



APPENDIX 2

Planning Appeals relevant to:

- Weight of “temporary developments”
- Landscape and Visual Impact
- Heritage issues in Solar “Farm” applications

Objection to development at
Maggotts End, Manuden
(Pelham Spring Solar Farm)

PINS Reference: S62A/22/0011

APPENDIX 2
OTHER SOLAR APPEALS

Appeal No	Date		Site	Issue considered	Outcome
2226557	30 November 2015	SoS	Badsell Road, Five Oak Green, Tonbridge, Kent	Temporary Nature of development no weight	REFUSED
3006387	30 March 2016	SoS	Limolands Farm, Vaggs Lane, Lymington	Temporary Nature of development no weight	APPEAL DISMISSED
3138266	1 January 2016	SoS	New Fen Dike, Sutton St James, Spalding, Lincolnshire	Unacceptable Visual impact	APPEAL DISMISSED
2229290	28 January 2016	SoS	Butteriss Farm, Edgumbe, Penryn	Unacceptable Visual impact	APPEAL DISMISSED
3142020	23 February 2017	Hearing	Land at Woodhall Farm, Wichenford, Worcestershire	Impact on Heritage Assets and Unacceptable Visual impact	APPEAL DISMISSED

2226557

Badsell Road,
Five Oak Green,
Tonbridge,
Kent

30 November 2015



Department for
Communities and
Local Government

Miss Gilly Slater
Wardell Armstrong International Ltd
Baldhu House
Wheal Jane Earth Science Park, Bhaldu
Truro
Cornwall TR3 6EH

Our Ref: APP/M2270/A/14/2226557

30 November 2015

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY CAPEL GRANGE SOLAR ENERGY LTD
OS PLOT 8200, BADSELL ROAD, FIVE OAK GREEN, TONBRIDGE, KENT TN12 6QX**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, John Woolcock BNatRes(Hons), MURP, DipLaw, MRTPI, who made a site visit on 19 May 2015 in connection with your client's appeal against the decision of Tunbridge Wells Borough Council (the Council) to refuse planning permission for the development of a 22.3ha solar photovoltaic park on land 120m to the south of the village of Five Oak Green, along with attendant equipment and infrastructure.
2. On 22 January 2015 the appeal was recovered for the Secretary of State's determination in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because it involves a proposal for significant development in the Green Belt.

Inspector's recommendation and summary of the decision

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

Environmental Statement

4. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2011 and the addendum to the ES primarily dealing with surface water drainage. The Secretary of State agrees with the

Inspector (IR78) that the information provided in the Environmental Statement is adequate for the purposes of this appeal decision.

Policy and Statutory Considerations

5. 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.
6. In this case the development plan consists of the saved policies of the Tunbridge Wells Borough Local Plan 2006 (LP), together with the Tunbridge Wells Borough Core Strategy 2010 (CS) (IR12). The Secretary of State considers that the development plan policies of most relevance to this appeal are those summarised by the Inspector at IR13-14.
7. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework, March 2012 (the Framework), the accompanying planning practice guidance (the guidance), and the Community Infrastructure Levy (CIL) Regulations.
8. The Secretary of State has had regard to his predecessor's Written Ministerial Statement (WMS) – *Solar energy: protecting the local and global environment* of 25 March 2015. The statement explains that meeting energy goals should not be used to justify the wrong development in the wrong location and this includes the unnecessary use of high quality agricultural land. Specifically, the WMS underlines that any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence.
9. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

10. The Secretary of State considers that the main issues in this case are those described by the Inspector at IR80.

The development plan

11. The Secretary of State agrees with the Inspector at IR111-112 that the proposal would be contrary to LP Policy MGB1 because it would not preserve the openness of the Metropolitan Green Belt and would conflict with the purposes of including land within it; and contrary to LP Policy EN25, as it would not have a minimal impact on the landscape character of the locality.
12. For the reasons given at IR112, the Secretary of State agrees with the Inspector that the appeal scheme would not accord with CS Policy 2 because it would be at odds with its general presumption against inappropriate development in the Green Belt that would not preserve its openness, and would conflict with the purpose of including land within it; and CS Policy 4, which aims to conserve and enhance locally distinctive sense of place and character. He also agrees with the Inspector that it would be at odds with the policy of

restraint pursuant to CS Policy 14, which aims to maintain the landscape character and quality of the countryside and to protect the countryside for its own sake.

National policy and guidance

13. The core planning principles set out in the Framework encourage the development of renewable energy, whilst recognising the intrinsic character and beauty of the countryside. The Secretary of State agrees with the Inspector's conclusion (IR113) that LP Policies MGB1 and EN25 are not fully consistent with the balancing exercise for sustainable development set out in the Framework. Like the Inspector, the Secretary of State gives significant weight to the Framework in determining this appeal and has gone on to perform a balancing exercise to weigh the benefits of the proposed solar park against its disadvantages.

Green Belt

14. The Secretary of State agrees with the Inspector (IR82) that the proposal is inappropriate development in the Green Belt. He has had regard to paragraph 87 of the Framework which states that inappropriate development is, by definition, harmful to the Green Belt and that it should not be approved except in very special circumstances. He has also taken account of paragraph 88 of the Framework which states that substantial weight should be given to any harm to the Green Belt, and 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. Furthermore, the Secretary of State has taken account of paragraph 91 of the Framework which states when renewable energy projects comprise inappropriate development, very special circumstances need to be demonstrated if projects are to proceed, and these may include the wider environmental benefits associated with increased production of energy from renewable sources.

15. The Secretary of State agrees with the findings of the Inspector at IR83-84, that the proposal would have a significant adverse effect on the openness of the Green Belt, and would adversely affect the countryside, even if controlled by condition. For the reasons given by the Inspector at IR84, the Secretary of State agrees that the proposal would therefore harm the Green Belt.

Character and appearance

16. The Secretary of State has given careful consideration to the Inspector's reasoning (IR85-87) and agrees with his conclusions (IR88) that the proposal would harm the character of the area, and would have a significant adverse effect of moderate/substantial significance on the local landscape.

Agricultural land and soils

17. For the reasons given at IR89-91, the Secretary of State agrees with the Inspector that the limited grazing likely to be available under and around solar panels would significantly underutilize a large expanse of the best and most versatile agricultural land for a long time, conflicting with national policy and guidance; and that this matter weighs heavily against the proposed development (IR91).

Biodiversity

18. The Secretary of State agrees with the Inspector's conclusion at IR93 that, overall, the proposed development would enhance biodiversity. He agrees too that this is a consideration that weighs in favour of the proposal.

Heritage assets

19. For the reasons given by the Inspector at IR94-95, the Secretary of State agrees that the proposal would have a moderate adverse effect on the setting of the Grade II Brook Farmhouse. He agrees too that this is a consideration which should be given special weight and considerable importance in the overall planning balance. The Secretary of State agrees that, in terms of the Framework, the adverse impact on this asset would amount to less than substantial harm and that this is a consideration to be weighed against the benefits of the proposed development.

Renewable energy

20. The Secretary of State agrees with the Inspector (IR96) that the proposal, with an estimated installed capacity of 10.36 MW and average electrical output of 11,850 MWhr/yr, would make a significant contribution to achieving renewable energy targets; and that the wider environmental and energy security benefits of the proposal weigh significantly in its favour.

Other matters

21. The Secretary of State agrees with the Inspector that there is scope within the appeal site for the design and implementation of a drainage scheme that would ensure the development did not significantly increase flood risk (IR97). For the reasons given at IR98, the Secretary of State agrees with the Inspector that noise and disturbance could be minimised by the implementation of an approved construction environmental management plan. He also agrees that the scheme would not have a dominating or overbearing effect on the outlook from nearby residential dwellings, and accepts the Inspector's conclusion that there is no evidential basis for claims that the proposal would adversely affect tourism. Turning to potential traffic problems, the Secretary of State agrees with the Inspector (IR99) that there is no convincing evidence that construction traffic would significantly increase the risk to local road users and also agrees that a construction traffic management plan would help to minimise any congestion or risk to highway safety.

Conditions

22. The Secretary of State has had regard to the schedule of conditions at Annex A to the IR. He is satisfied that the Inspector's proposed conditions are reasonable and necessary and would meet the tests of paragraph 206 of the Framework. However, he does not consider that they would overcome his reasons for dismissing this appeal.

Planning Balance

23. The Secretary of State has given careful consideration to the Inspector's overall balancing exercise at IR 101-113. He considers that significant weight should be given to the contribution the scheme would make to the Government's commitment to tackle

climate change by reducing carbon dioxide emissions and towards energy security, along with ecological enhancement, and the benefits that would result to the local economy from job creation and farm diversification (IR103).

24. However, he disagrees with the Inspector's conclusion (IR105) that the temporary nature of the proposal is relevant insofar as the effects of the scheme, both positive and negative, would endure for a limited period. **The Secretary of State takes the view that 25 years is a considerable period of time and the reversibility of the proposal is not a matter he has taken into account in his consideration of whether the scheme should go ahead.** Reflecting March's WMS, the Secretary of State has, rather, considered whether there is compelling evidence to justify the proposal's location on the best and most versatile agricultural land. The significant underutilisation of 14.4 ha of the best and most versatile agricultural land is a factor that weighs heavily against the proposal. Like the Inspector, and having regard to the terms of the CIL Regulations, the Secretary of State agrees that no weight should be given to the offer by the appellant of a community fund. He has also given no weight to local concerns about the effects on property values.
25. Against the positive benefits described at paragraph 23 above, the Secretary of State agrees with the Inspector at IR106 that the identified harm to the character and appearance of the area is of moderate/substantial significance. He also attaches special weight and considerable importance to the moderate adverse effect on the setting of a listed building, as well as giving substantial weight to the harm to the Green Belt

Overall conclusions

26. For the reasons set out above, the Secretary of State considers that the balance in this case falls against the proposal. In particular, the proposal would conflict with Green Belt policy. Furthermore, there is no compelling evidence to justify the use of 8.5 ha of the best and most versatile agricultural land over and above that which would be utilised by the permitted scheme. The proposal would also be at odds with national policy and guidance, which encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land. Overall, the Secretary of State considers that the evidence submitted does not demonstrate that the impacts of the appeal scheme are, or could be made, acceptable; and he concludes that the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the Framework when taken as a whole. Like the Inspector, the Secretary of State therefore considers that the proposal would not accord with the requirements for sustainable development set out in the Framework.
27. In coming to his decision, the Secretary of State has taken account of the permitted scheme as an important material consideration, but it does not alter his conclusions that the benefits of the appeal scheme do not clearly outweigh the identified harm, and that the very special circumstances necessary to justify the development do not exist.

Formal Decision

28. 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 development of a 22.3ha solar photovoltaic park on land 120m to the south of the village of Five Oak Green, along with attendant equipment and infrastructure.

