



## Department for Communities and Local Government

Ms Gillian Slater  
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Wheal Jane Earth Science Park  
Baldhu, Truro  
CORNWALL  
TR3 6EH

Our Ref: APP/F0114/W/15/3103260

11 February 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL BY GREEN SWITCH DEVELOPMENTS LTD:  
HOWGROVE FARM, GREEN LANE, NEMPNETT THRUBWELL, SOMERSET**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Anne Jordan BA (Hons) MRTPI in relation to your client's appeal against the decision of Bath and North East Somerset Council ('the Council') to refuse planning permission for the construction of a solar park with output of approximately 4.76MW on land associated with Howgrove Farm, Nempnett Thrubwell, Somerset BS40 7UY, in accordance with application ref 14/03990/FUL dated 29 August 2014.
2. The appeal was recovered for the Secretary of State's determination on 10 November 2015 in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990 because the proposal is significant development in the Green Belt.

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

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

**Policy considerations**

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the adopted development plan for the area comprises the 2014 Bath and North East Somerset Core Strategy (CS) and saved policies from the 2007 Bath and North East Somerset Local Plan (LP). The Secretary

of State considers that relevant development plan policies include those set out in IR 9 and IR12-16.

5. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework) and the associated planning practice guidance; the UK Solar PV Strategy (parts 1 and 2) and subsequent policy publications; and the Written Ministerial Statement "Planning Update March 2015" which, amongst other matters, concerns solar energy and the protection of the local and global environment.

### **Main issues**

6. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out in IR53.

### *Compliance with the development plan*

7. For the reasons below, the Secretary of State considers that the proposal conflicts with CS Policy CP.8, which states that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy. He also considers that it conflicts with LP Policy GB.2, which states that permission will not be granted for development within the Green Belt which would be visually detrimental, and also with CP Policy SR.9 which states that development which adversely affects the recreation and amenity value of public rights of way will not be permitted (IR 75). Consequently he considers that the proposal conflicts with the development plan as a whole.

### *Green Belt*

8. The proposed Solar Park would constitute "inappropriate development" in the Green Belt and very special circumstances are required to justify such development (IR54). The Secretary of State agrees with the Inspector that the panels would be perceived as large built structures when viewed from within the solar park itself. He further agrees that in views from the public footpath the panels and security fencing would have a significantly harmful impact upon openness and the resultant encroachment into the countryside would be at odds with one of the stated purposes of the Green Belt (IR56). However the Secretary of State also agrees with the Inspector's view that the impacts would not extend over a wide geographical area. (IR57).
9. The impacts would be for a temporary period of 25 years (IR57). The Secretary of State takes the view that 25 years is a considerable period of time and the temporary nature of the proposal is not a matter that he has taken into account in his consideration of whether the scheme should go ahead.

### *Rural character and appearance*

10. For the reasons given in IR58-59 the Secretary of State agrees with the Inspector that, due to the relatively level nature of the land to the north, established field boundaries would allow only very limited views from outside the site. He also agrees that in views from the south, from the direction of the Mendip Hills AONB, the development would be barely perceptible in the wider landscape.
11. The Inspector, however, considers that the footpath which crosses the site appeared to be in regular use. The Secretary of State agrees with her that the proposal would have a significant urbanising effect on the outlook currently enjoyed by walkers and that the detrimental effect would be compounded by the enclosing effect the security

fencing would have for walkers, which would entirely alter the character of this section of the route and significantly detract from its enjoyment as a rural footpath for a significant distance. The Secretary of State also agrees that this harm would not be mitigated by the proposed interpretation boards (IR60).

#### *Alternative sites assessment*

12. The Secretary of State agrees with the Inspector that the Assessment of Alternative Sites appears to underestimate the constraints posed by the public footpath, as it makes the assumption that any impact upon it could be effectively mitigated. Like the Inspector, the Secretary of State is not assured that the appeal site clearly represents the least constrained site within the area of search. He also agrees that it has not been demonstrated that the renewable energy benefits could not also arise on other sites within the search area (IR62).
13. The Secretary of State notes that the amount of higher grade agricultural land that would be put out of full productive capacity for the duration of the scheme would be fairly limited (IR63). However, having had regard to the Written Ministerial Statement of 25 March 2015 on solar and agricultural land, he considers that this adds further weight against the proposal.

#### *Benefits*

14. The generation of 4.76MW of electricity per year, saving some 2,380 tonnes of CO<sub>2</sub> emissions, would contribute towards renewable energy and CO<sub>2</sub> emission reduction targets both locally and nationally (IR67).
15. The Secretary of State also agrees with the Inspector that there will be some limited benefits by way of reinstatement of the historic field patterns and some ecological benefits (IR68-69). However no tangible evidence was presented about how the income generated for the landowner would assist in sustaining an existing rural enterprise or other local businesses (IR70).

#### *Other matters*

16. The Secretary of State agrees with the Inspector's assessment regarding the matters covered at IR64-66. He does not consider that any of these matters adds weight either for or against the appeal proposal.

#### **Conditions**

17. The Secretary of State agrees with the Inspector's comments at IR78-79 on planning conditions and is satisfied that the conditions recommended at IR pages 15 – 17 (Schedule of Conditions) are reasonable and necessary, and would meet the tests in paragraph 206 of the Framework. However, the Secretary of State does not consider that the recommended conditions would overcome his reasons for dismissing the appeal.

