



## Department for Communities and Local Government

Mrs Amy Williams  
BE Renewables Ltd  
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Hesketh Mount  
92-96 Lord Street  
Southport  
PR8 1JR

Our Ref: APP/D0840/A/14/2229290

Your Ref: Antigua Appeal

28 January 2016

Dear Madam,

### **TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78 APPEAL MR D ADAIR OF ANTIGUA SOLAR LIMITED BUTTERISS FARM, EDGCUMBE, PENRYN TR10 9EF**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, J M Trask BSc(Hons) CEng MICE, who carried out a site visit on 17 March 2015 regarding your client's appeal against a decision of Cornwall Council ('the Council') to refuse planning permission for solar photovoltaic panels and associated works including inverter housings, security fencing and cameras at Butteriss Farm, Edgcumbe, Penryn TR10 9EF, in accordance with application reference PA13/11664, dated 19 December 2013.
2. The appeal was recovered for the Secretary of State's determination by letter dated 25 November 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990, in order for him to consider any cumulative impact of photovoltaic schemes in the locality.

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

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions and agrees with her recommendation. 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. An application for costs was made by the appellant against the Council (IR2). This application is the subject of a separate decision letter.

#### **Policy and Statutory considerations**

5. In deciding the 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

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determined in accordance with the development plan unless material considerations indicate otherwise. In this case, there is no development plan covering the site and the emerging Cornwall Local Plan is at an early stage and has limited weight. The Secretary of State has also given limited weight to the study published by Cornwall Council in August 2013: *Landscape Sensitivity to Onshore Wind and Large Scale Solar Photovoltaic Development in Cornwall*.

6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework) and the accompanying planning practice guidance (the guidance).
7. The Secretary of State has also had regard to his predecessor's Written Ministerial Statement (WMS) – *Solar energy: protecting the local and global environment* of 25 March 2015. The statement explains that meeting energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land. Specifically, the WMS underlines that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence. However, the Secretary of State is satisfied that, in this case, the land which would be taken is classified as grade 4 agricultural land - below the standard to be classified as best and most valuable.
8. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

#### **Main issue**

9. The Secretary of State agrees with the Inspector that the main issue is that set out at IR39.

#### *Character and appearance*

10. The Secretary of State agrees with the Inspector that, for the reasons given at IR40, the proposed development would not be in accord with the landscape strategy for the area. He also agrees (IR41) that the uniform nature of the development would give rise to an industrial appearance contrary to the subtle changes in land colour and texture currently apparent and thereby adversely altering the landscape character of the immediate area. Furthermore, for the reasons given at IR42, the Secretary of State agrees with the Inspector that the proposal, combined with the existing array, would result in a major adverse impact on the local landscape and character of the rural fields in which it would be located, albeit reducing to minor adverse impacts on the wider landscape. The Secretary of State also agrees with the Inspector's conclusion at IR50 that, for the reasons given at IR43-49, there would be a major adverse impact from the development on the local landscape character and a minor adverse effect on the wider landscape character, with some harm to residential amenity.
11. Overall, the Secretary of State agrees with the Inspector (IR50) that the proposed solar farm together with the cumulative impact arising from the adjoining solar farm would become the defining characteristic of the area. The visual impact would be substantial adverse in some locations and the scheme would have a detrimental impact on the pastoral, semi-natural and open character and appearance of the area.

### *Benefits*

12. The Secretary of State agrees with the Inspector at IR52 that, whatever the number of houses which could be supplied turns out to be, the scheme would result in carbon dioxide savings and would contribute towards targets of installed renewable electricity production. He also agrees that it would provide a valuable contribution to cutting greenhouse gas emissions and would support the Government's obligations in terms of renewable energy requirements. The Secretary of State gives substantial weight to these considerations, and also agrees with the Inspector that the benefits described at IR53 (enhanced ecology and biodiversity and farm diversification) warrant significant weight.

### *Heritage assets*

13. The Secretary of State agrees with the Inspector at IR56 that the impact of the proposal on the setting of the Grade 2 Listed Building of Edgcumbe Chapel would be minor. The Secretary of State considers that this impact is a consideration which should be given special weight and considerable importance in the overall planning balance. Nevertheless, he agrees with the Inspector's conclusion that the extent of the residual less than substantial harm would not be so great as to outweigh the benefits if the proposal had otherwise been acceptable.

