative impact – is or can be made acceptable. That is a very high test."
108. SHSFRG compiled 2 reports outlining their findings and concerns<sup>43</sup> which include a photomontage of the proposal showing its impact and argued that in addition to the 4 principle reasons given for refusal by the Council, the harm to the landscape and the effects on visual amenity, should also be considered at this appeal. The SHSFRG go on to raise the following concerns in respect of the proposal.

#### *Statement of Community Involvement*

109. The appellant states that a consultation event was hosted in April 2014 to 'raise awareness'. The awareness took the form of an advert in a free newspaper

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<sup>43</sup> SHSFRG Statement of Case, Appendix 1.1 A and Appendix 1.1 B



which, by nature of the rural landscape of the area, is not widely delivered to rural properties. This was followed 6 days later by a Consultation Event. According to the developer, 30 people attended and 10 questionnaires were completed and these formed the basis for the developer's Statement of Community Involvement report. Feedback taken from these 10 questionnaires, and accordingly reported in the SCI, is that attendees 'generally demonstrated a positive response'. No further consultation with the local community has ever taken place.

110. Given the level of interest that this development has generated since July 2014 when the local community first started to become aware of the proposal, SHSFRG query the validity of the Statement of Community Involvement. The majority of residents in the local community were not even aware of the proposal in April and only heard about it after an application was made to the Council. Many more than 10 people have issued statements about this development and their comments are completely at odds with the appellant's conclusion, that there was 'a positive response'.

*Council's Reason for Refusal 1*

111. The appellant provides examples of 4 proposals for solar farms which were approved by their respective LPA's and located in Green Belt. In 3 of the 4 cases, the solar farms are much smaller than Tawdside Farm. In some cases, permission was only granted after the solar farms were considerably amended (Capel Grange-reduced by 9ha: Burton reduction in CCTV from 17-9 and further measures after consultation with public). The 5th example that was considered at Appeal Ref: APP/C3105/A/13/2207532 is again a much smaller site. The examples do not compare similar sites or circumstances with the site being considered at this appeal.
112. Conversely, a number of appeals have been dismissed and refer to the effect of large solar scale developments on the openness and purposes of the Green Belt. Appeal Ref: APP/J1535/A/13/2208676<sup>44</sup> states: 'One of the purposes of designating a Green Belt is to assist in safeguarding the countryside from encroachment. By introducing a hi-tech form of development into this generally rural area, the proposal would conflict with that purpose. Overall, the scheme would be inappropriate development in the Green Belt, would be in conflict with one of the purposes of designating the area, and would reduce its openness'.
113. Though a smaller project than this proposal, there are a number of farm buildings, both agricultural and business, which draw some similarities to the 2 sites. The Inspector refers to this in para 14; 'It would be a relatively large scale and quasi-industrial development which would be at odds with the essentially rural character of the landscape. The appellant suggests that the area has a more commercial character due to the presence of the buildings and uses beyond the hedge. However these are generally not apparent as one approaches the farm along the footpath, and the proposed array would be out of keeping and harmful'. The Inspector did not find the presence of existing development or the renewable energy benefits a reason to allow the appeal and cited the harm to the Green Belt, character and appearance of the area as his reason.

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<sup>44</sup> SHSFRG Statement of Case, Appendix A paras 10 and 11

114. A further appeal proposal had previously been refused by the neighbouring Chorley Borough Council. The Inspector in Appeal Ref: APP/D2320/A/14/2222025<sup>45</sup> refers to the loss of openness in the Green Belt; 'Paragraph 80 of the NPPF states that the Green Belt serves five purposes; one of which is to assist in safeguarding the countryside from encroachment. Solar panels are engineered products that have an industrial appearance. They are not, inherently, products that fit into a countryside environment. On the scale proposed the solar panels, if installed on the site and together with the industrial type fence that would surround them, would result in significant encroachment into the countryside. Paragraph 79 of the NPPF states that "The fundamental aim of Green Belt policy is to prevent urban sprawl by keeping land permanently open; the essential characteristics of Green Belts are their openness and permanence".
115. Appeal Refs; APP/Y3615/A/14/2212923<sup>46</sup> and APP/D0121/W/13/2209567<sup>47</sup> are further examples of proposals dismissed at appeal where the developments were considered inappropriate development in the Green Belt and where there would be a loss of openness and sizeable encroachment of 'built' development into the countryside. Once again, all of these appeal examples are smaller in size than this proposal, so illustrating the enormity of this development and the significance and harm that such an industrial plant would have on the openness and character of the Green Belt. The appellant does not address the issues of the openness of the Green Belt nor the safeguarding of the countryside which are key to the NPPF and the protection of the Green Belt. The appellant lists 9 reasons claimed to constitute very special circumstances, sufficient to outweigh any harm to the Green Belt.

*a) Renewable Energy*

116. SHSFRG agree that the need for renewable energy is an important consideration for Government, LPAs, local communities and individuals. Over the last 3 -5 years there has been a huge increase in applications to LPAs seeking to install renewable energy projects and developers have favoured expanses of low lying countryside, agricultural or Green Belt land, for solar plants, for ease of development and commercial returns.
- Electricity capacity from renewable sources has more than doubled since 2010. Renewable generation now provides almost a fifth of the UK electricity needs, powering the equivalent of 14.5 million homes annually.
  - £11.4 billion has been invested in the UK's solar PV sector alone between 2010 and 2014, highlighting the progress made in the solar market over a short stretch of time.
  - By the end of 2014 there was an increase of 79% in electricity generated from solar PV. This is a 28% increase in installations over the same period.

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<sup>45</sup> SHSFRG Statement of Case, Appendix C para 6

<sup>46</sup> SHSFRG Statement of Case, Appendix J

<sup>47</sup> SHSFRG Statement of Case, Appendix K

Whilst these figures do not detract from the need for the UK to increase its installed generating capacity, they do illustrate how robust the solar PV industry has been in the last year and how targets have been met and superseded.

117. 'Meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land. Protecting the global environment is not an excuse to trash the local environment'. (Planning Update: Written statement-HCWS488)<sup>48</sup>. The UK has the second largest number of solar farms in the world and has more than France and Spain combined, despite both European countries having more hours of sun than the UK (Solar photovoltaics deployment -April 2015- DECC)<sup>49</sup>.
118. Table 2<sup>50</sup> shows that from the 4<sup>th</sup> quarter 2014, to the end of the 1st quarter 2015, the Total Solar Capacity (TSC) jumped by 26 per cent to 6.521GW and 460 sites, as developers strove to commission sites before the ROC scheme ended on March 31st 2015. The monthly growth in April 2015 was a more modest 0.6 per cent. SHSFRG estimate capacity for 2015 at 6.892 GW, a year on year growth of 33%. (Method: the actual April figure from DECC for Solar Photovoltaics Deployment, plus 8 months at the April growth of 0.6 per cent), There is rapid growth in the 1<sup>st</sup> quarter followed by subsequent slowing as the new, less generous subsidy regime commences. 33% growth is a reasonable estimate for 2015 and is considerably less than previous years. By 2020, even assuming modest growth of 15%, the TSC is 13.862 GW, at the upper-end of the government's 12 to 14 GW target. By 2020, assuming growth of 33%, the TSC is 28 GW, more than double the government target. These figures make it patently clear why the government is significantly reducing the subsidy regime. In April 2015, the actual TSC commissioned in the UK was already 55% of the 2020 Target. It is only 3 years ago that solar capacity was barely 1GW (8%)<sup>51</sup>.
119. These startling 2015 solar capacity figures will now allow LPAs to take a more balanced and careful view of both the number and location of the new solar farms. Ministers have issued guidance and directives that large-scale solar farms should be deployed on roofs or previously-used land. Government's support for solar continues but with the knowledge that developing on Green Belt and agricultural land is not necessary, as solar targets can now be comfortably met. The appellant has not demonstrated that providing 15.9MW from Green Belt land is vital or necessary to meet Government targets nor does the appellant provide evidence that it is necessary to override any guidance in the NPPF and that this proposal is necessary for "increased production of energy from renewable source" (para 91). The appellant has made no reference to the current UK situation in terms of Solar PV and the energy already being produced or forecast. Reference is only made to historic information.

*b.) Sustainable energy in the UK and West Lancashire*

120. The proposal quotes a number of sources in order to establish a case that sustainable energy, renewable energy potential and the 'core planning principles of the NPPF' are intended to encourage individual councils to contribute towards

<sup>48</sup> SHSFRG Statement of Case, Appendix 2B

<sup>49</sup> SHSFRG Statement of Case, Appendix 2A

<sup>50</sup> SHSFRG Statement of Case

<sup>51</sup> SHSFRG Statement of Case, Appendix 2A

renewable energy. The PPG says that there is no quota which the Local Plan has to consider. As has been outlined above and covered in detail in the Government publication; Delivering UK Energy Investment: Low Carbon Energy-March 2015<sup>52</sup> the UK is achieving above target results from its renewable energy installations, with solar achieving a greater share of the market much faster than anticipated.

- DECC estimates that between 2010-2013, £45bn was invested in electricity generation and networks. In the solar sector this equates to around 650,000 PV installations since 2010.
- Up to the 3<sup>rd</sup> quarter 2014, solar PV provided around 1.7% of the UK's total electricity generation. By 2020 it could account for around 3-5% of our electricity generation, powering the equivalent of around 2.5 million to 3.3 million homes. Since 2010, some 99% of the UK's current total solar PV has been installed so illustrating the enormous changes to renewable energy in just 5 years.
- The Government's Electricity Market Reform (EMR) Delivery Plan anticipated 10-12 GW of solar capacity throughout the UK by 2020: a figure quoted by the appellant. This has since been revised upwards, reflecting higher than expected deployment of large scale solar under the Renewables Obligation (RO), reaching 12-14GW of solar by 2020. This contributed to the government's decision to end most subsidies for large-scale solar in March 2015 with further reductions due from July 2015.

121. Whilst West Lancashire may have an obligation to contribute towards renewable energy targets, it does not have to do so at the expense of its Green Belt. An Inspector in appeal ref: APP/J1535/A/13/2208676<sup>53</sup> remained unconvinced by the appellant's reasons and stated: 'However the need for renewable energy does not automatically override environmental protection..... Overall the other considerations, particularly in relation to the renewable energy benefits of the proposal, do not clearly outweigh the harm to the Green Belt and the harm to the character and appearance of the area'.

122. With the UK on course to achieve renewable energy projects in line with government targets, developers need to pay greater attention to updated recommendations, guidance and statements by Ministers. The Energy Secretary, Ed Davy, in March 2015 stated<sup>54</sup>, 'We support the deployment of solar PV at all scales and see the future of the solar PV industry in the UK centred around 3 markets:

- small-scale building-mounted PV panels, typically on housing, small commercial premises and community buildings
- PV panels mounted on commercial and industrial buildings, larger public and community buildings
- large scale industrial ground-mounted solar farms, as long as they are well sited and sensitively developed, preferably on previously-used land'.

