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For the attention of Leanne Palmer,
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3rd February 2023

Dear Sirs,

Application ref.: S62A/22/0006, Berden Hall Farm

On behalf of CPRE Essex I have already submitted a response to this application. You subsequently wrote to inform us that further documents had been submitted by the applicant and kindly invited us to respond to them.
My previous letter dealt with the following concerns:

- Cumulative Impact
- Landscape harm and harm to heritage setting
- Ecology and Wildlife
- The loss of Productive Farmland
- The lack of any form of alternative Sites Assessment.

In this supplementary response I will deal specifically with the new material submitted, or omissions related to information that has still not been provided.

The new material principally relates to the anticipated impact on the landscape and the setting of heritage assets. These are matters of great concern to this charity whose purpose is to ensure the enhancement and protection of the Essex countryside. After a preliminary comment on the applicant's response to the EIA request, I will therefore comment below on the documents most recently submitted and the issues that arise from them. Although there is a considerable overlap between the visual impact on the landscape and the visual impact on the setting of the affected heritage assets, I will treat them as separate subject matter. I will also highlight a couple of specific areas where I believe this application to still be deficient and where certainty is lacking.

1. SCOPE OF ENVIRONMENTAL STATEMENT

In response to the request for an EIA the applicants set out their position in a letter to PINS dated 2nd September 2022. In it they state *'The development's visual impact is the only*

environmental topic considered to have the potential to have adverse effects on the environment of a likely significance that merits EIA. They go on to say that *‘These effects will be confined to those using the PRoW network that passes through the development and ‘None of the remaining reports comprised within the submitted application that relate to other environmental topics have concluded that the development has the potential to have adverse effects on the environment whose significance would merit EIA. All other such topics have therefore been excluded from the proposed ES.* Our concern is that in relation to heritage impact (one of the key issues with this application) their approach is in conflict with Historic England’s advice note ‘The Setting of Heritage Assets’. We will deal with heritage impact in more detail below but must point out here that under the sub-heading ‘Appreciating Setting’ in the section covering Setting and the Significance of Heritage Assets, Historic England specifically state *‘Because setting does not depend on public rights or ability to access it, significance is not dependent on numbers of people visiting it’.* This is a point reiterated by the applicants’ own consultants in their Heritage Statement where they clearly recognise the significance of the guidance provisions that the impact on heritage setting is not dependent upon public access.

Whilst views from public rights of way are therefore important in relation to the experience of users as visual receptors, by limiting their study to views from PRoWs The applicants have failed to properly address the harm caused to the setting of heritage assets. Views obtained from and to, private areas clearly contribute to the setting of the asset as much as views from public road and path ways. On that basis the applicants have failed to fully assess the impact the development would have on some very high-grade heritage assets.

2. LANDSCAPE IMPACT

Perhaps of greatest concern to CPR Essex is the impact that the proposed development would have on this genuinely rural landscape. Berden village is a remarkably well-preserved rural settlement whose relative remoteness has ensured that it has retained much of its historic character. It is set within an agrarian landscape that has remained largely unchanged for decades and, in part, for centuries. It is now proposed that for the next 40 years some 73 has. of Best and Most Versatile agricultural land contained within outstanding countryside should be turned into an industrial wasteland. No amount of hedge planting or reinforcement could mitigate this loss to the natural environment. Seemingly never-ending uninterrupted rows of glass panels punctuated only by industrial storage buildings would have a truly dramatic effect on this important local landscape.

2.1 Town Planning

In order to understand the policy context against which this application will be judged it is necessary to consider both national and local plan policy to the extent that they relate to rural landscapes. Both, in fact, provide strong protection for the natural environment.

Section 15 of the NPPF is titled ‘Conserving and Enhancing the Natural Environment’. para 174 makes it clear that planning policies and decisions should contribute to: *a) protecting and enhancing valued landscapes and b) recognising the intrinsic character and beauty of the countryside.* It is clear that the landscape in the vicinity of the site is highly valued and has a very special intrinsic character and beauty. The appraisal submitted by the applicants acknowledges the implications of Section 15 of the NPPF but the scheme proposed ignores them entirely. The reality is that the applicants’ proposals completely disregard the requirements of para 174 of the NPPF.