### *Other matters*

14. Like the Inspector (IR57), the Secretary of State has taken account of the objections raised by local people insofar as they are founded on valid planning reasons, but he agrees with the Inspector that any harm arising therefrom would not materially add to the harm or otherwise affect the overall planning balance.

### **Conditions**

15. Having considered the Inspector's conclusions on conditions, as set out at IR36-38, and the conditions which she proposes in Annex A to the IR, the Secretary of State is satisfied that, in the form recommended by the Inspector, they are reasonable and necessary and would meet the tests of paragraph 206 of the Framework and the guidance. However, he does not find that they overcome his reasons for dismissing the appeal.

### **Overall conclusions**

16. As there is no adopted development plan applicable to this site, the Secretary of State has gone on to consider the material considerations for and against the proposal and, in this case, he concludes that the harm to the character and appearance of the area outweighs the benefits of the proposal, thereby making it contrary to the provisions of the Framework. Like the Inspector (IR55) he is satisfied that the impacts could not be made acceptable and that the proposal would not represent sustainable development.

### **Formal Decision**

17. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for solar photovoltaic panels and associated works including inverter housings, security fencing and cameras at Butteriss Farm, Edgcumbe, Penryn TR10 9EF, in accordance with application reference PA13/11664, dated 19 December 2013.

**Right to challenge the decision**

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

19. A copy of this letter has been sent to Cornwall Council.

Yours faithfully

*Jean Nowak*

**Authorised by Secretary of State to sign in that behalf**

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

by J M Trask BSc(Hons) CEng MICE

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

Date: 26 November 2015

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Appeal under section 78 of the Town and Country Planning Act 1990.

Mr D Adair of Antigua Solar Limited

Against a decision to refuse planning permission by Cornwall Council

Site visit made on 17 March 2015

Butteriss Farm, Edgcumbe, Penryn TR10 9EF

File Ref: APP/D0840/A/14/2229290

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**File Ref: APP/D0840/A/14/2229290**

**Butteriss Farm, Edgcumbe, Penryn TR10 9EF**

- 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 D Adair of Antigua Solar Limited against the decision of Cornwall Council.
- The application Ref PA13/11664, dated 19 December 2013, was refused by notice dated 16 June 2014.
- The development proposed is solar photovoltaic panels and associated works including inverter housings, security fencing and cameras.

**Summary of Recommendation: The appeal be dismissed.**

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**Procedural Matters**

1. The appeal was recovered for determination by the Secretary of State in order for him to consider any cumulative impact in the locality.
2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Report.
3. There are discrepancies between the site layout plan of the proposed development shown on the drawing entitled Appendix 2 version v2 and the version confirmed by the appellant following a request for clarification after the site visit. The appellant intends to apply for the relocation of public right of way (PROW Footpath 232100) so that it would no longer cross the site. However, it is not guaranteed that relocation would be acceptable and this report is based on the site layout that shows the public footpath in its original position and no solar panels to the south of the footpath (as suggested by the appellant and labelled Sheet PV-100).
4. The Council has confirmed that Appendix 32 (Ref 1059771-LUD-AN-002 B ) should have been included on the list of plans but that Appendices 3 and 30 are for illustrative purposes only. Appendix 32 (Ref 1059771-LUD-AN-002 C ) has been updated to take account of the Landscape Officer's comments. Since this drawing does not change the development to such an extent that the interests of any party would be prejudiced by not having the opportunity to comment, this report is based on the revised proposal.

**The Site and Surroundings**

5. The appeal site comprises an area of sloping fields. The edge of the site is located just over 100m to the east of the A394. The linear hamlet of Edgcumbe is located along the opposite side of the main road. To the east of the site is an existing solar farm (Little Trevease) which has an area of 11.33ha. The land slopes down from the road to the site boundary and then rises again to a ridgeline within the existing solar farm. Permission has been granted for the importation and storage of topsoil on the fields to the west of the site and there is a containment bund between the site and the road. The Rame electricity substation and its associated gantries and transmission lines lies about 300m to the north east. As noted above a public right of way (PROW Footpath 232100) crosses the appeal site near its southern boundary. The wider surroundings are primarily agricultural fields and the area has a pastoral, semi-natural and open character and appearance.