#### **The planning balance and conclusions**

18. Weighing in favour, the proposal would contribute towards targets for renewable energy generation and reducing greenhouse gas emissions, and the Secretary of State places significant weight on these benefits. He also places limited weight on benefits to the historic landscape; from habitat creation and to the rural economy.
19. However the Secretary of State places substantial weight on the harm would arise to the Green Belt by way of inappropriate development, and that harm would occur to openness and to the purposes of including land in the Green Belt. He also places

substantial weight on the harmful impact upon visual amenity in local views from the public footpath. Moreover, he considers that the limited amount of higher grade agricultural land that would be put out of full productive capacity for the duration of the scheme adds further weight against the proposal.

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

#### **Formal decision**

21. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. He hereby dismisses your client's appeal and refuses planning permission for the construction of a solar park with output of approximately 4.76MW in accordance with application ref 14/03990/FUL dated 29 August 2014.

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

22. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within six weeks from the date of this letter for leave to bring a statutory review under section 288 of the Town and Country Planning Act 1990.
23. A copy of this letter has been sent to Bath and North East Somerset Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

*Julian Pitt*

**JULIAN PITT**

Authorised by Secretary of State to sign in that behalf

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

**by Anne Jordan BA (Hons) MRTPI**

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

**Date: 16 December 2015**

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**Town and Country Planning Act 1990**

**Bath & North East Somerset Council**

**Appeal by Green Switch Developments Ltd**

Site visit made on 10 November 2015

Land Associated with Howgrove Farm, Green Lane, Nempnett Thrubwell, Somerset, BS40 7UY

File Ref: APP/F0114/W/15/3103260

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**File Ref: APP/F0114/W/15/3103260**

**Land Associated with Howgrove Farm, Green Lane, Nempnett Thrubwell, Somerset, BS40 7UY**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Green Switch Developments Ltd against the decision of Bath & North East Somerset Council.
- The application Ref 14/03990/FUL, dated 29 August 2014, was refused by notice dated 11 June 2015.
- The development proposed is Installation of solar park with output of approximately 4.76MW on land associated with Howgrove Farm.

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

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**Procedural Matters**

1. The application was originally submitted as a 7MW solar park with solar pv panel arrays arranged to cover the entirety of the 13.5ha site. The scheme was subsequently amended to reduce the extent of the area covered by solar panels to approximately 9.5ha with an output of 4.76MW. The description of development given above reflects this amendment.
2. The site lies within the Bristol and Bath Green Belt. The appeal was recovered for decision by the Secretary of State in a direction dated 10 November 2015. The direction was made because the appeal involves a proposal for significant development in the Green Belt.
3. In accordance with the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 an EIA screening opinion was issued by the Council. On the basis that the site is not in an environmentally sensitive area and the proposals would give rise to relatively straight-forward issues of local importance, it was concluded that the development would not comprise EIA development and an Environmental Statement was not required.
4. The Council refused the application, against officer recommendation for conditional approval, finding that the scheme would be contrary to local and national policy for the following 2 reasons:
  1. The proposed development is inappropriate development in the Green Belt and would result in a significant loss of openness. The benefits of the scheme would not clearly outweigh the harm to the Green Belt and its rural character. It is therefore considered that very special circumstances do not exist to justify the proposed development in the Green Belt. The proposal is therefore contrary to policy CP8 of the Bath and North East Somerset Core Strategy, policy GB.2 of the Bath and North East Somerset Local Plan and guidance in the National Planning Policy Framework.
  2. The proposed development, due to its siting, scale and urbanising effect, would have a significant adverse impact upon the rural character and appearance of the site and its surroundings. The proposal is therefore contrary to policy NE.1 of the Bath and North East Somerset Local Plan 2007, policy CP6 of the Bath and North East Somerset adopted Core Strategy 2014 and the National Planning Policy Framework.

## The Site and Surroundings

5. The site comprises 13.5ha of agricultural pasture consisting of 3 large fields located close to the junction of Benches Lane and Thrubwell Lane, around a mile north-east of the village of Butcombe, and north-west of the village of Regil. The site lies within an undulating landscape of arable and grazing land dispersed with small settlements. The nearest residential property is Greenway, which is located adjacent to the proposed site entrance on Thrubwell Lane.
6. The Bath and North East Somerset Landscape Character Area Assessment defines the site as lying within 2 Local Character Areas (LCAs). The northern half is "Thrubwell Farm Plateau" which is characterised by flat or gently undulating plateau, with occasional groups of trees and isolated farms or houses. The southern section of the site lies within the "Chew" Valley". This is defined by low lying or undulating valley, a small regular field pattern defined by established hedges and larger groups of woodland. The site rises gently from the south and level out onto a plateau towards the northern end. It is screened on all sides by established native hedging, although glimpses are available from outside the site through gated entrances on Thrubwell Lane. Open views from within the site are afforded by the Public Right of Way (CL14/7) runs through the site from the north-west corner on Thrubwell Lane to the field boundary at the eastern side.
7. The site is situated approximately 1.7km north of the Mendip Hills Area of Outstanding Natural Beauty (AONB), 1.3 km south of Common Local Nature Reserve and 1.7km from Plaster's Green Meadow Site of Special Scientific Interest (SSSI). A Grade II listed building - Regilbury Court, lies approximately 300m to the east of the site. The land is shown on the 1:250,000 soil map of the area as Provisional Grade 1 and at the time of my visit had recently been used for grazing cattle.

