



Department for  
Communities and  
Local Government

4 March 2013

Mr Mike Ibbott  
TP Bennett Partnership  
1 America Street  
London SE1 0NE

Our Ref: APP/Z2830/A/11/2155999  
Your Ref: P2675

Dear Sir,

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY MR C E R AND MRS S BUCKLEY – LAND EAST OF BANBURY LANE,  
CULWORTH GROUNDS FARM, THORPE MANDEVILLE, OX17 2HW:  
APPLICATION REF: S/2011/0314/MAF**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI, who held a public local inquiry on 16-19 October 2012 into your clients' appeal under Section 78 of the Town and Country Planning Act 1990 against the decision by South Northamptonshire District Council (the Council) to refuse planning permission for a photovoltaic park on land east of Banbury Lane, Culworth Grounds Farm, Thorpe Mandeville, OX17 2HW, in accordance with application number S/2011/0314/MAF, dated 10 March 2011.
2. In pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, the appeal was recovered for the Secretary of State's determination on 18 July 2011 because it involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.

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

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

**Procedural matters**

4. The inquiry was opened by Neil Pope BA (Hons) MRTPI on 22 November 2011, but adjourned to obtain a revised Screening Direction under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999

as amended (the EIA Regulations). An updated Screening Direction and revised proforma was issued on 25 April 2012.

5. For the reasons set out in IR85-90, and adopting a precautionary approach, the Secretary of State agrees with the Inspector's conclusion in IR91 and IR131 that the project does not appear to be a Schedule 2 application to which Regulation 9 of the EIA Regulations would apply, and that there are no considerations that would justify revisiting the Screening Direction dated 25 April 2012.
6. In determining this appeal the Secretary of State has had regard to the proposed amendments submitted at the appeal stage and shown on Drawing No.S2395-101 rev 6 dated 19 October 2012. He agrees with the Inspector (IR81) that the revised plan, along with the deletion in Note 5 of the reference to provisional cable routes, would be consistent with the proposal for an underground cabling connection to the 11 kV line. He also agrees with the Inspector that these changes would not substantially alter the proposal for the development of a photovoltaic park that was considered by the Council when it determined the application.
7. The Secretary of State has taken into account the fact that the proposed alterations were the subject of consultation, and that submissions were received from the Council, local Parish Councils and members of the public (IR82 and 113). He agrees with the Inspector that the resumed Inquiry provided an opportunity for any interested person or party to make submissions about the proposed alterations. He also agrees with the Inspector that the amended scheme would not be so changed that to allow the appeal on this basis would deprive those who should have been consulted the opportunity to do so. He agrees with the Inspector that this would comply with the *Wheatcroft* principles (IR82).
8. For the reasons given at IR130, the Secretary of State has determined the appeal on the basis of the amended scheme, shown on Drawing No.S2395-101 rev 6 dated 19 October 2012, for a photovoltaic park with a grid connection to the existing 11 kV line and with a peak generating capacity of 3.05 MW.

### **Policy considerations**

9. 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.
10. In this case, the development plan currently includes the East Midlands Regional Plan (RSS) and saved policies in the South Northamptonshire Local Plan 1997 (IR24). The Secretary of State considers that the development plan policies most relevant to the appeal are those referred to by the Inspector at IR25-31, 94-105, 107, 118 and 119.
11. The Localism Act 2011 provides for the abolition of Regional Strategies. However, until such time as the RSS is formally revoked by Order, the RSS remains part of the development plan and must be taken into account in determining this appeal.
12. The Secretary of State has had regard to the Inspector's comments at IR36 regarding the emerging West Northamptonshire Joint Core Strategy. The Secretary of State has taken account of the fact that the Joint Core Strategy, as amended by the Proposed

Changes, has now been submitted to him for Examination, and that a Public Examination of the Plan is due to commence on 16th April 2013. However, he attributes limited weight to the emerging Core Strategy as it is still subject to change.

13. Other material considerations which the Secretary of State has taken into account include: the National Planning Policy Framework (the *Framework*); *Planning for renewable energy: a companion guide to Planning Policy Statement 22*; Circular 11/1995: *Use of Conditions in Planning Permission*; Written Ministerial Statement by Baroness Hanham CBE – Abolition of Regional Strategies (25 July 2012); and the Council's *Farm Diversification* Supplementary Planning Guidance 1996. The Secretary of State has also had regard to National Policy Statement EN-1 *Overarching Energy*, although, for the reasons in IR86, he gives it little weight.

### **Main Issues**

14. The Secretary of State agrees with the Inspector that the main issues in this case are those listed at IR92.

### **Local amenity, character and appearance**

15. For the reasons given IR93, the Secretary of State accepts that the Inspector was able to make an informed judgement about how the proposal would look in its setting, so that no adverse inference should be drawn about the absence of photomontages from the appellants' evidence. The Secretary of State has gone on to carefully consider the Inspector's findings in IR94-105, regarding the effect of the proposed scheme on local amenity character and appearance, and agrees with the Inspector's conclusions and reasoning on these matters.

16. Overall, therefore, the Secretary of State agrees with the Inspector (IR106) that, although the proposed development would have a negligible to moderate significance of effect on landscape character and the character of the Special Landscape Area, this would not result in much harm to the overall integrity of the Undulating Hills and Valleys Character Area; and that, although the scheme would result in some visual harm in the short term of moderate/major or major significance from nearby footpaths which would, to some extent, adversely affect the amenity of the area, the impact would be restricted in its extent, and would affect only a limited part of any walk in this locality. Thus, the Secretary of State agrees with the Inspector that, whilst, mitigation in the medium to long term would considerably soften the visual impact of the photovoltaic array, the harm from such utilitarian structures in this rural landscape to the character, appearance and amenity of the area needs to be weighed in the balance (IR106), as does the level of compliance with the relevant development plan policies (IR107).

### **Archaeological remains and nature conservation**

17. For the reasons given in IR108, the Secretary of State agrees with the Inspector that there is no evidence that archaeology represents a fundamental constraint to the development (IR108). He also agrees with the Inspector that, whilst the proposal could result in a net gain for biodiversity, this is not a consideration which weighs heavily in the overall planning balance (IR109).

## Renewable energy

18. The Secretary of State agrees with the Inspector that a photovoltaic park with a peak generating capacity of 3.05 MW would make a significant contribution to meeting targets for renewable energy, and that the resultant contribution to the reduction of greenhouse gases would accord with the Government's aims concerning climate change. He also agrees with the Inspector that the proposal would have energy security benefits; and that these are all important considerations that should be given significant weight in the overall planning balance (IR110). Furthermore, although it is proposed to revoke the RSS, (see paragraphs 10 and 11 above), national policy support for renewable energy is provided by the *Framework* and it therefore remains an important consideration in this case (IR111). (See paragraphs 22 and 23 below)

## Planning balance

19. The Secretary of State agrees with the Inspector (IR114) that the economic, social and environmental roles for the planning system require that a balancing exercise be performed in this case to weigh the benefits of the proposed photovoltaic park against its disadvantages. Like the Inspector, the Secretary of State has had regard to *Planning for renewable energy: a companion guide to Planning Policy Statement 22* which recognises that the landscape and visual effects will only be one consideration to be taken into account and that these must be considered alongside the wider environmental, economic and social benefits that arise from renewable projects. He agrees with the Inspector that the planning balance is a matter of judgement.

20. The Secretary of State agrees with the Inspector (IR115) that the proposed development would, cumulatively, make a significant contribution to renewable energy targets and towards the reduction of greenhouse gases, and that this should be given significant weight. He also agrees that the evidence indicates that likely harm to the character and appearance of the area, and to the amenity of those using the local footpath network, would be limited, and would be outweighed by the significant benefits of renewable energy generation and that the scheme could also result in a net gain for biodiversity. The Secretary of State therefore agrees that the planning balance in this case is in favour of granting planning permission.

## Development Plan

21. For the reasons set out in IR94-107, the Secretary of State agrees with the Inspector that the proposal would conflict with South Northamptonshire Local Plan Policies G2, G3(A), EV1, EV2 and EV7 concerning protection of the countryside and the Special Landscape Area (IR119). Against this, he also agrees with the Inspector that, at least for the time being, the conflict with these policies must be weighed against the compliance with relevant RSS policies, as set out in IR118, so that the proposal would accord with the provisions of the development plan as it currently stands when read as a whole.

22. Assuming that the intention to revoke the RSS is realised, the Secretary of State considers that the development plan position would be that the proposal would remain in limited conflict with the South Northamptonshire Local Plan, whilst losing the support of RSS policies on renewable energy. However, the *Framework* provides that due weight should be given to policies in existing plans according to their degree of consistency with its terms. As the Local Plan does not include criteria-based policies to enable the assessment of renewable energy schemes, or against which proposals for

development affecting designated landscape areas would be judged, the Secretary of State considers that its provisions are not consistent with the *Framework* (IR120). He therefore considers that, once the RSS is revoked, greater weight should be given to the *Framework* than to the Local Plan.

#### National Planning Policy Framework

23. The Secretary of State agrees with the Inspector that the encouragement given in the *Framework* for renewable energy is sufficient in this case to outweigh any harm to the intrinsic character and beauty of this part of the countryside. He also agrees with the Inspector that the proposed development gains considerable support from the *Framework* when read as a whole (IR122).

#### Conditions

24. The Secretary of State agrees with the Inspector's reasoning and conclusions on conditions as set out at IR123-25. He is satisfied that the proposed conditions are reasonable, necessary and comply with Circular 11/95.

#### **Overall Conclusions**

25. The Secretary of State agrees with the Inspector's conclusion that the proposed development would result in some harm to the local landscape and to the amenity of walkers using the local footpaths. However, he also agrees with the Inspector that this would be outweighed by the renewable energy benefits of the proposal. He agrees with the Inspector that the scheme would make a significant contribution to meeting targets for renewable energy and that the resultant contribution to the reduction of greenhouse gases would accord with the Government's aims concerning climate change. He also considers that the proposal would have energy security benefits and that the scheme would be sustainable development which would gain support from the *Framework*.

#### **Formal Decision**

26. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby allows your client's appeal and grants planning permission for a photovoltaic park at Part OS 2454, East of Banbury Lane, Culworth Grounds Farm, Thorpe Mandeville OX17 2HW, subject to the conditions listed at Annex A of this letter.

27. An applicant for any consent, agreement or approval required by a condition of this permission for agreement of reserved matters has a statutory right of appeal to the Secretary of State if consent, agreement or approval is refused or granted conditionally or if the Local Planning Authority fail to give notice of their decision within the prescribed period.

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

**Right to challenge the decision**

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged by making an application to the High Court within six weeks from the date of this letter.

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

Yours faithfully

**JEAN NOWAK**

Authorised by Secretary of State to sign in that behalf

**Conditions**

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall not be carried out otherwise than in complete accordance with the approved plans being Drawing Nos.2220/01, 02 and 03, Drawing No.2220/01a and Drawing No.S2395-101 rev 6 dated 19 October 2012.
- 3) The planning permission hereby granted is for a period from the date of this decision until the date occurring 25 years after the date of commencement of the development hereby permitted. Written notification of the date of commencement shall be given to the local planning authority no later than 14 days after the event.
- 4) No later than 12 months prior to the end of this permission, a site restoration scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include a programme of works to remove the solar panels and related equipment, and shall be fully implemented within 12 months of the expiry of this permission.
- 5) If any of the individual solar panel(s) ceases to export electricity to the grid for a continuous period of 12 months then a scheme shall be submitted to the local planning authority for its written approval within 3 months from the end of the 12 month period for the removal of the solar panel(s) and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall then be fully implemented within 6 months of that written approval being given.
- 6) The solar panels hereby approved shall not exceed 2 metres above ground level.
- 7) Piling or any other foundation design using penetrative methods shall not be permitted.
- 8) No development shall take place until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation including a timetable which has been previously submitted to and approved in writing by the local planning authority.
- 9) No development shall take place until detailed elevations and plans of the solar panels, supporting structures and equipment housings (including confirmation of material and colour finishes) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until detailed elevations and plans of the stock-proof fence to the western boundary of the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) No development shall take place until a scheme for on-site and off-site landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include: (i) details of planting along the

site's western boundary and supplementary planting of all other site boundaries to provide a screen of not less than three metres in height, including an on-going management plan to ensure maintenance of that screen once established at that height for the lifetime of the development; (ii) details of supplementary planting of the field boundary to the immediate south-west of the application site between the points marked A-A on plan No.2220/01a to provide an effective screen of not less than three metres in height; and (iii) details of management measures to maintain the existing hedge along the eastern side of Banbury Lane between the points marked B-B on plan No.2220/01a to a height of at least two metres. The landscaping scheme shall be implemented in accordance with the approved details within the first planting season following the commencement of the development hereby permitted, and shall be maintained during the lifetime of the development, with the replacement of any trees or plants which die, are removed or become seriously damaged or diseased, in the first available planting season with others of similar size and species.

- 12) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the solar panels hereby permitted are installed on-site, and shall thereafter be retained.
- 13) The development hereby permitted shall be carried out in accordance with the recommendations set out in Section 4.2 of the Extended Phase 1 Habitat Survey by Martin Ecology dated May 2011 (as amended December 2011).