6. The site lies in an area defined as landscape character area (LCA) CA10 Carnmenellis in the *Cornwall and Isles of Scilly Landscape Character Study*. The area comprises a gently undulating open and exposed elevated plateau, boggy in places, with radiating valleys at the edge. There are the remains of mining and quarrying industry related structures and pylons, masts and poles are prominent in places. The area is described as having an appealing remoteness.

## Planning Policy

7. Statute provides that the appeal is to be decided in accordance with the provisions of the development plan unless material considerations indicate otherwise. I agree with the Council's advice that although there is an emerging Cornwall Local Plan this is at an early stage and has limited weight. Therefore there is no development plan covering the site. In these circumstances the National Planning Policy Framework (the Framework) (paragraph 14) advises that planning permission should be granted unless any adverse impact of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the Framework as a whole; or specific policies in the Framework indicate development should be restricted.
8. The Framework includes a presumption in favour of sustainable development which has three dimensions: economic, social and environmental. In relation to the environmental dimension, the Framework includes the core principle of protection of the countryside for its intrinsic value and it aims to protect and enhance valued landscapes (para 109) and minimise adverse effects on the local and natural environment (para 110). Other environmental considerations include meeting the challenge of climate change. In Section 10 the Framework promotes and seeks to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily, including cumulative landscape and visual impacts (para 97). It also provides for the approval of renewable energy applications if the impacts can be made acceptable, unless material considerations indicate otherwise (para 98).
9. In relation to the economic dimension of sustainable development, economic growth in rural areas is supported by the Framework. It encourages diversification of agricultural and other land based rural enterprises. However, where significant development of agricultural land is demonstrated to be necessary, the Framework encourages the use of poorer quality land in preference to that of higher quality (para 112).
10. The Government's Planning Practice Guidance (the PPG) supports the Framework policies and has superseded Planning Practice Advice for Renewable and Low Carbon Energy (July 2013). The PPG recognises the potential impact of large-scale solar farms on the rural environment, particularly in undulating landscapes. It encourages the effective use of land by focusing large scale solar farms on previously developed and non-agricultural land. However, it does not preclude necessary development on agricultural land, subject again to a preference for poorer quality land over higher quality land. The PPG explains the Framework policy that all communities have a responsibility to help increase the use and supply of green energy but acknowledges that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities.

11. National policy in the Framework has not been changed by either the UK Solar PV Strategy or by letters by the Minister for Energy in the Department of Energy and Climate Change and to which I have been referred.
12. The Council's Technical Paper E4 (a) *An assessment of the Landscape Sensitivity to Onshore Wind and Large Scale Solar Photovoltaic Development in Cornwall* indicates sensitivity to solar PV development in the area is moderate/high with particular sensitivity to large scale SPV development (10-15ha). The strategy is for small (1-5ha) to medium (5-10ha) developments located in sheltered folds with multiple installations clearly separated so collectively they do not have a defining influence. Although not yet adopted by the Council, and therefore warranting little weight, this document includes valuable guidance.

### **The Proposals**

13. The appeal site covers an area of about 4.5ha. The small south eastern projection of the site would be a wild flower meadow and the solar panels would cover a net land area of 1.4ha on the rest of the site. The designed capacity would be 2.1MWp comprising of about 7000 photovoltaic panels which would be less than 2m above ground level. The proposal includes the provision of string inverters, two transformer cabins. One communications building and substation building. Stock proof security fencing and three CCTV cameras. Planning permission is applied for for a period of 25 years and 6 months after which the site would be reinstated to its previous use. The proposal includes provisions for planting including hedge strengthening and the creation of new hedgerows within the site.