## Planning Policy

8. The development plan comprises the *Bath and North East Somerset Core Strategy* (Core Strategy) and Saved policies from the *Bath and North East Somerset Local Plan* (Local Plan).
9. Policy CP3 of the Core Strategy sets local targets to increase the level of renewable energy generated in the district to 110MWe of electricity from renewable resources by 2026. Policy ES.1 of the Local Plan states that developments for renewable energy projects will be assessed against the contribution that will be made to the regional target for renewable energy; any wider environmental, social and economic benefits; the extent to which the design and siting of the development minimises any adverse impacts and, where there is harm and conflict with other policies, whether that harm can be removed at the end of the economic life of the development.
10. The *National Planning Policy Framework* (the Framework) supports the transition to a low carbon future in a changing climate and encourages the use of renewable resources. It seeks to increase the use and supply of renewable and low carbon energy, by encouraging LPAs to provide a positive strategy to promote energy from renewable and low carbon sources. It also states that when determining planning applications, applicants should not be required to

- demonstrate the need for renewable energy and that even small scale projects provide a valuable contribution to cutting greenhouse gas emissions.
11. In this regard the Framework reflects the *National Policy Statement for Renewable Energy Infrastructure* which sets out the Government's strategy for meeting the legally binding target of reducing UK emissions by at least 34% by 2020 and 80% by 2050, as well as achieving the UK's obligation of 15% of energy consumption from renewable energy resources by 2020.
  12. Policy CP.8 of the Core Strategy states that the openness of the Green Belt will be protected from inappropriate development in accordance with national planning policy. GB.2 of the Local Plan states that permission will not be granted for development within the Green Belt which would be visually detrimental. The Framework identifies a fundamental aim of Green Belt policy being to prevent urban sprawl by keeping land permanently open. National and local policy establishes a presumption against inappropriate development which, by definition, is harmful to the Green Belt. Paragraph 87 of the Framework states that inappropriate development should only be approved if very special circumstances exist. Paragraph 88 goes on to state that very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. Paragraph 91 of the Framework states that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable resources.
  13. Policy CP.6 of the Core Strategy seeks to conserve and enhance the distinctive character and quality of Bath and North East Somerset's landscapes. Saved policy NE.1 of the Local Plan aims to retain and where appropriate enhance local landscape character by being sensitively related to existing settlements and conserving historic, wildlife and landscape resources. Policy NE.2 seeks to protect the natural beauty of the AONB. Policy SR.9 states that development which adversely affects the recreation and amenity value of public rights of way will not be permitted. These aims are consistent with national guidance in the Framework which seeks to recognise the intrinsic character and beauty of the countryside as a core planning principle.
  14. Policy ET.7 of the Local Plan seeks to protect the viability of farm enterprises by resisting development which would have an adverse effect on the efficient operation of the agricultural enterprise and policy ET.8 supports farm diversification where it would support an existing farm operation. The Framework requires that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be used in preference to that of higher quality. This guidance is also reflected in *Planning Policy Guidance* (PPG).
  15. Policy BH.2 of the Local Plan seeks to ensure that new development preserves the special architectural or historic interest of listed buildings. Paragraph 131 of the Framework advises local authorities to take account of the desirability of sustaining and enhancing the significance of heritage assets.
  16. Policies NE.4 and NE.5 of the Local Plan aim to protect trees and woodland of wildlife, landscape and historic value. Policies NE.9 and NE.10 together seek to protect local and nationally recognised wildlife species and their habitats. Policy NE.12 also aims to retain natural features in the landscape for their wildlife,



amenity and historic value. Paragraph 118 of the Framework directs decision makers to conserve and enhance biodiversity in new development by firstly seeking to avoid such harm, and where appropriate seeking mitigation or compensation for such harm where unavoidable.

### **The Proposal**

17. The amended proposal as determined by the Council comprises a 4.76MW solar park with associated fencing, planting, CCTV, and utilities. The proposed operational life of the solar park would be 25 years. The panels would be mounted on frames with a front height of approximately 800mm and back panel height of approximately 2.4m, at a tilt angle of approximately 25 degrees, in a fixed position. The rows of panels would be set back from the site security fence to prevent shadowing from adjoining vegetation and provide a wildlife buffer. There would also be a separation of 3-4m between each row, again to ensure that the panels would not be overshadowed.
18. The facility would be unmanned. A small control building/substation will be constructed within the site boundary to house the Low Tension (LT) and High Tension (HT) control panels, as well as the transformer. Approximately seven inverters would be installed on site to be housed in weather proof enclosures.
19. The proposal would allow for the grazing of sheep to continue during the operation of solar park. Hedgerow infill, together with additional wildlife buffers, have also been incorporated into the scheme. Interpretation panels along the route of the public footpath CL14/7 would also be provided.

### **Matters Agreed by the Main Parties**

20. The main parties agree that the proposal would not fall within any of the identified exceptions in paragraphs 89 and 90 of the Framework. Accordingly the development is considered to be inappropriate development in the Green Belt. The parties agree that very special circumstances are required to justify such development.
21. An Agricultural Land Classification Report was submitted with the application. The land is level to gently undulating without any significant gradients which might affect farming practice. However, areas of historic disturbance, which include rock outcrops preclude it from normal soil cultivations on a whole field basis. This has restricted the agricultural practices on the land to grazing and permanent grassland. Based on this, and considerations of drainage and soil type, the appeal site is considered to be made up of land within grades 2, 3a, 3b and 4, with part of the site, around the pond, considered as non-agricultural. The Council have not disputed these findings.
22. The main parties therefore agree that notwithstanding the details on the agricultural classification map, the site is made up of land ranging from agricultural grade 2 to 4. Although the Council dispute the appellant's claim that the proposal would bring agricultural benefits, they agree it would involve the irreversible loss of agricultural land.
23. The main parties agree that the proposal would not have any significant impacts on the residential amenity of any nearby residential occupiers, be detrimental to highway safety, or raise issues of flood risk. The main parties and the airport

operator also agree that the proposal would not impact upon operations at Bristol Airport which lies around 1.5km away to the north-west.