Right to challenge the decision

29. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. From 26 October 2015, 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.

30. A copy of this letter has been sent to Tunbridge Wells Borough Council. A notification letter has been sent to all other parties who asked to be informed of the decision.

Yours faithfully

Jean Nowak

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by John Woolcock BNatRes(Hons) MURP DipLaw MRTPI

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

Date: 8 October 2015

Town and Country Planning Act 1990

Tunbridge Wells Borough Council

Appeal by

Capel Grange Solar Energy Ltd

Site visit made on 19 May 2015

Land at Capel Grange Farm, Badsell Road, Five Oak Green, Kent TN12 6QX

File Ref: APP/M2270/A/14/2226557

File Ref: APP/M2270/A/14/2226557

Land at Capel Grange Farm, Badsell Road, Five Oak Green, Kent TN12 6QX

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr Matthew Hayes, Capel Grange Solar Energy Ltd, against the decision of Tunbridge Wells Borough Council.
- The application Ref: 14/00271/FULL, dated 31 January 2014, was refused by notice dated 15 September 2014.
- The development proposed is "The development of a 22.3 ha solar photovoltaic park on land 120 m to south of the village of Five Oak Green, along with attendant equipment and infrastructure."

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

1. The site lies with the Metropolitan Green Belt. The appeal was recovered, by letter dated 22 January 2015, for determination by the Secretary of State because the appeal involves proposals for significant development in the Green Belt.
2. The planning application was accompanied by an Environmental Statement dated January 2014 (ES) under The Town and Country Planning (Environmental Impact Assessment) Regulations 2011 (SI 2011 No. 1824). An addendum to the ES, primarily dealing with surface water drainage, was submitted in May 2014. The response from consultees is set out later in this report.
3. 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 three reasons.
 - (1) The proposed development would result in the unacceptable loss of best and most versatile agricultural land, and it has not been adequately demonstrated that poorer quality land could not be used instead.
 - (2) Elements of the proposed development constitute inappropriate development in the Green Belt. Insufficient very special circumstances have been demonstrated to outweigh the harm caused to the Green Belt, taking into account the duration of the development for 25 years.
 - (3) The proposed development, by reason of its scale and appearance, would have a harmful effect on the character and appearance of the site, which would be detrimental to the landscape setting of Five Oak Green.
4. At the site visit I asked for clarification about what documentation comprised the application, and what was illustrative material. This was clarified in Parts 1 and 2 of the letter from the appellant dated 4 June 2015.¹ Application plans that were before the Council and that are now to be considered in this appeal are set out in Annex B to this report.
5. The Council advised at my site visit that it had granted planning permission on 10 April 2015 for the development of a solar photovoltaic park on part of the appeal site. The on-site differences between the appeal scheme and the permitted scheme were highlighted to me at my site visit. I requested details

¹ Letter from Wardell Armstrong marked on file.

about the permitted scheme, which are included in Part 3 of the 4 June 2015 letter.² In summary, the permitted scheme reduced the site area from 22.3 ha to 13.2 ha, the capacity of electricity generation from 10.36 MW to 6.6 MW, and the utilisation of Grade 3a classified agricultural land from 14.4 ha to 5.9 ha.³ An overlay plan showing the appeal scheme and the permitted scheme is included at Document 3.5 of this report. The appellant and the Council submitted written representations about the implications of the extant permission.⁴

6. I also requested details about solar park/farm development in the wider area, that I saw under construction at the time of my site visit, at Sherenden Road (a 27 ha site also known as the Hadlow scheme) and Knells Farm (a 25 ha site). These details are included in Part 4 of the 4 June 2015 letter.⁵

The Site and Surroundings

7. The appeal site lies to the south-east of the village of Five Oak Green, and is set back from Badsell Road (B2017) to the north of the site, from which the site takes access. Colts Hill, part of the A228, lies to the east. The site is currently used predominantly for orchards, and is crossed by several electricity lines. A Public Right of Way (PROW) from the centre of village, which provides public access to the footpath network to the south, abuts part of the western boundary of the appeal site, in the vicinity of Alder Stream. Brook Farmhouse is a Grade II listed building that lies near to the south-western corner of the appeal site. Other heritage assets are shown on ES Figures 7.1-7.3.
8. The land around the village is a reasonably flat part of the Medway Valley. However, there is a ridge of higher land located towards the eastern part of the appeal site. The south-eastern corner of the site is about 40 m AOD and its north-western boundary is about 24 m AOD.⁶ An extended Phase 1 habitat map is included as ES Figure 8.1. This indicates that the site is predominantly an orchard, with species rich hedgerows around most of the site perimeter, and species poor windbreaks located across parts of the site.
9. The appeal site lies within National Character Area NCA121 Low Weald, which is characterised by broad, low-lying, gently undulating clay vales, with a generally pastoral landscape of arable farming and fruit cultivation. In the 2004 Landscape Assessment of Kent the northern and western parts of the site lie within Landscape Character Type (LCT) Low Weald Fruit Belt with the south-eastern part located within LCT Kent Fruit Belt. The former comprising a mixed farmed landscape of dwarf fruit trees, arable, hops and pasture. The latter with more small scale orchards with high hedges.
10. The site lies wholly within Local landscape Character Area 13: Paddock Wood/Five Oak Green Low Weald Farmland (LCA13) in the Supplementary Planning Document Borough Landscape Character Area Assessment 2002 (with 2011

² Application Number 14/506168/FULL. Relevant documents are included as Documents 3.1-3.5 attached to this report.

³ *Planning Statement* November 2014 at Document 3.4.

⁴ Documents 6 and 7.

⁵ Documents 4.1 and 4.2 attached to this report. The location of these sites in relation to the appeal site is shown on Document 4.3.

⁶ The local topography is shown on the drawing entitled Site Topography; Hydrology, Drawing No.LE11951/Figure5.2, which is marked on the file. This shows contours at 0.5 m intervals.

update). LCA13 is characterised by a mixed farmed landscape with extensive open arable fields, dwarf fruit orchards and pockets of hops and pasture, with remnant wind breaks providing a strong vertical element in the open flat landscape. Local landscape character objectives for the area include respecting the vulnerability of the slopes rising up to the south to new developments/land use change.

11. An agricultural land survey, which included samples at a grid density of one boring per hectare, along with two hand-excavated soil inspection pits, determined that of the 27.8 ha assessed, 66% of the site (18.4 ha) was subgrade 3a and the remaining 9.4 ha subgrade 3b. The subgrade 3b land is located in two areas; an area along part of the northern boundary of the site near to Badsell Road, and a central belt extending from the south of Brook Farm almost to the east of the appeal site.⁷ For the 22.3 ha appeal site the appellant refers to 14.4 ha (65%) of Grade 3a land and 7.9 ha (35%) of Grade 3b land.

Planning Policy

12. The development plan includes saved policies of the Tunbridge Wells Borough Local Plan 2006 (LP), along with the Tunbridge Wells Borough Core Strategy 2010 (CS).
13. LP Policy MGB1 requires, amongst other things, that the openness of the Metropolitan Green Belt would be preserved and that no development which would conflict with the purposes of including land within it would be permitted. It adds that planning permission would not be granted other than for the development listed in the policy. The proposed development is not included in the specified list. However, clause (4) of Policy MGB1 does provide for engineering, other operations or any material change of use provided that it would maintain the openness of the Green Belt and would not conflict with its purposes. LP Policy EN25 sets out criteria for development outside the defined Limits to Built Development, in which the appeal site lies. These include having a minimal impact on the landscape character of the locality, and no detrimental impact on the landscape setting of settlements.
14. CS Policy 2 defines the boundaries of the Green Belt and includes a general presumption against inappropriate development that would not preserve its openness, or would conflict with the purpose of including land within it. It adds that any new development should accord with the provisions of PPG2 or its replacement. CS Policy 4 aims to conserve and enhance locally distinctive sense of place and character. CS Policy 14 concerns development in villages and rural areas, and provides, amongst other things, that the countryside would be protected for its own sake and that a policy of restraint would operate in order to maintain the landscape character and quality of the countryside.
15. The parties also refer to the *National Planning Policy Framework (the Framework)* and *Planning Practice Guidance (the Guidance)*.

⁷ The distribution of these soils is shown on Plan 1 of the Vaughan Redfern Report, which is marked on the file.

The Proposal

16. The proposed solar panels would have a maximum height of 2.25 m. They would be enclosed by a 2 m high deer fence with 2.5 m high pole-mounted infra-red security cameras at approximately 50 m intervals along the boundary. Hedgerows around the site would be retained with gaps filled and vegetation allowed to grow to a height of 3 m. The land around and beneath the panels would be laid to grass and grazed by sheep. Land between the proposed security fence and the boundary of the holding would be retained as orchard, with some wildflower planting and possibly some Christmas tree production.
17. The appeal scheme would have a total estimated installed capacity of 10.36 MW with an average electrical output of 11,850 MWhr/yr. This could service 2,800 homes, with carbon dioxide emission savings of between 122,944 tonnes and 265,144 tonnes over its 25 year life, depending on the energy mix which applied at the time. The grid connection is proposed to be dealt with in a separate application, but it would be via an underground cabled connection from the proposed on-site substation to the existing overhead 33 kV line that crosses the site.⁸
18. A community fund is offered by the appellant at a rate of £1,000 per installed megawatt for environmental, social or economic projects within the vicinity of the proposed solar park.

The Case for Tunbridge Wells Borough Council

19. The Council's case is set out in its written representations statement dated November 2014. The gist of the Council's objections to the proposal are as follows.⁹

Harm to character and appearance of the site and landscape setting of Five Oak Green

20. The site is located outside the Limits to Built Development identified in the LP and so is within the open countryside, where the *Framework* recognises the intrinsic character and beauty of the countryside as a core planning principle, and expects valued landscapes to be protected and enhanced. The *Guidance* indicates that local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on the landscape. Adverse landscape effects during the operational phase at year 10 are likely to be of moderate to substantial significance. Short and medium views would be most affected, with the ES finding a moderate to substantial adverse effect from Viewpoints 1, 2 and 3. The visual impact may reduce over time with proposed hedgerow planting and management, but this would not be a fully effective screen, particularly in winter or from the upper windows of nearby residential properties. The proposal would cause harm to the visual amenities and rural character of the area, and would adversely affect the setting of the village, contrary to LP Policy EN25, CS Policies CP4 and CP14, and paragraphs 17 and 109 of the *Framework*.

⁸ Planning Statement dated January 2014 paragraph 1.7.

⁹ The following is based on the Council's Written Representations Statement dated November 2014.