### **The Case for the appellant**

#### **The material points are:**

14. The Council identifies two main issues: the impacts of this solar farm, its scale and siting would be visually experienced with another solar development within the landscape and the harm to the landscape and visual harm would be experienced by many, including neighbouring residents.
15. The site is outside any area of landscape policy constraint and is dominated by the A394. It is in a LCA that has an overall moderate-high sensitivity to solar PV development and would be particularly sensitive to large scale PV development. Large scale is 10 to 15ha and medium scale 5 to 10ha. The landscape strategy is for *"occasional small to medium size solar pv developments located in sheltered folds in the landscape"*. The proposed development is within a fold or dip in the undulating landscape and while the adjacent solar farm has an area of 11.33ha only 4.51ha is visible as a result of the local topography. Hence the cumulative area of the two solar farms would be well within the medium scale of development recommended.
16. The Council's Principal Public Space Officer (Landscape) states that "... due to the prominence of the electricity sub-station .... and other development associated with the A394 the landscape and visual impact of the proposed development is less here than in the more rural parts of the character area". The proposal would result in a limited visual change to the character and appearance of the immediate environment but this would not result in unacceptable harm to the character of the local area. This view is supported by the consultation responses



received from the Council's qualified Landscape Officer and the Planning Officer's recommendation to approve the development.

17. The Landscape and Visual Impact Assessment concluded that: "the proposed development ... would not fundamentally influence the character of the surrounding landscape" and "the effects would be limited to the immediate environs of the site and would not have a defining influence on landscape character outside the site itself". The Council's Principal Public Space Officer (Landscape) stated that: "the development within the framework of existing field boundaries and topography will minimise visual intrusion and not adversely affect wider landscape designations".
18. The Planning Officer's report confirms "With the retention of the hedgebanks/vegetation and the recessive colouring of the perimeter security fencing, landscaping enhancements and given the temporary nature of the landscape and visual impacts, the development which is tantamount to an extension of an existing solar park, would not be so harmful to the host undesignated landscape as to outweigh the benefits of providing renewable energy on agricultural land which is not of the best and most versatile quality".
19. The Planning Officer's report indicates the only potential impact on residents' living conditions would be in terms of the view from the upper floors of properties located 200m to the north west of the site. Some of these properties front the kerbside of the road but others are screened from the site as they are behind the first row of properties. There is no right to a view and the only relevant planning consideration is how the development would impact on the established landscape character of the area and views from public standpoints. In any event the views to which the Planning Officer refers are capable of mitigation through enhancement of existing hedgerows, new planting of hedgerows and management of hedgerows to increase their maturity and screening function.
20. The satisfactory discharge of landscaping conditions imposed on a planning permission for the conversion of barns to dwellings at Butteriss Farm supports the planting of new hedgerows as appropriate mitigation. In any event the significance of any visual or landscape impact is not likely to make any dwellings "unattractive places to live".
21. The capacity of the scheme has been reduced, no-development zones and buffer zones have been provided and these would mitigate any potentially harmful impacts.
22. The reason for refusal refers to the Council's Technical Paper E4 (a) *An assessment of the Landscape Sensitivity to Onshore Wind and Large Scale Solar Photovoltaic Development in Cornwall*. This document has not been adopted and should be given little or no weight.
23. Reference is also made to the published Solar PV Strategy Part 1 & 2 and the letters sent by Mr Greg Barker, who at that time was Minister for Energy in the Department of Energy and Climate Change. These strongly support solar PV.
24. Natural England, Cornwall Wildlife Trust, Cornwall Historic Environment Advice (Archaeology) and other statutory consultees responded to the application with no material objection.

25. The development also provides additional sustainability resulting from the farm diversification and considerable increase in the ecological and bio-diversity of the site.
26. The proposal would not adversely or significantly impact on landscape, historical character and amenity in the area. It would contribute renewable energy to the national grid and contribute towards the Government's renewable energy and CO<sub>2</sub> reduction targets. Accordingly the proposal is consistent with national and local planning policy and planning permission should be granted.