24. Subject to the provision of additional landscaping and the implementation of an ecological management plan, the parties are also satisfied that the proposal would not impact upon local wildlife or any protected species, or local wildlife habitats.
25. The main parties agree that the proposal, as amended, would not affect the setting of the grade II listed Regilbury Court. They also agree that the reinstatement of historic field boundaries would bring some benefits, although the Council consider these to be limited. Due to limited intervisibility between the site and pre-historic remains in the area, the proposal is not anticipated to have any significant effects upon two possible Bronze Age round barrows west of the site (BANES Historic Environment Record: MBN682 and MBN2188), the scheduled bowl barrow at Bicknell Farm (North Somerset) and 'Fairy Toot' Neolithic long barrow to the south-west. The parties dispute the potential within the site for archaeological remains but agree that due to the limited areas of impact associated with this solar farm development, any effects upon any potential archaeological remains are likely to be minimal and could be mitigated by appropriate conditions requiring a field evaluation, a subsequent programme of archaeological work and/or mitigation, and control over groundworks.

### **The Case for Green Switch Developments Ltd**

26. National and local planning policy support renewable energy development. Nationally the UK's legally binding targets require immediate action to provide alternative sources of energy generation. Local and small scale renewable energy generation such as this proposal can help in meeting these targets.
27. The proposal would accord with the principles of sustainable development as set out in the Framework, specifically those elements relating to mitigating and adapting to climate change by moving to a low carbon economy.
28. The Framework supports economic growth in rural areas by supporting the development and diversification of agricultural and other land-based rural businesses. The proposal would promote diversification by continuing to allow additional agricultural activities (such as grazing or hay cultivation) to take place alongside the generation of renewable electricity, increasing the productivity of the land. Suppliers and contractors could be sourced locally. The proposal would not permanently take land out of agricultural use and would be easily removed after 25 years when the land can be returned to its present state. The agricultural land would also be given a period of rest from intensive agricultural activities and the proposal would contribute to agricultural diversification and ongoing investment in the business.
29. There is a connection to national electricity transmission network (the grid) available adjacent to the Appeal Site. In March 2015 the Distribution Network Operator (DNO), Western Power Distribution (WPD), announced that much of the grid connection capacity within the south west was allocated and there was likely to be a delay of 3-6 years for additional grid connection works. Given the impending 2020 renewable energy targets, the urgent need to install additional renewable energy capacity and this 3-6 year delay for additional grid

connections, the Appellant contends that appropriate weight should be attributed to sites where there is an available grid connection point.

30. An "Assessment of Alternative Sites" considered the suitability and viability of other sites within the area to accommodate a solar park. 12 alternative sites were considered within a 3km buffer zone from a central grid connection point but were discounted for a number of reasons, including size of the site, proximity to sensitive receptors, access arrangements and environmental impacts. There are only two known previously developed sites within the area of search. Both of these sites are considered unsuitable to accommodate a solar park development. On this basis the appeal site was found to be the most suitable site as it had least constraints and is known to be available.
31. The proposed development will also contribute to protecting and enhancing the natural environment, as well as improving biodiversity. The site is not considered to be locally or nationally important in terms of its wildlife habitats. It is currently in grazing use which limits the variety of flora onsite and the biodiversity of the site as a whole. The solar array would provide an opportunity to create areas of species rich grassland which would have a higher net biodiversity value than the current site use.
32. The layout of the proposed development has taken existing surrounding trees into consideration, and significant buffer zones between surrounding trees and the solar modules have been incorporated into the design layout to protect the roots of existing trees and account for shading, ensuring that heavy pruning will not be required. The proposal would also provide 620m of new hedgerow to reflect the ancient field system, the establishment of a wildflower meadow and a reptile refuge and insect habitat.

#### *Green Belt*

33. It is acknowledged that the proposed development would be inappropriate development within the Green Belt, as detailed in paragraph 89 of the Framework. Paragraph 87 states that inappropriate development within the Green Belt is, by definition, harmful and should not be approved except in very special circumstances. Paragraph 88 goes on to clarify that very special circumstances will not exist unless the potential harm to the Green Belt by reason of its inappropriateness, and any other harm, is clearly outweighed by other considerations. Paragraph 91 of the NPPF states that when located in the Green Belt, elements of many renewable energy projects will comprise inappropriate development. In such cases developers will need to demonstrate very special circumstances if projects are to proceed. Such very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.
34. The solar panels would hug the ground, low in height and sited on low lying land, and would not appear in skylines or block open views of the Green Belt. The development would also be highly screened from the surrounding area by existing screening vegetation. The proposed development would not substantially alter the degree of openness enjoyed by the Green Belt in this area. The overall effects of the development on the visual amenity of the Green Belt would be slight adverse to imperceptible. The proposal is for a temporary period, and effects of the visible elements of the development are fully reversible.