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

by John Woolcock BNatRes(Hons) MURP DipLaw MPIA MRTPI

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

Date: 3 December 2012

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Town and Country Planning Act 1990

South Northamptonshire District Council

appeal by

Mr CER and Mrs S Buckley

Inquiry held on 22 November 2011 and 16-19 October 2012

Part OS 2454, East of Banbury Lane, Culworth Grounds Farm, Thorpe Mandeville OX17 2HW

Report APP/Z2830/A/11/2155999

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## ABBREVIATIONS

BG	Barley Group
DNO	Distribution Network Operator
DNOC	DNO Consulting Ltd
EIA	Environmental Impact Assessment
EN-1	<i>Overarching Energy</i> National Policy Statement
<i>Framework</i>	<i>National Planning Policy Framework</i>
GHG	greenhouse gases
HS2	high-speed railway line between London and Birmingham
LP	saved policies of the South Northamptonshire Local Plan 1997
NPS	National Policy Statement
PINS	The Planning Inspectorate
PV	photovoltaic
PPS22CG	<i>Companion Guide to PPS22: Renewable Energy</i>
RE	renewable energy
RSS	East Midlands Regional Plan, March 2009
SoCG	Statement of Common Ground
SLA	Aynho, Cherwell Valley and Eydon Special Landscape Area
SPG	Council's <i>Farm Diversification</i> Supplementary Planning Guidance 1996

**File Ref: APP/Z2830/A/11/2155999**

**Part OS 2454, East of Banbury Lane, Culworth Grounds Farm, Thorpe Mandeville OX17 2HW**

- 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 Mr CER and Mrs S Buckley against the decision of South Northamptonshire Council (hereinafter referred to as the Council).
- The application No: S/2011/0314/MAF, dated 10 March 2011, was refused by notice dated 10 June 2011.
- The development proposed is a (solar) photo voltaic park.

**Summary of Recommendations:**

- (1) The appeal be determined on the basis of the amended scheme, and for a photovoltaic park with a grid connection to the existing 11 kV line and with a peak generating capacity of 3.05 MW.
  - (2) The relevant application does not appear to be a Schedule 2 application for the purposes of the EIA Regulations and there are no considerations that would justify revisiting the extant Screening Direction.
  - (3) Subject to (1) and (2) above, the appeal be allowed, and planning permission granted subject to conditions.
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**Procedural matters**

1. The Inquiry was opened by Inspector Neil Pope on 22 November 2011, but was adjourned to obtain a revised Screening Direction. I set out in more detail below the position with respect to the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 1999 (hereinafter referred to as the EIA Regulations).<sup>1</sup> The previous Inspector also ruled on submissions concerning hearing evidence about an amended scheme and the viability of the scheme.<sup>2</sup>
2. I made an accompanied inspection of the appeal site and various vantage points in the locality on 19 October 2012, and returned to view the area unaccompanied from some of these, and other more distant locations, on 30 October 2012. On both occasions markers were placed on the site, and its western boundary, to indicate the height of the proposed photovoltaic (PV) panels.<sup>3</sup>
3. The appeal was recovered for determination by the Secretary of State by letter, dated 18 July 2011, because the appeal involves proposals of major significance for the delivery of the Government's climate change programme and energy policies.
4. On application, the Barley Group (BG) was granted Rule 6(6) status pursuant to the Town and Country Planning (Inquiries Procedure) (England) Rules 2000

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<sup>1</sup> Which continue to apply in accordance with the transitional arrangements for the Town and Country Planning (Environmental Impact Assessment) Regulations 2011. These Regulations implement European Council Directives on the assessment of the effects of certain public and private projects on the environment.

<sup>2</sup> Annex A of this report.

<sup>3</sup> Marker posts requested by Inspector.

(hereinafter referred to as the Rules). BG coordinated opposition to the proposed development and participated fully in the Inquiry process. BG and the Council made legal submissions about the basis on which the appeal was proceeding. The Inquiry continued without prejudice to any decisions which might later be made on these matters.

5. The Planning Inspectorate's (PINS) letter, dated 28 July 2011, pursuant to Rule 6(12) sets out the following matters about which the Secretary of State particularly wished to be informed for the purposes of considering this appeal;
  - (a) the extent to which the proposed development would be in accordance with the development plan for the area;
  - (b) the extent to which the proposed development would be consistent with Government planning policies for renewables and countryside protection;
  - (c) the effect on local amenity;
  - (d) the matters set out in the Council's Notice of Decision dated 10 June 2011;
  - (e) whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable;
  - (f) whether any permission should be subject to any conditions and, if so, the form these should take; and
  - (g) any other matters the Inspector considers relevant.
6. With respect to (g) above, I indicated before the resumption of the Inquiry that from what I had then read, that this should clarify that local amenity included the character and appearance of the area. I also considered the effects on archaeological remains and nature conservation to be relevant, along with whether the benefits of the scheme would be sufficient to outweigh any harm that might be caused, and whether there are any other considerations which would justify allowing the appeal. Whether the proposed development would be sustainable development to which the presumption in favour set out in the *National Planning Policy Framework* would apply was also raised as a relevant matter.<sup>4</sup>
7. The Council refused the application for a photovoltaic park, as shown on Drawing Nos.2220/01, 02 and 03, and Drawing No.S2395-101, against officer recommendation, for the following reasons.

"1. The proposed development by reason of its size of 7.7 hectares will appear incongruous in the rural setting and the scale, appearance, materials and resulting glare of the proposed panels will have an adverse visual impact which will cause serious harm to visual amenity and the valued character and appearance of the Special Landscape Area. In this case, this is an isolated site of quality land in a gently rolling, tranquil, agricultural landscape. The development will not only be evident from Thorpe Mandeville village, but also from the well-used and valued surrounding public rights of way network and in particular, footpath AG7. The harm that would result is significant and adverse in extent and in this particular case outweighs the benefits of the strategic aim

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<sup>4</sup> Annex B to this report.

of meeting targets for renewable energy regeneration. The proposal would also not be used to meet the energy requirements of a specific local end user (and hence the local community would not benefit directly from the proposal). The proposal is therefore contrary to Planning Policy Statements 1 and 7, Policies 1 and 26 of the East Midlands Regional Plan 2009 (RSS8), Policies G3(A), EV1 and EV7 of the adopted South Northamptonshire Local Plan and Policies S1 and S11 of the pre-submission West Northamptonshire Joint Core Strategy Feb 2011.

2. PPS22 encourages renewable energy projects but states in paragraph (vii) that local community involvement, active consultation and discussion with local communities should take place. Apart from consulting with the Parish Councils, the larger community was not consulted, and as such contrary to PPS22."

8. The appellants submitted an amended scheme by letter dated 20 October 2011. This is the scheme shown on Drawing No.S2395-101 rev 5. It seeks to amend the western boundary of the appeal site so as to accord with the route of Footpath AG7, as shown on the Definitive Map.<sup>5</sup> The appellants also took the opportunity to incorporate the following changes to the scheme;
- maintenance of the generation capacity of 3.05 MW with arrays of 1.98 m high panels
  - replacement of the proposed 3 m high chain link fence with a 2 m high stock-proof fence
  - hedgerow planting between the footpath and the solar array as well as in an area to the south-west
  - reduction to two equipment housings located along the northern boundary of the site
  - existing hedges on the northern, eastern and southern boundaries to be gapped-up and maintained.

The revised plan also brought into line with Drawing No.2220/01 that the proposed underground cabling connection to the 11 kV line to the west lies within the red line application site. The opportunity was taken during the Inquiry adjournment for the amended scheme to be the subject of consultation.<sup>6</sup> The appellants submitted an addendum ecology report from Martin Ecology, and an addendum archaeology report from Prospect Archaeology, both dated December 2011.

9. The Council considered the amendments and additional information at a committee meeting in March 2012. It resolved that these changes made a marginal difference to the overall scheme, maintained its first reason for refusal, and added to it a point relating to the stock-proof fence. This amended the first sentence of the first reason for refusal to, "The proposed development by reason of its size of 7.7 hectares will appear incongruous in the rural setting and the

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<sup>5</sup> The appellants acknowledged that Drawing No.S2395-101 depicted a slight encroachment on Footpath AG7.

<sup>6</sup> The Council invited comment on the amended plans in accordance with its consultation procedures by letter dated 16 December 2011, with a closing date that was extended to 12 January 2012. Written representations received are included in the Second Red Folder.

scale, appearance, materials and resulting glare of the proposed panels and *scale of the proposed fence* will have an adverse visual impact which will cause serious harm to visual amenity and the valued character and appearance of the Special Landscape Area." In relation to BG's submissions concerning the capacity of the grid connection, the Council felt that it had insufficient evidence to be able to pass comment and that this should be a matter left for the Inquiry, but in the event that it was concluded that the connection was deficient, then the Council would support this as a reason for refusal. The Council was satisfied that sufficient consultation had now been carried out and withdrew its second reason for refusal. At the Inquiry the Council conceded that the reference to; "resulting glare", and to the scheme, "not being used to meet the energy requirements of a specific local end user (and hence the local community would not benefit from the proposal)", were not justified.

10. Following the without-prejudice discussion at the Inquiry about possible conditions in the event that the Secretary of State allowed the appeal and granted planning permission, the appellants submitted a further proposed amendment to Drawing No.S2395-101 rev 5. This deleted the second sentence to Note 5, which states that; "Indicated cable routes are provisional pending confirmation from the local Distribution Network Operator of the preferred connection point(s)." It was pointed out at the Inquiry that this alteration would make the drawing consistent with the amended scheme described in the appellants' letter dated 20 October 2011. No one at the Inquiry raised any objection to the alteration to Note 5, and the revised drawing was submitted with the version of the Statement of Common Ground (SoCG) dated 19 October 2012 as Drawing No.S2395-101 rev 6.<sup>7</sup>
11. The Council, in dealing with the application, issued a negative Screening Opinion.<sup>8</sup> A Screening Direction was issued under delegated authority by PINS on 11 August 2011. This was queried by the Barley Group.<sup>9</sup> Submissions were made about this on the first day of the Inquiry.<sup>10</sup> After the adjournment of the Inquiry a replacement Screening Direction and revised proforma was issued on 2 February 2012. Following concerns by the Council about the reasons given in the revised proforma, this in turn was replaced.<sup>11</sup> An updated Screening Direction and revised proforma was issued by PINS on 25 April 2012. This remains the extant Screening Direction. The proforma accompanying the Screening Direction should be read as a whole, but some of the considerations it took into account are highlighted in Annex C to this report. However, the judgements made in the Screening Direction were intended to establish whether the project would be likely to have significant effects on the environment by virtue of factors such as its nature, size or location, for the purposes of the EIA

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<sup>7</sup> ID8.4.

<sup>8</sup> However, the Council now considers that this opinion was unsustainable either by reasons relating to the red line boundary or, in the alternative, the adequacy of reasons given at that time.

<sup>9</sup> WR3.3 and other parties' responses at WR2.2 and WR9.6.

<sup>10</sup> ID1, ID2.1, ID2.2, ID3.1, ID3.2, ID3.4.

<sup>11</sup> The Council raised concerns about local effects, impact on footpaths and references to the height of the proposed array at PoE2.2. The other parties' responses are at WR2.1 and WR3.2.

Regulations. The appeal that is the subject of this report must be determined on its planning merits, notwithstanding that issues raised in the Screening Direction are also relevant planning considerations.

### **The site and surroundings** <sup>12</sup>

12. The appeal site comprises about 7.7 ha of agricultural land. <sup>13</sup> It is located to the north-east of Thorpe Mandeville and to the south of Culworth. The village of Sulgrave lies to the east, and Lower Thorpe lies to the west of the appeal site in a shallow valley. The main part of the site is a field currently grazed by sheep, but a strip of land near to the edge of an arable field extends some 640 m west to the 11 kV overhead line, which lies to the east of Banbury Lane. The site lies within an area consisting of gently rolling farmland, both arable and laid to pasture, and the main part of the site slopes down towards the south-western corner of the field. It is set back from Banbury Lane and Banbury Road. Public Footpath AG7 is adjacent to the open western boundary of the appeal site. The northern, eastern and southern boundaries of the site are enclosed by mature hedgerows, which include some tall trees. There is a pond on adjacent land some 200 m to the south-west of the appeal site, with many of the nearby hedgerows incorporating drainage ditches.
13. Footpath AG7 joins Footpath BB11, which runs east/west between Banbury Lane and Banbury Road to the south of the appeal site. A long distance footpath called Millennium Way runs north/south some distance to the west of Thorpe Mandeville. Further to the west there is a network of footpaths that link into the Jurassic Way, some 3-4 kms from the appeal site. Banbury Road is the eastern boundary of a designated Special Landscape Area, within which the appeal site lies. There are scattered dwellings and farmsteads in the wider area, including Magpie Farm and Culworth House Farm, along Banbury Road, and Chumscote House on Banbury Lane. <sup>14</sup> There is a 33 kV overhead electricity line located to the west of Banbury Lane and about 1600 m from the field that comprises the main part of the appeal site.
14. At a national level the site lies within Landscape Character Area 95 'Northamptonshire Uplands', but more locally is within the 'Undulating Hills and Valleys Character Area' (13a Middleton Cheney and Woodford Halse). It is characterised by broad and sweeping undulations, but where these are more frequent, such as around Culworth, has a more intimate character. The landscape has a diverse and colourful character, of arable and pastoral farmland with 'horsiculture' frequent around settlements. Woodlands are sparse, but hedgerow trees are frequent in a number of places resulting in occasional well treed boundaries. Large sections of the Character Area remain sparsely settled with scattered farmsteads and isolated dwellings. Banbury Road is the boundary to the adjoining character area 'Undulating Claylands'. <sup>15</sup> The site also lies within the 19<sup>th</sup> Century Non-Parliamentary Enclosure Historic Character Area

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<sup>12</sup> Some of the features outlined in this section are shown on Figure 2 PoE7 Appendix 3.