### **The Case for the Council**

#### **The material points are:**

27. The main issues are whether the siting, either singly or in combination, adversely affects the landscape character and visual appearance of the locality and whether the benefits of the scheme outweigh such concerns.
28. The Council generally supports the provision of energy from renewable sources.
29. The site area totals 4.5ha which places it in the small<sup>1</sup> category. However, it is adjacent to an operational solar panel development and, with no separation, the two will inevitably be viewed as one. The combined area of the two would be in the order of some 20ha which exceeds the large category.
30. The proposal is not sited in any dip or fold in the undulating landscape but is an elevated open area of land which has a remoteness engendered by its open nature. There is no significant tree cover and the site can be seen from a number of viewpoints as well as from along the A394.
31. The site is in an area where the strategy is to encourage clear separation between renewable energy developments. The current relatively open agricultural landscape will change to a more industrialised form of landscape. This would result in a landscape where renewable energy development becomes a significant and defining characteristic in this particular locality. This is not the aim of Government advice in the Framework.
32. Tackling climate change is a key Government policy through the development and deployment of alternative sources of energy production. The proposed pv development would make a small but nonetheless important contribution to the reduction in greenhouse gases and farm diversification.
33. These considerations need to be weighed in the balance against the harm to the landscape and those who enjoy the area for its sense of openness. The proposal is in conflict with the aims and intentions of the Framework, the PPG and other Government documents relating to energy from renewable sources which emphasise the importance of landscapes. The scheme would result in a public benefit that would not outweigh the harm to the landscape character and appearance of the area.

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<sup>1</sup> As defined in the document *Landscape Sensitivity to Onshore Wind and Large Scale Solar Photovoltaic Development in Cornwall*

## Written Representations

34. Some 38 representations opposing the development were received by the Council at the time of the application. Wendron Parish Council and the adjoining Parish Councils of Constantine and Stithians raised objections but there was no objection, in principle, made by the remaining consultees. The concerns expressed include the adverse landscape and visual impact; cumulative impact having regard to the adjoining existing solar farm; unacceptable traffic from construction activities; false information and changes; loss of agricultural land; protected species and biodiversity; non-implementation of landscape enhancement associated with the existing solar farm; the effect on the view from neighbouring dwellings; safety hazard for drivers resulting from glint and glare; efficiency of the technology and no need to install panels in this location. The Ramblers Association (Cornwall) also objected to the proposal particularly in terms of the visual impact on users of the public footpath crossing the site.
35. There were some 14 representations received at appeal stage. These letters raised similar issues and concerns.

## Conditions

36. In the event that the Secretary of State does not agree with my recommendation, the Council has suggested that conditions of approval would be necessary. The appellant indicates that he would agree to the imposition of the planning conditions recommended in the Officers Report. The Council's suggested conditions at appeal stage also include four conditions relating to biodiversity protection and enhancement.
37. The majority of the conditions are derived from consultation responses and appear to me to be reasonable and necessary having regard to the reasons indicated by the Council.
38. The suggested conditions are attached as the Appendix to this report. I have made some alterations as I have thought necessary in the interests of clarity and enforceability.

## Conclusions

My conclusions are as follows:

### *Main Issue*

39. The main issue is whether any harmful effects of any cumulative impact arising from the proposed development and another permitted solar farm, having particular regard to the effect upon the character and appearance of the area, outweigh the benefits of the scheme, including the production of electricity from a renewable source.

### Landscape Character

40. The size of the site area is about 4.5ha but the small south eastern projection of the site would be a wild flower meadow and buffer zones would be provided such that the area used for the proposed panels would be less. The appeal site is separated from the existing PV development by a concrete road and hedges. Nevertheless, when seen from the surroundings it would be read as part of the

same development. The existing adjacent solar farm has an area of 11.33ha and while the full extent of the existing solar farm would not be visible from a single viewpoint that also encompasses the full extent of the proposed solar farm (as discussed below), the fact remains that the combined area of the adjoining solar farms would fall within the large scale<sup>2</sup>. Therefore the proposed development would not be in accord with the landscape strategy for the area.

41. The proposal includes strengthening existing hedges and the provision of new hedgerows. Nevertheless, it would result in the presence of regimented rows of hard surfaced solar panels and the structures of the arrays. These, together with the associated new buildings and structures, would form a strong physical presence. The uniform nature of the development would give rise to an industrial appearance contrary to the subtle changes in land colour and texture currently apparent. It is therefore clear that the proposal would adversely alter the landscape character of the immediate area by the introduction of these new elements.
42. The development would be low level so that the sense of openness would remain but when seen in conjunction with the west facing slope of the existing solar farm it would occupy a large area and would have a defining influence on the local landscape. Thus the proposal, combined with the existing array, would result in a major adverse impact on the local landscape and the character of the rural fields in which it would be located. As the site is at a relatively low level the effect on the wider area would be less. The conclusions of the appellant's Landscape and Visual Impact Assessment were that residual landscape impact after mitigation would range from negligible to moderate negative. However, as described above, it is my view that the industrial appearance and resulting defining influence on the local landscape would result in major adverse impacts on the other use and experience elements of local landscape impact, which would reduce to minor adverse impacts on the wider landscape.