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<sup>52</sup> SHSFRG Statement of Case, Appendix 2C

<sup>53</sup> SHSFRG Statement of Case, Appendix A paras 25 and 27

<sup>54</sup> SHSFRG Statement of Case, Appendix 2C

123. SHSFRG recognises that the NPPF seeks to encourage the delivery of renewable and low carbon energy but not at the expense of Green Belt land and not in opposition to Government directives unless very special circumstances apply. The appellant has not proved this to be the case. Whatever the MWp output of this large scale solar plant, this justification does not constitute a very special circumstance. As outlined by DECC in March 2015, roofs, industrial units, community buildings and previously used land should be used when deploying solar PV, and in particular when it is large scale.

*c) Solar farm - size and scale*

124. The appellant refers to the physical nature of the proposal and its setting in the landscape. The majority of those who objected at planning stage disagree with the developer that this development will have 'little visual impact' believing that it will cause serious harm to the landscape and affect the amenity of residents and visitors alike. Appeal Ref: APP/Q3305/A/14/2214650<sup>55</sup> (paras 30 and 31) show that the Inspector in that appeal regarded the size, appearance, location and structure were of major significance in his considerations. SHSFRG agree with that Inspector's assessment and believe that this proposal will be viewed in exactly this way. From many of the surrounding lanes-Hall Lane, Waness Blades Road, Deans Lane, Chorley Road, Mains Lane-alongside the low lying fields and from the surrounding hills-Hunters, Parbold, Bannister, Harrock, - the assessment is exactly the same.
125. It is precisely because of the flat nature of the site that this huge solar complex will be seen from many viewpoints in the immediate vicinity and from the surrounding hills and villages. A planning appeal APP/D0840/A/14/2213107<sup>56</sup> confirms 'large scale solar farms could have a damaging effect on landscape and recognise that the impact can be as great in predominately flat landscapes as in hilly or mountainous areas'. SHSFRG refutes the appellant's claim that the overall effects of the development on the landscape character of the Green Belt would be 'slight adverse to imperceptible'. The character and openness of 90 acres of Green Belt will be severely affected by almost 60,000 solar panels arranged in arrays of up to 2.5m high, a tall mesh perimeter fence, CCTV cameras measuring 3m at intervals around the perimeter, security lights, metal gates and assorted buildings, a disused shipping container as a substation, 16 fibre glass inverter cabinets and access roads within the site itself.
126. SHSFRG do not see how this predominately industrial development can appear as anything but a large, alien structure in a landscape of agricultural fields, mixed with pastures that create extensive views from the surrounding hills across the West Lancashire Plain to the sea. It certainly will not enhance the beneficial use of the Green Belt or enhance the landscape or visual amenity.
127. Appeal Ref: APP/Q3305/A/13/2195742 is not dissimilar to the one at Hoscarr: 'At present the scene is one of uninterrupted rolling pastureland and offers a clear appreciation of the quintessentially rural character of the landscape. ... The introduction of solar panels with the attendant equipment, fencing and supplementary boundary planning would significantly change the experience of walkers' SHSFRG would add in Hoscarr's case...and cyclists, residents and lovers

<sup>55</sup> SHSFRG Statement of Case, Appendix D

<sup>56</sup> SHSFRG Statement of Case, Appendix L

of nature. 'It would also cause material harm to landscape character and it would be prominent and conspicuous from the extensive footpath networks surrounding the site.'<sup>57</sup>

128. Appeal Ref: APP/D0121/A/13/2208198<sup>58</sup> is comparable and states: 'Purn Hill ... is an important and valued local resource and the fact that there are areas where the appeal site is obscured by vegetation is of limited importance. Much of the pleasure of using the path is to enjoy the outward vistas. Those using Purn Hill will almost certainly only be there for the purposes of recreation .... Those people (or receptors) can be rightly classified as having the highest level of sensitivity to any change. Visual appreciation of the landscape.....would be seriously compromised. The eye would be drawn to the ranks of the PV array in the foreground, and the essence of the view across relatively unspoilt rural land would be harmed. I recognise that there are already some visual detractors in this view, but nothing of a scale such as that proposed.....'. 'Because of the elevated nature.....I am satisfied that the proposal would introduce an unacceptably harmful intrusion into, and dilution of, the character of the landscape.....In my judgement the impact could not be satisfactorily mitigated by additional planting and it would therefore remain for the life of the development'.

129. The Council acknowledges that the 'proposed development will introduce a new feature within the landscape and will result in a degree of industrialisation'. The appellant has not proved that their assertion of 'little visual impact' is correct nor that any impact, small or large, constitutes 'a very special circumstance' that can justify a development on Green Belt land.

*d) Temporary Development*

130. The proposal seeks to prove that this large installation would only be a temporary development on the Green Belt. The 25 year period of operation, together with a further 6 months or more at installation and decommission is, in human terms at the very least, not temporary. It is the span of a generation and many residents, particularly those who are middle aged or elderly, are horrified that if this development is built, they will not see a return to an agricultural landscape in their lifetime.

131. The Inspector in appeal Ref: APP/X2220/A/13/2203582<sup>59</sup> states: 'Unlike some other developments that occupy large areas of land and are progressively restored over their lifetimes, such as landfill sites and mineral extraction sites, the full extent of the proposed development would be in place for the entire operational life of the solar photovoltaic development..... to many of those who live nearby or walk in the area the development would occupy a significant proportion of a lifetime. In this context, the development may seem to many as being far from temporary'.

132. Whilst planning conditions can be imposed to stipulate that the site is returned to agricultural use at the end of the operation, many residents are sceptical that this will be properly enforced or practical. Large scale solar farms are in their infancy and as such, no guarantees can be given that the land will be suitable for

<sup>57</sup> SHSFRG Statement of Case, Appendices M & 1.1B

<sup>58</sup> SHSFRG Statement of Case, Appendix E paras 12-16

<sup>59</sup> SHSFRG Statement of Case, Appendix F paras 25-27

a return to productive agricultural land. So far, only desk based studies have been undertaken with small scale tests on test patches. It is not known what harm a development of this magnitude may have on the Green Belt as there are no precedents. No amount of planning conditions can predict the future nor guarantee that the benefits achieved by solar PV will outweigh the damage to this land which has been protected and farmed for centuries and which the NPPF and Government also seek to preserve.

133. The appellant seeks to prove that the temporary nature of solar farms has been confirmed at planning appeals and lists examples. It is worth noting that none of these examples include solar farms sited in Green Belt land. All of the examples are much smaller than this proposal (10MW, 12.8 MW, 4.2MW, 5MW) and in one (APP/D0840/A/14/2213745) a car park for the local school is included within the proposal whilst in another the heights of the panels were reduced. In the last example given by the Appellant, the appeal was dismissed.

*e) Agriculture and Diversification*

134. The appellant argues that there will be no permanent loss of agricultural land and that there will be benefits in terms of diversification and investment. The proposal seeks to prove that such diversification of agricultural practices overcomes any objection to development of the Green Belt. Reference is made to a recent planning appeal decision, in which the Inspector refers to farm diversification supporting the overall farm business, as an example of the benefits of such a development. However, once again this site is not in Green Belt and is significantly smaller than this proposal. In addition, the land had only been used previously for grazing and hay production, so no loss of arable crops would result from such a site.

135. The appellant claims, as additional justifications to overcome the LPA's planning refusal on grounds of inappropriate development in the Green Belt that: 'The development of a solar farm would provide far greater economic security than many other forms of agricultural diversification. The financial subsidy available is provided for 20 years and is guaranteed as an index-linked stream of income for this entire period, or as long as the solar farm is operating'.

136. The installation of 60,000 solar panels on further productive agricultural land will take a considerable amount of land out of food production. Hoscar is, and always has been, an area of productive farming. Crops grown here include barley, wheat, potatoes, carrots, leeks, lettuce, calabrese, spinach and cabbage. There is crop rotation on these fields in line with best farming practice and though the appellant suggests that having a 'period of rest' —of 25 years—would be beneficial and give the fields a break from 'intensive agricultural activities', the reality is that crop rotation ensures this land remains much sought after for providing high yields of quality crops. It cannot be good agricultural practice to take this land out of crop production for 25 years.

*f) Sheep grazing*

137. Designing the proposed solar farm so that sheep will be able graze under the panels, is a further very special circumstance put forward by the appellant. Though this was not mentioned during the planning application stage, the proposal is now acknowledging advice from the PPG and BRE advisory guidelines that such activity will constitute a continuation of agriculture on this land.

138. The low lying land at Hoscar is not traditionally known for grazing sheep. To diversify into this activity is underusing 90 acres of land which could be used more productively for the production of crops. Furthermore, the appellant states that the design would enable the grazing of sheep. This is not the same as obtaining a definite commitment from the landowner that for the next 25 years, sheep will be grazed on these 90 acres. The Wildlife Trust provide detailed guidance on conservation grazing which is more detailed than the advice referred to by the appellant in the BRE report. Whilst grazing the right animals, on the right land and during the right season is generally seen as good conservation practice for flora and fauna, there are restrictions and best practice guidelines to be followed. Under or over grazing can be damaging in equal measure to the land and habitats that it seeks to conserve.
139. The matter of sheep grazing was considered by the Inspector in appeal ref: APP/J3720/A/14/2217844<sup>60</sup> who opined that there was no evidence to suggest how sheep grazing would benefit the local area and that it may not occur in any event. It was, as a result, given very little weight in that case. In appeal ref: APP/D0840/A/13/2202450<sup>61</sup>, the comment is made: 'Some weight attaches to the likelihood that the site would continue to be used for grazing while panels are in place. However there would be a great deal less grass under the panels than there is currently. The 25 year temporary nature of the proposal is a consideration, but that is a long time in which an attractive area of productive land would be used essentially for a non-agricultural purpose'.
140. Grazing sheep on these fields is a departure from normal farming practice in this area and is not the best use of this fertile land which produces high yields of crops. Neither is there a guarantee that sheep will be grazed for the duration of the solar farm nor on all 90 of its acres. If the fields 'farm solar panels' it is a waste of productive agricultural land. SHSFRG cannot accept that such vague guidance can carry sufficient weight to allow this inappropriate development in the Green Belt.

*g) Site selection*

141. The PPG directs developers to look at previously developed and non-agricultural land over greenfield land, when bringing forward large scale solar schemes. PPG Paragraph 13 includes detailed guidance for the installation of solar farms, including: *Particular factors a local planning authority will need 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; 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.*
142. Inspectors in 2 recent appeals refs: APP/V2255/A/ 14/2212592 and APP/D3505/A/13/2204846<sup>62</sup> have concluded that the word 'necessary' requires a developer to provide a sequential test to support their application, which demonstrates that there are no more suitable alternative sites within the vicinity.

<sup>60</sup> SHSFRG Statement of Case, Appendix B

<sup>61</sup> SHSFRG Statement of Case, Appendix H Para 31

<sup>62</sup> SHSFRG Statement of Case, Appendices G & I



The Inspectors also concluded that the search area should not be confined by district boundaries. There are many references to the lack of alternative site surveys and the lack of evidence that a sequential test has been carried out. The following are just 3 appeals where the lack of site selection on Green Belt or on greenfield land was highlighted by the Inspectors: APP/Q3305/A/14/2214650; APP/D3505/A/13/2204846 and APP/X2220/A/13/2203582<sup>63</sup> para 18; 'The problem for the decision maker is that no attempt has been made to demonstrate that there are no other suitable sites. This may mean that land within the countryside is being unnecessarily developed when a site within a built-up area is available or that a Greenfield site is being developed when previously developed land is available. The absence of a site search or other information to show that a trawl of sites has been undertaken is contrary to what is required by recent Government policy as set out in the Planning Guidance...'