<sup>13</sup> The proposed amendment would reduce the site area to about 7.58 ha.

<sup>14</sup> These features are shown on Figure 1 of PoE7 Appendix 2.

<sup>15</sup> PoE7 Appendix 2.



(2a Farthinghoe-Kings Sutton Clay Uplands), with irregular field patterns, historic parkland in a mixed farming landscape, often with archaeological remains.<sup>16</sup>

15. The Grade II\* listed Manor House at Thorpe Mandeville and its Grade II listed stable block are located about 1,000 m to the south-west of the appeal site. A bowl barrow located to the west of the appeal site and to the east of Lower Thorpe is a Scheduled Ancient Monument. There are crop marks near to, and possibly extending into the site, which probably indicate part of a prehistoric settlement. The central core of Culworth is a Conservation Area.
16. A site some 3 km to the south-east of the appeal site has been granted planning permission for five 125 m high wind turbines at Spring Farm Ridge.<sup>17</sup> This decision is currently the subject of an outstanding legal challenge.<sup>18</sup>
17. The proposed route of the high-speed railway line between London and Birmingham (HS2) is located, at its closest point, some 600 m to the south-west of the appeal site. The Inquiry was advised of a proposed alignment in a north-west/south-east direction crossing Banbury Lane on a viaduct.<sup>19</sup> Other than this no further details about the proposal were before the Inquiry.

### **The proposal development**

18. The appeal scheme proposes a photovoltaic park comprising up to 21,000 m<sup>2</sup> of PV panels spaced in rows, with a peak generating capacity of 3.05 MW. The panels would be built upon ballast bases, and the field retained as pasture to be grazed by sheep. The proposal includes equipment and transformer housings with maximum dimensions of 3 m x 8 m x 3 m located on the northern boundary of the site, along with fencing and a new hedgerow along the western site boundary. The scheme proposes an underground grid connection to the existing 11 kV overhead line. The trench would be between 225 mm to 300 mm wide and 600 mm deep.
19. The Design and Access Statement provides that in this location a solar farm of 3,050 kW would generate the equivalent to the total annual electrical consumption of over 700 typical households. It also notes that solar farms are regarded as a temporary use of land, and a condition has been suggested that any permission would endure for a period of 25 years.<sup>20</sup>

### **Statement of Common Ground**<sup>21</sup>

20. The SoCG sets out that the issues contested by the Council and the appellants concern landscape and visual impact, amenity impact on public rights of way, and the planning balance. Planning issues not contested include the principle of the development, highway safety, crime prevention and security.

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<sup>16</sup> *Current Landscape Character Assessment and Historic Landscape Character Assessment*, Northampton County Council 2006, at PoE2.1 Appendix 2 and PoE7 Appendix 1.

<sup>17</sup> ID12.

<sup>18</sup> ID22.

<sup>19</sup> The proposed route of HS2 is shown on Mr Ibbott's Appendix MI/4.

<sup>20</sup> ID 8.4 Condition 3.

<sup>21</sup> ID8.4.

21. Furthermore, the Council and appellants agree that archaeology does not represent a fundamental constraint to the development, subject to the imposition of a planning condition which secured a programme of archaeological work in accordance with an approved scheme of investigation.
22. Given that the site comprises grazing land of little ecological value, the Council and the appellants concur that the proposal could result in a net gain for biodiversity, with the implementation of enhancements set out in the Extended Phase 1 Habitat Survey by Martin Ecology.
23. The appellants and the Council agree that there would be no adverse impact on the listed Manor House and stable block and Lower Thorpe Farmhouse, and that their setting would be preserved in line with the requirements of Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990. They are also agreed that there would be no adverse impact on the private amenity of residents of Thorpe Mandeville.

### **Planning policy**

24. The development plan for the area includes the East Midlands Regional Plan, March 2009 (RSS) and saved policies of the South Northamptonshire Local Plan 1997 (LP). A Core Strategy is in preparation.<sup>22</sup>
25. RSS Policy 1 sets out core objectives to secure the delivery of sustainable development, including, amongst other things, to protect and enhance the environment, to reduce the causes of climate change by minimising emissions of CO<sub>2</sub> in order to meet the national target through maximising the level of renewable energy (RE) generation and other measures.
26. RSS Policy 3 concerns the distribution of development and provides, amongst other things, that the development needs of rural areas should contribute to maintaining the distinctive character and vitality of rural communities, and give priority to making best use of previously developed land. RSS Policy 24 aims to promote diversification and development of the rural economy.
27. RSS Policy 26 provides that sustainable development should ensure the protection, appropriate management and enhancement of the Region's natural and cultural heritage. It sets out principles to be applied, including; that damage to natural assets should be avoided wherever and as far as possible; unavoidable damage must be minimised and clearly justified by a need for development in that location which outweighs the damage that would result; there should be a net increase in the quality and active management of natural assets in ways that promote adaptation to climate change, and an increase in the quality of environmental assets generally.
28. RSS Policy 40 concerns regional priorities for low carbon energy generation. It promotes the development of a distributed energy network using local low carbon and renewable resources. In order to help meet national targets low carbon energy proposals in locations where environmental, economic and social impact can be addressed satisfactorily should be supported, so as to achieve the indicative regional targets for RE. The supporting text states that at present RE

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<sup>22</sup> Relevant policies are highlighted in Mr Frampton's PoE3 and WR/PoE4.

- sources make a minor contribution to the Region's capacity (approximately 2%) and the East Midlands lags behind the other English regions. It adds that the regional target of 20% RE mix by 2020 can only be achieved by, amongst other things, large scale grid connected RE.
29. LP Policy G2 provides, amongst other things, that new development would be severely restrained in the open countryside. Policy G3 states that planning permission would normally be granted where the development; (A) is compatible in terms of type, scale, siting, design and materials with the existing character of the locality; (D) would not unacceptably harm the amenities of any neighbouring properties; (G) would have access to necessary infrastructure without causing unacceptable visual intrusion into the surrounding landscape; (L) incorporates suitable landscaping.
  30. LP Policy EV1 expects new development to pay particular attention to, amongst other things, existing site characteristics including landscape features and levels. LP Policy EV2 states that planning permission would not be granted for development in the open countryside. The appeal scheme is not within the type of development that may be included in exceptions.
  31. The site lies within the designated Aynho, Cherwell Valley and Eydon Special Landscape Area (SLA), where LP Policy EV7 provides that planning permission would only be granted for development which would not have a detrimental impact on the SLA's character and appearance, and that particular attention must be paid to design, materials, siting of buildings and the use of land.
  32. The Council's *Farm Diversification Supplementary Planning Guidance 1996 (SPG)* provides that certain diversification proposals, such as noisy sports, garden centres, golf courses, tourist camping and caravan sites are not appropriate because of the high landscape quality of the SLA, but that where a proposed use was acceptable, every effort should be made to produce a well-designed scheme, sympathetic to the area.<sup>23</sup>
  33. The *National Planning Policy Framework* (hereinafter the *Framework*) was published after the Council determined the application. However, the parties submitted written comments and the *Framework* was discussed at the Inquiry.<sup>24</sup> Core principles of planning include encouraging the use of renewable resources, for example by the development of RE, and recognising the intrinsic character and beauty of the countryside. It adds that in determining applications applicants should not be required to demonstrate the overall need for RE and recognises that even small-scale projects provide a valuable contribution to cutting greenhouse gas (GHG) emissions. Applications should be approved if the impacts are (or can be made) acceptable. The *Framework* provides that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing valued landscapes. Authorities should set criteria based policies against which proposals for any development on or affecting landscape areas would be judged.

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<sup>23</sup> PoE7 Appendix 5.

<sup>24</sup> PoE2.3, WR3.1 and WR9.3 and WR9.4.

34. The *Framework* replaced PPS22: *Renewable Energy*, but its *Companion Guide* (PPS22CG) remains extant. This states that information to accompany a planning application for a PV scheme could usefully include connection details to the grid.<sup>25</sup> It also notes that cumulative effects may arise where two or more of the same type of RE development are visible from the same point, or are visible shortly after each other along the same journey.<sup>26</sup> PPS22CG recognises that the landscape and visual effects will only be one consideration to be taken into account and that these must be considered alongside the wider environmental, economic and social benefits that arise from RE projects.<sup>27</sup> A guiding principle refers to the aim to source energy from UK renewable sources for reasons of energy security.<sup>28</sup>
35. Paragraph 3 of the *Framework* states that national policy statements are a material consideration in decisions on planning applications. The parties referred to National Policy Statement (NPS) EN-1 *Overarching Energy* (EN-1), but this states that the generation of electricity from renewable sources other than wind, biomass and or waste is not within the scope of this NPS.<sup>29</sup> EN-1 paragraph 4.1.9 provides that where the financial viability and technical feasibility of a proposal has been properly assessed by the applicant it is unlikely to be of relevance in decision making by the determining authority. Section 4.9 of EN-1 concerns grid connection and advises that in the market system it is for the applicant to ensure that there will be necessary infrastructure and capacity within the distribution network to accommodate the electricity generated, that in doing so the applicant may wish to take a commercial risk for a variety of reasons, although the determining authority would want to be satisfied that there is no obvious reason why a grid connection would not be possible.
36. The West Northamptonshire Joint Strategic Planning Committee is currently preparing a Core Strategy, with pre-submission amendments dated July 2012. This includes Policy S11 on low carbon and RE, which currently states that proposals should be sensitively located and designed to minimise potential adverse impact on people, the natural environment, biodiversity, historic assets and should mitigate pollution.

### **The case for the Barley Group**

The main points are as follows.<sup>30</sup>

37. In summary BG considers that the scheme should be rejected because the benefit on offer is outweighed by the harm, but BG also makes legal submissions that the appellants have failed to comply with the law in bringing forward the proposal.

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<sup>25</sup> PPS22CG Page 147. With reference to wind farms PS22CG states that developers should provide information on the most likely route and method for grid connection, which is an intrinsic part of the project and should be considered together with the wind farm.

<sup>26</sup> PPS22CG paragraph 5.23.

<sup>27</sup> PPS22CG paragraph 5.4.

<sup>28</sup> PPS22CG paragraph 2.3.

<sup>29</sup> EN-1 paragraph 1.4.5.

<sup>30</sup> Based on closing submissions at ID27.

38. The 25 April 2012 Screening Direction should be disregarded because it was made on the basis of a proposed link to the 11 kV line some 640 m from the field that comprises the main part of the appeal site, and pays no attention to the likely significant environmental effects of providing a connection above or below ground to the 33 kV line some 1600 m to the north-west. The justification for confining the EIA consideration to the proposal as submitted is wrong in law, having regard to the purpose of the EIA Directive, which is to consider the likely environmental effects of the project, and contrary to the judgement in *Kraaijeveld (Dutch Dykes)*.<sup>31</sup> This is consistent with the approach adopted by the Secretary of State in the Covanta appeal.<sup>32</sup> The precautionary principle should be applied.<sup>33</sup> This is supported by a PINS letter concerning another case which states; "As such (and taking a precautionary approach to the application of the EIA Regulations) unless it is clear that no significant effects arise as a result of the [*development proposed in that case*] (in other words that it is not EIA development), planning permission cannot lawfully be granted without taking into account the environmental information (Regulation 3 of the EIA Regulations)." <sup>34</sup>
39. This would require the decision maker to consider the implications of the most severe of the candidates for grid connection, in an area of archaeological and landscape sensitivity. The link to the 33 kV line would be longer than the link to the 11 kV line, and likely to have more severe environmental impacts. The precautionary principle has not been applied. A limitation based on the narrow confines of a planning application has no legal justification because it is the implications of the project as a whole which is the concern of the environmental protection instruments. The proposal has not been the subject of a lawful Screening Direction. Furthermore, it is not possible for the Secretary of State to produce a Screening Direction because he does not have the necessary information about connection to the 33 kV line to do so.<sup>35</sup>
40. There is a dispute about whether this proposal is technically feasible. DNO Consulting Ltd (DNOC) advised that the maximum voltage rise caused by any new generation allowed by the network owner Western Power Distribution, the Distribution Network Operator (DNO), affecting existing customers is 1%. DNOC calculated the voltage rise constant for the existing 11 kV line and believes that in order to keep within the 1% voltage rise limit for generation connected locally to the existing line, the generation capacity from the appeal scheme would have to be restricted to 800 kW (0.8 MW).<sup>36</sup> The DNOC material, which noted that the electricity grid is a dynamic complex system, provides a proper basis for doubting the technical feasibility of this proposal, and EN-1 elevates this into a material consideration.<sup>37</sup> If the Secretary of State accepts BG's evidence that 0.8 MW is the maximum that may be achieved then it would be impermissible to

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<sup>31</sup> *Aannemersbedrijf PK Kraaijeveld BV and Others v Gedeputeerde Staten van Zuid-Holland* Case C-72/95 included in ID2.2.