#### Visual Amenity

43. In terms of the visual impact of the development I have assessed the effect when seen from a number of viewpoints. The existing solar farm traverses a ridge and its full extent is not visible from the appeal site or most locations from which the proposed development would be visible. Nevertheless, a high proportion of the existing solar farm would be visible in the same views as the proposed scheme and when seen from the surrounding viewpoints it would appear to be an extension of the existing development.
44. I viewed the site from ground level outside a number of residential properties in Edgcumbe and it seemed to me that the viewpoint at the top of the external stairs to Edgcumbe Chapel was representative of the view from upper floor windows of properties to the northwest of the site. The A394 is immediately in front of the chapel and the proposed wild flower meadow and remaining green space would be on the east facing slope below the level of the A394 and so would not be readily visible from the houses. The existing solar farm extends to the skyline and the proposed development would appear to occupy most of the remaining visible green space between the edge of the existing installation and

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<sup>2</sup> As defined in the document *Landscape Sensitivity to Onshore Wind and Large Scale Solar Photovoltaic Development in Cornwall*

- the A394 when seen from the houses. Thus, despite the buffer zone and hedgerow planting around and within the site, the view towards the east would be predominantly of solar panels. The visual receptors would be of high sensitivity and the magnitude of the cumulative visual effect would be substantial such that there would be a substantial adverse impact on visual amenity.
45. The view from the public footpath leading west from Edgcumbe (232107) would be similar to that from Edgcumbe Chapel and there would be a substantial adverse impact on visual amenity for the users of the footpath.
46. Butteriss Gate is on the same side of the A394 as the appeal site and lies between Viewpoints 5 and 6. The proposed wild flower meadow would be visible in front of the proposed solar panels. Nevertheless, the proposed development would occupy most of the remaining visible green space and together with the existing development would occupy most of the aspect when looking eastwards from this property. Having regard to the high sensitivity of receptors and the magnitude of the cumulative visual effect I again conclude that there would be a substantial adverse impact on visual amenity.
47. The users of footpath 232100 would have solar panels along one side as they crossed the appeal site and the panels of the existing solar farm would be seen as extending up to the nearby ridge. This would have an enclosing effect and substantially increase the apparent presence of man-made features to such an extent that the development would appear overbearing. This would be a substantial adverse impact on visual amenity.
48. The users of the bus stop on the A394 (Viewpoint 5), Rame substation (Viewpoint 2), the layby on the west carriageway of the A394 (Viewpoint 1) and the A394 itself would be there for a relatively brief time and would have a medium to low sensitivity so that there would be a slight to moderate increase in adverse visual impact. From the public footpath beyond Nancrossa the proposed installation would be beyond the existing solar farm. It would therefore have little additional visual impact.
49. The appellant considers there is no right to a view and, with the possible exception of Butteriss Gate, I agree that the proposal is not likely to make any dwelling an unattractive place to live. Nevertheless, there would be some harm to residential amenity.

#### *Conclusions on Character and Appearance*

50. I conclude that there would be a major adverse impact from the development on the local landscape character and a minor adverse effect on the wider landscape character. I have found that the proposed solar farm together with the cumulative impact arising from the adjoining solar farm would become the defining characteristic of the area. The visual impact would be substantial adverse in some locations. I conclude that the proposed scheme would have a detrimental impact on the pastoral, semi-natural and open character and appearance of the area.
51. However, having regard to the provisions of the Framework this needs to be balanced against any benefits.

### *Benefits*

52. The appellant advises that the proposed development has a designed capacity of 2.1MW. The appellant considers the scheme would generate enough energy to power the equivalent of about 1200 homes and would offset approximately 1300 tonnes of CO<sub>2</sub> emissions. However, having regard to other factors such as lifetime degradation the Council estimates there would be enough to supply around 391 houses in Cornwall. Whatever the ultimate number of houses supplied turns out to be the scheme would result in carbon dioxide savings and would contribute towards targets of installed renewable electricity production. The proposed development would provide a valuable contribution to cutting greenhouse gas emissions. The proposal would also support the Government's obligations in terms of renewable energy requirements.
53. The appellant has also referred to benefits associated with the enhanced ecology and biodiversity as well as farm diversification. These benefits warrant significant weight.