143. Green Switch Solutions did not provide any evidence of a site survey at the planning stage, stating that the whole of West Lancashire was Green Belt. They now state; 'Any alternative site for a ground mounted solar farm within West Lancashire would therefore also be very likely to be located within the Green Belt'. The word 'likely' is not a very definitive argument based on a detailed search. The PPG can be seen as a strengthening in government policy direction and now places an onus on the developer to justify the need for a scheme on agricultural land or Green Belt. The appellant refers to 'an extensive site search' but has not submitted a detailed site survey despite claiming that it has been proved that Tawdside Farm is the only site that meets the criteria for a solar farm in West Lancashire.
144. However, 3 full planning applications are pending consideration by the Council and a further 5 screening opinions have been submitted. An appeal is also under way for a further large scale solar farm elsewhere in the Borough. These developers have found what they consider to be suitable sites for solar farms in West Lancashire. West Lancashire is a rural area but there are also significant industrial areas in the area which contain a great many warehouses, factories and industrial units. Skelmersdale, Simonswood, Burscough Industrial Estate, dis-used airfields, quarries of which there are several are examples of sites that fit the criteria outlined by the Minister and subsequent Government Ministers<sup>64</sup>.
145. Other developers have submitted sequential tests and site surveys, to the Council, in the planning applications referred to above but this proposal does not contain this information. Of note, is that one planning application, pending consideration, is based on a former airfield in Burscough. This is close to the appellant's offices which are based on the very industrial estate mentioned above. It is a site that has been dismissed by the applicant who has stated that no other sites are available in West Lancashire, other than 90 acres of Green Belt agricultural land at Tawdside Farm, Hoscar.
146. SHSFRG suggest that the proposal does not provide any evidence of a thorough survey of alternative sites and that this cannot be considered a 'very special circumstance'.

#### *h) Grid Connection*

<sup>63</sup> SHSFRG Statement of Case, Appendices D, I & F

<sup>64</sup> SHSFRG Statement of Case, Appendix 2G

147. The appellant states that an accessible grid connection is vital to the selection of a large scale solar farm and that, as there is an 'affordable' connection this constitutes a very special circumstance for consideration to develop in the Green Belt. SHSFRG argue that a grid connection and its affordability for the developer is a commercial consideration for the appellant and the landowner. This 'affordability' or proximity or ease of connectivity is not a planning reason which can be considered a 'very special circumstance' or justification for overcoming the NPPF's concerns regarding inappropriate development in the Green Belt.

*i) Biodiversity and wildflowers*

148. If the landowner or the developer is keen to create wildflower meadows and enhance further the rich habitat that already exists for wildlife, flora and fauna, a large scale solar park is not necessary to enable its creation. The landowner could dedicate land or hedgerows to such biodiversity whilst continuing to farm the fields for crop production. In the view of SHSFRG and the local community, this carries no validity to create a solar park in an area where biodiversity along the hedgerows, fields and river banks already exists and in no way justifies building on Green Belt land.

*Summary*

149. The appellant does not seek to address the concern and the main reason for refusal by the Council that this development has 'a significant adverse impact upon the openness of the Green Belt'. This is given major weight in the NPPF and in appeals refs: APP/J1535/A/13/2208676, APP/D2320/A/14/2222025, APP/Y3615/A/14/2212923 and APP/D0121/W/13/2209567<sup>65</sup> but is largely ignored in this proposal. We do not believe that the appellant has demonstrated that there is no alternative to this location for this development and we do not believe that 'very special circumstances' have been demonstrated that can overcome an inappropriate development of the Green Belt.

*2nd Reason for Refusal*

150. SHSFRG is of the opinion that arable agricultural land in West Lancashire, an area well known for its fertile soil is inappropriate for this proposal. In accordance with the NPPF and the PPG, "Whilst local authorities should design their policies to maximise renewable and low carbon energy, there is no quota which the Local Plan has to deliver". Defra's ALC for Lancashire shows that 45.4% of its agricultural land is Grades 4 and 5. As Green Switch Solutions did not provide a Sequential Test Document, unlike many other companies who make similar applications, we do not know how diligently they explored for more suitable sites within and outside of West Lancashire.

151. In addition to the fact that West Lancashire's fields are crucial to supplying food to the North West of England, we also consider that it is inappropriate to locate solar PV projects in West Lancashire because irradiation here is substantially less than most areas to the south. With reference to the UK Solar Irradiation Map, Figure 1 in BRE's document 'Planning guidance for the development of large scale ground mounted solar PV systems'<sup>66</sup>, it is clear that

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<sup>65</sup> SHSFRG Statement of Case, Appendices A, C, J & K

<sup>66</sup> SHSFRG Statement of Case, Appendix 3.2 figure 1

solar PV projects are more suited to the South of England and even the middle of England, and should not be placed on agricultural land in the North unless it has been shown that sites further south are not available.

152. The appellant points out that “The Agricultural Land Classification plan for West Lancashire clearly shows that the majority of the agricultural land within the Borough represents Grade 1 (excellent) or Grade 2 (very good) agricultural land. While this plan shows the appeal site as Grade 1 agricultural land, the ALC assessment for the appeal site, which was undertaken in accordance with MAFF guidelines and accepted by Natural England and the LPA, confirmed that 67% of the appeal site did not in fact constitute BMV agricultural land.” 67% of this site is classed as moderately good, rather than very good or excellent, but certainly not poor or very poor. SHSFRG together with many local residents, farmers and others who wrote to object, noted the excellent and varied crops that are successfully grown on this land and were surprised at the land classification.
153. It is generally recognised that these maps were created over 30 years ago and have never been updated. Natural England has confirmed that the information provided on this map and held by the Council is quite broad brush in nature. Therefore, if the appeal site was classified incorrectly, it would be wrong to assume that all other land in West Lancashire has been classified correctly. Without extensive research, we could assume that a good proportion of land classified as Grade 1 or Grade 2 could be of a lower grade and vice versa. The appellant has justified the choice of land by referring to the document ‘Agricultural Land Classification plan for West Lancashire’ and then shown this document to be out of date and inaccurate.
154. Recent appeal decisions consider the loss of agricultural land and search for alternative sites. Though each appeal is an individual case, the following comments resonate very strongly with the residents who oppose this proposal. Appeal ref: APP/X2220/A/13/2203582<sup>67</sup> ‘In respect of the necessity for locating the development in the countryside, no information has been submitted with the planning application or the appeal which demonstrates that there is no alternative, firstly, to locating the development in the countryside and secondly to using a greenfield site. The appellant makes the point that it would be unlikely for a site to be identified within the built-up area that would be of sufficient size on which to develop a solar photovoltaic farm of the size being proposed. This may be so, but no evidence in the form of a site search has been submitted which supports the appellant’s view. In addition, no evidence has been submitted which indicates that within the countryside there are no alternative sites to the use of greenfield land. Many areas of countryside contain tracts of previously developed land such as landfill sites, quarries and disused wartime establishments such as airfields. ....no attempt has been made to demonstrate that there are no other suitable sites. This may mean that land within the countryside is being unnecessarily developed when a site within a built-up area is available or that a Greenfield site is being developed when previously developed land is available. The absence of a site search or other information to show that a trawl of sites has been undertaken is contrary to what is required by recent Government policy as set out in the PPG.

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<sup>67</sup> SHSFRG Statement of Case, Appendix F para 16 and 17

155. With regard to the 33% of land that is Grade 2 or 3a, SHSFRG asserts that this should not even be under consideration. The NPPF paragraph 112 expresses a preference for development to be directed to land outside of this classification. The NPPF does normally support development on the best agricultural land stating that "The best quality land should be used for agriculture purposes." In appeal ref APP/Z3825/A/14/2219843<sup>68</sup> the Inspector says: "My attention has also been drawn by a third party to Appeal ref APP/J3530/A/13/2193911. In that case the Secretary of State for Communities and Local Government dismissed an appeal .....(where) no sequential test in relation to the availability of brownfield land was then applied by either the Inspector or Secretary of State. The appeal also concerned a proposal on agricultural greenfield land. That is relevant because the appeal was dismissed in part because the proposal would have involved the loss of 'best and most versatile' Grade 3a agricultural land which formed a significant part of the site area." The lack of an alternative site survey and the use of 30 acres of BMV land in this proposal is a similar situation.
156. A similar conclusion was made by Inspectors in appeal refs: APP/Q3305/A/14/2214650 and APP/X2220/A/13/2203582<sup>69</sup> 'the development of a ground based solar photovoltaic farm would significantly reduce the options available for farming the land over the not inconsiderable lifetime of the development. The development would not permit ploughing, seeding and harvesting of crops in the narrow spaces between the arrays. Using the land for grazing is the only feasible option, but using the land for grazing over a period of twenty five years would not be making the best use of a site which contains much land which comes within the category of being the best and most versatile..... Accordingly, I conclude on this issue that the proposal would result in the unacceptable loss over the lifetime of the development of a site which contains some of the best and most versatile land. During the life of the development, the agricultural potential of the site would not be realised. As such, the proposed development would be contrary to the recently issued PPG which seeks to safeguard the best and most versatile land."
157. It is relevant to note the comments of the Inspector in appeal ref: APP/V2255/A/14/2212592<sup>70</sup> "BMV agricultural land is a national asset of limited supply and there is nothing in national or local policy to suggest that protection of it should be reduced in areas where there is a relatively large amount of it. Equally, that the scheme involves the use of a very small amount of BMV land (when considered at the holding, district, county or national level) is also not a factor in its favour. This is an argument that could be used again and again in planning applications cumulatively resulting in a significant loss of BMV land."
158. The Inspector for appeal ref: APP/V2255/A/14/2212592<sup>71</sup> makes a pertinent point with regard to benefitting the land by taking it out of crop production; 'I have seen no evidence to indicate that the value of this (period of rest) to agriculture, potentially 25 years from now, would outweigh the loss during the lifetime of the development of its ability to be used for crops requiring BMV land.' Moreover, an appeal into a local solar farm acknowledges a concern that many

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<sup>68</sup> SHSFRG Statement of Case, Appendix N paragraph 34

<sup>69</sup> SHSFRG Statement of Case, Appendices O & F

<sup>70</sup> SHSFRG Statement of Case, Appendix G para 12

<sup>71</sup> SHSFRG Statement of Case, Appendix G Para 12

local residents have: that 25 years might indeed turn into 50 years. Appeal ref: APP/D2320/A/14/2222025<sup>72</sup>. The Inspector writes "25 years, however, is about a third of a person's lifetime and is the span of a generation. Furthermore, there is no guarantee that planning permission would not be granted, after 25 years, for the replacement of the solar panels for a further 25 year period. Very little weight is therefore given to the reversibility of the scheme."