<sup>32</sup> ID19.1 and ID19.2.

<sup>33</sup> *R(on the application of Loader) v SoS CLG and others* at ID21.

<sup>34</sup> ID9.

<sup>35</sup> *Lebus v South Cambridgeshire DC* [2002] EHC 2009 (Admin) and *Co-op and Northumberland CC* [2010] EHC 373 (Admin) included in ID2.2.

<sup>36</sup> WR6.2 and WR6.3.

<sup>37</sup> WR6.1 and EN-1 paragraph 4.1.9.

deal with any required connection to the 33 kV line by means of either permitted development rights or a section 73 application, because that would consent a radically different scheme and a wider connection would be an environmentally harmful part of the project, which had not been taken into account in the Screening Direction.

41. If it is assumed no greater physical works than are currently proposed, but that there is a 0.8 MW maximum capacity on the grid connection, then a *Wheatcroft* problem would prevent the grant of consent.<sup>38</sup> The output would only be a fraction of that which was advertised to the public, and the number of PV panels needed to generate 0.8 MW would be far fewer. This would be a substantially different proposal and, without further consultation, determining the appeal on this basis would be unlawful. If the Secretary of State considers that he is able to determine the appeal on this basis, it should be rejected because the harm substantially outweighs the benefits in this scenario.
42. If the Secretary of State takes into account the inevitability of a connection to the 33 kV line then there is insufficient information before the Inquiry about the likely harm of above ground landscape consequences, or below ground impact on archaeology, for a recommendation to be made. A Grampian condition could not address this because there is no evidence of whether such a connection could be made without requiring third party land.
43. BG agrees with the Council's evidence and conclusions on landscape harm.
44. This proposal is in the wrong place and, applying the policy of the *Framework*, it should be rejected. However, the matter is not resolved by a planning judgement of this nature when the European and domestic law is applied, and the conclusion is that permission must be refused.

### **The case for South Northamptonshire Council**

The main points are as follows.<sup>39</sup>

45. On the evidence before the Inquiry submitted by BG and from Mr Farman, the Council submits that the only safe conclusion is that the proposed development, with the connection to the 11 kV line, would only yield a maximum of 0.8 MW generating capacity. If so, the scheme at appeal would not be capable of satisfying the energy needs of over 700 houses as stated in the Design and Access Statement, and would never actually be built. If the expert evidence of DNOC is accepted then three legal results follow. The appeal must be dismissed on *Wheatcroft* grounds as it would not be appropriate to permit further amendments and another round of re-consultation. Secondly, regardless of the adequacy of consultation, the appeal should be dismissed because allowing it would be to grant planning permission for a development which is unimplementable. Finally, the appeal proposals do not accurately reflect the real "project" which the appellants want to develop, and which has not been, and cannot be on the information before the Inquiry, screened in accordance with the EIA Regulations. The appeal should, therefore, be dismissed on legal grounds.

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<sup>38</sup> *Bernard Wheatcroft Ltd v SoSE* at ID10.

<sup>39</sup> Based on closing submissions at ID28.

46. Furthermore, accepting DNOC's evidence about generating capacity would, in any event, go to the heart of the planning merits. It would not be in accordance with the development plan or the *Framework* for permission to be granted for 20,000 m<sup>2</sup> of solar panels to be erected on this sensitive site if such an amount exceeded by far that necessary to serve the purpose of the development, which if DNOC's evidence is accepted, would be a generating capacity of 0.8 MW. The development of an unnecessarily large PV array in a valued and sensitive rural location cannot be sustainable development in terms of the *Framework*, and cannot be justified. Furthermore, if DNOC's evidence is accepted then advice in EN-1 and PPS22CG has not been complied with concerning grid connections.
47. The proposed development would be located within beautiful rolling countryside with a distinctive character that is highly sensitive to change. The PV array would introduce an urban and regimented form that would be an alien feature in this rural landscape. The modern materials and geometric forms of the panels would cause harm to the natural character of the site and surrounding environment.
48. The Council disagrees with the appellants about the significance of visual effects from some vantage points, and notes that the view points (VP1 to VP10) are representative, but not exhaustive.<sup>40</sup> Pre-mitigation there is disagreement about the magnitude and significance of visual amenity impact from VP5 and VP9. Post-mitigation there is a dispute about VP4, VP5, VP6, VP9 and VP10. The Council is also concerned about the significant effect from the vantage points shown in Photographs 19, 20 and 21, from Footpath BB5 and the Millenium Way.<sup>41</sup>
49. This is not a case where the decision maker can simply determine the visual and amenity impacts by deferring to the evidence of Mr Roberts as the only landscape expert at the Inquiry. It involves a qualitative judgement informed by the site visit. The appellants have not produced any photomontages, notwithstanding their finding that without mitigation the proposal would have a moderate/major significance from certain viewpoints.
50. The effect of mitigation is open to question in three respects. The assessment takes no account of the differences between summer and winter. Vegetation would offer less effective screening in winter from the closest viewpoints, which would be subjected to the most harmful visual impact. There is no convincing evidence about mitigation from viewpoints to the west and south-west, especially about the height that existing hedgerows would need to grow to offer effective mitigation, for example from VP4. Finally, assumptions about growth rates are questionable and subject to climatic considerations. There is an inconsistency in the appellants' submission that it would take 10 years for screening to be robust, but it would nevertheless offer effective screening in between 5 to 7 years. It is difficult to see how impacts could be mitigated to an acceptable level for a 25 year period if it would take half, a quarter or a fifth of that period before effective mitigation was apparent.

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<sup>40</sup> VP1-VP10 are included in PoE7 Appendix 4, and Photographs 1-22 at PoE2.1 Appendix 3.

<sup>41</sup> The differences between the Council and the appellants in terms of significance of visual effects, both pre- and post-mitigation, are set out at ID26.

51. If the appeal is not dismissed on legal grounds, then the approach to determination on its planning merits should start with the development plan, establish what policies are relevant and how they should be interpreted, consider other material considerations, including the *Framework*, and weigh up the planning balance.<sup>42</sup> At each stage consideration should be given to factual findings in relation to both generational capacity, and visual and amenity impact.
52. On this basis, the proposed development would not be in accordance with the development plan or the *Framework*, because it would result in unacceptable visual and amenity impacts which could not be adequately mitigated, and those adverse impacts cannot be justified by the amount of energy that the development would produce, even if that was 3 MW.
53. Paragraph 14 of the *Framework* does not apply in this case because the development plan, which comprises the RSS and LP, is not absent, it is not silent on the issues raised by this appeal, and it is not out of date. It is a question of whether the development plan is consistent with the *Framework*, and both require the balancing of impact against benefits, including here the precise contribution to RE. Even if paragraph 14 is engaged, it does not mean that a different conclusion should be reached about whether development is sustainable for the purposes of the *Framework*, depending upon what is or is not said in the development plan.
54. A Screening Direction for EIA purposes must provide sufficient information to enable anyone interested in the decision to see that proper consideration has been given to the possible environmental effects of the development and to understand the reasons for the decision.<sup>43</sup> If further evidence is required which is not before the Inquiry, such as photomontages, or evidence about the potential effects of the Spring Farm Ridge wind farm scheme, then consideration should be given to whether the analysis for the extant Screening Direction is up to date and sound.

### **The case for the appellants**

The main points are as follows.<sup>44</sup>

55. BG disputes the determination that the scheme is not EIA development, but no legal challenge has been brought in respect of the 25 April 2012 Screening Direction. The appeal scheme sets out the likely route of the grid connection, and it is this which constitutes the project for the purposes of EIA screening.<sup>45</sup> Although it is possible that the DNO could require a different connection, there is no other likely connection that properly falls to be screened at this stage. If the DNO were to require a different connection, then the necessary assessment of the implications of the new connection would be required. EIA involves an assessment of likely, not any possible, significant environmental effects. 'Likely' connotes real risk and not probability, and an exercise of judgment or opinion by

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<sup>42</sup> ID28.2 and ID28.3.

<sup>43</sup> *R (Bateman) v South Cambridgeshire District Council* [2011] EWCA Civ 157.

<sup>44</sup> Based on closing submissions at ID29.

<sup>45</sup> *Berkeley v SoSE* [2001] 2AC 603 at ID4.



- the decision maker.<sup>46</sup> *Loader* and PINS letter of 26 September 2012 both refer to the precautionary principle. This applies where scientific evidence is insufficient, inconclusive or uncertain and preliminary scientific evaluation indicates there are reasonable grounds for concern that the potentially dangerous effects on the environment may be inconsistent with the high level of protection chosen by the European Union.<sup>47</sup> The invocation of the principle has to be anchored on evidence which indicates reasonable grounds for concern that there may be potentially dangerous effects on the environment. Spring Ridge Wind Farm was granted planning permission after the issue of the latest Screening Direction, but there is no creditable evidence before the Inquiry for suggesting that there is likely to be a significant cumulative effect with the proposed PV array. There is no basis to justify another round of EIA screening.
56. BG's theoretical alternative grid connection, by underground route or overhead cable to the 33 kV line, is based on DNOC's "belief" that the generation capacity would have to be restricted to 800 kW. But DNOC's approach fails to take proper account of the dynamic complexity of the system. The DNO is continually replacing, refurbishing and reinforcing the network and there are many technological advances occurring, which facilitate dynamism in the system and enable DNOs to accommodate generation. The information submitted about the likely grid connection is consistent with the advice in PPS22CG.
57. The proposed amendments to the scheme at the appeal stage satisfy the *Wheatcroft* test.<sup>48</sup> BG's suggestion that *Wheatcroft* would preclude consideration of a scheme which produced only 0.8 MW, as members of the public might have been misled, is baseless, as the scheme is for a 3 MW PV plant. Furthermore, the connection issue was the subject of consultation responses. With the reconsideration of the screening issue, further extensive and detailed consultation has taken place, and there has been considerable public involvement in the case.
58. A landscape and visual assessment has been submitted.<sup>49</sup> The proposal would alter the character of the site during its operational lifetime. However, the field would be retained as pasture to be grazed by sheep. The development would be reversible and the field would return to its present character when the PV array was decommissioned. In the medium to longer term new hedgerow planting and enhanced maintenance of existing hedges would strengthen landscape structure. This landscape has high sensitivity to change, but the PV array would have a low magnitude of effect locally, and negligible magnitude of effect within the broader area. The significance of the proposed development on landscape character, and the SLA, would be moderate at site level, and within the broader context the effect would be negligible.
59. In terms of visual effects, the proposed development would be situated in a complex local landscape where landform, woodland and hedgerows would combine to restrict the number of view points from which it would be visible. The

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<sup>46</sup> *R(on the application of Loader) v SoS CLG and others* [2012] EWCA Civ 869 and *R (Morge) v Hampshire County Council* [2010] Civ 608.

<sup>47</sup> European Commission Communication on the Precautionary Principle (COM/2000/001).

<sup>48</sup> Annex A to this Report.

<sup>49</sup> PoE7 Appendix 1.

- potential for glint or glare from the fixed panels would be limited because they would be designed to absorb, not reflect, light. The equipment housing would be set against trees and finished in a dark green so as to blend in with the vegetation. Photosheets show existing views, comment on visibility, and refer to mitigation, for 10 representative view points.<sup>50</sup> There is concern about the accuracy of distance representation in some of the Council's photographs. Mr Roberts' evidence should be preferred because of the acceptance of his methodology, and because of his experience.
60. Views from the north, including from Culworth, are assessed as having negligible significance due to a combination of distance, orientation and local topography, along with the influence of existing hedgerows and trees. Gapping up planting would enhance the visual screen that already exists between the appeal site and the dwelling located to the north-east at Culworth House Farm. From the east and south views would be limited, generally oblique and screened by vegetation. The proposed development would initially have a moderate significance of visual impact upon residential viewpoints west of the site on Banbury Lane where there is intervisibility. However, the effect is assessed as negligible as screening by hedgerow planting on the western boundary of the site develops.
61. Some viewpoints on local footpaths record a moderate or moderate/major significance of effect prior to mitigation because of their proximity to the site, but new hedgerow planting and hedgerow management along the southern, eastern and northern boundaries would reduce the significance of visual effects to moderate or negligible. It is expected that the new length of hedgerow would develop to form an increasingly effective screen within 5 to 7 years after planting, and would be robust after 10 years, based on average growth and conditions. It would then appear to users of Footpath AG7 as a continuation of the length of hedgerow that forms the western boundary of the field immediately to the north of the appeal site. Evidence about planting growth rates is clear and authoritative, and was not credibly challenged.
62. Given some intervisibility between the appeal site and the listed stable block at the Manor House, the scheme would have a moderate significance of effect upon this building, but the setting of the listed buildings would be preserved because of the surrounding vegetation. There would be no effect upon Culworth Conservation Area or the Scheduled Ancient Monument.
63. The Government has set a target of 20% of UK electricity from renewable sources by 2020. The appeal scheme would be a sustainable RE development that meets the key Government objective to promote the provision of RE. Policies in the RSS support RE, and there are no equivalent policies in the LP. Planning policy places significant weight on the achievement of national targets through the implementation of local RE resources – subject to environmental impacts and safeguards. Artificial obstacles to obtaining planning permission, for example in considering technical or commercial feasibility or scale, should not be used to frustrate legitimate proposals.<sup>51</sup>

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<sup>50</sup> PoE7 Appendix 4.