In the context of Local Plan policy, the site lies within open countryside to which Policy S7 applies. Policy S7 states that *'development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it has been set or is appropriate.* The applicants' proposals do not comply with policy S7 as they neither protect nor enhance the character of the local countryside. Similarly, a large-scale industrial facility can in no way be described as appropriate to a genuinely rural landscape.

Policy ENV9 acts as a further constraint on development in the countryside: *'Development proposals likely to harm significant local historic landscapes... will not be permitted unless the need for development outweighs the historic significance of the site'*. Given the historic significance of this local landscape containing a Scheduled Ancient Monument, several high-quality listed buildings (including one at Grade I) and very considerable archaeological deposits, it would be hard to imagine any form of development that could outweigh the significance of the site in its existing state, let alone an inefficient industrial complex that has no need to be there.

Local Plan Policy ENV 15 does allow for renewable energy developments but significantly, this is limited to 'small scale' schemes.

Finally, Policy ENV5 deals with the protection of agricultural land and states quite clearly that *'development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality...'* We will return to this topic towards the end of our submission but for the moment, suffice to say that no attempt appears to have been made to assess other options which do not use BMV land. The application is therefore contrary to ENV5 of the Local Plan as well as S7 and ENV9.

2.2 Impact on the character of public rights of way

A further aspect of the impact that this development would have on the character of the local countryside is in relation to the experience of walkers and other users of PRow.

The experience of users of the Public Rights of Way that traverse and surround the site would be wholly changed. Views would become those of an industrial landscape of metal, glass and containers set within a vast compound of security fencing together with the added intrusion of security cameras. Any attempt to mitigate the impact with new planting would largely be futile as new vegetation would take time to mature and no benefits would be seen for some 15 years. The views of landscape features and heritage assets that surround the site and define its character would be completely changed. It is immaterial that a hedge would be planted in a vain attempt to screen the security fences. No significant effect would be achieved for many years and the character of the route would be changed from one of openness to one of tunnels enclosed by hedging. This is a precious landscape currently experienced at its wide-open best. That would change dramatically if the proposed development was to proceed and the mitigation measures proposed would only make things worse by hampering those views that were left.

2.3 The Proposed Mitigation

It is noted that the applicants have allowed for areas of new planting. **This includes one hectare of what is labelled 'community woodland'; further linear tree belts and hedge planting to screen the site from the PRow; together with a 2.7 ha. Wild flower meadow. None of this will compensate for the loss of 73 has. of open arable land currently contained within natural**

properly established field boundaries. The community woodland with its new public access trails will appear as a particularly suburban feature and out of context, while there is no guarantee over the proper maintenance of the small wild flower meadow. The hedge planting in straight rows will similarly appear unnatural and will be many years before it takes on an established quality.

This proposed planting has now been illustrated by the applicants with the production of photomontages. Some of these are helpful in understanding the scale and massing of the development but others are just distant shots which provide no proper impression of the effect on the broader landscape. We do not generally experience views from a static state. Our experience of the landscape is kinetic as we walk through it. We get glimpsed or extended views depending on where we are at any particular moment. These photomontages cannot therefore properly demonstrate the impact that the development would have.

I am however very concerned about the impression provided by the applicants of how their hedge planting will look once established. These impressions are often misleading and experience of planting schemes carried out elsewhere suggests that the capability of new plantings to provide effective screening even after 7-10 years is limited particularly with the poor level of maintenance that is usually applied to them. In fact, it would normally take fifteen years at least before there was any significant screening and only then if the planting was properly maintained.

3. IMPACT ON HERITAGE SETTING

One of the features of the Berden Hall site that distinguishes it from other sites being promoted for utility scale solar plant development is the existence of a large number of high-quality heritage assets that surround it and whose significance is dependent upon the qualities of its landscape. The individual assets have been well documented by others and we will not repeat any of the descriptive detail. It is important though, to consider the consequences that the proposed development would have in relation to this immensely important heritage.