Harm to the Green Belt and insufficient very special circumstances

21. Paragraph 91 of the *Framework* advises that elements of many renewable energy projects will comprise inappropriate development, which is by definition harmful to the openness of the Green Belt. The proposed extensive area of panel arrays and ancillary electrical equipment would conflict with one of the purposes of the Green Belt, which is to assist in safeguarding the countryside from encroachment. In considering whether very special circumstances exist the demonstrable visual harm should be added to the harm caused by reason of inappropriateness. The proposed development would be reversible, but 25 years would be a long timescale, with an option of extending further through additional planning applications giving a degree of permanence. The environmental benefits that would accrue from the scheme in reducing carbon emissions and increasing energy security, or the lack of other potential sites for solar farms within the environmentally constrained Borough, the benefits to ecology through a less intensive agricultural use, and the support for sustainable growth of rural businesses and enterprises, are not considered sufficient to outweigh the harm to the Green Belt. It is not accepted that very special circumstances exist, and the proposal does not comply with CS Policy 2 or LP Policy MGB1.

Unacceptable loss of best and most versatile agricultural land

22. Paragraph 112 of the *Framework* requires the presence of the best and most versatile agricultural land (grades 1, 2 and 3a) to be taken into account. It adds that significant development, such as the appeal scheme, should be shown to be necessary, and that areas of poorer quality land should be used in preference to that of higher quality. The *Guidance* encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided it is not of high environmental value. It adds that proposals involving greenfield land should, amongst other things, allow for continued agricultural use where applicable and/or encourage biodiversity.

23. The grazing of sheep proposed in this case would be an incidental use rather than resulting in the creation of a viable sheep farming enterprise. The adverse effect on agriculture also arises from the long time that the solar park would operate, offering no flexibility to return to a more productive agricultural use. The continued use of the more productive parts of the site for fruit growing would take advantage of the soil quality. The Council acknowledges that it is unlikely that any significant amounts of poorer quality agricultural land would be available for a large scale ground mounted solar installation, but there is no requirement for a specific quantum of land to be used for solar farms within the Borough. Opportunities will exist in other parts of the south-east of England using brownfield land and lower grade agricultural land. The appellant's sequential analysis lacks robustness.

24. The scheme permitted at Sherenden Road involved mainly grade 3a land, but the circumstances are not comparable to the appeal scheme because that proposal included mitigation through upgrading the quality of land elsewhere. Furthermore, the appeal scheme has a greater harmful visual impact due to its local topography and the proximity of the village of Five Oak Green. The land at Knells Farm was nearly all Grade 3b.

The planning balance

25. The benefits of the proposal through generating a significant amount of renewable energy are outweighed by the harm that would result to the landscape, visual amenities and setting of Five Oak Green, the loss of Green Belt openness, and the loss of potentially more productive agricultural land for 25 years. Notwithstanding the proposed mitigation, the solar park could not be made acceptable, and would conflict with the development plan, the *Framework* and the *Guidance*.

The permitted scheme

26. The permitted 6.6 MW scheme is significantly different from the appeal scheme, and the revisions were sufficient to overcome the Council's three reasons for refusal of the appeal scheme. An important material difference was the reduction of the area of the best and most versatile agricultural land used from 14.4 ha to 5.9 ha. The significant reduction in scale would reduce the impact on the openness of the Green Belt. The smaller scale scheme would have a reduced impact on the setting of the village by 'drawing away' panels and security fencing from the western and southern boundary of the site, so creating a much wider buffer of undeveloped land adjacent to Alder Stream and Brook Farm. This area is particularly sensitive because of the PROW. The permitted scheme also avoids the highest parts of the site, which reduces its visibility from both the village and the A228. The reduced scale of the permitted scheme would also reduce the wider environmental benefits in terms of carbon reduction, but the balanced planning judgement weighed in favour of granting permission for the revised scheme.¹⁰

The Case for Capel Grange Solar Energy Ltd

27. The appellant's statement of case and final comment respond to the Council's three grounds of refusal, the gist of which is set out below.¹¹

Impact on agricultural land

28. Capel Grange Farm is a unit of about 49 ha (120 acres) and the principal enterprise is apple production. Margins are declining and recent adverse weather patterns have caused yield fluctuations with resultant swings in profitability. Problems with soil type and susceptibility to frost damage mean that certain areas of the farm are unlikely to produce profitable yields, even if replanting was undertaken. These poorer areas have been selected for the solar park with replanting proposed on the better areas of the farm. The solar park has the potential to strengthen the business by levelling out fluctuations in profitability and releasing resources to develop and improve other areas of the business in the longer term and provide a pension for the farm partners.¹²
29. The site would continue in agricultural use throughout its 25 year life as a solar park, after which it would be returned to full agricultural use. There would be no permanent and irreversible loss of best and most versatile agricultural land. The less intensive use of the site would bring ecological benefits. These are matters

¹⁰ Document 7.

¹¹ Statement of Case dated October 2014 and Final Comments dated December 2014.

¹² Financial appraisal of the proposed solar park at ES Appendix 4.1.

which can be controlled by planning conditions, as is evident from the submitted appeal decisions. The proposal is not contrary to the provisions of either the *Framework* or the *Guidance*.

30. There are limited opportunities for siting large solar installations in the Borough, and the Capel Grange site was identified after a robust site search and identification exercise that was almost identical to that undertaken in the Sherenden Road and Knells Farm schemes. There is a complete lack of consistency in the Council's treatment of the Sherenden Road and Knells Farm schemes, and the appeal scheme, with regard to the use of the best and most versatile agricultural land and the application of the *Guidance*.

Green Belt evidence

31. The combination of a range of factors demonstrate that very special circumstances apply sufficiently to the appeal scheme to allow temporary development of a solar park at this Green Belt site. These include:
- (a) Constraints restricting the availability of suitable sites. A sequential test was followed in order to identify the Capel Grange site, including constrained areas, cultural heritage considerations, topography and grid connection.
 - (b) Proximity to an available electricity grid connection point. A grid connection has been secured for the appeal scheme, and there is now no further capacity in the Pembury to Paddock Wood 33 kV circuit.
 - (c) Other renewable energy technologies are unlikely to be appropriate for this site.
 - (d) Solar photovoltaic is a reliable and sustainable technology, and a major element of the Government's commitment to tackle climate change. The *Framework* states that very special circumstances may include the wider environmental benefits associated with increased production of energy from renewable sources.
 - (e) The iterative design of the scheme.
 - (f) The height of the panels and screening by trees and hedgerows.
 - (g) The carbon dioxide emission savings from the offset of electricity generation by fossil fuels, along with ecological enhancement.
 - (h) Job creation during construction and 1 or 2 permanent jobs over the life-time of the development.
 - (i) Establishment of a community benefit fund.
 - (j) No negative impact on local tourism.
 - (k) The site is not within any national designation other than Green Belt.
 - (l) Construction and decommissioning phases would be temporary, and after 25 years all equipment would be dismantled and removed from the site. The Council considers that the appeal scheme would achieve a degree of permanence. However, the appeal should be considered on the basis of a temporary period for 25 years. Any degree of permanence would be a matter to be considered in the future.

32. Although very special circumstances exist for the proposed development, it would not affect the openness of the site or conflict with the purposes of the Green Belt designation, and so would accord with clause (4) of LP Policy MGB1. The proposal would represent agricultural diversification and so would comply with LP Policy MGB1. The CS is silent in respect of the need for development of medium/large scale renewable energy infrastructure.

Scale and appearance

33. The extent of the solar park would be relatively large in relation to the village, but there would be limited perception of it from sensitive receptors. The proposed solar park would have limited visibility from within the surrounding area and screening would be provided by hedgerows and trees. By years 5-8 there would be no significant effects on the landscape character of the area. The site can be sufficiently screened such that it would not have a detrimental impact upon the landscape setting of Five Oak Green. The Sherenden Road and Knells Farm photovoltaic schemes are unlikely to be visible in the same views from transport routes, PROW or public viewpoints, and the development at Capel Grange would not result in any cumulative impact. The proposed development is of an appropriate scale, mass and design, in accordance with relevant provisions of LP Policy EN25.

The permitted scheme

34. The extant planning permission has clearly established a precedent for the development of a solar park at the appeal site within the Green Belt. Such development would be regarded as inappropriate development and very special circumstances were demonstrated in order to justify the permitted development. Having established that very special circumstances exist for the extant permission, such very special circumstances would apply equally to the appeal scheme. The moderate extension of the permitted scheme would have a negligible additional landscape and/or visual impact. Permitting the appeal scheme would increase the average electrical output by 4,300 MWhr/yr above that which would be generated by the permitted scheme, which could serve an additional 1,020 homes. Carbon dioxide emissions offset during the 25 years would increase above the offset that would result from the permitted scheme from between 44,613 tonnes and 96,213 tonnes, depending on the energy mix at the time. The appeal scheme would also allow the available grid connection to be optimised.
35. The appeal scheme would increase the extent to which the best and most versatile agricultural land was used. However, the proposed development would be temporary and reversible, it would have agricultural diversification benefits, and a negligible impact on the local agricultural resource given the ongoing agricultural activities proposed. The wider benefits of the appeal scheme significantly outweigh any adverse impact of using the additional Grade 3a agricultural land. The additional benefits from the appeal scheme significantly outweigh any impacts which may be associated with a moderate extension of the extant permission.¹³

¹³ Document 6.

Written Representations

Application stage

36. The Council received representations from 31 households about the application, including 9 representations in support of the proposal and 1 neutral submission. The representations are summarised in Section 6 of the Council's Planning Committee Report, dated 10 September 2014, and the gist of submissions at the application stage are as follows.
37. Issues raised by objectors included the use of agricultural land for a long period, flood risk, harm to the setting of listed buildings and to the character and appearance of the area, cumulative impact with solar farms surrounding the village, loss of orchards and biodiversity, noise and safety concerns. Some objectors, including the Campaign to Protect Rural England (CPRE) considered the proposed development to be inappropriate development in the Green Belt and that no very special circumstances exist.
38. Supporters of the proposal referred to the generation of clean electricity by safe technology, low yields from the orchards with irregular cropping due to frost damage, limited visual impact from public viewpoints, that flood risk could be decreased with the replacement grass sward, along with improved land fertility and biodiversity.

Consultees

39. Consultation replies at the application stage are summarised in section 7 of the Council's Planning Committee Report, and the gist of these submissions follows.
40. Capel Parish Council initially (25 February 2014) recommended refusal of the application and was concerned about flooding and potential for the site to be reclassified as brownfield land at the end of the 25 year period. Subsequently the Parish Council voted to recommend approval (1 July 2014), but noted concerns about cumulative effects and whether the proposal was suitable within the Green Belt.¹⁴
41. The Environment Agency removed its initial objection following submission of the amended Flood Risk Assessment, and subject to the imposition of a condition about surface water drainage. The agency acknowledged that the site is situated within flood zones 1, 2 and 3, but does not dispute that construction of a solar array is acceptable within any flood zone. The Upper Medway Internal Drainage Board has no objection subject to the imposition of conditions.
42. Natural England advised that the proposal is unlikely to affect any statutorily protected sites, and did not wish to comment on this proposal, other than referring to its standing advice about protected species.
43. Kent County Council advised that the site lies within an area of some limited archaeological potential, especially associated with early prehistoric remains and post medieval agricultural and horticultural use. However, it considered that heritage issues here could be addressed through a planning condition which secured the implementation of a programme of archaeological work.