159. In BRE's Planning guidance for the development of large scale ground mounted solar PV systems, section 2, Planning Application Consideration point (d) Ground Maintenance<sup>73</sup>, it refers to the presence of sheep on a solar farm merely as an occasional means of keeping down the weeds. "Vegetation will grow under the solar panels and this will require management, particularly to avoid the site becoming overgrown with noxious weeds..... During those times of the year when growth requires managing, grazing is to be encouraged wherever practicable." APP/D0840/A/14/2213745<sup>74</sup> the Inspector recognised that "sheep grazing might be seen as the minimum level of agricultural activity that could be undertaken." Appeal ref: APP/J3720/A/14/2217844<sup>75</sup> '...the land would be taken out of agricultural production for the duration of the development since there is no clear evidence that sheep grazing would take place.'
160. SHSFRG agree with both Inspectors' comments as there is no clear evidence that sheep grazing would take place on the appeal site, no commitment has been given and it would be an underuse of good productive agricultural land. The appeal site already performs multiple functions; it is used to grow food, house electricity pylons, supports a variety of wildlife including invertebrates, birds, mammals and reptiles, and it offers a pleasant view for the many people who walk, cycle, drive and take their leisure in this area. The fields already give homes to many insects, and reptiles and a section of additional hedgerow has recently been planted.
161. To conclude, SHSFRG can see no evidence that Green Switch Solutions have demonstrated that they have properly researched suitable locations for the siting of their solar PV project. They have produced no evidence of locating sites outside of West Lancashire which would be more appropriate for solar panels in terms of irradiation and ALC. Nor have they demonstrated that the development of agricultural land is necessary as they have not produced a sequential report or site survey, documenting reasons why available brownfield land is unsuitable and sites such as old quarries and old airfields were not considered.
162. The presence of non-arable land was not explored because the appellant looked no further than the Agricultural Land Classification plan for West Lancashire, which it then sought to prove inaccurate in the case of the appeal site. The inclusion of the considerable amount of land that is shown to be BMV, has not been justified by the appellant, even though, BRE's Planning guidance for the development of large scale ground mounted solar PV systems, states that "The best quality land should be used for agriculture purposes"<sup>76</sup>.

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<sup>72</sup> SHSFRG Statement of Case, Appendix C Para 25

<sup>73</sup> SHSFRG Statement of Case, Appendix 3.2

<sup>74</sup> SHSFRG Statement of Case, Appendix P para 13

<sup>75</sup> SHSFRG Statement of Case, Appendix B Paragraph 26

<sup>76</sup> SHSFRG Statement of Case, Appendix 3.2

163. The appellant justifies the installation on the grounds that it is 'temporary' though 25 years does not feel very temporary to the community. To counter claims of the loss of full crop growing status, the appellant states that "agricultural activities would be ongoing throughout the life of the proposed solar farm." However, other than reference to the possible use of sheep, no detail is given, so no weight can be given to such claims. The "period of rest from intensive agricultural activities" is unnecessary due to existing good farming practices and it would not make up for the loss of production in the intervening 25 years.
164. Tawdside Farm has already diversified and does not fit the criteria of a farming concern that is struggling and needing alternative sources of income or occupation. No details of the landowner or his existing business have been submitted to clarify the appellant's justification that it is a benefit to diversify and take this land out of crop production in exchange for rental income.

### *3<sup>rd</sup> and 4<sup>th</sup> Reasons for Refusal*

#### *Ecology*

165. The proposed development is contrary to the NPPF, LP Policy EN2 and the Conservation of Habitat and Species Regulations 2010 (as amended) in that insufficient information has been provided to demonstrate compliance with the statutory duty to assess the likely significant effects on nearby designated sites and supporting habitat.
166. The appellant's Wintering Bird Survey Report was started in October 2014. This consisted of a visit once a month between October 2014 and March 2015 and each visit consisted of; pre-dawn and post-dusk vantage point surveys to record movements of Whooper Swan *Cygnus cygnus*, Bewick's Swan *C. columbianus* and Pink-footed Goose *Anser brachyrhynchus* on or immediately adjacent to the site; systematic walkovers of the site recording all bird species observed or heard and approximate numbers recorded, and a wider area search of up to a 5km radius of the site to locate flocks of swans and geese.
167. We are advised by a senior official of the RSPB that the 'vantage point surveys' should be considered simply as "roost surveys" – i.e. a survey to ascertain if swans or geese have been roosting in these locations. Pink-footed geese do not generally roost on farm land but choose lakes, reservoirs, estuaries and remote moorland lochs. Most geese in this area roost either at the Wetlands and Wildfowl Trust reserve at Martin Mere Special Protection Area and Ramsar site, where they have the advantage of receiving supplementary feeding, or on sandbanks on the Ribble and Alt Estuary SSSI (Ribble and Alt Estuaries SPA and Ramsar site). WWT use this fact as an additional visitor attraction by opening early on occasions during the winter to enable the public to witness the geese taking off in their tens of thousands to forage on local farmland. This year saw 45,800 pink-footed geese present at Martin Mere WWT reserve -the highest number ever recorded.
168. Local residents have the pleasure of witnessing these enormous numbers of geese flying over these fields throughout the October-March period. It is not just the sight but also the sound as these geese fly overhead and this is amplified a hundred fold when they circle and land on the fields, particularly those adjacent to Mains Lane when numbers are in the thousands. In which case, it is surprising

that Wardell Armstrong found relatively few geese, suggesting their methodology, infrequency of visits and use of vantage point surveys demonstrates a lack of understanding of the behaviour of pink-footed geese.

169. We support completely the comments of Natural England regarding their concerns relating to the survey. This document makes the following points which need to be satisfactorily addressed by the applicant:

- a. How the single survey on 30th October is representative of the month.
- b. Justification is required why only a single survey per month was considered appropriate to assess the usage of the site by SPA birds.
- c. Why spring passage surveys have not been undertaken.
- d. Why breeding SPA birds have not been mentioned within the survey or the HRA given that breeding birds are an interest feature of Martin Mere.
- e. Justification why representative times of the day and where possible observations during conditions of low cloud or mist was not considered necessary.
- f. Justification why it was not considered necessary to undertake surveys across the tidal cycle. Obtaining data on nights when flights to or from roosts may coincide with high tides close to dawn or dusk may be particularly useful as these are key times when many species are most active.
- g. Justification why 24 hours of vantage point survey effort was deemed appropriate rather than the recommended 72 hours by Gilbert (36 hours for wintering and 36 hours for breeding).

170. The RSPB advise that geese are opportunistic feeders and move around according to the availability of food. They first feed in stubble feeds, then move on to root crops and finally onto grass and cereal crops. This means that for example a stubble field will be exhausted of spilt grain in December and, therefore, no geese would be present. Similarly, you would not expect geese to be present on grass land in October when arable feeding is available. The surveyors do not appear to have looked for evidence (for example – droppings) of geese usage of fields.

171. The numbers of Pink-footed geese recorded in the Habitats Regulations Assessment are not recognised by SHSFRG. Maps provided by Lancashire Environment Record Network (LeRN) show an area of farm land to the north-west of Wanes Blades Road and Mains Lane as being a Sensitive Bird Area for Pink-footed Geese – regularly used. At its closest point this SBA is less than 50m from the proposed solar farm development and less than 500m from the centre of the site. The appellant recorded a total of 700 Pink-footed geese landing on a field adjacent to Mains Lane in the SBA on one occasion only.

172. Local observers report that flocks of geese, often considerably in excess of 1000 birds, are frequently present on these fields from late autumn through to February. The appellant also recorded no geese present on the site during any of their visits. It is a fact that a small number of Pink-footed geese (about 50) were seen landing on the fields behind the farm buildings at Tawdside farm on occasions in December 2014. The figures given in Table 3 of the Habitat

Regulations Assessment document are incomplete – the figure for 2013/14 was available in July 2014 but is not included in the table. The figure in the WeBS annual survey is 29400 – an increase of 146% over 2012/13.

173. The Waterbirds in the UK 2013/14 Report states that the Pink-footed Goose population reached its highest-ever point, continuing the long term trend, after a poor year in 2012/2013. The 2014/15 figure is not available from WeBS until July but using WWT's figure, given in their press release in October 2014, of 45800 this is a further increase of 56% over the previous year or 291% since 2012/13. Increases in population of this magnitude greatly increase the pressure on farmland which is suitable for feeding pink footed geese.
174. The NPPF seeks to protect biodiversity by resisting development which would destroy or adversely affect important wildlife habitats. In particular paragraph 118 states that when determining planning applications, local planning authorities should aim to conserve and enhance biodiversity by applying a set of principles which include the following: .... *If significant harm resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated or, as a last resort, compensated for, then planning permission should be refused.* The appellant has simply stated that there were no sites which were less harmful within the Borough. However, another developer based in London has now applied for planning permission for a solar farm on previously used land (part of a former airfield) at Burscough. Paragraph 118 goes on to say that proposed development on land within or outside a SSSI likely to have an adverse effect on a SSSI (either individually or in combination with other developments) should not normally be permitted. Where an adverse effect on the site's notified special interest features is likely, an exception should only be made where the benefits of the development, at this site, clearly outweigh both the impacts that it is likely to have on the features of the site that make it of special scientific interest and any broader impacts on the national network of SSSI.
175. Under the Habitats Regulations in-combination assessment, the developer has only considered wind and solar developments. However, any development which has the potential to affect functionally linked land should be taken into consideration. This would include any plans or projects at any stage of the planning process together with any draft plans being prepared by public bodies. Thus, any proposed works at United Utilities Wigan Waste Water Treatment Works which lies immediately alongside the proposed site should be considered. The applicant has not demonstrated that they have undertaken any such investigations. The application site is located in an area known to have the potential to support sensitive birds such as Pink-footed Geese and Whooper Swans. On this basis it is identified as being either within or in close proximity to a European designated site and, therefore, the proposed development has the potential to affect its special features. European sites are protected under the Conservation of Habitats and Species Regulations 2010 (as amended). The application site is also close (approx 5.2km) to the Martin Mere Special Protection Area which is a European site and listed as Martin Mere Ramsar Site and as Martin Mere SSSI. It is also close to the Sefton Coast Special Area of Conservation (SAC), the Ribble and Alt Estuaries SPA and Ramsar which are European designated areas and also notified as SSSIs. The developer has submitted that the application site is not a European designated site as it falls outside an RSPB alert area for Pink-footed geese and Whooper Swans. As stated



above, the distance from the application site to the alert area is very small. The alert area was identified, prior to 2008, when the number of overwintering birds was considerably lower than the current figures. The alert area should be a guide and not used simply as a method of determining where sensitive birds are or are not using certain fields, or for showing which fields are sufficiently far from known roosts and feeding areas. SHSFRG consider that the appellant has still not demonstrated that the requirements of the Habitat Regulations in respect of Pink-footed Geese and Whooper Swans have been satisfied.

176. The appellant's Report refers to "minimal flyover events" in the area of the proposed development and concludes that the area is of no significance to the movement of Pink-footed geese as they are concentrated to the north-west of the site. They state that the solar farm does not lie under the route between sites of international importance and is therefore unimportant as a wildlife corridor. It may be true if lines were to be drawn on a map connecting the Scottish sites, Martin Mere and the over-wintering sites in East Anglia but direct visual observations show that this is completely erroneous. There is, at present, no information published about local movements of geese and swans. However, research shows that there is good anecdotal evidence that these birds follow physical features on the ground, for example, rivers, canals and even main roads. Local experienced observers see very large numbers of geese using the Tawd – Douglas valley for migration as well as for local movements to and from feeding grounds. Every year, starting in late August and continuing well into the autumn, large numbers of geese can be seen flying in a southerly direction along the Tawd – Douglas valley to the general area of Newburgh/ Parbold where they change direction and fly to the west towards Martin Mere. When they resume their journey to East Anglia, they fly east along the line of the Leeds-Liverpool canal to the Tawd – Douglas valley and then turn south towards their winter locations. There is a smaller population of Pink-footed geese which 'stop-over' at the RSPB reserve at Leighton Moss in north Lancashire and for this group the Tawd – Douglas valley is on the direct route to Norfolk. Natural England National Character Area 32 -Lancashire and Amounderness Plain stresses the importance of this wildlife corridor. It is also listed as a "Major Wildlife Corridor" in the Council's notes on the reasons for refusal of planning consent.