### *Planning Balance*

54. Having considered all matters, including the general policy support for wind energy development and the weight to be given to the benefits, I conclude that the harm to the character and appearance of the area outweighs the benefits of the proposal. For the same reasons the proposal is contrary to the provisions of the Framework.
55. Paragraph 98 of the Framework states that Councils should approve renewable energy applications, provided that impacts are or can be made acceptable. In this case the impacts could not be made acceptable and therefore the proposal is contrary to paragraph 98. With regard to the provisions of paragraph 14 of the Framework, I conclude that the proposal would not represent sustainable development.

### *Other Matters*

56. There are a number of heritage assets in the wider area including the Grade 2 Listed Building of Edgcumbe Chapel. The setting to the chapel has been disrupted by the A394 and in light of this I agree with the appellant's assessment that the impact of the proposal on the setting would be minor. While I accord considerable weight and importance to any harm to the setting of listed buildings in this case the extent of the residual less than substantial harm is not so great as to outweigh the benefits were the proposal otherwise acceptable, which, however, it is not.
57. Objections were raised by local people and I have taken these representations into account insofar as they are founded on valid planning reasons although I do not consider that any harm would materially add to the harm or otherwise affect the planning balance that I have already identified.

### **Recommendation**

58. I recommend that the appeal be dismissed. In the event that the Secretary of State disagrees with me, I recommend that the conditions in the Appendix below be attached to any permission granted.

*J M Trask*

INSPECTOR

### Appendix – Conditions

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.  
*Reason: In accordance with the provisions of section 91 of the Town and Country Planning Act 1990 (as amended by Section 51 of the Planning and Compulsory Purchase Act, 2004).*
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans:  
APPENDIX 1 SITE LOCATION PLAN;  
APPENDIX 2 (v2) PV-100 PROPOSED BLOCK PLAN;  
APPENDIX 4 TYPICAL SUBSTATION;  
APPENDIX 5 TYPICAL CCTV;  
APPENDIX 6 TYPICAL FENCING;  
APPENDIX 7 SITE ACCESS GATE;  
APPENDIX 8 CABLE TRENCH DETAILS;  
APPENDIX 9 GRID CONNECTION ROUTE;  
APPENDIX 13 PV FRAMEWORK;  
APPENDIX 14 TYPICAL FRONT & PILED;  
APPENDIX 15 ACCESS TRACK;  
APPENDIX 32 PROPOSED SOFT LANDSCAPING (1059771-LUD-AN-002B);  
APPENDIX 32 (I) PROPOSED SCREENING TO NNW BOUNDARY;  
APPENDIX 32 (II) TYPICAL HEDGEROW;  
Proposed CONSTRUCTION OF CORNISH HEDGES;  
Proposed LANDSCAPE AND HABITAT MANAGEMENT.  
*Reason: For the avoidance of doubt and in the interests of proper planning.*
- 3) All hard and soft landscape works shall be carried out in full accordance with the approved scheme. Any trees or plants which within a period of five years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species.  
*Reason: In the interests of visual and residential amenity and in accordance with the aims and intentions of the National Planning Policy Framework 2012, in particular section 11.*
- 4) No external artificial lighting shall be installed or operated during the operation of the site.  
*Reason: In the interests of nearby amenity and to safeguard the ecological interests of the site in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*
- 5) No construction or decommissioning works shall take place except between the following hours:  
0800 - 1800 Monday to Friday  
0800 - 1300 Saturday



No material delivery, construction or decommissioning works shall be undertaken outside these hours or on Sundays, Bank or Public Holidays.

*Reason: To minimise the potential for disturbance to local amenity in accordance with the provisions of the National Planning Policy Framework 2012.*

- 6) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) Order, 1995 (or any Order amending, replacing or re-enacting that Order), no fixed plant or machinery, buildings, structures and erections, or private ways shall be erected, extended, installed rearranged, replaced, repaired or altered at the site without prior planning permission from the local planning authority except for those works permitted by this consent.