3.1 Town Planning

Of equal importance to the effect the development would have on the landscape is the effect it would have on the setting of heritage assets. Again, though, planning policy provides a very considerable degree of protection for heritage assets, arguably more than for landscapes.

The significance of any listed building is as much to do with its setting as its physical form. In and around Berden there are numerous listed buildings whose setting would be dramatically altered. The applicants' Heritage Consultants have tried to play down the impact but there is no getting away from the fact that the setting of buildings that has gone unaltered for centuries will be changed for the future with no prospect of recovery. First, with regard to NPPF policy in relation to heritage impact para. 199 states *'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance.* On that basis with the setting of so many listed buildings including one at Grade I; a Scheduled Ancient Monument; and very extensive

archaeological deposits directly harmed by this proposal, the heritage detriment must weigh extraordinarily heavy in the planning balance.

Turning to the Local Plan, policy ENV2 states that *‘Development affecting a listed building should be in keeping with its scale, character and surroundings’* and goes on to say that *‘proposals that adversely affect the setting... will not be permitted’*.

It is clear therefore that this development is contrary to both the NPPF heritage policies and policy ENV2 of the Local Plan.

3.2 Historic England Guidance

I have already referred to Historic England’s Planning Practice Advice note (3) in relation to The Setting of Heritage Assets. Specifically in relation to this application it is important to consider para. 5 of that document under ‘Views and Setting’:

‘5. The contribution of setting to the significance of a heritage asset is often expressed by reference to views, a purely visual impression of an asset or place which can be static or dynamic, including a variety of views of, across or including that asset and views of the surroundings from or through the asset, and may intersect with, and incorporate the settings of numerous heritage assets’. Significantly it goes on to say *‘Views which contribute more to understanding the significance of a heritage asset include: those where relationships between the asset or places or natural features are particularly relevant’*

At Berden it is clear that views, and hence setting, contribute greatly to the significance of the heritage assets that have been identified. It is also clear that there is a strong historical inter-relationship and association between the various assets since they reflect the way in which the settlement has developed through the ages with features from the early medieval period through the Tudor and Stuart era to the Victorian period. All are, however, clearly associated in one way or another with the surrounding land, either through ownership or as a working environment for villagers. Berden is a community that has always been connected with the land - land that is farmed or that is in its natural state. Its heritage is not an industrial one. For that reason, in this case it is not just the visibility of the heritage assets that is important, it is also about context – the Hall with its associated estate; the barns connected to agriculture; the church, which served an agricultural community and the ring-works which would have provided protection within an otherwise open landscape. To appreciate these assets and to properly understand their importance it is necessary to preserve the surrounding land in its agricultural state, the state that it has been in for centuries.

3.3 The Applicants’ Assessment

The attempt by the applicants’ consultants to downplay both the importance of the heritage assets themselves and the impact that the development would have, serves only to undermine their credibility and to bring their impartiality into question.

In respect of The Crump, they dismiss the harm to the setting of this Scheduled Ancient Monument on the basis that it is ‘small scale’ and reversible’. The fact is that the change in character that the development would bring to its surroundings would be very significant indeed

and the reversibility would not become effective for 40 years. Two generations would therefore be impacted by the change. I would refer to the comments of Dr. Richard Hoggett who was previously commissioned to provide an independent view on the heritage impact. His conclusion in relation to The Crump is that the surrounding agricultural land makes a strong contribution to the significance of this Scheduled Monument, the most important designation for this type of asset and for which great weight, the NPPF tells us, should be given to its harm.

In respect of St. Nicholas church the applicants again seek to downplay the level of harm suggesting that the effect on its setting would be 'neutral'. Again, I would agree with Dr. Hoggett that the consultant's position is untenable. This is a Grade I listed asset and following the NPPF the greatest weight must be afforded to the harm to its setting which would clearly be considerable.

Berden Hall, a Grade II* asset is also assessed as 'neutral' in terms of impact. The land for which permission is sought was a part of the Hall's estate. Not only does its openness therefore afford strong views of and from, the heritage asset but the land itself provides the historical context for this important building.