<sup>51</sup> PoE9.1.

64. The application was accompanied by an archaeological impact assessment that concluded that the potential for archaeological remains to be affected was minor, given past subsoiling to a depth of between 400 mm to 500 mm, and that a watching brief would be appropriate. An addendum to the assessment dated December 2011 reiterated this finding. Archaeological remains have been assessed and are the subject of an appropriate condition.
65. A habitat survey concluded that the site was of very low ecological value, but noted that aquatic habitats nearby may support a population of Great Crested Newts, with grazed pasture and hedgerow boundaries and ditches providing foraging, commuting and wintering grounds. An addendum to the assessment dated December 2011 did not anticipate any impacts on protected or notable species, including Great Crested Newts, but set out recommendations for a precautionary approach to undertaking the work. Nature conservation has been assessed and is the subject of an appropriate condition.
66. A range of appropriate planning conditions has been agreed, and no section 106 obligation is either proposed by the appellants, or claimed to be required by the Council or BG.
67. The proposal accords with the RSS and relevant policies of the LP. However, the LP is out of date and silent about the provision of criteria-based policies to enable assessment of RE schemes.
68. The *Framework* provides that the purpose of the planning system is to contribute to the achievement of sustainable development, which is defined in terms of economic, social and environmental roles. The latter includes moving to a low carbon economy. The proposal is sustainable development, to which the presumption in favour set out in the *Framework* should apply. No adverse impacts significantly and demonstrably outweigh the benefits of the scheme when assessed against the *Framework* as a whole. In accordance with paragraph 14 of the *Framework*, planning permission should be granted.
69. This is a sustainable development that would produce much needed RE on an appropriate site. With suitable mitigation, landscape and visual effects would be localised and limited, and the benefits of the scheme are clearly sufficient to outweigh the impact on local character, appearance and amenity.

## Written representations

### *Application stage*

70. The Council received 20 letters of objection to the application and a petition with 164 signatures.<sup>52</sup> The signatories objected to the application on the grounds that, in summary, the visual and industrial impact of the site would drastically alter the character and appearance of the countryside in a designated SLA. The petition also refers to the creation of a vast brownfield site with potential for damaging alternative uses in the future, disruption and inconvenience, and that any proposed payment to parishes dependent on the scheme being successful would be abhorrent. The 2011 committee report sets out a summary of the

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<sup>52</sup> ID8.4. The petition is included with Questionnaire.

representations.<sup>53</sup> However, Thorpe Mandeville Parish Council, following an extraordinary meeting held on 6 June 2011, resolved to object to the proposal.

71. Northamptonshire County Council's Assistant Archaeological Adviser referred to a group of crop marks near to, and possibly extending into the site, which is probably part of a prehistoric settlement. The cable trench for the proposed grid connection would have a detrimental impact on any archaeological deposits present, but this would not represent an overriding constraint provided that adequate provision was made for the investigation and recording of any remains affected.

*Appeal stage*

72. Written representations were received from 13 individuals and organisations in response to the appeal.<sup>54</sup> A further 42 signatures were added to the petition referred to above, bringing the total from Thorpe Mandeville residents to 123.<sup>55</sup> An objection from Culworth Parish Council refers to growing concern about this area becoming a focus for RE and transport schemes and the cumulative effects on the character of the area. Others commented that if the appeal was allowed the Council would be inundated with such applications resulting in the loss of even more special landscape areas. The need to grow food and the use of highly productive Grade 3 agricultural land was also cited. The proposal would result in disruption and inconvenience because of vehicle movements during construction and maintenance. The scheme would operate for 25 years, and so would have a long-term impact. Alternative brownfield sites such as disused airfields should be used.

*Appeal stage – consultation on amended scheme*

73. Consultation on the amended scheme resulted in the submission of written representations from 8 individuals and organisations.<sup>56</sup> Thorpe Mandeville Parish Council maintained its objection, raised concerns about a provisional cable route, and about views from the south-west, especially with regard to the effectiveness of the proposed planting on the western boundary. It also considers EIA to be essential. Culworth Parish Council queried whether a stock-proof fence would provide adequate security, reiterated concerns about visual impact, and noted that the intended route for HS2 would pass close to the appeal site, and that this, along with proposals for wind turbines in the locality, would result in a radical change in the character of the area.
74. Mr Cadogan MA FSA considered the proposed changes to the scheme to be minor matters that would not address the principal issue of such a large area of solar panels in a SLA. He added, as an archaeologist, that it was important not to disturb the setting of the bowl barrow. Northamptonshire County Council's Assistant Archaeological Adviser is of the opinion that the revised cable run does not present a greater or lesser impact on any below ground heritage assets, and stated that her previous comments still stand.

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<sup>53</sup> ID11.

<sup>54</sup> First red folder.

<sup>55</sup> There are 152 electors registered on the parish Electoral Roll.

<sup>56</sup> Second red folder.

75. The local wildlife trust was unable to provide any detailed ecological advice. Natural England has no objection to the original proposal or to the amended scheme. It advised that the ecological survey has identified that there would not be any significant impacts on protected sites, species or priority habitats as a result of the proposal. The recommendations in the Extended Phase 1 Habitat Survey by Martin Ecology dated December 2011 should be followed, and if any Great Crested Newts were found all work should stop and advice sought from a qualified consultant.
76. Mr and Mrs Cole referred to views between the Manor House, its listed stable block, along with other dwellings, and the proposed PV array. These and other environmental concerns reinforce the necessity for an authoritative EIA, which should be undertaken when the grid connection route has been determined.
77. Mr Curtis reiterated his concerns that the appeal site is located on a "crown" in the surrounding rolling countryside and that photomontages should have been submitted. He refers to views from Public Rights of Way off the Jurassic Way on high ground above Upper Wardington and Edgcote. The archaeological and ecological information submitted falls short of the detail that would be required for a full EIA, which should be required. Furthermore, it only applies to the link to the 11 kV line, and not to the possibility of a link to the 33 kV line further to the west.

### **Conditions and obligations**

78. The Council and the appellants in earlier versions of the SoCG agreed suggested conditions in the event that the appeal were to succeed and planning permission to be granted.<sup>57</sup> BG participated in the without-prejudice round table discussion at the Inquiry about suggested conditions. I also questioned the wording of some conditions. The discussion had regard to Circular 11/95 *The Use of Conditions in Planning Permissions*. There was a measure of agreement about the wording of conditions, and the outcome of the discussion was a revised list of suggested conditions.<sup>58</sup> I deal with this in more detail in my Conclusions.
79. No obligation pursuant to section 106 of the 1990 Act has been submitted. Neither at the Inquiry, nor at any other time during the processing of the application and appeal, were submissions made that a planning obligation would be necessary in this case.

My Conclusions begin on page 21 of this report.

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<sup>57</sup> ID8.1-ID8.3.

<sup>58</sup> ID8.4.

## Conclusions

### *Preliminary matters*

80. The following conclusions are based on the evidence given at the Inquiry, the written representations and my inspection of the site and its surroundings. In this section the figures in parenthesis [ ] at the end of paragraphs indicate source paragraphs from this report. I deal first with whether the appeal should be dealt with on the basis of the amended scheme, and then consider submissions about EIA, before concluding on other planning and policy considerations.

### *Amended scheme*

81. The proposed amendments submitted at the appeal stage and shown on Drawing No.S2395-101 rev 6 dated 19 October 2012, would make an adjustment to the western boundary of the appeal site that would slightly reduce its area, reduce the height of the PV panels, reduce the number of equipment housings from three to two, and replace a proposed 3 m high chain link fence with a 2 m high stock-proof fence. They also propose additional hedgerow planting, gapping up and maintenance. The revised plan, along with the deletion in Note 5 of the reference to provisional cable routes, would be consistent with the proposal for an underground cabling connection to the 11 kV line. These changes would not substantially alter the proposal for the development of a photovoltaic park that was considered by the Council when it determined the application. [8, 10]

82. Furthermore, the proposed alterations were the subject of consultation, and submissions were received from the Council, local Parish Councils and members of the public. The resumed Inquiry provided an opportunity for any interested person or party to make submissions about the proposed alterations. The amended scheme would not be so changed that to allow the appeal on this basis would deprive those who should have been consulted on the development the opportunity to do so. Dealing with the appeal on the basis of the amended scheme would comply with the *Wheatcroft* principles. [8, 9, 57, 73-77]

83. In the alternative, if the appeal is determined on the basis of the scheme as originally submitted with the application and considered by the Council, then it is recommended that the appeal should be dismissed because the scheme would obstruct a Public Right of Way.

### *The project and EIA Screening Direction*

84. I deal next with the issues raised by BG and the Council concerning the extant Screening Direction, and submissions from some third parties that a full EIA should be required. [38, 45, 54, 55, 77]

85. If the appeal proceeds on the basis of the amended scheme there would be no doubt that the proposal includes a grid connection to the 11 kV line, which is some 640 m from the proposed PV array. The extant Screening Direction took into account the implications of the proposed connection to the 11 kV line. Suggested Condition 2 would require that the development could not be carried out otherwise than in complete accordance with a drawing that depicts this link to the 11 kV line. However, BG and the Council consider that the proposed development, with the connection to the existing 11 kV line, would only yield a

maximum of 0.8 MW generating capacity. BG also submits that consideration should be given to the implications of the most severe of the candidates for grid connection, which it considers to be a link to the 33 kV line, located about 1600 m from the proposed array. [11, 38-40, 45, 46, 56, 76,]

86. Not much weight can be given to EN-1 because this PV scheme is not within its scope. Nevertheless, its reference to grid connection being a matter for the applicant, which might involve a commercial risk, and that the decision maker would want only to be satisfied that there is no obvious reason why a grid connection would not be possible, seems to be a common sense approach, which might usefully be applied to projects outside the remit of EN-1. This is especially so where EIA concerns the assessment of the effects of projects on the environment and the planning system is concerned with the use and development of land, but separate provisions exist for regulating the electricity network. The capacity of the existing 11 kV line to accommodate new generation is determined by its existing physical properties, the demands on the network and the laws of physics. The experts agree that this is a dynamic system, in the sense that it is active and in which changes are considered. Ultimately, grid connection would be a matter for the DNO to determine in the light of all the circumstances which applied at the time it considered the matter. A dynamic system is one that might change over time. If planning permission were to be granted the standard period for implementation of three years would apply. Taking all these factors into account it is considered that the arguments advanced by BG fall short of establishing an obvious reason why a grid connection would not be possible. [35, 38-40, 46, 56]
87. BG and the Council's legal submissions rely upon a finding that the appeal scheme would not have a peak generating capacity of 3.05 MW because of the grid connection. Whether this would be so, or not, is properly a matter for the DNO to determine at any particular point in time. To reject the proposal at this stage would deny the proponent a fair and proper opportunity to exercise commercial judgement about a matter that is regulated outside the planning system. What is required for the purposes of determining this appeal on its planning merits is a judgement to be made, on the balance of probabilities, about whether there are reasonable grounds to find at this stage that such a grid connection would not be possible. For the reasons set out above, such a case has not been made out. There is currently no sound basis to come to a conclusion that allowing the appeal would result in the granting of an unimplementable planning permission. The approach advocated in EN-1 to grid connections recognises that a commercial risk might be involved. This might, in some cases, result in unimplemented permissions where, for whatever reasons, the required grid connection could not ultimately be achieved. However, there are many instances where the implementation of a planning permission might be dependent upon consents or approvals being obtained under other jurisdictions. This would not be a consideration that would justify dismissing the appeal. [35]
88. With respect to the legal submissions made by BG and the Council, there are no grounds to deal with the proposal other than as a scheme for a photovoltaic park with a grid connection to the existing 11 kV line, and with a peak generating capacity of 3.05 MW. Having regard to the judgment in *Kraaijeveld (Dutch Dykes)*, there are no considerations here which would indicate that the project,

as a whole, should be assessed on the basis of a grid connection to the 33 kV line. [38, 45, 55]

89. BG cites a PINS letter concerning another case which referred to taking a precautionary approach to the application of the EIA Regulations and to clarity about significant effects. The EIA Directive has a sufficiently wide scope and a broad purpose to embrace such a precautionary approach. However, the PINS letter does not accord with the definition set out in Regulation 2, which states that "EIA development" means development which is either – (a) Schedule 1 development; or Schedule 2 development likely to have significant effects on the environment by virtue of factors such as its nature, size or location. The PINS letter should not, therefore, be relied upon to inform a view about the scope of the project in this case. [38, 55]
90. The selection criteria for screening Schedule 2 development includes the characteristics of the development having regard to, amongst other things, the cumulation with other development.<sup>59</sup> The proforma for the extant Screening Direction notes that HS2 is not yet the subject of detailed proposals. No evidence was adduced at the Inquiry to indicate that this situation has changed. Since determination of the extant Screening Direction planning permission has been granted for five 125 m high wind turbines at Springs Ridge some 3 kms to the south-west of the appeal site. This decision has been challenged, but it remains in place at the time of this report. Given the height of the turbines it would be likely that if constructed they would be visible from some vantage points that included views of the proposed PV array, for example from Footpath AG7. However, tall wind turbines projecting above the skyline would be likely to have a different landscape impact to that of the proposed PV array. The turbines would be vertical features with moving blades, whereas the appeal scheme would follow the local landform and appear more as a horizontal and static feature in the local landscape. PPS22CG notes that cumulative effects may arise where two or more of the same type of RE development are visible from the same point, or are visible shortly after each other along the same journey. Given the different types of development, along with their separation distance, it does not appear likely that any cumulative impact on the character and appearance of the area would have a significant effect on the environment for the purposes of applying the EIA Regulations. [11, 16, 17, 34, 54, 55, 73]
91. Taking all the above into account, and adopting a precautionary approach, the project does not appear to be a Schedule 2 application to which Regulation 9 of the EIA Regulations would apply, and there are no reasons which would warrant revisiting the Screening Direction dated 25 April 2012.