#### *SUMMER VISITORS/BREEDING BIRDS*

177. Lancashire Environment Record Network (LeRN) has provided a set of bird records centred on Tawdside Farm. This shows that a considerable number of bird species of conservation concern have been recorded on the site of the proposed solar farm. It must be pointed out that many of these records are not recent – dating from 1998 or 1999. However, the appellant's Wintering Bird Survey between October 2014 and March 2015 revealed that 10 red listed and 18 amber listed Birds of Conservation Concern (BoCC) were present on the site. BoCC relate to the decline in breeding populations of these species in the UK. Of these, 6 species are listed as Schedule 1 species which receive special protection – these are merlin *Falco columbarius*, peregrine *F. peregrinus*, barn owl *Tyto alba*, kingfisher *Alcedo atthis*, fieldfare *Turdus pilaris* and redwing *T. iliacus*. When checked, Drawing LE12333-004 of the Wintering Bird Survey Report, which

maps the findings of the survey, was found to contain errors and omissions which are shown in the SHSFRG table<sup>77</sup>.

178. Clearly, the appellant could not record any summer visitors or breeding birds due to the timing of the surveys. SHSFRG could not carry out a detailed survey on site, but experienced observers have identified another 28 species which are present at locations very close to Tawdside Farm. Of these, 3 are red listed and 7 are amber listed as BoCC. Not only is this location a valuable site for wintering birds, it is also clear that it is a most important habitat for farmland birds many of which are in serious decline. Lapwing *Vanellus vanellus*, skylark *Alauda arvensis*, oystercatcher *Haematopus ostralegus*, common sandpiper *Actitis hypoleucos*, all of which are ground nesters, are very likely to be breeding on the site usually along the edge of crops. Other species will breed along hedgerow field boundaries and along the banks of the rivers Tawd and Douglas. Green It is proposed to leave an 8m buffer along the river banks but considerable disturbance is inevitable during the construction phase of the development. This is too important a site for many species in serious decline to allow it to be damaged in this way.
179. Barn owl *Tyto alba* and kingfisher *Alcedo atthis*, both recorded by the appellant as being present on site, have protection under Schedule 1: Part 1 of the Wildlife and Countryside Act 1981 (as amended). The Council has stated that the appellant did not demonstrate that the barn owls which are known to roost in the farm buildings immediately adjacent to the site would not be adversely affected by the construction or operation of the solar farm. In the appellant's Statement of Case there is no indication that any further assessment of the possible effect on barn owls has been carried out. A similar argument applies to the kingfishers which are present on both the River Tawd and the River Douglas. The Barn Owl Trust does accept that it is possible to manage solar farms for the benefit of barn owls but only if the vegetation is allowed to develop into rough tussocky grass. This is not the appellant's intention which is to either have clear land under the PV panels or plant wild-flower meadows between the arrays of panels. The Barn Owl Trust recommends that a full environmental assessment be carried out and an assessment of the likely impact of the proposal on both barn owl roosts/nest sites and foraging habitats in order to carry out mitigation, compensation and enhancement measures.
180. Summer visitors to the area include swallow *Hirundo rustica*, house martin *Delichon urbica* and swift *Apus apus* which feed in flight over open farmland. In order to avoid impacts on nesting birds and to ensure compliance with the provisions of the Wildlife and Countryside Act 1981 (as amended) it is recommended that any initial ground works and associated vegetation removal take place outside of the bird breeding season (March to August inclusive). If vegetation works are necessary during the breeding season, breeding birds and their nests should be protected by a watching brief. Potential nesting habitats should be hand searched by a suitably experienced ecologist and only when they are satisfied that clearance works will not result in an offence being committed will work be allowed to proceed. Inevitably PV panels do present some risk of collision mortality to birds. Security fencing around PV arrays and any overhead

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<sup>77</sup> SHSFRG Statement of Case, Ecology para 3.1

power lines, wires and supports could represent a collision risk for some bird species.

#### *MAMMALS*

181. Bats are often to be seen on summer evenings hunting over the fields and waterways in the area of the proposed solar farm. The rivers Tawd and Douglas provide an abundance of insect food on which the bats feed. Roosts occur in mature trees – to be found along the river banks, in buildings especially of traditional construction, and in the old stone bridges often found in this area over rivers and canals. The appellant's site survey confirmed that suitable foraging sites for bats exist along the boundaries.
182. No attempt appears to have been made to ascertain which species of bat are present and in what numbers. Any works to be carried out on the trees along the boundaries has the potential to impact on bat roosts. The developer has undertaken to provide an 8m buffer zone along the boundaries but if work is to be carried out on any trees within the buffer zone or overhang the site, for example to reduce shading of PV panels, then a full assessment should be made by a competent and independent authority such as the Bat Conservation Trust to comply with the Habitat regulations and with the NPPF and Policy EN2 in the Local Plan. Thus far, the applicant has failed to demonstrate that the proposed development would not have a detrimental impact on a European protected species.

#### *WATER VOLE and OTTER*

183. The water vole *Arvicola terrestris* is the fastest declining mammal, having lost 90% of its population across the country. However, the numbers to be found in this part of Lancashire are encouraging. The Northwest Lowlands Water Vole Project reports that the numbers of water voles in West Lancashire is above average (53.4%) and this is due to the extensive network of agricultural drainage ditches throughout the area. The Canal and Rivers Trust reports a stronghold for water voles on the Rufford branch of the Leeds – Liverpool Canal where they are carrying out extensive work to improve the environment to increase breeding success. The North West Lowlands Water Vole Project reports that good populations of water voles exist in the north-west of the Borough. The Merseyside Biodiversity Project reports that there are good populations of water voles in the Leeds & Liverpool Canal from Litherland (North Liverpool) to Parbold. At its closest point the canal is less than 300m from the site." These areas are connected by the Tawd – Douglas rivers and their associated watercourses. It would be logical to expect that water voles will be present in these rivers adjacent to the proposed solar farm and in the drainage ditches which cross the site. The developer has not undertaken a full assessment of this species but has relied on the establishment of the 8m buffer zone. Any work which encroaches towards the water courses will inevitably cause disturbance to this increasingly rare and shy creature. The situation regarding the otter *Lutra lutra* is not at all clear. It has, over the last number of years, spread south from its stronghold in north Lancashire. It is present in the Ribble valley, north of the proposed solar farm, and there have been reports of otters being seen around the Leeds – Liverpool canal less than 300m from the site. An investigation should be carried out to ascertain the status of the otter in the Tawd – Douglas rivers before any possible disturbance to this rare animal can occur.

### *OTHER SMALL MAMMALS*

184. A number of small mammals are found in the local area and it would be most likely that these are also present in the arable crops and field boundaries at Tawdside Farm. We would expect common shrew *Sorex araneus*, pygmy shrew *S. pygmaeus*, bank vole *Cethrionomys glareolus*, field vole *Microtus agrestis* and wood mouse *Apodemus sylvaticus* to be abundant on the site. These provide a most valuable food source for raptors. No attempt has been made by the appellant to survey these creatures.
185. The appellant did not submit any information about the possible presence of Great Crested Newt *Triturus cristatus* in the watercourses surrounding the site or in the drainage ditches within the site. Lancashire has a large population of this species which is protected under European legislation. The applicant has not undertaken a full assessment of this species but has relied on the establishment of an 8m buffer zone along ditches and both rivers. The appellant has also indicated that works may be required within the buffer zones. If these works were to impact Great Crested Newts these could result in a breach of the Habitat Regulations. The appellant has therefore failed to demonstrate compliance with the NPPF and LP Policy EN2 in respect of a European protected species.

### *INVERTEBRATES*

186. Dragonflies and Damselflies are common near to water courses where they breed. There are 19 breeding species of these insects to be found in Lancashire and of these, 17 can be found at the Mere Sands Wood reserve belonging to the Lancashire Wildlife Trust. Mere Sands Wood is only a short distance from the proposed solar farm and it is likely that there will be breeding populations of some of these beautiful insects along the Tawd and Douglas rivers. It is important that survey work should be carried out by a competent and independent authority on Dragon Flies to establish which species are present before any work on the site adversely affects a rare dragonfly.

### *ECOLOGY CONCLUSION*

187. SHSFRG believes that the Wintering Bird Survey Report and the Habitats Regulations Assessment are inadequate for the following reasons:
- a. The survey was not independent as it was carried out by employees of Wardell Armstrong (who produced the Wintering Bird Survey Report on behalf of the appellant).
  - b. The survey was shallow and of very limited scope in terms of the apparent late commencement of the Wintering Bird Survey; the severely restricted hours of actual vantage point survey work (only one third of the recommended number) and the extremely restricted number of days on which the survey was carried out.
  - c. The number of wintering pink-footed geese and whooper swans was very much lower than local experienced observers would have expected. In the wider area search, the recorders seem to have ignored much of the area surrounding the site to the North, East and South and have concentrated on the area surrounding the WWT reserve at Martin Mere (North West of the site).

- d. We believe that the report lacks integrity – a detailed investigation into drawing LE12333-004 revealed several errors.
  - e. This report will become invalid in October 2015, thus requiring a new wintering birds survey.
  - f. Much of the findings are at variance with those of the local residents.
188. The proposed development conflicts with the NPPF, LP Policy EN2 and the Conservation of Habitat and Species Regulations 2010 (as amended). The site has Barn owl and Kingfisher present (both observed by Wardell Armstrong's staff); bats are also common and there is every possibility that Water Vole and Great Crested Newt are present in the Rivers Tawd and Douglas. The appellant has failed to produce sufficient information to demonstrate that the proposal would not adversely affect Protected Species and Habitats.
189. It is not clear when the appellant will be able to carry out this development. It is stated that the work would be undertaken between March and September so as to mitigate any possible disturbance to Pink-footed Geese and Whooper Swans. However, important breeding populations of increasingly uncommon ground nesting birds such as Skylark, Lapwing, Oystercatcher and Common Sandpiper will be present during April to August. These species are already in serious decline and it would be folly to allow even more nest sites for these birds to be destroyed. This conflict of interest means that there is no period in which construction work could be carried out without serious consequences for the bird population. Tawdside Farm is potentially too important an ornithological site to be covered by nearly 60000 PV panels. The appellant has already indicated that additional hedges will be planted for screening purposes but apparently not to benefit the wild-life. When will these be planted so as to cause the least disruption?
190. The appellant has indicated a willingness to plant wild flower meadows between the arrays of PV panels. This is in line with guidance from Natural England, BRE and RSPB stating that wildflower meadows should be incorporated into the proposals for a solar plant. This is excellent when the land is a previously used (brownfield) site when it will create an increase in biodiversity.
191. The landowner is committed to an onerous regime for 25 years of using the correct grasses and flowers together with on-going maintenance and ensuring that the PV panels do not cast shade to negate the advantages of sowing a wildflower meadow. However, in this case, the land has been used for many years for growing cereal or vegetable crops and, therefore, will be far too rich to grow wildflowers successfully as stronger grasses and herbs will crowd out the desired species.
192. PV panels are raised from the ground and it is estimated that 95% of a field utilised for solar farm development will remain accessible for plant growth and, potentially, wildlife enhancements. Apart from a commitment to wildflower meadows discussed above, the appellant has not undertaken to provide any other wildlife enhancements such as:
- a. Allowing rough tussocky un-cropped grass to develop – this would provide nest sites for ground nesting birds.

b. Planting wild bird seed or nectar rich mixes to provide winter feeding and food for pollinating insects in summer.

c. Enhancing features such as hedgerows, ditches, field margins and scrub to provide nesting and foraging areas and allowing wildlife to move between habitats.

d. A variety of artificial structures could be built to provide suitable habitats for nesting, roosting and hibernating animals. These might include nest boxes for birds and bats, log piles for invertebrates and suitable locations to encourage insects to hibernate. Built structures could be designed, for example, to allow access to loft spaces.