¹⁴ Four councillors voted for approval, two voted against.

44. Highways and Transportation Kent County Council raised no objection to the proposal, but recommended conditions regarding a traffic management plan and condition surveys for Badsell Road. The County also noted that although the proposal would be visible from PROW WT194, which runs adjacent to the site, it would not directly affect the PROW.
45. The Highways Agency has no objection.
46. NATS has no safeguarding objection to the proposal regarding air traffic.
47. Kent Police provided general crime prevention advice about solar farms.

Appeal stage

48. There were 26 written submissions at the appeal stage, which are summarised as follows.

Written submissions objecting to the proposed development (11)

49. Mrs Gwendoline Lamb, local resident. Objects to the scale of the proposed development in this rural area and the use of prime agricultural land, along with a fear that it would make flooding worse.
50. Bryan and Jane More, local residents. Concerned about serious implications for increased flooding, which could be caused by this proposal within Green Belt land.
51. Roger and Adrienne Bishop, local residents. The need for renewable energy does not 'trump' Green Belt. There would be a very large impact on the surrounding area and any ecological benefit would not outweigh the visual amenity and cumulative effects. Five Oak Green would be hemmed in by two large industrial solar developments. Government guidance suggests brownfield sites and commercial units could provide the same benefits with little or no environmental impact. There is no national requirement to build such development within a local authority's area, in any event consent has been granted for a scheme and Government targets have been exceeded.
52. The scheme would not protect the countryside for its own sake, and would not be appropriate to the scale and character of the settlement, and so would conflict with Local Plan policy. It would also result in the removal of over 10,000 trees and use best and most versatile agricultural land, which would damage the prospect of its return to full agricultural use. There have never been any sheep on the land. The Environment Agency has dropped its objection, but the rising water table coupled with runoff from the panels and surface water would exacerbate flooding. Construction traffic would impact the underlying clay. The existing fruit trees mitigate some of the flooding threat. Mr and Mrs Bishop refer to EU policy for renewable energy, and cite statements about subsidised capacity in solar and wind energy schemes resulting in overcapacity.
53. Fiona Pengelley, local resident. The adverse impact upon the character and appearance of Five Oak Green would be significant and of great concern to the local community. The site is neither predominantly flat, nor gently sloping, but follows the contours of Colts Hill. The solar park would be clearly visible from the main footpath out of the village and any newly planted hedges would take over 10 years to mature. There would be a cumulative effect with the permitted

scheme as the two sites would be visible shortly after each other along the same journey. The scheme would grub out over 12,000 trees, and increase the risk of flooding. The best and most versatile agricultural land should be retained for food growth, and there are no special circumstances to use this Green Belt land. It has not been shown that there are no other appropriate sites, eg Transfesa Industrial Estate at Paddock Wood.

54. Bruce and Liz Lynes, local residents. Concerned about the impact on the countryside and its tranquil feel, especially from footpaths around the area. It would have a detrimental effect on the values of the surrounding properties, and make way for more industrialisation. After 25 years the site would become a brownfield site, allowing for housing.
55. Laura Donaghue, local resident. There has been no public consultation and no evidence of any intent of working with the community. Capel Parish Council ignored strong objections from the community. The visual effect of 2.25 m high panels on the local countryside would be huge and the scheme would not respect the site. The site would be a mere 200 m from main living areas on the first floor of some properties. Vegetation is seasonal. Concerned about the cumulative effect with permitted scheme, and loss of the blossom trail and implications for tourism. The community are not willing partners in this development.
56. JW and MA Fenton, local residents. The Metropolitan Green Belt acts as the lungs around London and it is our duty to protect and preserve it from becoming a brownfield site. Connection to the grid here does not amount to very special circumstances, and there is no quota for Tunbridge Wells to fulfil. Locations should be found that are more appropriate following Government guidelines to use brownfield or rooftop sites. Flood risk in Five Oak Green has not been addressed, particularly properties at the eastern end of Badsell Road. The Environment Agency now calculates that greenfield runoff from the site will increase by between 1.8%-8.6%. There is limited space for this to be absorbed and no amount of work to ditches or swales would guarantee that flooding would be eliminated. The risk would remain. Local residents are still trying to settle back into their houses after the floods of 23 December 2013. The removal of trees would have a significant detrimental effect.
57. Mr and Mrs Fenton consider that their basic human right to the peaceful enjoyment of their property has been shattered by the insensitivity of this proposal. The loss of good quality agricultural land would conflict with Government policy and guidance. There is a million square feet of warehousing roof available at one of the largest distribution centres in Europe nearby at Paddock Wood. The village would be sandwiched between two solar photovoltaic developments. Views from local footpaths would be destroyed by either the solar parks or the high hedging necessary to hide them. The proposed development would be overlooked by many properties, including several listed buildings. The Government Response to Consultation on Changes to Financial Support for Solar PV in 2014 refers to evidence that large scale solar PV development is deploying faster than can be afforded. Financial viability of the farm should take into account the growing and selling of Christmas trees. The likelihood of sheep grazing would need to consider insurance and tax implications.

58. Mr and Mrs BR Turner, local residents. Object to the industrialisation of the land immediately bordering their listed property, which forms a central part of the village. An additional solar park would swamp the village and make it a 'no go' area during the construction period. There is still concern about the threat of flooding. Good agricultural land should be used for growing food and the orchard of some 12,000 trees would be destroyed. Mass solar panels are not the answer to long term energy needs, producing only a small percentage of supply, and even less on a dark winter's day when energy needs are greatest.
59. Ewan & Jane Mackenzie, local residents. Flooding is a real and current problem in Five Oak Green. A solution that allows water to be taken through the village to the fields the other side of the railway (the north) would be needed before they would be happy to endorse a development that would add to this runoff.
60. Helen Hardware, address not given. Large quantities of trees would need to be removed and the addition of the solar park would spoil the numerous characteristics of Five Oak Green. The village already has a problem with commercial traffic, inadequate infrastructure and parking. The additional traffic from the scheme would create further damage, congestion and danger.
61. Tara Brooksbank, local resident. The proposed solar farm would ruin the look and feel of the village, which is prone to flooding. The loss of trees would strongly impact on this on-going problem. Solar farms are extremely ugly and unsightly and would bring no benefit to the village. It is the overall feeling that this must not be allowed to happen to this area.

Written submissions in support of the proposed development (15)

62. Mrs M Marsh, local resident. Generating power from sunlight is worthwhile. There is a need to drastically reduce the use of fossil fuels and nuclear power has a long legacy. Solar parks allow for panels to be orientated so as to maximise output, and livestock can still graze underneath the panels. This site is well protected from being overseen, and frost has affected apple crops. Farmers need to be able to diversify.
63. Stephen Davey, local resident. There is a need for energy generation alternatives to using fossil fuels, and this scheme would generate sufficient power for nearly 3,000 households. Wind farms are unsightly and damage wildlife and habitat. So too, do tidal schemes. A solar park has no moving parts and creates no noise. It would not create an additional flood risk, leaves the land suitable for sheep farming, and for return to farming at the end of the life of the panels. A larger solar park on better quality farmland has been permitted at Hadlow.
64. Ann Smith, local resident. We have a responsibility to provide clean energy for future generations. Green Belt land would not be lost as this would be a temporary development and would remain as agricultural land. The land at Hadlow for the permitted scheme was graded 3a.
65. Charles Darbyshire, one of landowners of the appeal site. On poorer sites it is not possible for apple production in the UK to compete with imported product. Growers have to diversify. A solar park with sheep grazing beneath panels would allow farming to continue. Additional rain water storage has been added, and the Upper Medway Drainage Board considers the scheme offered potentially significant flood protection to Five Oak Green. Other benefits include a teaching

- facility, increased wildlife and community benefit fund in excess of £250,000 during its lifetime. The land could easily be returned to bare farmland at the end of its life. Grade 3a land is not that good, particularly if it is within a frost pocket. The site is predominantly flat, surrounded by existing hedging, with any gaps to be filled with new tree plantings. The Council's decision is flawed. It permitted a larger scheme on 3a land in the Green Belt. Both schemes can fit into this area without negative impact. Surveys show 85% support for renewable energy nationally. The appeal should succeed for the sake of securing power supplies for the nation, for farming to continue and to maintain a diverse countryside.
66. Ingrid Cohen, resident of East Peckham. The need for renewable energy solutions is real, and this site lends itself very well to a solar park. There are misconceptions about flood risk and the Environment Agency is now in favour of the proposal. The proposed development is supported by Capel Parish Council and consultees. A comparable application was approved on the Hadlow site.
67. Nicholas Pope, resident of Tunbridge Wells. The UK is in desperate need of renewable energy to meet Government targets. The scheme would have a minor impact on the land, but would provide critical electricity. It would have a dual use with sheep grazing, which seems a good use of land that is not suitable for orchards. The solar park would be well screened from view, and would appear less intrusive than some hillsides covered in plastic to provide protection for fruit and vegetables.
68. Sue Bottomley, local resident. Solar parks are the way forward for the future. The infrastructure would not be seen from the road. Trees and sheep would be on the land. The scheme would not devalue property in the surrounding area.
69. Dr Alaric Smith PhD(Biogeography) MSc (Biology) BSc (Zoology), local resident. The project would provide an excellent source of renewable energy, while providing for increased biodiversity and reduced flood risk, but not changing the status of the land. There is a moral and ethical duty to generate energy in cleaner and more sustainable ways. The visual and physical impacts on the local area would be small in comparison to other projects, such as housing. Solar panels on roofs would only provide a small fraction of the solar plant needed to counteract the effects of global warming.
70. Rhiannon Wellington, address not given. There is a need to embrace sustainable power supplies for future generations. Capel Parish Council supported the scheme, and the Government supports such schemes. The land could still be farmed, for sheep or goats, or used to produce honey. It is currently banded average to poor in terms of farming. The visual impact would be minimal. There is no flood risk, and flooding could be reduced. It could be decommissioned and dismantled easily. A larger scheme on better quality farm land has been permitted at Hadlow.
71. AJ Burgess, resident of Tunbridge Wells. Rejection of this proposal would be at odds with wider policies of promoting renewable and low carbon energy in the locality. Local concerns about visual impact do not appear to be valid. There seems to be some inconsistency with the decision to approve the scheme at Hadlow.