*Reason: To protect the landscape character of the area in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*

- 7) No development shall be begun until a Construction Traffic Management Plan has been submitted to and approved in writing by the local planning authority. The scheme shall include details relating to:
- (a) construction vehicle routing;
  - (b) the management of the junctions with and crossings of the public highway and other public rights of way;
  - (c) timetable for construction and material delivery timings;
  - (d) temporary warning signs and;
  - (e) an access improvement scheme.

The development shall be carried out in accordance with the approved scheme.

*Reason: In the interests of maintaining a safe and efficient highway network, and to protect surrounding environmental and amenity interests and to ensure that the site is developed in accordance with approved layout in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 4.*

- 8) The noise emissions during construction of the development shall not exceed an LAeq,T noise level of 65 dB 1-metre from the façade of any occupied residential dwelling, during the construction and decommissioning periods.

*Reason: To minimise the potential for pollution and disturbance to local amenity in accordance with the provisions of the National Planning Policy Framework 2012.*

- 9) Within 25 years and six months following completion of construction of development, or within six months of the cessation of electricity generation by the solar PV facility, whichever is the sooner, the solar PV panels, frames, foundations and all associated structures and fencing approved shall be dismantled and removed from the site. The developer shall notify the local planning authority in writing no later than five working days following cessation of power production. The site shall subsequently be restored in accordance with a scheme, the details of which shall be submitted and approved in writing by the local planning authority no later than three months following the cessation of power production.

*Reason: To ensure the achievement of satisfactory restoration in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*

- 10) The Rating Level LArTr (to include the 5dB characteristic penalty) of the noise emanating from the approved scheme, shall be at least 5 dB below the measured background noise level at any time at the curtilage of any noise sensitive premises lawfully existing at the time of consent. The rating level (LArTr) and the background noise level (LA90) shall be determined in accordance with the guidance and methodology set out in BS4142: 1997.

*Reason: To minimise the potential for pollution and disturbance to local amenity in accordance with the provisions of the National Planning Policy Framework 2012.*

- 11) Prior to commencement of the development hereby permitted, a further survey to assess the presence of protected species on site, including areas of vegetation to be removed, should be submitted to and approved in writing by the local planning authority.

*Reason: In the interests of nearby amenity and to safeguard the ecological interests of the site in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*

- 12) Prior to commencement of the development hereby permitted, a programme of works shall be submitted to and approved in writing by the local planning authority showing how construction activities shall be planned to avoid key mammal breeding seasons. The development shall take place in accordance with the approved details.

*Reason: In the interests of nearby amenity and to safeguard the ecological interests of the site in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*

- 13) Prior to commencement of the development details and specific locations of the following shall be provided to and approved in writing by the local planning authority:
- Reptile hibernacula;
  - The species mix of the proposed wildflower meadow;
  - A suitable barn owl breeding structure.
- The development shall take place in accordance with the approved details.

*Reason: In the interests of nearby amenity and to safeguard the ecological interests of the site in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*

- 14) Prior to commencement of the development, a protective fence shall be constructed to protect the adjacent watercourse from disturbance during the construction activities. The fence shall be maintained for the duration of the construction activities and until such time as the permanent enclosure in that location has been provided.

*Reason: In the interests of nearby amenity and to safeguard the ecological interests of the site in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*

- 15) Prior to first use of the development hereby permitted, a written statement shall be submitted to and approved in writing by the local planning authority setting out that all of the biodiversity protection and enhancement measures have been satisfactorily been carried out. The development shall be retained thereafter in accordance with the approved details.

*Reason: In the interests of nearby amenity and to safeguard the ecological interests of the site in accordance with the provisions of the National Planning Policy Framework 2012, in particular section 11.*



## **RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT**

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, Queens Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### **SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS**

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act). This new requirement for permission to bring a challenge applies to decisions made on or after 26 October 2015.

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

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the date of the decision.

### **SECTION 2: ENFORCEMENT APPEALS**

#### **Challenges under Section 289 of the TCP Act**

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### **SECTION 3: AWARDS OF COSTS**

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

#### **SECTION 4: INSPECTION OF DOCUMENTS**

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.