193. The long-term effect of large solar farms is unknown. None has yet reached anywhere near its design life of 20 or 25 years. The only scientific research on the effects of arrays of PV panels which appears to be taking place is very small scale and in its very early stages.

#### *Conclusion*

194. SHSFRG contends that large scale solar farms should not be developed on Green Belt and agricultural land. We agree with Government Ministers who have given clear guidance that previously used land and roof tops should be the first choice for these developments. We support the Council's reasons for refusal and we support and agree with hundreds of residents in the local community who object to this proposal. SHSFRG represents and comprises residents from the local and wider community and as such, our local knowledge and passion for the area in which we live should, we feel, carry weight in the course of assessing this proposal.

#### **Inspector's Appraisal**

*(Numbers in square brackets denote source paragraphs)*

##### *Main considerations*

195. The Council's reasons for refusal [2] relate to the Green Belt, agricultural land, and protected species and habitat. In addition, local residents and the SHSFRG [103, 106, 108] raised concerns regarding the effect of the proposal in respect of landscape character and visual impact.

196. In which case, I consider the main issues to be:

- 1) the effect of the proposal on the openness of the Green Belt and the purposes of including land within the Green Belt, in respect of any encroachment into the countryside,
- 2) the effect of the proposal on landscape character and its visual impact,
- 3) the effect of the proposal on protected species and habitat,
- 4) whether it has been demonstrated that the development of agricultural land is necessary, and
- 5) whether any harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

### *Green Belt*

197. The NPPF states in paragraph 91, that when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. The main parties agree [11, 47, 112] that the proposal is not listed in the NPPF as a type of development deemed to be not inappropriate in the Green Belt. Inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances.
198. The NPPF also makes clear that the essential characteristics of Green Belts are their openness and permanence so any reduction in these characteristics would also be harmful. In my judgement, the proposal would introduce a development with a very distinctive industrial appearance into an agricultural landscape. As engineered products, the solar arrays would be alien to this countryside location and this would serve to emphasise their intrusive and incongruous appearance. The scale and amount of development, which includes the solar arrays, several associated buildings and security fencing, would result in a significant amount of built form being created. This would lead to a major reduction in the openness of the Green Belt and would fail to assist with safeguarding the countryside from encroachment, which is 1 of the 5 purposes served by the Green Belt.
199. LP Policy GN1 advises that development proposals within the Green Belt will be assessed against national policy and relevant LP policies. The NPPF states that substantial weight should be given to any harm to the Green Belt.

### *Landscape character and Visual impact*

200. The Natural England National Character Assessment (NCA) places the appeal site within NCA 32 *Lancashire and Amounderness Plain*. This is characterised by a rich patchwork of pasture and arable fields, within a flat to gently undulating landscape. There are extensive views across the plain, punctuated by blocks of mixed woodland. The appellant also locates the appeal site within Local Landscape Character Area (LCA) 1d *The Douglas Valley Mosses* described as a low lying and flat landscape, with gently undulating fringes.
201. I observed that the land form in the vicinity of the appeal site is flat and low lying with the land rising some way to the south and southeast towards Parbold Hill. The surrounding area is rural in character with some scattered built development. The appeal site is crossed by electricity pylons and is adjacent to a large waste water treatment plant. Close by are the rivers Douglas and Tawd, and the Leeds to Liverpool Canal.
202. In addition to the solar panels, proposed associated structures would include 16 no. inverter cabins, a substation, a switchroom, a communications building, security fencing (around 2.4m in height) and CCTV posts (around 3m tall). No building should exceed around 3.6m in height. It is proposed that the existing hedging at the appeal site would be enhanced by additional planting.
203. The appellant submitted a Landscape and Visual Impact Assessment (LVIA) which includes 10 viewpoints claimed to be representative of a range of views of the proposal [12c]. The LVIA study area extended to a radius of 5km, including a Zone of Theoretical Visibility (ZTV). The nearest settlements to the proposal are Newburgh around 1km to the south, Grimshaw Green around 1.1km to the east and Parbold around 1.2km to the southeast. There are several scattered

dwelling nearby the closest being 38 Deans Lane around 25m to the south, 31 – 37 Deans Lane around 50 - 70m to the south and Snipe Hall Farm and Cottage around 50m to the west. There are a number of local roads which pass close to the site, notably Waness Blades Road, Deans Lane and Mains Lane. In addition, Regional Cycle Route 91 passes around 2.9km from the south of the site; a cycle route and footpath along the Leeds and Liverpool Canal pass around 380m from the south of the site; the Lancashire Trail footpath passes around 3.3km to the south of the site in an elevated position, and local footpath 32 passes around 1km to the east of the site on elevated ground.

204. The LVIA noted the perceptibility of the appeal site to be limited due to the flat landscape and existing vegetation, buildings and raised embankments on waterways, and assessed the effect of the proposal on landscape character as slight adverse. In my judgement, while the proposal would not become a characterising feature of NCA 32 and LCA1d were planning permission to be granted, the introduction of an expansive array of structures (some rising to around 3.6m in height) across land, which is currently open and free from development (except for the 2 pylons and connecting power lines crossing its western extremity) would nevertheless be a major incursion of built form into this area.
205. The proposed scheme would be extant for what would be a considerable time period in the lives of local residents. Solar panels are engineered products that have an industrial appearance. They are not, inherently, products that fit into a countryside environment. I consider the appeal site and its immediate environs to be very characteristic of the overall landscape character areas within which it sits. The adjacent water treatment plant, rather than being a justification for further development in the area, would give the proposal a cumulative impact such that its effect on local landscape character would be moderately harmful.
206. In terms of visual impact, the LVIA concludes that with the exception of the receptors at 38 Deans Lane, who would experience a substantial adverse visual effect, the majority of receptors at dwellings, settlements, and using local roads and recreational routes within the study area, would experience slight to moderate adverse visual impact, depending on the time of year.
207. From what I observed, notwithstanding the proposed set back of the development from the site boundaries, when seen from certain local vantage points such as along Waness Blades Road (LVIA Fig. 8 VP2), Deans Lane (LVIA Fig. 7 VP1) and Mains Lane (LVIA Fig. 9 VP3), along the footpath and cycle path on the Leeds to Liverpool Canal (LVIA Fig. 11 VP 5), along local footpath 32 (LVIA Fig. 12 VP 6), along the footpath along the River Douglas (LVIA Fig. 15 VP 9) and along the Lancashire Trail footpath, the proposal would be a striking, stand out feature. While views are screened to some degree by existing vegetation buildings (which would be enhanced by the proposed planting), the proposal would remain a stark addition to the local landscape when the solar arrays and associated infrastructure are seen from the local road network. This would be particularly the case when the proposal would be seen from the rising land to the south and southeast as shown in the submitted SHSFRG photographs of the appeal site [67].
208. Accordingly, I consider that the proposal would result in significant visual impact harm when seen from local vantage points.



### *Agricultural land*

209. While the Agricultural Land Classification Plan for West Lancashire classifies the majority of the area as Grade 1, the submitted Agricultural Land Classification assessment for the appeal site (which I note was undertaken in accordance with MAFF guidelines and is accepted by both Natural England and the Council) confirms that around 67% of the site is Grade 3b agricultural land [79]. From the submitted evidence, notwithstanding the views expressed by SHSFRG [152, 153], I have no reason to disagree. Furthermore, as a temporary development, albeit one that would endure for around 25 years, the land would not be permanently taken out of agricultural use.
210. With regard to the Council's concern that no sequential test was undertaken in respect of agricultural land, there is no explicit requirement for such a test set out in the NPPF nor was such a requirement drawn to my attention in relation to the development plan. Nevertheless, the PPG makes it clear that particular factors a decision maker will need 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; 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 [21, 73].
211. The Council also referred to Ministerial Statements and speeches in this regard [74] which make clear that *meeting our energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land, and for larger deployments, brownfield land should always be preferred*. The SHSFRG alludes to alternative non-agricultural land sites in the Borough [161] which it is claimed were not considered by the appellant.
212. However, I do not have full details of these alternative sites and cannot assess if they would be suitable for a development of the size proposed under this appeal. In addition, most of the land available in the Borough is BMV. Although the smaller portion of the appeal site would constitute BMV, I consider that the proposal conforms to NPPF Paragraph 112 by minimising the use of BMV agricultural land as it would use land of poorer agricultural quality available within the area. It would also follow the advice in the PPG insofar as poorer quality land would be used in preference to higher quality land and the proposed sheep grazing would allow continued agricultural use.
213. Accordingly, in this regard, I consider that the proposal would not conflict with the policies of the NPPF and the advice in the PPG.

### *Protected species and habitat*

214. During the application and appeal stages of the proposal, the appellant's ecologist, Wardell Armstrong, submitted a Preliminary Ecological Appraisal (PEA), a Wintering Bird Survey (WBS) and a Habitats Regulations Assessment (HRA) [25]. The Council consulted the Merseyside Environmental Advisory Service (MEAS) [92] and Natural England [93] on these documents, both of whom raised

concerns. In response, the appellant submitted a rebuttal which was also prepared by Wardell Armstrong.