35. It should be further noted that all land within a 4km radius of the site is situated within the Green Belt, and the majority of land within the district is within the Green Belt. It is considered unreasonable to discount the potential for siting large scale renewable energy installations within the district on this basis.
36. The amended 4.76MWp appeal proposal would generate sufficient electricity for 1,428 homes for 25 years, equating to a reduction of approximately 2,380 tonnes of CO2 emissions per year when compared to electricity generation using fossil fuels and contributing towards Bath and North East Somerset and UK renewable energy and CO2 emission reduction targets. Furthermore, the development would be able to be installed within a 12-16 week period.
37. All of the above considerations are deemed to constitute very special circumstances in favour of the proposed development.

#### *Landscape Character*

38. The scheme would result in very few landscape or visual impacts. Those which would occur would be contained within the site boundary or felt by a limited number of receptors. Visual effects upon the 460m long section of footpath CL14/7 which passes through the site would be substantial and adverse in overall effect. The footpath is overgrown and little used. Whilst the site will be visible from this footpath it would be managed as part of the management of the solar park site which would act as a point of interest for footpath users. There is opportunity for the erection of interpretation boards on the stretch of footpath providing key facts about the solar park.
39. There are no other existing or proposed solar farm (or other renewable energy) proposals within close proximity to the site and as such there would be no cumulative landscape or visual effects. The development is not anticipated to be perceptible from the Mendip Hills AONB, due to the screening provided by intervening vegetation.
40. The appellant made reference to a number of previous planning decisions, which demonstrate the range of factors that can be considered material in determining other proposals for solar development.

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

41. Development plan policy and policy within the Framework seek to encourage appropriate development of renewable energy schemes. Both local and national policy also seek to protect the openness of the Green Belt and to protect it from visually detrimental development. The development plan also recognises the need to enhance local landscape character and to protect the natural beauty of the AONB.
42. The contribution towards renewable energy of 4.76MWe is considered to be relatively small in the context of national and local targets. Any benefits by way of deliverability are considered to carry limited weight.
43. The proposed planting and ecological enhancement would bring some benefit to biodiversity but these should be afforded limited weight as they would not be dependent upon the proposed development. The stated benefits to the historic fieldscape are also considered to be limited. The extent of agricultural activity

proposed on site during the operation of the turbine is considered to be of limited value.

#### *Green Belt*

44. The proposal to erect solar PV panels up to 2.5m in height and a range of ancillary structures and buildings, including security fencing, would have a significantly harmful impact upon the openness of the Green Belt. The proposal would have an extensive footprint and would be utilitarian and industrial in character. This would have a significantly urbanising effect upon the currently open countryside to the detriment of the character of the Green Belt in this location.
45. The identified harm by way of inappropriateness, harm to openness, and harm to visual amenity and rural character would not be outweighed by the stated benefits of the scheme. As a result, very special circumstances cannot exist in this case.

#### *Landscape Character*

46. Although long range views of the site would be limited, the proposal would be visible from Thrubwell Lane and Benches Lane and would have significant visual impacts in respect of the Public Right of Way (PROW) running through the site, which is considered to be a highly sensitive receptor.

### **Written Representations**

#### *Butcombe Parish Council*

47. Councillors are concerned with regard to the visual impact of the development, and whether landscaping conditions would be effective in providing landscape screening. Particular concern was raised in relation to the size and height of the substation and the inverter units. Concerns were also raised in relation to the visual impact on the Mendips AONB, in particular the views from Two Trees Lane, Blagdon, and the potential that the proposal would give rise to a precedent, which would lead to cumulative visual harm as a result of further, future applications. Councillors also raised concerns in relation to highways impact during construction, and the means by which panels would be disposed of at the end of their productive life.

#### *Nempnett Thrubwell Parish Council*

48. Although Councillors initially supported the scheme it later changed its position to one of objection following a change of Councillors and also to reflect local opinion. The Parish Council's main concerns were the urbanising visual effect of the proposal on the Green Belt, and fear that the proposal would give rise to a precedent.

#### *Other Written Representations*

49. 22 Letters of objection were submitted to the Council at the time of the application, and a further 10 were submitted as part of the appeal. The concerns raised broadly echo those of the Parish Councils. Local residents were not convinced that the site selection process undertaken by the appellant stood up to scrutiny, or that the developer had demonstrated a need to develop agricultural land for a solar park when brownfield land should be used in preference. Other

additional points include the potential impacts of glare/glint upon aircraft using Bristol Airport; concerns about the impacts of traffic within the narrow lanes upon highway safety; the effect of the proposal on the public footpath and the view from it; queries about consultation process; concerns about site maintenance; lack of detail in the plans including absence of details of de-commissioning and that the proposal would provide no direct benefit to the local community.

50. 6 Letters of support were received in total. The main points raised were that the development was considered to give rise to minimal visual intrusion as it is not easily overlooked from the surrounding flat land and that views from the Mendips are long distance. The proposal would maintain the openness of the Green Belt and provide a source of renewable energy. The use of renewable energy is considered preferable to continued reliance upon nuclear power. The agricultural value of the land was also considered to be relatively unproductive.
51. Bristol Airport, which lies 1.5 km from the site had no objection to the proposal. The Environment Agency also raised no concerns. Avon and Somerset Police had no objection but provided comments in relation to security measures on site. The highways officer had no objection to the principle of development, subject to appropriate conditions. The Council's tree officer similarly expressed no concerns, subject to appropriate conditions.