Further, in relation to the Crabb's Green Conservation Area any harm is dismissed by the applicants on the basis that views are already compromised by the presence of power cabling. Yet, it will be appreciated that this point is dealt with by Historic England in their guidance with regard to cumulative harm. They state that *'where the significance of a heritage asset has been compromised in the past by unsympathetic development affecting its setting, to accord with NPPF policies, consideration still needs to be given to whether additional change will further detract from ...the significance of the asset'*.

3.4 Proposed Mitigation

Apart from down-playing the level of harm that would be caused to local heritage, the applicants have suggested mitigation measures by way of screening, in an attempt to make amends. Again, I would refer to the Historic England advice. They state **'As screening can only mitigate negative impacts, rather than removing impacts or providing enhancement, it ought never to be regarded as a substitute for well-designed developments...'**

The applicants' specific solution appears to be to carry out a scheme of planting that might shield the worst effects of the development for the Church and the Berden Hall cluster. It is highly unlikely that their proposals will have any impact at all in reducing the harm caused. Important views will still be lost both from and to the heritage assets. The planting itself will of course change the character of the landscape and hence the setting of the heritage assets but the fifteen years or so that will elapse before any form of barrier is established renders the exercise futile anyway.

The applicants have now provided photomontages and artist's impressions in an attempt to demonstrate both the effect of the development itself and the effect of the screening. I would highlight the use of silver birch to screen Berden Hall. Whilst lovely trees, silver birch do very little to form an effective screen. I was also interested in views 7 and 8 where the 'wire-frame' overlays dramatically illustrate the scale and massing of the development and the effect it will have on the setting of the heritage assets. The applicants' consultants appear to dismiss the effect on the basis that the views are not from a PRoW. Again, I refer to the point made earlier that public access is not a factor in the determination of setting.

I should also refer to the fact that whilst the principal planting block of 7.3 acres of wild flower meadow is set in front of some of the most significant heritage features, a wild flower meadow will do very little to screen the heritage assets from the new industrial landscape beyond. It also needs to be pointed out that this area is labelled 'for further discussion with the landowner' It would appear therefore that there is no certainty that this planting would be delivered.

It should further be noted that the applicants' proposals for screening the heritage assets are very heavily dependent on existing established hedges and trees. There is no guarantee that these would remain for the next 40 years, as they are today. Trees and hedges can be removed or die. Even if there was an undertaking to re-plant, mature landscape features could not be replaced in anything other than the very distant future.

3.5 Conclusion

My conclusion in relation to the impact on the setting of the heritage assets is that it would be dramatic. The entire character of the area in which that heritage is set would be changed leading to a very substantial loss of our understanding of its context and hence its significance. That loss though is contrary to both national and local planning policy. Perhaps most significantly, whatever conclusions are reached as to the level of harm for each heritage asset, it is immaterial since the NPPF states clearly that whatever the level of harm, great weight must be given to it and the more important the heritage assets, the greater the weight that should be applied.

Minor attempts have been made to mitigate the harm caused but as Historic England have said mitigation cannot compensate for harmful development.

Whilst renewable energy sources are a priority it is critical that the right choices are made as to the type of energy source and where the necessary plant is located. As former Secretary of State, Eric Pickles said '***Protecting the global environment is not an excuse to trash the local environment.***' Here at Berden we have a case of a developer seeking to trash an outstanding local environment and the setting of irreplaceable heritage.

4. DEFICIENCIES

Whilst a lot of supporting information has been provided by the applicants their proposal still has significant omissions and deficiencies:

- a) Proposals for new planting areas as a percentage of the whole site are very limited and will have little effect in compensating for the land that will be sterilized or in screening views to and from the heritage assets. What is particularly concerning however is that no proper maintenance programme for this planting scheme has been provided. I would suggest that this is not something that can be vaguely left to a future condition.
 - b) The applicants' consultants in their response to PINS, indicated that revisions to their Heritage Statement would be carried out after liaison with Historic England and Place Services. From the recent responses from those bodies it would appear that that did not happen.
 - c) Local Plan policy ENV 5 then requires that the development of BMV land will only be permitted where alternative opportunities involving previously developed sites or less
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valuable land have been assessed. No attempt has been made in this case to seek out and assess alternative options. Here the developers have simply found a cheap grid connection and a willing landowner and have looked no further. It will be appreciated that in the Sawston Solar Park appeal (*Sawston Solar Park - APP/W0530/W/15/3012014 and APP/W0530/W/15/3013863*) it was determined that the availability of a grid connection was not a material planning consideration and must not form a part of the decision-making process.