72. Christopher Dennis BSc(Hons) ACIEEM, local resident and professional ecologist. Tunbridge Wells Borough Council should favour such projects because of the responsibility to help tackle climate change. The scale, location and design of the scheme would preserve the landscape character of the area. It would increase biodiversity due to the instatement of wildlife-friendly hedgerows and tree lines.
73. Megan Forster, local resident. Solar panels are no more intrusive or ugly than fields of polytunnels, or the yard of broken buses next to the proposed site. More trees would be planted around the boundary which would compensate for the fruit trees that have come to the end of their productive life.
74. JM Sells, local resident. The site is ideal as being away from the main village and surrounded with high hedges. The scheme would be a great asset for the village. The site would still be able to raise animals and crops on land which has poor soil. With energy shortage the village would be helping the future generation, and a substantial fund would be used for village improvements.
75. Gordon Darbyshire, local resident and partner in Capel Grange Farm. The scheme would enable diversification and to continue top fruit production on areas of the 120 acre farm better suited to this. On land which tends to lay wet in winter, dries out in summer, and is at high risk of frost damage, there is very limited choice. Unviable orchards would be gubbed and not replanted. Solar panels are more effective than crops grown for renewable energy production. Planning conditions could require that the site remain as agricultural land, with removal of the panels after 25 years, unless a new planning permission was granted. The site would not become a brownfield site. It is not technically possible to put solar panels on every large building. Brownfield sites in southern England are needed for housing. In the face of an imminent fuel squeeze and price rises, the case for additional generation capacity is stronger than ever. Solar farms have a comparatively short construction phase and therefore are becoming a significant part of the solution to the energy problem.
76. George Templeton, resident of Tonbridge. This solar park would generate power sufficient to supply around 2,800 homes. The land would remain in farming use for grazing sheep, with minimal visual impact of the site to local homes. Local plans to safeguard electricity supplies should be encouraged. No statutory body has raised objection to the scheme, and Capel Parish Council are publicly supporting the scheme.

Appraisal

Preliminary matters

77. 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.
78. The ES and its addendum reasonably comply with the relevant provisions of the EIA Regulations. I am satisfied that the Environmental Information is adequate for the purposes of determining this appeal, and I have taken it into account in these conclusions and in my recommendation. [2]
79. The extant permission for a 6.6 MW solar voltaic park on a 13.2 ha part of the appeal site is an important material consideration. The on-site differences between the permitted scheme and the appeal scheme were highlighted to me at my site visit. There is nothing to suggest that the 6.6 MW scheme would not be implemented were the appeal to be dismissed. I have, therefore, had regard to the permitted scheme as a realistic fall-back position. [5]

Main considerations

80. In the absence of any matters set out, about which the Secretary of State particularly wishes to be informed for the purposes of considering this appeal, the evidence indicates that the main considerations here are as follows. [1]
- (1) Whether the development conflicts with policy to protect the Green Belt and the effects of the proposed development on the openness of the Green Belt and upon the purposes of including land within it.
 - (2) The effects of the proposed development on its own, and in combination with other photovoltaic development in the area, on the character and appearance of the area.
 - (3) The effects of the proposed development on agricultural land and soils.
 - (4) The effects of the proposed development on biodiversity.
 - (5) The effects of the proposed development on heritage assets.
 - (6) The contribution of the proposed development towards the generation of energy from renewable sources.
 - (7) If the development is inappropriate in the Green Belt, whether the harm by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations, so as to amount to the very special circumstances necessary to justify the development. This balancing exercise first considers the appeal scheme on its own merits, before considering the fall-back position and the additional effects of the appeal scheme, over and above those of the permitted scheme, in terms of both adverse impacts and benefits.
 - (8) The extent to which the proposed development would be in accordance with the development plan for the area.

- (9) The extent to which the proposed development would be in accordance with the *National Planning Policy Framework* (the *Framework*) and *Planning Practice Guidance* (the *Guidance*).

81. I consider whether any permission should be subject to any conditions or obligations and, if so, the form that these should take, before considering my overall conclusions. The remainder of this report addresses the matters outlined above, and my recommendation is based on these findings.

Green Belt

82. The scheme would involve development that is not included in the exceptions set out in paragraph 89 of the *Framework*, and paragraph 90 does not apply. The advice in the *Framework* that elements of many renewable energy projects will comprise inappropriate development applies in this case to the proposed panels, electrical equipment and security installations. The proposal would be inappropriate development in the Green Belt. The *Framework* states that when located in the Green Belt inappropriate development is, by definition, harmful to the Green Belt and should not be approved except in very special circumstances. The *Framework* provides that substantial weight should be given to any harm to the Green Belt, and very special circumstances will not exist unless the potential harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations. [21,32,37,50]

83. The extensive array of solar panels and associated equipment would have a significant adverse effect on the openness of the Green Belt. The scheme would require security fencing and cameras, which would also adversely affect the countryside, even if controlled by condition. The resultant encroachment into the countryside would be at odds with one of the purposes of the Green Belt. [21,32]

84. I find that the proposal would be inappropriate development in the Green Belt. Furthermore, it would be at odds with one of the purposes of the Green Belt, and would erode its openness. The proposed development would, therefore, harm the Green Belt. I next consider whether the proposal would result in any other harm, and then have regard to other considerations, so as to undertake the balancing exercise outlined above.

Character and appearance

85. The site lies within LCA13, which is characterised by a mixed farmed landscape with extensive open arable fields, dwarf fruit orchards and pockets of hops and pasture, with remnant wind breaks providing a strong vertical element in the open flat landscape. The panels and associated infrastructure would be utilitarian structures in this countryside location. The structures of the frames and the panels, along with their regular arrangement in long rows, would be out of keeping with the character of the area. The solar panels would be of a colour and texture that was not typical of its agricultural context, and so the proposed development would introduce a discordant element of significant scale into the local landscape. This area has medium sensitivity to the type of development proposed. Given the proximity of the village, and the nearby PROW links, the proposal would, to some extent, adversely affect the countryside setting of Five Oak Green. With a moderate/high magnitude of effect, the proposal would have

an adverse effect on the landscape resource of moderate significance.
[9,10,16,20,33,49,51,53,54,60,61,66,72,74]

86. I turn next to visual effects.¹⁵ From the PROW to the west of the appeal site the solar panels would be apparent in some views, particularly in winter when trees are not in leaf. This would be likely to be so even with the proposed mitigation measures. From Viewpoints 1, 2 and 3, with high sensitivity receptors and medium magnitude of effects, the proposed development would have a visual impact of moderate/substantial significance. The effect would be localised with views from vantage points further to the west (such as Viewpoints 6 and 10) likely to be of imperceptible or slight significance. From the east and south (Viewpoints 5, 4 and 7) the local topography and intervening vegetation would provide an effective screen. The visual impact of the scheme from these vantage points would be of slight significance. The effect from further afield in this direction (Viewpoints 8, 11, 9, 13, and 10) would be imperceptible. The solar panels would be well screened in views from Badsell Road (B2017) to the north of the site, and would be absorbed into the wider views of the landscape in more distant views from the north (such as from Viewpoints 12, 14 and 15).
[7,8,20,33,37,53,55,61,62,65,67,68,69,70,71,73]

87. The other solar farms in the locality are sited a considerable distance from the appeal site. Given the limited visibility of the appeal scheme from nearby roads any sequential cumulative visual impact for those using local roads to the east and west of Paddock Wood would not be significant. Some sequential cumulative effects might occur for those using the PROW network around Five Oak Green. However, glimpses of the solar parks would be likely to affect only a small part of any such walks. The appeal scheme would not have a significant cumulative adverse impact on the local landscape or the visual amenity of the area.
[6,33,37,51,53,57]

88. The proposal would harm the character of the area, and would have a significant adverse effect on its appearance. Overall, the proposal would have an adverse effect of moderate/substantial significance on the local landscape. The development proposed would be temporary, but the harm to the landscape would last for 25 years, and so would be significant. This harm is a consideration that weighs against the proposal.

Agricultural land and soils

89. The *Framework* provides that the planning system should contribute to and enhance the natural and local environment by, amongst other things, protecting and enhancing soils. It also adds that account should be given to the economic and other benefits of the best and most versatile agricultural land, defined as Grades 1, 2 and 3a land, and where significant development of agricultural land is necessary areas of poorer quality land should be preferred to that of a higher quality. This preference is reiterated in the *Guidance*, which goes on to refer to proposals allowing for continued agricultural use where applicable and/or encouraging biodiversity improvements around arrays of solar panels.

¹⁵ The zone of theoretical visibility and viewpoint locations are shown on ES Figure 6.1.

90. The appeal scheme would use 14.4 ha of Grade 3a agricultural land. Taking this land out of intensive agricultural production and using it for solar panels and grazing for 25 years might, with appropriate management, result in some improvement of soils. I have taken into account that the use of heavy construction equipment on these soils could result in lasting damage, but a method statement could be included in a construction management plan, and a condition could require restoration of temporary access tracks and compounds. [52,62]
91. The current occupiers of the orchard argue that the soils at Capel Grange Farm tend to lay wet in winter, dry out in summer, and are at high risk of frost damage. However, it seems to me that the limited grazing likely to be available under and around solar panels would significantly underutilise a large expanse of the best and most versatile agricultural land for a long time. This would conflict with national policy and guidance, and is a consideration which weighs heavily against the proposed development. [23,28,29,49,52,53,57,58,63,64,65,67,68,70,74,75,76]
92. Such a finding would not be inconsistent with the Council's conclusions for the schemes at Sherenden Road and Knells Farm. The site at Sherenden Road comprised nearly all Grade 3a land, but that scheme included mitigation through upgrading the quality of land elsewhere. The land at Knells Farm was nearly all Grade 3b. [24,30,63,64,65,66,70,71]

Biodiversity

93. The proposed development would require the removal of internal hedges. But these largely function as windbreaks and are species poor. The effects on wildlife would not be significant given the limited diversity of recorded species and the wide availability of similar habitats elsewhere in the locality. Nature conservation interests and any protected species could be adequately safeguarded by the imposition of appropriate planning conditions. Less intensive agricultural use of the site would be beneficial for wildlife, as would improved management of the perimeter hedgerows. Overall, the proposed development would enhance biodiversity. This is a consideration that weighs in favour of the proposal. [29,69,72,73]

Heritage assets

94. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 requires special regard to be given to the desirability of preserving the setting of a listed building. The rural appreciation of the Grade II listed Brook Farmhouse would be impacted, to some extent, by the proposed solar panels because they would be located in a part of the farmhouse's historic landholding. However, the intervening screening by existing and proposed vegetation would limit any adverse impact on the setting of the listed building to moderate significance. There is nothing evident from either the written submissions or from my site visit to indicate that the appeal scheme would have a significant adverse effect on the other heritage items assessed in the ES. [7,57,58,]
95. The proposal would have a moderate adverse effect on the setting of Brook Farmhouse. This is a consideration which should be given special weight and considerable importance in the overall planning balance. In terms of the *Framework* the adverse impact on this asset would amount to less than

substantial harm, and a consideration to be weighed against the benefits of the appeal scheme.