215. The PEA notes that habitats within the site and to the west are considered to be suitable for foraging and roosting bats including individual trees, ruderal arable fields and hedgerows. It also notes that it was not possible to verify colonisation of the River Douglas by otters nor was any evidence of a holt or resting site observed during the site surveys. With regard to owls, the PEA was unable to identify the species of owl as no birds were present in the owl box during the survey. The appellant further notes that the arable fields of the appeal site and immediate environs currently form poor quality foraging habitat for Barn owl. The PEA considered other species including water vole, kingfisher, reed bunting and breeding birds.
216. The PEA makes the point that no further survey work is required dependent upon the implementation of a minimum operational 5m buffer zone adjacent to trees and hedgerows within the site. The PEA states that no works would be undertaken within the buffer zone once operational but goes on to state that; *if works are required on the trees within the buffer zone or that overhang into the site outside the buffer zone then further survey work will be required to determine their value in terms of roost sites for bats (detailed emergence/re-entry surveys)*. With regard to owls, reference is again made to the buffer zone and no works being undertaken within the buffer once operational. In respect of the ditch, and the Rivers Tawd and Douglas and the associated species, the PEA comments that if works are required within the buffer zone or within the river ditches, then further survey work will be required to determine the value of the buffer zone, ditch and rivers (in terms of associated species). In respect of breeding birds and works within the buffer zone, the point is again made that further survey work should be carried out to determine the status of nesting birds, prior to any works being undertaken.
217. MEAS was concerned that it would not be possible from the submitted evidence, to assess the impact of the proposed development on protected species, including European protected species. The provision of a buffer zone without the survey information to demonstrate that this approach would be effective does not show that impacts on protected species have been addressed. Reasonable avoidance measures as advocated by Natural England's Standing Advice for Protected Species are evidence based and must be reasonable to avoid harm.
218. However, in the rebuttal, the appellant confirms that "further works" refers to unscheduled works that may be required over the lifetime of the development, such as tree management works. No such unscheduled works are envisaged at this time and should they become necessary in the future, advice would be sought from an Ecologist prior to works being undertaken. In my judgement, this matter could be satisfactorily dealt with by attaching suitably worded conditions to any grant of planning permission to require the establishment of a buffer zone and to require said advice to be obtained in the event of works becoming necessary.
219. The proposal is in close proximity to sites of international and national designation (including Natura 2000 sites such as Ramsar, Special Protection Area (SPA), Special Area of Conservation (SAC) and Sites of Special Scientific Interest)

which are referred to by the parties [25, 87]. In its Statement of Case on Ecology, MEAS [92] advised that the arable fields of the appeal site are used for feeding by Pink-footed geese and Whooper swans, a qualifying feature of the European designated sites across the Borough. Whereas, the WBS concluded that the appeal site was not considered to be supporting notable assemblages of roosting, foraging or resting Whooper swan, Bewick swan or Pink footed goose. Two Schedule 1 listed species were identified and the area of highest ornithological interest was in the northern half of the site and close to the banks of the Rivers Tawd and Douglas. It was also concluded that a mitigation strategy would be needed to limit the impacts on wintering birds.

220. However, I note the concerns raised by Natural England [93] regarding the WBS and HRA including: how the single survey on 30 October is representative of the month, justification as to why the use of a single survey per month is appropriate to assess usage by Special Protection Area birds, the lack of spring surveys and why 24 hours of vantage point survey effort was deemed appropriate rather than 72 hours. Natural England also recommended that wintering bird data should be obtained from Martin Mere Wildfowl and Wetlands Trust and local birds groups to cover the site and adjacent fields, and (with regard to the HRA) queried why in assessing the effect of the proposal in combination with other plans and projects, only other wind and solar developments were considered.
221. The appellant's rebuttal points out that annual peak count Wetland Bird Survey data, which it was considered was relevant to the location of the appeal site and Martin Mere, was sought from the British Trust for Ornithology. With regard to the single October survey it is claimed that the survey allows results to be obtained for all winter months, covering the peak periods for Whooper swan and Pink-footed goose. The appellant also argued that 1 survey per month was appropriate because the survey followed the methodology for sites where displacement of over-wintering birds is the impact to be assessed.
222. As for the lack of a spring survey, the appellant pointed out that there was no justification for continuing surveys into April and May as Pink-footed geese leave the area in March and the appeal site lacks the arable farm habitat to support most bird species. Breeding SPA birds were not assessed as the appellant claimed that Bewick's swan, Whooper swan and Pink-footed geese do not breed in the UK and SPA birds which do breed in the UK would not find suitable habitat at the appeal site. In addition, the appellant's rebuttal includes a list of other plans and projects that covers all forms of development, in response to Natural England's concern regarding the HRA.
223. While I note the appellant's rebuttal response, it is not clear if local bird groups were approached for data and several of the responses appear to be based on likelihood, such as the farmland of the appeal site being unlikely to be a significant migrant stop over site for significant numbers of waders or wildfowl. This claim does not appear to have been substantiated by survey data. Similarly, there does not appear to be survey data to substantiate the claim that habitats within the appeal site do not form a suitable breeding resource for the identified SPA breeding birds.
224. Moreover, it is not clear if Natural England was consulted in respect of the revised "plans and projects" list. Furthermore, a housing development at New

Cut Lane and the proposed Ormskirk bypass are identified as having an impact on the qualifying features of designated sites. In the case of the former, it is stated that it may result in the loss of foraging and roosting habitat for Whooper swan and Pink-footed geese and it is then claimed that when considered alongside this proposal, the effect of such loss would be negligible. The rebuttal also points out that the LP makes clear that the Ormskirk bypass will conform to LP Policy EN2, with regard to ecology, and it is assumed that appropriate mitigation measures will be designed for the project. The effect of this proposal in combination with the Ormskirk bypass is not directly addressed.

225. On this basis, the appellant's HRA breaks down the assessment of the proposal into 3 distinct stages which are sequential. These are; Likely Significant Effects Test, Appropriate Assessment and Imperative Reasons of Overriding Public Interest. The HRA concluded under the 1st test that the proposal was unlikely to have a significant negative effect upon the designated sites either in isolation or combination with relevant plans and projects in the Borough. As a result, the HRA did not consider the other 2 tests as set out above.

226. In my judgement, the shortcomings identified by Natural England, have not been fully addressed given the unsubstantiated claims contained in the appellant's rebuttal. Furthermore, the appellant's revised list of plans and projects has not been fully assessed regarding the effects in combination with this proposal on functionally linked habitats used by qualifying features of the designated sites. This calls into question the robustness of the survey data and taking a precautionary approach, I consider that the WBS does not provide sufficient information to enable a competent authority to undertake an assessment of the likely significant effects under the Habitats Regulations. Accordingly, I am unable to conclude that the proposal would be unlikely to have a significant effect as such a risk cannot be excluded on the basis of objective information.

227. In addition, having regard to the Habitats Directive and the Licencing Regime, from the evidence, I am unable to conclude that there are imperative reasons of overriding public interest on health or public safety grounds, or benefits of primary importance to the environment to justify granting planning permission, were the proposal acceptable in all other respects. Against this background, I consider that the proposal is not compliant with the Habitats Regulations and conflicts with LP Policy EN2.

#### *Other matters*

228. Interested parties raised concerns in respect of harm to the living conditions of local residents from loss of outlook, noise, and glint and glare, along with alleged harm to highway safety, heritage assets and flood risk [103]. These matters were considered by the Council taking advice from bodies such as the County Highways Surveyor, Environment Agency and the Council's Environmental Health Team. I note from the officer report [97] that the conclusion is drawn that subject to conditions, there would be no negative effects arising from the proposal in respect of these matters. From my assessment of the submitted evidence, I have no reason to disagree.

229. I further note the officer's conclusion that the proposal would not harm the setting of any of the identified heritage assets (as set out in the appellant's Archaeology and Cultural Heritage Assessment) as a development within their

settings. From my assessment of the submitted evidence, I have no reason to disagree and consider that there would be no conflict with the desirability of preserving the settings of these listed buildings in accordance with Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

230. The appellant referred to several previous appeal decisions [12, 12d, 12e, 12g, 18, 22, 23] claimed to be similar. However, I am not aware of the detailed considerations taken into account by those Inspectors. Furthermore, given the site specific circumstances in this instance, taking this appeal on its planning merits, I do not consider the cited appeal decisions to be directly comparable.

#### *Other considerations*

231. The appellant has put forward several matters [12] claimed as other considerations in favour of the proposal. Firstly, it is claimed that with a power rating of around 15.9MWp, the proposal would generate sufficient electricity for 4,800 homes for 25 years, equating to a reduction of approximately 8,000 tonnes of CO2 emissions per year. Related to this, the proposal would assist with meeting the UK Government's target for 2020 of at least 15% of electricity to be generated by renewable sources while serving to meet an identified need for renewable energy within Lancashire. The appellant also refers to several documents which set out a need for renewable energy in Lancashire [12b]. While that may be the case there is no requirement that all or part of that need should be met within this Borough. Nevertheless, this is a benefit which weighs significantly in favour of the proposal.
232. It is claimed by the appellant that the proposal would have little visual impact [12c]. However, I have found that the proposal would cause harm to landscape character and would have a harmful visual impact. Against this background, this consideration does not weigh in favour of the proposal.
233. The appellant points out that the temporary nature of the proposal would mean that any harm would be temporary and reversible, and refers to several previous appeal decisions in this regard [12d]. However, the identified harm would pertain for 25 years which is a considerable time period and I give this consideration limited weight in favour of the proposal.
234. The appellant put forward agricultural benefits [12e] pointing out that there would be no permanent loss of agricultural land, the land would be given a rest from agricultural activities and the proposal would result in farm diversification that would support the overall farm business, with an income stream provided for a 20 year period. I give this consideration moderate weight in favour as the proposal would take that part of the site which is BMV land out of arable use for a considerable time period.
235. The likelihood of sheep grazing at the appeal site as part of the proposal is also put forward as a consideration in favour [12f]. However, as a benefit this is tempered by part of the site falling within BMV classification. In my judgement, sheep grazing is not the most productive use of this land in agricultural terms. In which case, I give this consideration limited weight in favour of the proposal.
236. Similarly, while the lack of alternative sites is put forward as a consideration in favour [12g], I consider that it has not fully demonstrated that alternative sites are not available in the wider Lancashire/North West England region, given the

appellant identified the need for renewable energy schemes to lie within the wider area [12b]. Accordingly, this limits the weight I attach to this consideration.

237. Deliverability benefits were also claimed by the appellant with the availability of a willing landowner, an available/deliverable site, an available connection to the National Grid and the development being installed within a 12 – 16 week period being highlighted [38]. While a consideration in favour of this proposal, the weight I attach to it is limited as it has not been demonstrated that these deliverability benefits are features that are unique to this location.

238. The appellant claims biodiversity benefits citing the creation of a wildflower meadow, reptile refuge and insect habitats and additional hedgerow planting [38]. While that may be the case, it has not been demonstrated that the proposed use of the site would be an enhancement in biodiversity terms over the existing use or that the creation of a solar park is the only means by which such an enhancement might be achieved. In which case, I give this consideration limited weight.

239. The appellant also pointed out that the neighbouring United Utilities Water treatment works would be interested in utilising the generated electricity with any surplus being exported to the grid. This benefit is of moderate weight in favour of the proposal as it does not demonstrate that the proposal has to be located immediately adjacent to the treatment plant in order to supply it with power. Furthermore, the Council's uncontested evidence shows that United Utilities is considering developing a solar farm for its own use.

#### *Planning balance*

240. Although time limited to a period of 25 years, the proposal would nevertheless represent inappropriate development in the Green Belt. Inappropriate development is by definition harmful and should not be approved except in very special circumstances. In addition, openness is seen as an essential characteristic of Green Belts and the reduction in that quality arising from the proposal, along with the failure to safeguard the countryside from encroachment, would also be harmful. The NPPF advises that when considering any planning application, local planning authorities should ensure that substantial weight is given to any harm to the Green Belt. The proposal would also result in moderate harm to landscape character, significant harm in terms of its visual impact and would conflict with LP Policy EN2 in respect of protected species and habitats.