- d) Whilst the application is for a ‘temporary’ period of 40 years no provisions have been submitted with regard to decommissioning. We would expect a full specification of works including disposal and re-cycling. It is noted that Uttlesford District Council have, in the event that permission is granted, sought to obtain a bond to ensure a proper site clearance. In their letter to PINS of the 9th September the applicants indicated however, their unwillingness to provide such a bond. They say that the matter can be dealt with by condition and refer to the fact that no bond was provided in the case of another Uttlesford solar consent (S62A/ 22/0000004). I would first point out that a bond was in fact, requested and accepted by the developers as a part of a s.106 agreement on the Terriers’ Farm solar farm at Thaxted (UTT/19/1864/FUL) and the case referred to by the applicants can be distinguished from the Berden case to the extent that the solar installation was specifically to serve the needs of Stansted Airport. Stansted Airport is a very major operation wholly owned by Manchester Airports Group. The value of its assets is vast and there would not be the same concern over the company’s long-term financial stability. The Berden proposals are entirely speculative. Solar operations are regularly being traded with no continuity of ownership or certainty over financial status. There have been many operator collapses already. The case of Thurrock Council effectively being bankrupted by failed investment in solar schemes has been well reported. A planning condition would therefore be entirely inappropriate and would provide no certainty for the local authority or the local community. A s.106 agreement is essential if permission is granted, backed up by the security of a bond arrangement with a substantial provider.

5. THE PLANNING BALANCE

The starting point when considering any planning application is s38(6) of the 2004 Act. This states that applications for planning permission must be determined in accordance with the development plan unless material considerations indicate otherwise. In this case it is clear that the application fails to satisfy the requirements of a number of key policies in the Development Plan. Specifically, it is contrary to policies S7 and ENV9 in relation to countryside protection. It is contrary to ENV5 in relation to the loss of productive farmland and ENV2 in relation to harm to heritage assets. It is also contrary to policy ENV15 which although permissive of solar energy schemes limits them to ‘small-scale’ operations. This proposal could never be described as ‘small-scale’.

If a balancing act needs to be undertaken therefore based on the need for renewable energy against the harm caused, then the breach of so many and such significant Local Plan policies must in itself weigh very heavily in favour of a refusal.

Further weight in favour of refusal however is provided by national policy. The NPPF provides strong protection for the countryside and, very importantly in this case, heritage assets and their setting. In terms of countryside protection it refers to ‘protecting and enhancing valued

landscapes' and 'recognising the intrinsic character and beauty of the countryside'. This development could never achieve any of those objectives. Similarly, we are told that great weight must be afforded to harm to heritage assets and the greater the importance of those assets the greater the weight that should be given. Here not only are the affected buildings numerous but significantly, they are of great importance. There is a Scheduled Ancient Monument; a Grade I listed building; and a Grade II* building. These are very important heritage assets and, on that basis, the maximum weight must, if the NPPF is to be followed, apply to the harm that would be caused to there setting. Similarly, although it is very much my view that the applicants' consultants have down-played the extent of the harm caused, this is immaterial in the context of NPPF policy since the NPPF guidance with regard to weight applies irrespective of the level of harm.

Setting aside the undoubted harm caused by breaching both national and local planning policies, the lasting physical harm that this development would do to an irreplaceable landscape, the setting of important heritage assets and the loss of highly productive farmland at a time of food crisis, is immeasurable. It is however, clear that the maximum weight must be given to that harm in any balancing exercise.

When, on the other side of the balance is a form of development that has no need to be there, is hugely inefficient compared to its alternatives and is purely for the convenience and financial benefit of the applicant and landowner, it is obvious which way the scales must tilt. An approval would not only be to ignore planning policy, but would be environmentally disastrous.

Yours sincerely,

Richard Haynes (Trustee)