## Appraisal

52. The following appraisal is based on the evidence in 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.
53. The main issues in this case are
  - (a) the harm that the proposal would cause to the Green Belt;
  - (b) any other harm that the proposal would cause, with particular regard to the impact on the rural character and appearance of the area,
  - (c) any other considerations that weigh in favour of the proposal; and
  - (d) whether those other considerations would amount to the very special circumstances necessary to clearly outweigh the harm to the Green Belt and any other harm.

### *Green Belt*

54. There is no dispute that the proposed Solar Park would constitute "inappropriate development" in the Green Belt. Paragraphs 87 and 88 of the Framework explain that inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. Very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [2, 4, 13, 21, 34-38, 45, 46, 49, 51]
55. The site extends to around 13.5ha, although the panels would occupy only around 9.5ha and a large proportion of the south of the site would be left unoccupied. The individual panels would be modest in height with space between each row. Vegetation would be able to grow beneath each panel and within the

wildflower and grass areas around the perimeter of the site. The existing perimeter hedging would also be augmented so that the development would not have a marked effect on openness when experienced outside the site. [6]

56. However, the panels would be perceived as large built structures when within the solar park itself. In views from the public footpath and in glimpsed views from the adjoining lanes of Benches Lane and Thrubwell Lane, the panels and associated security fencing, would have a significantly harmful impact upon openness. The resultant encroachment into the countryside would also be at odds with one of the stated purposes of the Green Belt in Paragraph 80, although the limited visibility of the development outside the site would have only a limited adverse impact upon the wider character of the Green Belt in this location. [13, 21,35, 36, 39, 45, 46,47]
57. These impacts would not extend over a wide geographical area and would be for a temporary period of 25 years. Nevertheless, the harm identified, along with the harm by way of inappropriateness must carry substantial weight. [13]

#### *Any Other Harm*

#### Rural Character and Appearance

58. The appellant has provided a Landscape and Visual Impact Appraisal (LVIA) with the application. This shows that as the proposed panels would be confined to the flatter northern section of the site, due to the relatively level nature of the land to the north, established field boundaries would allow only very limited views from outside the site. From the entrance to the site on Thrubwell Lane (viewpoint 10) the development would be obvious through gaps in the boundary at the entrance. Only parts of the site, along with the substation would be visible and the extent of the site would not be immediately apparent. In the immediate vicinity of the site the proposal would not be apparent from the footpath north of Thrubwell Lane (viewpoint 1), or from the vicinity of Regilbury Court (viewpoint 5), due to intervening planting. From viewpoint 2, the junction of Green Lane, the development would be visible across the open field through the gated entrance. However, in such views, due to the height of the structures they would not appear prominent and their visual impact would be limited. [6,39,45]
59. In all other identified views from outside the site the development, due to the undulating topography and established hedges and woodland, would only be discernible in long range glimpses, where it would be seen within the context of the scattered farmsteads and agricultural buildings which are visible in the landscape. In this setting any available views would not be notable and their impact very limited. These include views from the south, from the direction of the Mendip Hills AONB where the development would be barely perceptible in the wider fieldscape. Having regard to the limited views available of the development when outside the site, and the limited level of visual intrusion which would occur within those views that are available I attribute very little weight to the matter of harm to wider landscape character. [6, 40]
60. However, I noted during my visit that the footpath which crosses the site appeared to be in regular use. Therefore, although the extent to which the site was visible in wider views would be relatively limited, the site has full public access through it and so cannot in practice be effectively screened from public view. The footpath extends to over 450m across open countryside. The

proposed development would have a significant urbanising effect on the outlook currently enjoyed by walkers as it would traverse the solar park. This detrimental effect would be compounded by the enclosing effect the security fencing would have for walkers, which would entirely alter the character of this section of the route and significantly detract from its enjoyment as a rural footpath for a significant distance. This harm would not be mitigated by the proposed interpretation boards. I therefore attribute substantial weight to this harm. [6,20,39,47]

#### Other Matters

61. I have also had regard to the views of residents and to national guidance which directs that brownfield sites should be promoted for use for solar development over greenfield land. The Assessment of Alternative Sites did not identify any suitable alternative brownfield sites. It takes as its starting point the issue of grid connection and so the area of search is relatively limited. I do not consider this to be unreasonable, and note that the Council consider that greenfield sites will be likely to be necessary to fulfil the districts targets for renewable energy provision<sup>1</sup>.
62. However, I also note that the Assessment shows that other greenfield sites within the search area had similar levels of constraint and identifies a number of sites as being potentially available. Furthermore, the assessment appears to underestimate the constraints posed by the public footpath, as it makes the assumption that any impact upon it could be effectively mitigated. I am therefore not assured by the Assessment that the appeal site clearly represents the least constrained site within the area of search. Whilst I am mindful of the contribution the proposal would make to local renewables production, it has not been demonstrated that these benefits could not also arise on other sites within the search area. This diminishes the weight I can attribute in relation to the matter of site availability. [30, 31, 50]
63. The development would lead to a temporary loss of land which could be used for agricultural production. Although I note that grazing could occur amongst the panels, the existence of the installations would nonetheless reduce the extent of land which could effectively be used to some degree. However, the amount of higher grade agricultural land that would be put out of full productive capacity would be relatively limited, due to both the size of the site, and the varied quality of the land. As such, notwithstanding national policy which seeks to use land of lesser agricultural quality in preference, in practice only limited harm would arise in this instance and as a result I attribute only limited weight to the matter. [15,22,23,29,50,51]
64. Furthermore, I note the concerns of residents in relation to harm arising from an increase in traffic during construction. Having regard to the limited period of construction and the comments of the highways officer, I am satisfied that the worst effects could be mitigated by conditions relating to construction method. This matter does not therefore add to my concerns. [24,50,52]
65. I also take account of the absence of harm to heritage assets in the area and the advice of the Council's archaeological adviser, who is satisfied that subject to