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<sup>59</sup> EIA Regulations Schedule 3.



*Planning and policy considerations*

92. The Inquiry heard evidence concerning the matters about which the Secretary of State wished to be informed, along with other relevant considerations.

Accordingly, the following topics are considered in these conclusions: [5]

- (1) The effects on local amenity, including the character and appearance of the area, having regard to policies for countryside protection (matters (b), (c) and (g)).
- (2) The effects on archaeological remains and nature conservation (matter (g)).
- (3) The compatibility of the proposed development with national and local policy in respect of the generation of energy from renewable sources (matter (b)).
- (4) The matters set out in the Council's Notice of Decision dated 10 June 2011 (matter (d)).
- (5) Whether the benefits of the scheme would be sufficient to outweigh any harm that might be caused, and whether there are any other considerations which would justify allowing the appeal (matter (g)).
- (6) The extent to which the proposed development would be in accordance with the development plan for the area (matter (a)).
- (7) Whether the proposed development would be sustainable development to which the presumption in favour set out in the *National Planning Policy Framework* would apply (matter (g)).
- (8) Whether any permission should be subject to any conditions and, if so, the form these should take (matter (f)). Whether any planning permission granted should be accompanied by any planning obligations under section 106 of the 1990 Act and, if so, whether the proposed terms of such obligations are acceptable (matter (e)).
- (9) Overall conclusions.

The remainder of this report addresses these matters, and my recommendations are based on these findings.

*(1) Local amenity, character and appearance*

93. I deal first with the adequacy of information before the Inquiry about landscape and whether photomontages would be beneficial. Wireframes or photomontages are particularly useful where it is difficult to envisage the height of a proposed development from various vantage points within the local landscape. That is not so with this proposal for a PV array, which would follow the landform, and where the height was indicated by marker posts on the site. It was therefore possible at the site visits, and with the aid of the submitted photographs, to make an informed judgement about how the proposal would look within its setting. No adverse inference should be drawn about the absence of photomontages from the appellants' evidence. [2, 49, 54, 77]

94. The 'Undulating Hills and Valleys Character Area' (13a Middleton Cheney and Woodford Halse) is a landscape which has high sensitivity to change. The underground grid connection would not result in visual intrusion, and so would not conflict with LP Policy G3(G). The proposed 2 m high stock-proof fence along the western boundary of the appeal site would not be out of keeping in this agricultural area, but the proposed PV arrays and equipment housing would introduce utilitarian structures within this rural landscape. However, the proposed development would retain and reinforce hedgerows, which are an important element of the local landscape structure. It would, therefore, have a low magnitude of impact locally. Within the broader area, the PV array would follow the local landform, and so would be consistent with the broad and sweeping undulations that are key elements of this landscape. This is a wide landscape where the proposed development would have a negligible magnitude of effect on the Character Area. Within the SLA the change would be discernible, but the underlying character would remain similar to the baseline. I find that the significance of the proposed development on landscape character and the character of the SLA would be moderate at site level, and within the broader context the effect would be negligible. [14, 47, 58]
95. I turn next to visual effects.<sup>60</sup> Views from the north would be limited to some extent by the local topography, hedgerows and woodland. However, the site is visible from some vantage points in and around Culworth, at a distance of about 1 to 1.5 km.<sup>61</sup> The proposed development would be seen as an elongated feature set between the pattern of field hedgerows and below the vegetation on the distant skyline. It would be apparent in that it would at times, and particularly in certain lighting and atmospheric conditions, have a noticeably different colour and texture from that of the surrounding fields. However, it would form a small part of what is an extensive view of the agricultural land that surrounds the village, and would be of negligible significance. [48, 58-61, 77]
96. From the east a ridge would screen the site from Sulgrave and local roads. Along Banbury Road existing roadside vegetation and the local topography would effectively screen the proposed PV array. Where any gaps permitted a view, these would be fleeting glimpses.<sup>62</sup>
97. The main dispute about visual impact concerns views from the south-west and west, and from the footpaths near to the site. The extent to which the site forms part of a local crown in the rolling landscape is evident from Photograph 13 looking west towards Lower Thorpe, and Photograph 14 looking north-west towards the field barn just outside the appeal site, and Chumscote House in the distance.<sup>63</sup>

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<sup>60</sup> My findings are based on VP1 to VP10 included in PoE7 Appendix 4, Photographs 1 to 22 at PoE2.1 Appendix 3, photographs submitted by third parties, along with what I saw at my site visits.

<sup>61</sup> Mr Roberts VP7 and 8, Mr Callis photographs 1 and 2. Intervisibility between Culworth and the appeal site is evident from Mr Callis photograph 15.

<sup>62</sup> Mr Roberts VP1, Mr Callis photograph 22.

<sup>63</sup> Photograph 14 also shows part of the overgrown hedgerow along the northern boundary of the appeal site, adjacent to Footpath AG7.

98. Notwithstanding trees and vegetation in and around Thorpe Mandeville and within the fields near to the appeal site, some intervisibility exists between the site and dwellings in the village.<sup>64</sup> However, the most prominent views of the proposed development from the village would be from the dwellings along Banbury Lane.<sup>65</sup> At this distance of about 1 km the proposed development would be seen above dense vegetation and trees that lie within the valley bottom, and below an overgrown hedgerow that is a prominent feature on the skyline. Intervening trees and hedgerows would screen parts of the PV array, particularly the south-eastern part of the field towards Magpie Farm. Pre-mitigation I agree with the appellants' assessment of a low magnitude of effect and moderate significance.
99. Similar views would be apparent from vantage points further to the west, along the Millennium Way and Footpath BB5.<sup>66</sup> Views towards the appeal site from the Millennium Way, at a distance of about 1.6 km, would be intermittent and peripheral. The proposed development would make up a small component of the wider landscape, which includes attractive views over the valley to the north of this part of the Millennium Way. Parts of the proposed PV array would be visible from Footpath BB5, which would offer a more elevated view over the intervening valley from that apparent from Banbury Lane. The central/south-western part of the PV array would be prominent because the appeal site falls away towards the south-western corner of the field. However, Photograph 19 does not show the extent that this field is seen within the wider context of the broad rural landscape. It was apparent from my site visit that the proposed development would not be a dominant feature within the overall pattern of fields, hedgerows and scattered buildings. This would be even more so in views from Public Rights of Way off the Jurassic Way, which lie further to the west, on high ground above Upper Wardington and Edgcote. The magnitude of effect and significance of visual impact in this broad rural landscape would be negligible.
100. Approaching the appeal site from the west along Footpath BB11 the south-western facing slope of the field is apparent.<sup>67</sup> Some views along the footpath would be screened by the local topography and hedgerows, but where the PV array was seen at close range, for example 200 to 300 m as shown at VP4, it would have a medium magnitude of effect and the significance from these vantage points would be moderate/major.
101. From the north-west, along Banbury Lane, it was evident from the site visit that the existing hedgerows provide considerable screening of the appeal site.<sup>68</sup> Where the PV array was visible, for example through field gates, its magnitude of effect would be low and its significance of effect moderate.
102. From the east along Footpath BB11 from Banbury Road the site boundary hedgerow would provide effective screening for the first part of the footpath. However, as the footpath follows the land down to the low point at the junction of

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<sup>64</sup> This is apparent from the photograph taken with a telephoto lens included in the Parish Council's submission [Second Red Folder].

<sup>65</sup> Mr Roberts VP5, Mr Callis photograph 18.

<sup>66</sup> Mr Roberts VP9, Mr Callis photographs 19, 20 and 21.

<sup>67</sup> Mr Roberts VP4, Mr Callis photographs 16 and 17.

<sup>68</sup> Mr Roberts VP6, Mr Callis photographs 3 and 4. The hedgerow has grown substantially since the photographs were taken.

Footpaths AG7 and BB11, there are gaps within the hedgerow which would offer intermittent views of the proposed development at close range.<sup>69</sup> Magnitude of effect would range here from negligible to medium, with moderate/major significance from some parts of the footpath.

103. The proposed development would be close to Footpath AG7.<sup>70</sup> There would be open views across the majority of the site at close range from this part of the footpath. The magnitude of visual effect of the PV array would be high, and the significance of effect major. However, this would apply only for that part of the walk along the length of the western boundary of the appeal site. Given the footpath network in the vicinity this would be likely to form only a relatively short length of any overall walk in this part of the countryside. Furthermore, the dense vegetation along this part of the northern boundary of the appeal site would limit any more distant views from Footpath AG7 on the approach to the PV array.

104. There is a dispute about the likely effectiveness of proposed mitigation. Growth rates of new hedgerows would be dependent upon soil and climatic conditions. It would take a substantial proportion of the 25 year lifetime of the PV array for the new hedge proposed along the western site boundary to provide sufficient screening to reduce the magnitude of visual effect to low from Footpath AG7. Nevertheless, from other vantage points, the management and gapping up of existing hedgerows has considerable potential to provide screening and soften the impact of the proposed development in the short term. This was apparent from the site inspection, where some hedgerows had been left to grow since the submitted photographs were taken. A suggested condition proposes supplementary planting and management measures for off-site hedgerows. Such reinforcement of the vegetation along the section marked A-A would help to soften the visual impact from the south-west, especially of the lower parts of the scheme. Promoting hedgerow growth along the eastern side of Banbury Lane, between B-B, would provide an effective and short term limit to views from the north-west.<sup>71</sup> Hedgerows would be less effective in winter than in summer, but would still soften the visual impact of the proposed PV array. I am satisfied that post-mitigation the significance of visual effects would be moderate from Footpaths BB11 and AG7, but negligible from other vantage points. The proposal would not conflict with LP Policy G3(L). [50, 61]

105. Given the separation distance and intervening vegetation, the proposed PV array would not unduly affect the living conditions or residential amenity of residents of Thorpe Mandeville or other nearby dwellings. It would not conflict with LP Policy G3(D). The setting of the listed buildings in Thorpe Mandeville is limited to the confines of the village and its immediate surroundings. Given the separation distance, along with the trees and vegetation in the intervening valley, the proposal would not harm the setting of the listed buildings. For similar reasons, the proposal would not have an adverse effect on the setting of other heritage assets in the vicinity. [23, 62, 76]

106. The proposed development would have a negligible to moderate significance of effect on landscape character and the character of the SLA. However, this would

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<sup>69</sup> Mr Roberts VP2 and VP3, Mr Callis photographs 10, 11 and 12.

<sup>70</sup> Mr Roberts VP10, Mr Callis photographs 5-9.

<sup>71</sup> The sections A-A and B-B are shown on the drawing attached to ID8.4.

not result in much harm to the overall integrity of the Undulating Hills and Valleys Character Area (13a Middleton Cheney and Woodford Halse). The scheme would result in some visual harm, in the short term of moderate/major or major significance from nearby footpaths. This would, to some extent, adversely affect the amenity of the area. The impact would be restricted in its areal extent, and would, in terms of its effects on the amenity of walkers, affect only a limited part of any walk in this locality. Mitigation in the medium to long term would considerably soften the visual impact of the PV array in its local landscape context. Nonetheless, the harm from such utilitarian structures in this rural landscape to the character, appearance and amenity of the area needs to be weighed in the balance.