241. While I have found that the proposal would not conflict with the policies of the NPPF in respect of the use of agricultural land and would not be harmful in terms of those matters set out above under *Other matters*, these are neutral rather than positive considerations. Nevertheless, the aggregated benefits arising from the matters set out under *Other considerations* above, lend substantial weight in favour of the proposal. However, the NPPF states that very special circumstances will not exist unless the harm to the Green Belt by reason of inappropriateness and any other harm is clearly outweighed by other considerations. In this case, the other considerations in favour of the proposal would not clearly outweigh the harm I have identified to the Green Belt, landscape character, visual amenity and the conflict with policy that seeks to safeguard protected species and habitats. Therefore, very special circumstances necessary to justify the proposal do not exist.

## Conditions

242. The Council provided a list of conditions that it considers would be necessary if planning permission were to be granted (appended to this report). I have examined them in terms of the tests set out in the NPPF and the PPG. Standard conditions are imposed relating to commencement time and to ensure that the development is carried out in accordance with the submitted plans, along with a condition restricting the permission to 25 years, for the avoidance of doubt. Further conditions are necessary to require the submission of a Decommissioning Method Statement, a Scheme of Restoration, a Construction Environmental Management Plan, a Construction Management Plan a Method Statement to control the identified invasive species, a detailed Habitat Management Plan, a detailed protected species protection; mitigation and enhancement scheme and timetable, and a Landscape and Ecology Management Plan, in the interests of safeguarding the character and appearance of the area, highway safety and safeguarding protected species. Details of the provision of site access and visibility splays are also required in the interests of highway safety.
243. In addition, conditions requiring details of drainage and the implementation of a Flood Risk Assessment are also necessary in the interests of decreasing flood risk along with a condition to ensure works are carried out in daylight and away from watercourses to protect wildlife. Also in the interests of safeguarding wildlife, conditions are required to avoid site clearance during the bird nesting season and to ensure the implementation of the mitigation and enhancement set out in the Ecological Appraisal, June 2014. A landscaping condition is also required along with conditions relating to tree protection, bat surveys and prevention of open burning of waste on site, in the interests safeguarding the character and appearance of the area, protecting wildlife and residential amenity.
244. A condition is also necessary to restrict permitted development on the site in respect of machinery, buildings, structures and means of enclosure, in the interests of safeguarding the character and appearance of the area, along with conditions relating to noise, lighting, CCTV, colour finishes and materials for the protection of the amenity of the nearest residents and to safeguard the character and appearance of the area.
245. However, I shall amend Conditions 26 and 27 (as suggested by the appellant) to begin; "No security lighting shall be installed", rather than; "No development shall commence" as this is a more reasonable requirement. Similarly, I shall amend Condition 29 to begin; "No inverters or transformers shall be installed", rather than; "No development shall commence", as this again is a more reasonable requirement. I shall not though amend Condition 14 to allow works during daylight hours or between the hours of 08:00 - 18:00 whichever is the longer, as this condition is required in the form suggested by the Council, to safeguard protected species.

## Recommendation

246. Having taken account of all of the matters raised in the representations, I recommend for the reasons given above, that the appeal should be dismissed. However, in the event that the Secretary of State disagrees, I recommend that the conditions in the Annex below be applied.

*Richard McCoy*

INSPECTOR

## Annex

### Conditions

1. The development must be begun not later than the expiration of 3 years beginning with the date of this permission.
2. The planning permission hereby granted is for the development to be retained for a period not more than 25 years from the date when electricity is first exported to the electricity grid (first export date). Written confirmation of the first export date shall be submitted to the Local Planning Authority within 1 month of the first export date.
3. Not less than 12 months before the expiry of this permission, a Decommissioning Method Statement (DMS) shall be submitted to, and approved in writing by, the Local Planning Authority. The DMS shall include details of the removal of the panels, supports, inverters, cables, buildings and all associated equipment/structures/infrastructure and fencing from the site. The DMS shall also include details of the proposed restoration and a timetable. The site shall be decommissioned and restored in accordance with the approved DMS and timetable within 6 months of the expiry of the 25 year period of planning permission.
4. If any of the solar panels hereby permitted ceases to export electricity to the grid for a continuous period of 6 months then a scheme of restoration shall be submitted to the Local Planning Authority for its written approval for the removal of the solar panel(s) and associated equipment, fencing and other infrastructure and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall be fully implemented within 6 months of the date of its written approval by the Local Planning Authority.
5. The development hereby permitted shall be carried in accordance with the following plans: Location plan SF0673-02 received by the Local Planning Authority on the 24th July 2014; PV layout SF0673-01 rev F received by the Local Planning Authority on the 29th October 2014; CCTV 3m pole standard detail GSS100A 001 received by the Local Planning Authority on the 24th July 2014; Inverter building GSS100A 002 received by the Local Planning Authority on the 24th July 2014; Fence detail GSS100A 003



received by the Local Planning Authority on the 24th July 2014; Gate detail GSS100A received by the Local Planning Authority on the 24th July 2014004; Typical 33kv switch room and meter room dated 16/7/2014 received by the Local Planning Authority on the 24th July 2014; Solar panel arrangement dated 25/6/2014 received by the Local Planning Authority on the 24th July 2014 and Typical trench detail dated 25/6/2014 received by the Local Planning Authority on the 24th July 2014.

6. No construction work shall take place until a Construction Management Plan has been submitted to, and approved in writing by, the Local Planning Authority. The plan shall include methods and details of construction, including vehicle routing to the site, construction traffic parking, deliveries and the proposed traffic management measures. The development shall be carried out in accordance with the approved details of the Construction Management Plan.
7. No construction work shall take place until a scheme for the construction of the site access 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 and retained as such for the duration of the development hereby approved.
8. No construction shall take place until visibility splays measuring 2.4 metres by 53 metres in both directions, measured along the centre line of the proposed access road from the continuation of the nearer edge of the existing carriageway of Deans Lane have been provided. The land within these splays shall be maintained thereafter, free from obstructions in excess of one metre in height.
9. No construction works shall take place until details of a surface water drainage scheme have been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological context of the development. The drainage strategy should demonstrate the surface water run-off generated up to and including the 1 in 100 year plus climate change critical storm will not exceed the run-off from the undeveloped site following the corresponding rainfall event. The development shall be carried out in accordance with the approved details and retained as such for the duration of the development hereby approved.
10. The development shall be carried out in accordance with the Flood Risk Assessment (FRA) dated October 2014.
11. No construction works shall take place until a Construction Environmental Management Plan (CEMP) has been submitted to, and approved in writing by, the Local Planning Authority. The CEMP shall include details of ground anchoring, ground re-profiling works, temporary storage/construction compound areas and construction hours. The development shall be carried out in accordance with the approved details and retained as such for the duration of the development hereby approved.
12. No development shall take place until a Landscape and Ecology Management Plan (LEMP) 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 and retained as such for the duration of the development hereby approved.

13. No construction works shall take place until a method statement to control the identified invasive species has been submitted to, and approved in writing by, the Local Planning Authority. The development shall be carried out in accordance with the approved control measures scheme.
14. All works shall be carried out during daylight hours and best practice with regard to mammals shall be followed for the duration of works with any trenches covered at night and known foraging routes left unobstructed.
15. No construction shall take place until a detailed habitat management plan and timetable to cover the period of use of the site as a solar farm have been submitted to, and approved in writing by, the Local Planning Authority. The agreed scheme shall be implemented in full as per the approved timetable and retained as such for the duration of the development hereby approved.
16. No construction shall take place until a detailed protected species protection; mitigation and enhancement scheme and timetable have been submitted to, and approved in writing by, the Local Planning Authority. The agreed scheme shall be implemented in full as per the approved timetable and retained as such for the duration of the development hereby approved.
17. No works shall be carried out, structures erected, or materials stored, within 8m of the watercourses (Rivers Douglas and Tawd) to the west, north and east of the site boundary and the ditch within the site.
18. All site clearance and preparation works including the removal of vegetation shall be timed so as to avoid the bird nesting and breeding season and the active reptile and great crested newt season from 1 February to 1 October inclusive.
19. The proposed mitigation and enhancement as referred to in paragraphs 4.2 to 4.8 of the preliminary ecological appraisal dated June 2014 shall be implemented in full throughout the duration of the development hereby approved.
20. No construction works shall take place until a landscaping scheme, including details of the hedgerow planting and timetable for implementation has been submitted to, and approved in writing by, the Local Planning Authority. The scheme shall include locally appropriate native species and show their location and branch spread with: a) details of the proposed tree and shrub planting including details of their species, number, sizes and positions, together with any grass seeded and/or turfed areas; b) details of existing trees and hedgerows to be retained, and measures for their protection in the course of the works, as well as those to be removed, including existing and proposed soil levels at the base of each tree or hedgerow and the minimum distance between their bases and the nearest excavation; and c) a detailed timetable. Trees and shrubs planted shall comply with BS. 3936 (Specification of Nursery Stock) and shall be planted in accordance with BS. 4428 (General Landscape

Operations). The development shall be carried out in accordance with the approved details of the landscaping scheme. All planting shall be maintained and dead or dying material shall be replaced for a period of 7 years from the agreed date of planting.

21. No construction work shall take place until a method statement detailing measures to be taken during construction to protect the health of the existing trees, shrubs and hedgerows to be retained has been submitted to, and approved in writing by, the Local Planning Authority. The measures contained in the approved method statement shall be fully implemented during construction.
22. No mature trees shall be removed without first having been surveyed by a suitably qualified person to determine whether bats are utilising it. Survey results, together with any necessary method statements and proposals for mitigation 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.
23. There shall be no open burning of materials or waste on the site.
24. Notwithstanding the provisions of the Town and Country (General Permitted Development) Order 2015 (or any Order amending, replacing or re-enacting that Order) no fixed plant or machinery, buildings, structures and erections, means of enclosure or private ways shall be erected, extended, constructed, installed, rearranged, replaced, repaired or altered at the site without prior planning permission from the Local Planning Authority, except for those works permitted by this permission.
25. Construction work, which is audible from the boundary of any noise sensitive receptor, shall only take place between the hours of 08:00 - 18:00 on Monday to Friday inclusive, 08:00 - 13:00 hours on Saturdays with no such working on a Sunday or local or national public or bank holiday. The receipt of any materials or equipment for the construction of the site is not allowed outside the said hours, unless otherwise approved in writing by the local planning authority having been given a minimum of two working days' notice of the occurrence of the proposed event.
26. No security lighting shall be installed until a scheme showing details of any security lighting 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 and retained as such for the duration of the development hereby approved.
27. No security lighting shall be installed until details relating to infra-red/thermal imaging CCTV equipment, including details of their design, appearance, height, colour and specification, have been submitted to and approved in writing by the Local Planning Authority. The development shall be implemented in accordance with the agreed details for the duration of the development hereby approved.
28. The CCTV cameras shall be permanently fixed to be focussed only into the site for the duration of the development hereby approved.

29. No inverters or transformers shall be installed until details of the colour of the inverters and transformers have been submitted to, and approved in writing by, the Local Planning Authority. The development shall be implemented in accordance with the approved details and retained as such for the duration of the development hereby approved.
30. The materials to be used in the development hereby permitted shall strictly accord with those indicated on the approved details associated with the application.



## **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). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

#### **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 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 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.