Renewable energy

96. The appeal scheme, with an estimated installed capacity of 10.36 MW and average electrical output of 11,850 MWhr/yr, would make a significant contribution to achieving renewable energy targets. The scheme could service 2,800 homes, with carbon dioxide emission savings of between 122,944 tonnes and 265,144 tonnes over its 25 year life, depending on the energy mix that applied at the time. The proposal would also optimise utilisation of the available grid connection. The wider environmental and energy security benefits of the proposal weigh significantly in favour of allowing the appeal. [17,58,62,64,65,66,67,68,69,70,71,72,74,75,76]

Other matters

97. There is considerable local concern about the potential for the proposed development to exacerbate flooding. The locality has experienced flooding in the past and run-off from hard surfaces has the potential to increase flood risk. However, the submitted Flood Risk Assessment demonstrates that surface water run-off could be adequately controlled. There is scope within the appeal site to design and implement a drainage scheme that would ensure that the development did not significantly increase flood risk. The additional evidence submitted in this regard was sufficient for the Environment Agency to withdraw its objection to the proposal. The likelihood of worse flooding is not a consideration that weighs against the proposal. [41,49,50,51,53,56,58,59,61,63,65,66,69,70]

98. Noise and disturbance, especially during construction and decommissioning, could be minimised by the implementation of an approved construction environmental management plan. Noise from the electricity substation could also be controlled by condition. The proposed landscaping would not, at all times, entirely screen out views of the solar panels from nearby residential dwellings. However, it is likely that vegetation would soften any adverse impact on such properties. Given the separation distance of the proposed panels from nearby properties, and the height of the panels, the scheme would not have a dominating or overbearing effect on the outlook from nearby residential dwellings. Any such effects would fall far short of breaching the human rights of neighbours. There is no evidential basis for claims that the proposal would adversely affect tourism. [55,56,58,76]

99. There is no convincing evidence that construction traffic would significantly increase the risk to those using the local road network. A construction traffic management plan would also help to minimise any congestion or risk to highway safety. [60]

100. Some local residents are concerned, notwithstanding the time limited nature of the proposal, that it would in effect become a 'brownfield' site after any permission expired. No weight should be given to such concerns because the suggested conditions would require removal of the panels and related equipment within 6 months of the expiry of the 25 year period, and restoration of the site to a solely agricultural use. Any other development requiring planning permission proposed for the site would, in the first instance, be a matter for consideration by

the Council. The appeal decisions for other solar farm development cited by the appellant should not be influential in deciding this appeal on its own merits, because much depends on the particular circumstances in each case. [29,54,56,75]

Very special circumstances

101. I deal first with the balancing exercise that applies to the appeal scheme on its own merits, before considering whether any recalibration is justified by the fall-back position.
102. The appellant argues that a range of factors demonstrate very special circumstances, but the balancing exercise that applies here is whether 'other considerations' outweigh the harm. Reference is made by the appellant to constraints restricting the availability of suitable sites, to the available grid connection, the absence of national designations other than Green Belt, and lack of alternative technologies for this site. But even if the appellant's selection process favoured the appeal site, I do not consider that it should be a decisive consideration, especially as Government targets for renewable energy apply nationally. The design of the scheme, including the height of panels and proposed landscaping, is a factor in determining the effect on the appearance of the area, and by itself is not an 'other consideration' for the purpose of this balancing exercise. The absence of a negative effect on local tourism is not a consideration that can be given much weight. [23,31,51,56]
103. Of the factors cited by the appellant and others supporting the scheme, I consider that significant weight should be given to the contribution the scheme would make to the Government's commitment to tackle climate change by reducing carbon dioxide emissions and towards energy security, along with ecological enhancement, and the benefits that would result to the local economy from job creation and farm diversification. The temporary nature of the proposal is relevant insofar as the effects of the scheme, both positive and negative, would endure for a limited period. Little weight can be given to the potential benefits of the scheme as a teaching facility as no details have been provided about how this would be achieved. No weight should be given to the offer by the appellant of a community fund, or to local concerns about the effects on property values. [18,28,31,51,54,57,62,65,68,74]
104. The balancing exercises applied by the Council in determining the applications for the Sherenden Road and Knells Farm schemes do not establish any precedent that should be determinative in dealing with the current appeal, either in terms of the overall outcome or how relevant policy and guidance should be applied to the particular circumstances. There are important differences between the three sites regarding topography and local context, along with differences in the design of the schemes, which make direct comparisons an unreliable basis for drawing conclusions about how the planning balance here should be decided. [24,30,63,64,65,66,70,71]
105. The balancing exercise, for the appeal scheme on its own merits, weighs the significant benefits from generating electricity from a renewable source, and the associated reduction in greenhouse gas emissions and energy security advantages, along with benefits to the agricultural holding from diversification, and to biodiversity and the local economy, against the harm that would result from the proposal. The disadvantages of the appeal scheme include harm to the

Green Belt and to the character and appearance of the area, along with underutilisation of the best and most versatile agricultural land, and an adverse effect on the setting of a listed building. The proposed development would be temporary and the reversibility of the development after 25 years is a relevant consideration. However, the harm would affect the area for a considerable time. [21,25]

106. The harm I have identified to the character and appearance of the area is of moderate/substantial significance. The appeal scheme would also have a moderate adverse effect on the setting of a listed building, which should be given special weight and considerable importance in the planning balance. Substantial weight should be given to the harm to the Green Belt in the balancing exercise which applies here. The significant underutilisation of 14.4 ha of the best and most versatile agricultural land for 25 years is also a factor that weighs heavily against the proposal. Taking all the above into account for the appeal scheme on its own merits, I find that the 'other considerations' in this case do not clearly outweigh the harm I have identified, and the very special circumstances necessary to justify the development do not exist. [25,51]
107. However, the fall-back scheme is an important material consideration, which has the potential to affect the judgements made in the overall balancing exercise to determine whether very special circumstances exist in this case. It is necessary, therefore, to consider the effects of the appeal scheme over and above those of the permitted scheme, both in terms of harm and benefits.
108. The appeal scheme would result in an additional 9.1 ha of solar panels, which would significantly increase the adverse effect on the openness of the Green Belt and encroachment in the countryside. The additional panels would not have much of an influence on the landscape character of the area, over and above that which would result from the permitted scheme. However, siting panels closer to the PROW to the west of the appeal site, and on the higher ground towards the eastern part of the site, would be likely to increase the adverse visual impact to some degree. The appeal scheme would also result in the use of 8.5 ha more Grade 3a agricultural land than would the permitted scheme. Taking more land out of intensive agricultural use would, to some extent, benefit wildlife, but the difference overall for biodiversity between the permitted and appeal schemes would be marginal. [26,34,35]
109. The main benefit of the appeal scheme would be a significant increase of 3.76 MW in the installed capacity of the solar park, above the capacity already permitted. However, there is nothing to indicate that the permitted scheme would not be sufficient to provide adequate diversification to achieve the objectives for the agricultural holding, in terms of future investment in, and the overall viability of, the enterprise at Capel Grange Farm. There are no grounds to find that the additional diversification benefits to the agricultural holding of the appeal scheme, over and above those that would result from the permitted scheme, should weigh significantly in favour of allowing the appeal. [26,34,35]
110. The benefits of the additional renewable energy generated by the appeal scheme, estimated to be 4,300 MWhr/yr over and above that of the permitted scheme, would go a long way to outweighing the additional harm to the Green Belt and to the appearance of the area. But in my judgement, it would not be sufficient to also outweigh the harm that would result from underutilising an

additional 8.5 ha of the best and most versatile agricultural land for 25 years. I do not, therefore, consider that the fall-back position is a material consideration that alters the outcome of the balancing exercise. My judgement remains that the 'other considerations' in this case do not clearly outweigh the harm I have identified, and the very special circumstances necessary to justify the development do not exist. [26,34,35]

Development plan

111. The proposal would be contrary to LP Policy MGB1 because it would not preserve the openness of the Metropolitan Green Belt and would conflict with the purposes of including land within it. Furthermore, the proposed development is not included in the list of acceptable development specified in the policy. It would also be at odds with the aims of LP Policy EN25, as it would not have a minimal impact on the landscape character of the locality. However, the core planning principles set out in the *Framework* encourage the development of renewable energy, whilst recognising the intrinsic character and beauty of the countryside. LP Policies MGB1 and EN25 are not fully consistent with the balancing exercise for sustainable development set out in the *Framework*. [12,13,20,21,32]
112. The appeal scheme would not accord with CS Policy 2 because it would be at odds with its general presumption against inappropriate development in the Green Belt that would not preserve its openness, and would conflict with the purpose of including land within it. This policy also refers to PPG2 or its replacement, and so incorporates reference to the *Framework*, with its balancing provisions for sustainable development, which is addressed in the next section of this report. However, the proposal would conflict with CS Policy 4, which aims to conserve and enhance locally distinctive sense of place and character. It would also be at odds with the policy of restraint pursuant to CS Policy 14 in order to maintain the landscape character and quality of the countryside, and to protect the countryside for its own sake. [12,14,20,21,32]

National Policy and Guidance

113. Relevant policies of the development plan are not fully consistent with the provisions of the *Framework*. Significant weight should, therefore, be given to the *Framework* in determining this appeal. The economic, social and environmental roles for the planning system, which derive from the three dimensions to sustainable development in the *Framework*, require in this case that a balancing exercise be performed to weigh the benefits of the proposed solar park against its disadvantages. For the reasons set out above regarding 'very special circumstances', the balance here falls against the proposal. In particular, the proposal would conflict with Green Belt policy. Furthermore, there is no compelling evidence to justify the use of 8.5 ha of the best and most versatile agricultural land over and above that which would be utilised by the permitted scheme. The proposal would be at odds with the *Guidance*, which encourages the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land. The evidence submitted does not demonstrate that the impacts of the appeal scheme are, or could be made, acceptable. Furthermore, in my judgement, the adverse impacts of the proposal would significantly and demonstrably outweigh the benefits when assessed against the policies in the *Framework* when taken as a whole. I find, therefore, that the proposal would not accord with the requirements for sustainable

development set out in the *Framework*. [25,29]

Conditions and Obligations

114. The Council's Committee Report set out suggested planning conditions, and the appellant has suggested amended wording for some conditions.¹⁶ I have considered the need for conditions and their wording in the light of the advice contained in the *Guidance*.
115. A commencement period of 3 years would be appropriate here (Condition 1). Otherwise than as set out in any decision and conditions, it would be necessary that the development was carried out in accordance with the approved plans, for the avoidance of doubt and in the interests of proper planning (Condition 2). The details of the design and layout would need to be approved (Condition 3). A condition would be required to specify that the permitted development was temporary and for a 25 year period (Condition 4). Decommissioning and restoration to a solely agricultural use would also be necessary (Condition 5). So too, would provision for restoration where any panels ceased to export electricity to the grid for a period of 6 months (Condition 6). An approved programme of archaeological work would be necessary to safeguard heritage assets, but it would not be necessary to specify the details of the programme (Condition 7).
116. Drainage would need to be approved in the interests of the amenity of the area (Condition 8). For similar reasons, a landscape and ecological management plan would need to be approved and implemented (Condition 9). Highway condition surveys and provision for any necessary remediation works would be required in the interests of highway safety (Conditions 10 and 11). However, it would not be necessary to specify in the conditions that the Highway Authority should be consulted. A construction traffic management plan would be necessary for similar reasons (Condition 12). A construction environmental management plan would also need to be approved and implemented to safeguard the amenities of the area (Condition 13). The temporary construction compound and access tracks would need to be removed within three months of the completion of construction works, and external lighting should be controlled, in the interests of the appearance of the area (Conditions 14 and 15). Removal of permitted development rights for means of enclosure would, exceptionally, be necessary here to safeguard the visual amenity of the area and the openness of this part of the Green Belt (Condition 16). Noise controls would be necessary given the proximity of residential dwellings (Condition 17).
117. In the event that the appeal is allowed, Annex A to this report lists the conditions that I consider should be attached to any permission granted. No planning obligation has been submitted, and there is nothing to indicate that one would be required.