107. Compliance with some development plan policies requires a balancing exercise, but with respect to policies for countryside protection, on the basis of the above findings, the proposal would be contrary to LP Policies G2 and EV2 concerning development in the open countryside. It would not be compatible with the existing character of the locality, and so would be at odds with the aims of LP Policies G3(A) and EV1. The scheme would have a detrimental impact on the SLA's character and appearance, and so would conflict with LP Policy EV7. RSS Policy 3 would not be satisfied to the extent that the proposal would not maintain the distinctive character of the rural community, nor would it give priority to the use of previously developed land. [25-31]

*(2) Archaeological remains and nature conservation*

108. There is some evidence that the appeal site lies within an area of some archaeological interest and sensitivity. However, securing the proposed panels would not disturb any archaeological remains. Excavation for the grid connection would not disturb the setting of the bowl barrow. Subject to the imposition of a planning condition which secured a programme of archaeological work in accordance with an approved scheme of investigation, there is no evidence that archaeology represents a fundamental constraint to the development. [21, 64, 74, 77]

109. The appeal site is of limited ecological interest. However, Great Crested Newts might be associated with wetland areas on lower land to south of route of the proposed grid connection. Work could be undertaken in accordance with conditions to safeguard any protected species. Limited benefits to nature conservation would result from grazing under panels compared to a return to arable use. New and enhanced hedgerows would be of some benefit. The proposal could result in a net gain for biodiversity, but this is not a consideration which weighs heavily in the overall planning balance. [22, 65, 75, 77]

*(3) Renewable energy*

110. A photovoltaic park with a peak generating capacity of 3.05 MW would make a significant contribution to meeting targets for RE. The resultant contribution to the reduction of GHG would accord with the Government's aims concerning climate change. The proposed development would also have energy security benefits. These are important considerations that should be given significant weight in the overall planning balance. [18, 34, 63]

111. No up to date figures were submitted to the Inquiry about progress towards meeting regional targets, but the supporting text in the 2009 RSS states that at that time RE sources made a minor contribution to the Region's capacity (approximately 2%) and the East Midlands lagged behind the other English regions. There is nothing to indicate that the view expressed in the RSS, that the regional target of 20% RE mix by 2020 could only be achieved by, amongst other things, large scale grid connected RE, does not still hold true. Policy support for RE is therefore an important consideration in this case. [28]

*(4) Council's Notice of Decision*

112. Issues arising from the Council's first reason for refusal are addressed under the other headings in this section. [5, 7]

113. The Council withdrew its second reason for refusal concerning inadequate consultation following the further consultation undertaken on the amended scheme. This provided an opportunity for comment and submissions about the overall project, not only the amendments. Furthermore, the Inquiry provided an opportunity for representations. There is no reason to find against the proposal by reason of inadequate consultation. [8, 9]

*(5) Planning balance*

114. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, require in this case that a balancing exercise be performed to weigh the benefits of the proposed photovoltaic park against its disadvantages. In addition, PPS22CG recognises that the landscape and visual effects will only be one consideration to be taken into account and that these must be considered alongside the wider environmental, economic and social benefits that arise from RE projects. The planning balance is a matter of judgement. [34]

115. The proposed development would, cumulatively, make a significant contribution to RE targets and towards the reduction of GHG. This should be given significant weight. The evidence here indicates that likely harm to the character and appearance of the area, and to the amenity of those using the local footpath network, would be limited, and would be outweighed by the significant benefits of RE generation. The scheme could result in a net gain for biodiversity. In my judgement, the planning balance here falls in favour of granting planning permission. [22, 41, 51, 52, 69]

*(6) Development Plan*

116. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires the appeal to be decided having regard to the development plan, and to be determined in accordance with it, unless material considerations indicate otherwise. Whether the proposal would accord with the development plan as a whole depends on the importance of the policies which are complied with or infringed, and the extent of compliance or breach. [24-31]

117. The Localism Act 2011 contains provision for regional strategies to be abolished, but the RSS remains part of the development plan at the present time. The Government's stated intention to carry out the abolition is a material

consideration, but this carries limited weight, since abolition is still dependent upon the outcome of a strategic environmental assessment.

118. The proposal would contribute to regional RE targets and so gains some support from relevant RSS Policies, including RSS Policy 24, which aims to promote diversification and development of the rural economy. However, it would not fully comply with RSS Policy 3 concerning the maintenance of the distinctive character and vitality of rural communities, and giving priority to making best use of previously developed land. Nevertheless, there is no compelling evidence that the proposal would harm the vitality of the rural community, and so any conflict with this policy would not weigh much against the proposal. Compliance with RSS Policies 1, 26 and 40 depends upon the balancing exercise. The proposal would help to reduce the causes of climate change by minimising emissions of CO<sub>2</sub> and to maximise the level of RE generation, which is a consideration that in this case would outweigh any harm to environment, and so the proposed development would accord with RSS Policy 1. With respect to RSS Policy 26, the appeal scheme would minimise harm to the natural heritage and assets, and the need would outweigh any damage. In this location the environmental, economic and social impact of the proposed development can be addressed satisfactorily, and the contribution towards RE targets indicates compliance with RSS Policy 40. Considerable weight should be given to this because the RSS states that the regional target can only be achieved with a contribution from large scale grid connected RE. A finding here that benefits would outweigh disadvantages would indicate compliance with RSS Policies 1, 26 and 40.<sup>72</sup>
119. The proposal would conflict with LP Policies G2, G3(A), EV1, EV2 and EV7 concerning protection of the countryside and the SLA. The conflict with these policies must be weighed against the compliance with relevant RSS policies. It seems to me that the support the proposal gains from RSS Policy 40 and the other relevant RSS policies above, would be sufficient to outweigh the limited conflict with LP policies. On this basis, the proposal would accord with the provisions of the development plan when read as a whole.
120. However, if this judgement is wrong, the *Framework* provides that due weight should be given to relevant policies in existing plans according to their degree of consistency with the *Framework*. The LP does not include criteria-based policies to enable the assessment of RE schemes. Furthermore, whilst the SLA designation is indicative of a valued landscape, the LP does not set criteria based policies against which proposals for any development on or affecting such landscape areas would be judged. The provisions in the LP are not consistent with the *Framework*. This affects the weight that should be given to them in determining how the proposal squares with the development plan. More weight should properly be given to the support the scheme gains from RSS policies, than to the conflict with LP policies concerning the countryside. This is a consideration which tips the balance firmly in favour of a finding that the proposal would comply with the development plan when read as a whole.

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<sup>72</sup> On the contrary, if the Secretary of State decides that the planning balance was against the proposal then it would be in conflict with the aims of these policies.

121. The proposal would not conflict with the Council's *Farm Diversification* SPG. Little weight can be given to the emerging Core Strategy because it has only reached pre-submission amendment stage. [32, 36]

*(7) National Planning Policy Framework*

122. The encouragement given in the *Framework* for RE is sufficient here to outweigh any harm to the intrinsic character and beauty of this part of the countryside. The suggested conditions would make this scheme acceptable, and in accordance with the *Framework* this would indicate that the proposal should be approved. Irrespective of whether paragraph 14 of the *Framework* applies in this case or not, the proposed development gains considerable support from the *National Planning Policy Framework*, when read as a whole. [53, 67, 68]

*(8) Conditions and obligations*

123. The need for conditions and their wording should properly be considered in the light of the advice contained in Circular 11/95 *The Use of Conditions in Planning Permissions*. The parties reached a measure of agreement at the Inquiry about possible conditions in the event that planning permission was granted. [78]
124. The standard three year commencement period was not disputed (Condition 1). Otherwise than as set out in any decision and conditions, it would be necessary that the development shall be carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 2). The drawing numbers cited in Condition 2 would depend upon whether the appeal was determined on the basis of the amended scheme. The scheme is for a limited duration and so a temporary permission for 25 years, along with provision for removal of structures and restoration, including any panels which ceased to operate for a continuous period of 12 months, would be necessary (Conditions 3-5). Suggested Condition 3 could be drafted with greater clarity. A height restriction for the panels would be necessary to accord with the scheme assessed at the Inquiry and in the interests of the appearance of the area (Condition 6). Use of penetrative foundation methods would need to be precluded because of the archaeological sensitivity of the area (Condition 7). For similar reasons, it would be necessary to secure the implementation of a programme of archaeological work in accordance with an approved scheme of investigation (Condition 8). Detailed elevations and plans of panels, supporting structures and equipment housings, and the stock-proof fence, would need to be approved as these details are not included in the application documents (Conditions 9 and 10). A scheme for both on- and off-site landscaping would need to be approved prior to the development taking place, and provision made for its implementation and management (Condition 11). A surface water drainage scheme would need to be approved and implemented in the interests of flood risk, water quality and local amenity (Condition 12). The development would need to be carried out in accordance with the recommendations in the habitat survey so as to safeguard wildlife and biodiversity (Condition 13).
125. The conditions agreed at the Inquiry, with some minor alterations in the interests of precision and enforceability would be necessary to mitigate the impact of the proposed development. The conditions set out in the Schedule of Conditions attached to this report would reasonably relate to the proposed



development and would appropriately address some of the issues raised by third parties.

126. No planning obligation has been submitted and none is necessary. [79]

*(9) Overall conclusions*

127. There is considerable local opposition to the proposed development, which is evident from the written representations, petition and the submissions made at the Inquiry. One of the aims of national planning policy is to strengthen local decision making.<sup>73</sup> However, it remains a general principle of the planning system that local opposition or support for a proposal is not in itself a ground for refusing or granting planning permission, unless it is founded upon valid planning reasons.<sup>74</sup> The proposal falls to be determined on its planning merits.

128. The proposed development would result in some harm to the local landscape and to the amenity of walkers using the local footpaths. However, this would be outweighed by the RE benefits of the proposal. The scheme would conflict with policies concerning development in the countryside, but taking into account the *Framework*, it would comply with the provisions of the development plan when read as a whole. Furthermore, the scheme would be sustainable development and so would gain support from the *Framework*.

129. All other matters raised in evidence have been taken into account, but there is nothing to outweigh the main considerations that lead to my conclusions.

**Recommendations**

130. Given that the amended scheme would not be a substantially different scheme to that considered by the Council when it determined the application, and that dealing with the appeal on the basis of the amended scheme shown on Drawing No.S2395-101 rev 6 dated 19 October 2012 would not be prejudicial to the interests of any party, it is recommended that the appeal be determined on the basis of the amended scheme. Notwithstanding submissions about the nature of the project, the proposal should properly be determined on the basis of a scheme for a photovoltaic park with a grid connection to the existing 11 kV line and with a peak generating capacity of 3.05 MW.

131. The project does not appear to be a Schedule 2 application to which Regulation 9 of the EIA Regulations would apply, and there are no considerations that would justify revisiting the extant Screening Direction dated 25 April 2012.

132. Subject to the above recommendations, it is further recommended that the appeal be allowed and that planning permission be granted for a photovoltaic park at Part OS 2454, East of Banbury Lane, Culworth Grounds Farm, Thorpe Mandeville OX17 2HW, subject to the conditions set out in the attached Schedule of Conditions.

*John Woolcock*

Inspector

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<sup>73</sup> *National Planning Policy Framework Annex 1: Implementation.*

<sup>74</sup> *The Planning System: General Principles*, ODPM, 2005.

## SCHEDULE OF CONDITIONS 1-13

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.
- 2) The development shall not be carried out otherwise than in complete accordance with the approved plans being Drawing Nos.2220/01, 02 and 03, Drawing No.2220/01a and Drawing No.S2395-101 rev 6 dated 19 October 2012.
- 3) The planning permission hereby granted is for a period from the date of this decision until the date occurring 25 years after the date of commencement of the development hereby permitted. Written notification of the date of commencement shall be given to the local planning authority no later than 14 days after the event.
- 4) No later than 12 months prior to the end of this permission, a site restoration scheme shall be submitted to and approved in writing by the local planning authority. The scheme shall include a programme of works to remove the solar panels and related equipment, and shall be fully implemented within 12 months of the expiry of this permission.
- 5) If any of the individual solar panel(s) ceases to export electricity to the grid for a continuous period of 12 months then a scheme shall be submitted to the local planning authority for its written approval within 3 months from the end of the 12 month period for the removal of the solar panel(s) and associated equipment and the restoration of (that part of) the site to agricultural use. The approved scheme of restoration shall then be fully implemented within 6 months of that written approval being given.
- 6) The solar panels hereby approved shall not exceed 2 metres above ground level.
- 7) Piling or any other foundation design using penetrative methods shall not be permitted.
- 8) No development shall take place until the applicant or their agents or successors in title has secured the implementation of a programme of archaeological work in accordance with a written scheme of investigation including a timetable which has been previously submitted to and approved in writing by the local planning authority.
- 9) No development shall take place until detailed elevations and plans of the solar panels, supporting structures and equipment housings (including confirmation of material and colour finishes) have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 10) No development shall take place until detailed elevations and plans of the stock-proof fence to the western boundary of the site have been submitted to and approved in writing by the local planning authority. The development shall be carried out in accordance with the approved details.
- 11) No development shall take place until a scheme for on-site and off-site landscaping has been submitted to and approved in writing by the local planning authority. The scheme shall include: (i) details of planting along

the site's western boundary and supplementary planting of all other site boundaries to provide a screen of not less than three metres in height, including an on-going management plan to ensure maintenance of that screen once established at that height for the lifetime of the development; (ii) details of supplementary planting of the field boundary to the immediate south-west of the application site between the points marked A-A on plan No.2220/01a to provide an effective screen of not less than three metres in height; and (iii) details of management measures to maintain the existing hedge along the eastern side of Banbury Lane between the points marked B-B on plan No.2220/01a to a height of at least two metres. The landscaping scheme shall be implemented in accordance with the approved details within the first planting season following the commencement of the development hereby permitted, and shall be maintained during the lifetime of the development, with the replacement of any trees or plants which die, are removed or become seriously damaged or diseased, in the first available planting season with others of similar size and species.