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<sup>1</sup> The Council's Committee Report ref 14/03990/FUL



appropriate conditions the proposal would have an acceptable impact upon archaeological interests. I also take account of the concerns of local residents in relation to decommissioning and site maintenance. These matters could also be adequately dealt with by relevant planning conditions if required, and so these matters do not alter my views on the merits of the proposal. These matters also do not add to my concerns. [26,50]

66. Having regard to the limited intervisibility between the site and the identified heritage assets, I am also satisfied that the proposal would not impact upon their settings and as such would preserve their historic interest. [26]

*Considerations in Favour of the Proposal.*

67. The development would provide up to 4.76MW of electricity, which would make a significant contribution to achieving renewable energy targets. This would equate to sufficient power for 1,428 homes for 25 years, equating to a reduction of approximately 2,380 tonnes of CO2 emissions per year when compared to electricity generation using fossil fuels. The Framework advises that small scale projects provide a valuable contribution to cutting greenhouse gas emissions. The proposal would assist in tackling climate change and help meet national ambitions for reducing greenhouse gas emissions and contribute towards UK renewable energy and CO2 emission reduction targets both locally in Bath and North East Somerset and nationally. It would also add to the security of supply. These matters carry significant weight in favour of the appeal. [10,11,12,37]
68. The proposal would also bring some limited benefits by way of reinstatement of the historic field pattern, although this would be largely offset in the short term by the visual impact of the panels and security fencing within the realigned fields in any available views. I therefore concur with the Council that this benefit would be relatively limited, at least in the short to medium term whilst the solar farm was in operation. [26,33,44]
69. The proposal would also bring some ecological benefits due to reduced levels of grazing, supplementary boundary planting and the proposed meadow planting. Although these measures would bring some benefit by way of habitat creation, having regard to the relatively limited area involved I attribute only limited weight to this benefit. [18,27,32,33,44]
70. The appellant has advised that the proposal will assist in farm diversification and could use local suppliers which would contribute to the local economy. However, whilst I note that the development would provide a fixed income for the landowner, I have been provided with no tangible evidence of how this income would assist in sustaining an existing rural enterprise or other local businesses and so can attribute these factors only limited weight. [29,44]

*The Balancing Exercise*

71. In coming to a view I take into account the harm that would arise to the Green Belt by way of inappropriate development, and the harm that would occur to openness and to the purposes of including land in the Green Belt. The Framework directs that I must attribute substantial weight to Green Belt harm. I add to this the substantially harmful impact upon visual amenity in local views from the public footpath, and the very limited harm to the wider landscape. This

harm would be both temporary and reversible. However, the evidence submitted does not indicate that these impacts could be made acceptable. [21 ,45, 46, 47]

72. Against this collective harm I weigh the benefit that the development would provide renewable energy, which would contribute towards national and local targets for reducing greenhouse gas emissions. The reduction in greenhouse emissions and the delivery of renewable energy infrastructure is identified in paragraph 93 the Framework as being central to the economic, social and environmental dimensions of sustainable development and I therefore attribute significant weight to this benefit. I add to this the limited benefits to historic landscape, from habitat creation, and to the rural economy. [12,13,24,37,44]
73. I take account of the numerous planning decisions referenced by the appellant, but none of these alters the weight I have attributed to the relevant factors in this case. [41]
74. The Framework directs that for the very special circumstances necessary to justify harm to the Green Belt will not exist unless that harm is clearly outweighed by other considerations. In this case, whilst I note that the wider environmental benefits associated with renewable energy production would be significant, even together with the other limited benefits of the scheme they would be insufficient to clearly outweigh both the substantial harm to the Green Belt and the substantial harm to local views from the footpath which I have identified in this case. [13, 34]

### **Overall Conclusions**

75. I therefore conclude that the proposal would fail to comply with Policy CP.8 of the Core Strategy which states that the openness of the Green Belt will be protected from inappropriate development and with Policy GB.2 of the Local Plan which states that permission will not be granted for development within the Green Belt which would be visually detrimental. It would also conflict with Policy SR.9 states that development which adversely affects the recreation and amenity value of public rights of way will not be permitted. Furthermore, the benefits of the proposal would not outweigh the harm identified when assessed against the policies in the Framework, when taken as a whole. The proposal would therefore also fail to comprise sustainable development as set out in the Framework.

### **Recommendation**

76. I recommend that the appeal be dismissed.
77. Should the Secretary of State disagree with this recommendation, attached is a schedule of conditions, based on those suggested by the Council, which may be considered were permission to be granted.
78. In addition to conditions relating to the period of implementation, the period of the permission and adherence with the approved plans, it is reasonable and necessary to require the site is decommissioned at the end of the period of permission. In order to ensure an acceptable appearance for the development, and to ensure that the cited ecological measures are provided, it is reasonable and necessary to impose conditions relating to landscaping and that the measures in the Ecological Management Plan are undertaken. Conditions relating to hedge protection are also necessary to ensure retention of existing hedged boundaries which screen the site. In the interests of protecting the amenity of

residential occupiers conditions relating to CCTV operation and a construction method statement are also reasonable and necessary.

79. In the interests of protecting any archaeological interest the site may have it is necessary to impose conditions relating to archaeological investigation, evaluation and if necessary, mitigation. In the interests of highway safety details of vehicular access and turning are also relevant and necessary.