¹⁶ Documents 5.1 and 5.2.

Conclusions

118. The Council received 31 representations about the application, including 9 letters in support. The proposal has the support of Capel Parish Council. At the appeal stage there were 11 written submissions objecting to the proposed development, and 15 written representations in support of the scheme. There is some criticism about public consultation for the appeal scheme, but measures to inform and involve the local community reasonably comply with relevant requirements. Local opinion about the proposal is divided. The appeal should be decided having regard to the development plan, and the determination made in accordance with it, unless material considerations indicate otherwise.
[36,37,38,48,55]

119. The proposal would be inappropriate development in the Green Belt. In my judgement, and for the reasons set out above, the 'other considerations' in this case, including the fall-back position, do not clearly outweigh the harm to the Green Belt by reason of inappropriateness, and any other harm, and the very special circumstances necessary to justify the development do not exist. The proposal would conflict with relevant development plan policies, and would not accord with the requirements for sustainable development set out in the *Framework*. There are no material considerations here that would indicate that a determination other than in accordance with the development plan was justified. For the reasons given above and having regard to all other matters raised, I conclude that the appeal should be dismissed.

Recommendation

120. I recommend that the appeal be dismissed. However, if the Secretary of State is minded to disagree with my recommendation, Annex A lists the conditions that I consider should be attached to any permission granted.

John Woolcock
Inspector

ANNEX A - CONDITIONS 1-17

- 1) The development hereby permitted shall be begun before the expiration of three years from the date of this decision.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans;
 - Drawing 1 Existing site plan date stamped 19/05/14.
 - Drawing 2 Construction Plan date stamped 19/05/14.
 - Drawing 3 Operational Site Plan date stamped 19/05/14.
 - Swept Path Analysis turning left off Badsell Road received by email 25/03/14.
 - Capel Grange Block Plan date stamped 03/02/14.
 - Flood risk addendum and hydrology management report date stamped 19/05/14.
 - Existing and Proposed Elevations (21/05/14) date stamped 22/05/14.
 - Existing and Proposed Floor Plan.
- 3) Notwithstanding the details shown on the submitted drawings and documents, no development shall take place until detailed plans and information regarding the following aspects of the proposed development have been submitted to and approved in writing by the local planning authority and the development shall be carried out in accordance with the approved details:
 - a) Details of the design and appearance of the solar panels, at a minimum scale of 1:50;
 - b) Details of the design and appearance of the solar arrays, mounting and means of securing in the ground, at a minimum scale of 1:50;
 - c) Detailed layout of the solar arrays, cable runs, substation, electrical stations, security fencing and CCTV cameras, at a minimum scale of 1:100;
 - d) Details of the design, foundations, external appearance, finish and scale of the substation, electrical stations, security fence and CCTV cameras, at a minimum scale of 1:50;
 - e) Details of the location and design of the pond and swales, including cross sections, at a minimum scale of 1:100.
- 4) The permission hereby granted is for the development to be retained for a period of not more than 25 years from the date when electricity is first exported to the electricity grid (First Export Date), or in the event that electricity is not exported to the electricity grid from the date that works first commenced on site, whichever applies shall indicate the commissioning of the development. Written confirmation of both the commencement of work and the First Export Date shall be submitted in writing to the local planning authority within one month of the event taking place.

- 5) Within a period of 6 months following the end of the 25 year period granted by Condition (4), the solar photovoltaic park hereby permitted shall be decommissioned and the panels and all related above ground structures, equipment (including security fencing) and materials, and all below ground structures, equipment and materials within 750 mm of ground level, shall be removed from the site. No later than 12 months before the decommissioning of the solar photovoltaic park, a decommissioning and restoration scheme for the site shall be submitted in writing to the local planning authority for approval in writing. The scheme shall make provision for the removal of all the above components and the restoration of the site to a solely agricultural use. The approved scheme shall be implemented within 6 months of the restoration scheme being approved in writing by the local planning authority or such other period as the local planning authority may approve in writing.
- 6) If any of the individual solar panels hereby permitted ceases to export electricity to the grid for a continuous period of 6 months then, unless otherwise approved in writing by the local planning authority, a scheme of restoration shall be submitted to the local planning authority for its written approval for the removal of the solar panel(s) and associated equipment and the restoration of (that part of) the site to a solely agricultural use. The approved scheme of restoration shall be fully implemented within 6 months of the date of its written approval by the local planning authority.
- 7) No development shall take place until the applicant, or their agents or successors in title, has secured the implementation of a programme of archaeological work in accordance with a written specification and timetable which has been submitted to and approved in writing by the local planning authority.
- 8) Prior to the commencement of the development hereby permitted, a surface water drainage scheme and drainage management plan shall be submitted to and approved in writing by the local planning authority. The scheme shall be based on sustainable drainage principles and an assessment of the hydrological and hydro-geological context of the development. The surface water drainage scheme shall seek to implement a Sustainable Urban Drainage hierarchy which achieves reductions in surface water run off rates to greenfield rates in accordance with the submitted Flood Risk Addendum and Hydrology Management Report dated May 2014. The development shall be carried out in accordance with the approved details and approved drainage measures shall be retained for the duration of the development as set out in the approved documents.

- 9) Prior to the commissioning of the development hereby permitted, a landscape and ecological management plan (LAEMP) shall be submitted to and approved in writing by the local planning authority. The LAEMP shall include the following:
- a) A landscaping scheme for the site (which may include entirely new planting, retention of existing planting or a combination of both).
 - b) Description and evaluation of features to be managed.
 - c) Ecological trends and constraints on site that might influence management.
 - d) Aims and objectives of management.
 - e) Appropriate management options for achieving aims and objectives.
 - f) Prescriptions for management options.
 - g) Preparation of a work schedule (including an annual work plan capable of being rolled forward over the duration of the development).
 - h) Details of the body or organisation responsible for implementation of the plan.
 - i) Ongoing monitoring.
 - j) Where the results from monitoring show that landscape and ecological aims and objectives are not being met, how contingencies and/or remedial measures will be identified, approved and implemented so that the LAEMP can meet its aims and objectives.
- The approved LAEMP shall be implemented in accordance with the approved details. The approved landscaping/tree planting scheme shall be carried out fully within 12 months of the commissioning of the development. Any trees or other plants which within a period of five years from the commissioning of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of a similar size and species unless the local planning authority gives prior written consent to any variation.
- 10) Prior to the commencement of the development hereby permitted, a condition survey of Badsell Road between the vehicular access to the site and the junction with the A228 Colts Hill shall be submitted to and approved in writing by the local planning authority.
- 11) Within 3 months of the First Export Date a condition survey and report for Badsell Road between the vehicular access to the site and the junction with the A228 Colts Hill shall be submitted to the local planning authority. The report shall identify whether there has been any deterioration in the surface of the road when compared with the survey submitted under Condition (10). If there is any deterioration a schedule of remedial measures, a timescale for their implementation and a methodology for a further condition survey and report and remedial measures shall be submitted to and approved in writing by the local planning authority and implemented in accordance with the approved timescale and details.

- 12) No development shall commence until a Construction Traffic Management Plan (CTMP) has been submitted to and approved in writing by the local planning authority. The CTMP shall include:
- a) details of the construction vehicles (number, size and type);
 - b) details of vehicular routes to and from the site, delivery hours and contractors' arrangements (compound, storage, parking, turning, surfacing, booking system, signage and wheel wash facilities);
 - c) details of the site access points for post development maintenance vehicles;
 - d) details of emergency contact numbers during the construction phase.

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

- 13) No development shall commence until a Construction Environmental Management Plan (CEMP) has been submitted to and approved in writing by the local planning authority. The CEMP shall include details of ground anchoring, ground re-profiling works, temporary storage/construction compound areas, permanent and temporary access routes and construction, the management of surface water, a construction method statement and construction hours. Development shall be carried out in accordance with the approved details.
- 14) Within three months of the completion of the construction of the development, the temporary construction compound and temporary access tracks (where such access track included a new route or hard surfacing) shall be removed from the site and the land restored in accordance with a scheme, the details of which shall first be submitted to and approved in writing by the local planning authority.
- 15) No external lighting shall be installed on the site without the prior written consent of the local planning authority.
- 16) Notwithstanding the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (or any Order revoking and re-enacting that Order with or without modification), no fencing or means of enclosure other than those permitted under Condition (3), shall be erected within or around the site unless details of such means of enclosure have first been submitted to and approved in writing by the local planning authority.
- 17) Prior to the first use of the electricity substation an acoustic report assessing the noise impact shall be submitted to and approved in writing by the local planning authority. The report shall address the issue of noise (including low frequency noise) and vibration from the substation to ensure that there is no loss of amenity to residential or commercial properties. For residential accommodation, the scheme shall ensure that the low frequency noise emitted from the substation is controlled so that it does not exceed the Low Frequency Criterion Curve for the 10 Hz to 160 Hz third octave bands inside residential accommodation as described in *The DEFRA Proposed Criteria for the Assessment of Low Frequency Noise Disturbance 2005*. The equipment shall be maintained in a condition so that it complies with the levels and mitigation measures specified in the approved acoustic report, whenever it is operating. After installation of the approved plant no new plant shall be used without the written consent of the local planning authority.

ANNEX B - APPLICATION PLANS

Drawing 1 Existing site plan date stamped 19/05/14.
Drawing 2 Construction Plan date stamped 19/05/14.
Drawing 3 Operational Site Plan date stamped 19/05/14.
Swept Path Analysis turning left off Badsell Road received by email 25/03/14.
Capel Grange Block Plan date stamped 03/02/14.
Flood risk addendum and hydrology management report date stamped 19/05/14.
Existing and Proposed Elevations (21/05/14) date stamped 22/05/14.
Existing and Proposed Floor Plan.