- 12) No development shall take place until a surface water drainage scheme for the site, based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development, has been submitted to and approved in writing by the local planning authority. The scheme shall be implemented in accordance with the approved details before the solar panels hereby permitted are installed on-site, and shall thereafter be retained.
- 13) The development hereby permitted shall be carried out in accordance with the recommendations set out in Section 4.2 of the Extended Phase 1 Habitat Survey by Martin Ecology dated May 2011 (as amended December 2011).

## ANNEX A

Ruling by Inspector Neil Pope

### **TOWN AND COUNTRY PLANNING ACT 1990. APPEAL BY Mr CER and Mrs S BUCKLEY. PART OS 2454, EAST OF BANBURY LANE, CULWORTH GROUNDS FARM, THORPE MANDEVILLE, NORTHAMPTONSHIRE.**

#### **Inspector's Rulings**

##### 1. EIA/Screening Direction

There is clearly a discrepancy in the plans that were submitted with the application showing the extent of the 'red line' application site area. Drawing No. 2220/01 shows an underground cable route, whereas drawing No. 2220/02 is limited to the area where the solar panels are proposed.

The matter was not clarified when the appeal was submitted, with drawing No. 2395-101 showing possible under-grounding of a cable route and possible connection to a 33kv line. This is depicted in a different format to the main body of the appeal site where the solar panels are proposed. Drawing No. 2395-101 rev5 was submitted in October 2011 and after the Secretary of State's Screening Direction. This revised plan shows a cable route under-grounded and depicted in the same manner as the main body of the appeal site. The appellants' agent's covering letter of 20 October 2011 advises that this amended plan has been submitted *"...to make clear that the proposed underground cabling connection to the 11kV line to the west lies within the red-line application site."*

The lack of clarity within the plans could have resulted in a failure by some of those involved in the planning process to consider the full extent of the cabling/trenching. In this regard, the appellants' ecological report is 'silent' on the issue of cabling.

Whilst the Council's staff and the PINS 'proforma' clearly recognise that some underground cabling formed part of the application and appeal, the discrepancies in the plans and the lack of reference within the ecology report lead me to question whether the Secretary of State was clear as to the full extent of the cabling works when he gave his Screening Direction, including matters of ecological impact.

From the Renfree<sup>1</sup> decision I therefore find that the Inquiry should be adjourned, before hearing evidence, to invite the Secretary of State to reconsider the Screening Direction.

It is a separate matter for the Secretary of State to consider whether in the light of the Mellor<sup>2</sup> decision he needs to give further reasoning to the Screening Direction and from the Lebus<sup>3</sup> and Co-op<sup>4</sup> cases whether he requires further information to

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<sup>1</sup> Renfree v Mageean and others [2011]

<sup>2</sup> R (Mellor) v Secretary of State for Communities and Local Government [2010]

<sup>3</sup> R (Lebus) v South Cambridgeshire DC

<sup>4</sup> R (Co-op Group Ltd) v Northumberland CC [2010]

assess whether the scheme would be likely to have a significant effect on the environment.

## 2. Wheatcroft Principles

I concur with the Council that the proposed reduction in height of the solar panels, use of stock proof fencing rather than chain link fencing, the 'tweaking' of the line around the site to reflect the route of the definitive footpath and the reduction in the number of equipment housings do not so change the development that it would deprive those who should be consulted on the changes of the opportunity of such consideration.

However, the lack of clarity over the route of the cable/trench at application stage could have resulted in some parties, including Natural England, being unaware of the full extent of the proposed works. Opportunity should therefore be taken during the adjournment for consultation and notification of the proposed cable/trench, including its length, depth and width.

The precise form of consultation/notification is a matter for the appellants and Council, but there would be a need to follow what may be set out within the Council's Statement of Community Involvement.

## 3. Viability

Following the *Stringer* case<sup>5</sup>, viability is capable of being a material consideration. However, in my experience, it is unusual for financial viability to be considered at appeal in the context of renewable energy schemes. As the matter has been raised by some interested parties this may be a matter upon which the Secretary of State may wish to hear evidence. That said, parties will note that it is not mentioned in the Secretary of State's letter of 28 July 2011 about matters upon which he wishes to be informed.

I am willing to hear evidence on this issue but it is a matter for the parties as to how far they wish to go in pursuing this at the Inquiry. There is no obligation on the appellants to provide commercially sensitive information as part of the appeal. If it assists the parties further, having read the evidence that has been submitted in respect of viability, at this stage, I do not have any questions in respect of this issue.

*Neil Pope*

Inspector

23 November 2011

(The above was verbally conveyed to the parties on 22 November 2011.)

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<sup>5</sup> *Stringer v MHLG* [1970]

## ANNEX B

### Inspector John Woolcock - note concerning matters about which SoS particularly wishes to be informed

(g) any other matters that the Inspector considers relevant.

From what I have read and seen so far, I consider it likely that the SoS would under (c) [The effect on local amenity], wish to be informed about the effects of the proposed development on the character and appearance of the area, as part of the effect on local amenity.

Other matters I consider at this stage likely to be relevant are:

The effects on archaeological remains and nature conservation.

Whether the benefits of the scheme would be sufficient to outweigh any harm that might be caused, and whether there are any other considerations which would justify allowing the appeal.

Whether the proposed development would be sustainable development to which the presumption in favour set out in the *National Planning Policy Framework* would apply.

I might revise my preliminary views about relevant matters in the light of the evidence before the Inquiry.

*John Woolcock*

Inspector  
12 October 2012

## ANNEX C

### Note on Screening Direction dated 25 April 2012

The panels would have a ballasted supported system so the ground would not be disturbed.

The site would be grazed by sheep and so continue to be used for agricultural purposes.

The grid connection assessed was that shown on the amended plan submitted by letter dated 20 October 2011, to the 11 kV line. The screening process needs to be undertaken on the basis of the proposal being put forward by the developer at that point in time.

The project would remain on the site for 25 years.

It was not considered that there would be a significant landscape effect upon the wider Special Landscape Area, and that any visual impact would be local.

The assessment took into account mitigation measures.

The cable trench would only be 100 mm to 200 mm deeper than the disturbed ground and the possible presence of archaeological remains would not preclude the development from proceeding.

HS2 is not yet the subject of detailed proposals.

No wind farms which have received planning permission have been identified.

## APPEARANCES

### FOR SOUTH NORTHAMPTONSHIRE DISTRICT COUNCIL:

David Loveday  
of Counsel

Instructed by South Northamptonshire District  
Council.

He called

Cllr Rosie Herring  
Daniel Callis MSc BSc  
MRTPI

Ward Councillor for Danvers and Wardoun.  
Senior Planning Officer.

### FOR BARLEY GROUP:

Anthony Crean QC

Instructed by Barley Group.

He called

Peter Frampton  
BSc(Hons) TP MRICS  
MRTPI

Director Frampton Town Planning Ltd.

### FOR APPELLANTS:

Graeme Keen  
of Counsel

Instructed by TP Bennett LLP.

He called

Andrew Roberts BA Dip  
LA CMLI  
James Farman HEC  
(Finance)  
Mike Ibbott MA MPhil  
MBA MRTPI AIEMA

Associated Consultant to Corylus Planning &  
Environmental Ltd.  
Director Forenergy.  
Director TP Bennett LLP.



## PROOFS OF EVIDENCE (PoE) AND WRITTEN REPRESENTATIONS (WR)

### South Northamptonshire District Council

- PoE1 Proof of evidence Cllr Rosie Herring.
- PoE2.1 Proof of evidence Daniel Callis including appendices 1-4.
- PoE2.2 Addendum Daniel Callis.
- PoE2.3 Second addendum Daniel Callis.
- WR2.1 Legal submissions concerning EIA 30 March 2012.
- WR2.2 Letter concerning amendment and EIA dated 27 October 2011.

### Barley Group

- PoE3 Proof of evidence Peter Frampton.
- WR3.1 Letter concerning *National Planning Policy Framework* dated 13 April 2012.
- WR3.2 Letter concerning EIA dated 30 March 2012.
- WR3.3 Legal opinion dated 16 October 2011.
- WR/PoE4 Proof of evidence Simon Dackombe including Appendices 1-5. [adopted in part by Mr Frampton].
- WR5.1 Proof of evidence Simon Cordery.
- WR5.2 Second Proof of evidence Simon Cordery.
- WR6.1 DNO Consulting letter dated 8 November 2011.
- WR6.2 DNO Consulting letter dated 24 February 2012.
- WR6.3 DNO Consulting letter dated 13 March 2012.

### Appellants

- PoE7 Proof of evidence Andrew Roberts including Appendices 1-6.
- PoE8 Proof of evidence James Farman including Appendices 1 and 2.
- PoE9.1 Proof of evidence Mike Ibbott.
- PoE9.2 Appendices to proof of evidence by Mike Ibbott appendices 1-8.
- WR9.3 Note on *National Planning Policy Framework* 11 April 2012.
- WR9.4 Letter concerning *National Planning Policy Framework* 24 April 2012.
- WR9.5 Legal submissions on behalf of the appellant dated 12 April 2012.
- WR9.6 Letter in response to Barley Group and Council submissions concerning amendment and EIA dated 1 November 2011.

### Other representations

Written representations to the Council at the application stage - attached to Questionnaire.

Third party written representations about appeal - in First Red folder.

Third party written representations about amended scheme - in Second Red folder.

## DOCUMENTS SUBMITTED AT THE INQUIRY

(ID – Inquiry Document)

Submitted on 22 November 2011

- ID1 Counsel's speaking note on behalf of South Northamptonshire Council.
- ID2.1 Appellants' response to Inspector's pre-Inquiry note.
- 2.2 Bundle of cases.

- ID3.1 Inquiry Issues Barley Group.
- 3.2 Reg 19 Letter from PINS dated 8 April 2011 and Annex concerning Covanta.
- 3.3 Second proof of evidence regarding financial viability of Culworth Solar Park Project by Simon Cordery.
- 3.4 Bundle of cases.
- ID4 *Berkeley v SoSE* [2001] 2AC 603.
- ID5 Plan showing footpaths AG7 and BB11.
- ID6 Plan showing extent of 'red line' site considered by the Council following the appellants' request for a screening opinion in respect of a larger site.
- ID7 Plan produced by the Council on validation of the planning application.

Submitted during remainder of Inquiry

- ID8.1 Statement of Common Ground dated 17 November 2011.
- 8.2 SoCG dated 16 October 2012.
- 8.3 SoCG dated 19 October 2012.
- 8.4 SoCG dated 19 October 2012 including Drawing No.S2395-101 rev 6.
- ID9 Letter from PINS dated 26 September 2012 concerning screening direction for Moreton Brickworks.
- ID10 *Bernard Wheatcroft Ltd v SoSE* (1981) 257 E.G. 934.
- ID11 Committee report on appeal scheme 2011.
- ID12 Appeal decision on Spring Farm Ridge wind farm  
Ref: APP/Z2830/A/11/2165035 and Site Plan.
- ID13.1 Committee report on PV application Shacks Barn Farm, Silverstone.
- 13.2 Minutes 12 July 2012 Development Control Committee.
- 13.3 Notice of Decision
- ID14 Opening statement on behalf of the appellants.
- ID15 Opening submissions on behalf of the Council.
- ID16 Opening submissions on behalf of Barley.
- ID17 Committee report on amended scheme March 2012.
- ID18 Extracts from EN-1 *National Policy Statement for Energy*.
- ID19.1 PINS EIA Reg 19 letter dated 8 April 2011 concerning Covanta appeal.
- 19.2 Annex by Inspector Richard Tamplin dated 8 April 2011.
- ID20 DNO Consulting Ltd 13 March 2012.
- ID21 *R(on the application of Loader) v SoS CLG and others* [2012] EWCA Civ 869.
- ID22 High Court Claim Form by South Northamptonshire District Council concerning Spring Farm Ridge wind farm [Document 12 above].
- ID23 James Farman: Note on Employment Experience.
- ID24 Extract from website DNO Consulting Ltd.
- ID25 Qualifications and experience of Lee Mason MIEE DNO Consulting Ltd.
- ID26 Note indicating where Mr Callis disagrees with Mr Roberts concerning visual effects. [requested by Inspector]
- ID27 Closing submissions on behalf of Barley Group.
- ID28.1 Closing submissions on behalf of South Northamptonshire Council.
- 28.2 *Sea & Land Power & Energy Ltd v SSCLG and Great Yarmouth Borough Council* [2012] EWHC 1419 (Admin).
- 28.3 *Tesco Stores Ltd v Dundee City Council* [2012] UKSC 13.
- ID29 Closing submissions on behalf of the appellants.



## Department for Communities and Local Government

### **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 to the High Court under Section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### **Challenges under Section 288 of the TCP Act**

Decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged under this section. 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 under this section must be made within six weeks from the date of the decision.

#### **SECTION 2: AWARDS OF COSTS**

There is no statutory provision for challenging the decision on an application for an award of costs. The procedure is to make an application for Judicial Review.

#### **SECTION 3: 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 report of 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.