*A Jordan*

INSPECTOR

## Schedule of Conditions

1. The development hereby permitted shall be begun before the expiration of three years from the date of this permission.
2. The development/works hereby permitted shall only be implemented in accordance with the plans as set out in the plans list below.
  - GSS100A\_001 CCTV details
  - GSS100A\_002 Inverter housing plans and elevations
  - GSS100A\_003 Fence detail
  - GSS 100A\_004 Gate detail
  - Landscaping Plan Revision A
  - Proposed PV Layout Revision I
  - Trench Detail
  - Solar Panel Details
  - Switch Room Substation Plans and Elevations
3. This permission shall expire within 25 years from the date when electricity is first exported from the solar farm to the electricity grid (the 'First Export Date'). Written notification of the First Export Date shall be given to the local planning authority no later than 14 days after this event
4. Within 6 months of the point where the Solar Farm permanently ceases to produce electricity, or the expiration of this permission, whichever is the sooner, the solar panels together with any supporting apparatus, mountings, cabling, foundations, inverter stations, fencing, CCTV cameras and other associated equipment shall be removed from the land, and the land restored to agricultural use or to a condition to be agreed in writing by the local planning authority. Prior to the decommissioning of the site a method statement shall be submitted to and approved in writing by the Local Planning Authority. This shall set out the approach to be taken to remove the array support poles, cable runs and other below ground structures whilst minimising harm to below ground archaeology. The decommissioning of the site shall take place in accordance with the decommissioning method statement.
5. The solar park shall not become operational until a hard and soft landscape scheme has been first submitted to and approved in writing by the Local Planning Authority, such a scheme shall include details of all walls, fences, trees, hedgerows and other planting which are to be retained; details of all new walls, fences and other boundary treatment and finished ground levels; a planting specification to include numbers, density, size, species and positions of all new trees and shrubs; details of the surface treatment of the open parts of the site; details, specifications and positions of all ecological features and habitats such as bird boxes, badger gates and native planting; and a programme of implementation. The scheme shall be in accordance with the approved Ecological Management Plan dated November 2014 and approved revised Landscaping Plan Revision A dated 10th October 2014, or any amendments to these Plans as approved in writing by the Local Planning Authority.

6. All hard and/or soft landscape works shall be carried out in accordance with the approved details. The works shall be carried out prior to the solar park becoming operational or in accordance with the programme agreed in writing with the Local Planning Authority. Any trees or plants indicated on the approved scheme which, within a period of five years from the date of the development being completed, die, are removed or become seriously damaged or diseased shall be replaced during the next planting season with other trees or plants of a species and size to be first approved in writing by the Local Planning Authority. All hard landscape works shall be permanently retained in accordance with the approved details.
7. The development hereby permitted shall be carried out only in accordance with the approved Ecological Management Plan dated November 2014 or any amendment to the Plan as approved in writing by the Local Planning Authority. A report containing any necessary further amendments details or prescriptions required for implementation of the approved Ecological Management Plan shall be submitted to and approved in writing by the Local planning Authority prior to solar park becoming operational.
8. Plans showing the proposed vehicle access, storage area and turning area to the site shall be submitted to and approved in writing by the Local Planning Authority before the development is commenced. This area shall be surfaced in accordance with details which shall first have been submitted to and approved in writing by the Local Planning Authority, and constructed to the satisfaction of the Local Planning Authority before the development commences and shall not be used other than for access, turning or the loading and unloading of vehicles in connection with the development hereby permitted.
9. Prior to the commencement of the development, a Construction Management Plan shall be submitted to and approved in writing by the Local Planning Authority and shall include details of deliveries (including storage arrangements and timings), contractor parking, traffic management and any need for cranes for construction.
10. No development shall take place until an annotated tree and hedge protection plan has been submitted to and approved in writing by the Local Planning Authority. The plan shall include proposed tree protection measures during site preparation, construction and landscaping operations.
11. No site preparation shall commence until the protective measures as stated in the approved annotated tree protection plan are implemented.
12. Prior to the first export of electricity to the National Grid an operational statement for the CCTV system shall be submitted to and approved in writing by the Local Planning Authority. This shall show the location and set out the purpose of each CCTV camera, set out how the CCTV system fits into the overall security strategy, define the quality of imagery produced and state how CCTV imagery is to be monitored. The approved system shall be installed in accordance with the agreed details prior to the first export of electricity to the national grid and thereafter maintained.
13. No development shall commence 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 which has first been submitted to and approved in writing by the Local Planning Authority. The programme of archaeological work should provide a field evaluation of the site to determine

date, extent, and significance of any archaeological deposits or features, and shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.

14. No development shall commence until the applicant, or their agents or successors in title, has presented the results of the archaeological field evaluation to the Local Planning Authority, and has secured the implementation of a subsequent programme of archaeological recording and/or mitigation work in accordance with a written scheme of investigation which has first been agreed and approved in writing by the Local Planning Authority. The agreed programme of archaeological work shall be carried out by a competent person and completed in accordance with the approved written scheme of investigation.
15. No development shall take place within the site (including any site clearance or demolition works) until the applicant, or their agents or successors in title, has produced detailed drawings of all ground works, including foundations, roadways, drainage and cable runs (including those of statutory undertakers), which have been submitted to and approved in writing by the Local Planning Authority. Such details shall include the location, extent and depth of all excavations and these works shall be carried out and completed in accordance with details as approved.



## **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.