ANNEX C - DOCUMENTS SUBMITTED AFTER THE SITE VISIT

(Including those requested by the Inspector and provided by appellant in the letter dated 4 June 2015, along with comments from the parties on the permitted scheme)

- | | | |
|----------|--------|---|
| Document | 1 | A list of plans/drawings that comprise the appeal application as determined by the Council. [plans/drawings on file] |
| Document | 2 | A list of other plans/drawings that were considered by the Council to be illustrative material not forming part of the appeal application. [plans/drawings on file] |
| Document | 3 | Details of recently permitted scheme for part of the appeal site. |
| | 3.1 | Decision Notice. |
| | 3.2 | Approved plans and drawings. |
| | 3.2.1 | Construction Plan [on CD] |
| | 3.2.2 | Existing and Proposed Elevations [on CD] |
| | 3.2.3 | Operational Site Plan [on CD] |
| | 3.2.4 | Block Plan |
| | 3.2.5 | Existing Site Plan [on CD] |
| | 3.2.6 | Substation Details [on CD] |
| | 3.2.7 | Existing and Proposed Floorplan [on CD] |
| | 3.2.8 | Application Form [on CD] |
| | 3.2.9 | Environmental Statement Volume 1A [on CD] |
| | 3.2.10 | Environmental Statement Volume 1B [on CD] |
| | 3.2.11 | Environmental Statement Volume 2 [on CD] |
| | 3.3 | Committee report. |
| | 3.4 | Supporting documentation including LVIA. [on CD] |
| | 3.5 | Overlay plan showing appeal scheme and permitted scheme. |
| Document | 4 | Details of schemes under construction. |
| | 4.1 | Decision notice and layout plan for Sherenden Road scheme. |
| | 4.2 | Decision notice and layout plan for Knells Farm scheme. |
| | 4.3 | A location plan for these schemes showing local roads. |
| Document | 5 | Draft conditions. |
| | 5.1 | The suggested conditions submitted by the Council. |
| | 5.2 | The appellant's submitted suggested alterations. |
| Document | 6 | Supplementary written statement on behalf of the appellant. |
| Document | 7 | Supplementary written statement on behalf of the local planning authority. |



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.

3006387

Limolands Farm,
Vaggs Lane,
Lymington

30 March 2016



Department for
Communities and
Local Government

Ms Joanne Plant
Locogen Ltd
5 Mitchell Street
EDINBURGH
EH6 7BD

Our Ref: APP/B9506/W/15/3006387

30 March 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL BY LOCOGEN LTD:
LIMOLANDS FARM, VAGGS LANE, HORDLE, LYMINGTON, HAMPSHIRE**

1. I am directed by the Secretary of State to say that consideration has been given to the report of the Inspector, Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI who carried out a site visit on 12 August 2015 in relation to your company's appeal against the refusal of the New Forest National Park Authority (NPA) to grant planning permission for the construction of a ground mounted solar array, capacity up to 5 megawatts; ancillary infrastructure including fencing, security cameras, inverter kiosks and substation building in accordance with application ref: 14/00817, dated 26 September 2014, at Limolands Farm, Vaggs Lane, Hordle, Lyminster, Hampshire, SO41 0FP.
2. The appeal was recovered for the Secretary of State's determination on 2 November 2015, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to the Town and Country Planning Act 1990 because the appeal site lies within the New Forest National Park and he wishes to consider himself whether or not the development proposal would have any impact on the National Park (NP).

Inspector's recommendation and summary of the decision

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

Policy and statutory considerations

4. In deciding this appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise. In this case, the development plan comprises the New Forest National Park Core Strategy and Development Management Policies Development Plan Document (CSDM), adopted in December 2010. The

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Secretary of State agrees with the Inspector that the most relevant policies in the CSDM are CP4 and CP5 (IR24 and IR29-30). CP4 supports proposals to mitigate climate change through, *inter alia*, increasing small scale renewable and low carbon energy generation and CP5 says that renewable energy schemes that assist in contributing towards the achievement of the national renewable energy targets will be permitted where they are small-scale, located and designed to reduce visual impacts and do not have significant impacts on the special qualities of the NP.

5. Other material considerations which the Secretary of State has taken into account include the *National Planning Policy Framework* (the Framework) and the associated Planning Guidance (the guidance); the CIL Regulations 2010 as amended; the National Parks and Broads Circular (the National Parks Circular); the various statutory provisions which define and limit the purposes of National Parks (IR25-26); and the New Forest Management Plan 2010-2015 (IR28). The Secretary of State has also had regard to the Written Ministerial Statement (WMS): "Planning Update March 2015" which, amongst other things, concerns solar energy.

Procedural matters

6. As indicated at IR4, the Planning Inspectorate ascertained from the appellant, at the Inspector's request, that 29% of the site (approximately 3.9 ha) is Grade 3a (best and most versatile), 67% is Grade 3b and 4% is non-agricultural.

Main issues

7. The Secretary of State agrees with the Inspector that the main considerations in this case are those set out in IR136.

Landscape Character

8. The Secretary of State agrees with the Inspector (IR137) that the manufactured and industrial character of the panels and other structures and equipment would inevitably affect the character of the landscape within the 2 fields and (IR143) that there would be effects on LCA18. The Secretary of State has given careful consideration to the Inspector's reasoning at IR137-142 including the mitigating effects of existing and proposed screening and notes that the Inspector considers that the overall landscape character effects would only be moderate-minor to minor (adverse). However, as the Inspector has acknowledged that the manufactured and industrial character of the panels and other structures and equipment would inevitably affect the character of the landscape within the NP, the Secretary of State considers that significant weight should be given to that.
9. In taking this different view from the Inspector on the degree of harm caused, the Secretary of State has taken account of the NPA's reasoning and conclusion at IR46 that the development would result in a semi-industrial appearance which would be at odds with the rural character of the appeal site, harmful to the landscape character of the area and to the special qualities of the NP. He has also had regard to paragraph 115 of the Framework which requires local planning authorities to give great weight to conserving landscape and scenic beauty in NPs, which have the highest status of protection in relation to landscape and

scenic beauty and, in that regard, has taken account of the need to conserve the key positive landscape attributes of the area arising from its historic origins (IR45).

Visual amenity

10. The Secretary of State agrees with the Inspector (IR144) that no harmful visual impacts on residential amenity have been identified so that the main considerations relate to the possibility of views from public places.
11. The Secretary of State has given careful consideration to the Inspector's observations at IR145-151, but he disagrees with the Inspector's conclusion at IR152 that there would only be some very limited residual harm to visual amenity to weigh in the balance. He notes that this conclusion by the Inspector depends on the mitigation of visual effects by proposed planting and considers that more weight should be given to the harm caused by the time required for that to reach maturity. Furthermore, the Secretary of State is concerned that the proposed planting is then likely to have a permanent effect on the landscape of the NP while the intention is that the appeal scheme would have only a limited life, albeit extending over 30 years (see paragraph 18 below). Overall, therefore he gives moderate weight to the negative impact of the proposal on visual amenity.

National Park

12. The Secretary of State agrees with the Inspector at IR153 that, as a nationally designated landscape, the NP is highly sensitive to change, although he accepts that national policy does not preclude the development of solar farms in national parks. The Secretary of State notes that the main parties agree that the current proposal is not small scale (IR154) and he agrees with that assessment (see paragraph 14 below). He therefore concludes that the proposal is in conflict with CSDM Policy CP4 (which supports increasing small scale renewable energy generation) and all three elements of Policy CP5 (see paragraphs 13 and 14 below), and he gives substantial weight to that conflict.
13. The Secretary of State acknowledges that the appellants and the Inspector have cited other cases within the NP as precedents (IR154-160 and IR162), but he considers it appropriate to assess each case on its own merits and, while he notes the Inspector's assessment at IR158 that there would be no material cumulative visual or landscape effects with the other schemes cited, he balances that against the sheer quantitative impact of an increasing number of solar farms in the NP, which he sees as being at odds with the requirement in paragraph 115 of the Framework to give the highest status of protection to the landscape and scenic beauty of NPs. Therefore, while noting the conclusion of the LVIA referred to at IR161 that the appeal scheme would not harm the most sensitive and fragile landscapes, the Secretary of State nevertheless takes the view that that needs to be seen within the overall context of the purpose of the NP designation – where the less sensitive and less fragile landscapes should complement those of the highest order. He has given careful consideration to the evidence available to him on the potential impact of the scheme within the NP in the context of the requirements of paragraphs 115 and 116 of the Framework, and concludes that the exceptional circumstances have not been demonstrated that would satisfy the

requirements of those paragraphs. Nor does he see any justification for reducing the weight to be given to CSDM policies CP4 and CP5 under the terms of paragraph 215 of the Framework.

14. As the Inspector points out at IR162, “major development” is not defined in the Framework and the Guidance confirms that it is a matter for the decision-maker. Having regard to the scale of the proposal (IR46), the fact that the parties agree that it is not small scale (IR154), the description of it making a “significant contribution” at IR169 and the Inspector’s own concluding comments that it would be a major development (IR191), the Secretary of State, as decision maker, concludes that the proposal should be regarded as “major development”. He has then gone on to assess the appeal scheme against the three criteria set out in paragraph 116 of the Framework and concludes that exceptional circumstances have not been demonstrated in terms of the need for the scheme to be located on the appeal site; the scope and cost of alternatives; or the justification for the detrimental effect on the environment, the landscape and recreational opportunities and the limited extent to which those impacts could be moderated.

Impact on Best and Most Versatile Agricultural land (BMV)

15. The Secretary of State has carefully considered the Inspector’s arguments at IR164-167 in relation to the impact on BMV land, and he agrees (IR172) that the inclusion of BMV land in the development would not of itself warrant the dismissal of the appeal but would be a factor to weigh in the overall planning balance. However, while he acknowledges that the proposal would minimise the use of the BMV land within the site, it would still necessitate the use of about 3.9 hectares of Grade 3a agricultural land, which he sees as representing a significant proportion of the site.
16. He considers that the loss of this BMV land, other than for sheep grazing, weighs substantially against the proposal. He is not satisfied that, in accordance with the WMS of 25 March 2015 (see paragraph 5 above), “the most compelling evidence” has been provided to justify this proposal involving the loss of BMV land, and he does not consider that the appellants have demonstrated clearly that the use of BMV land for this scheme is necessary and justifiable in terms of its loss to the full range of farming practices for which it would otherwise be suitable; and he gives substantial weight to its loss. In coming to this conclusion, he has taken account of the fact that the appellants had taken no account of any differentiation between Grade 3a and Grade 3b agricultural land in drawing up the scheme until that information was sought by the Planning Inspectorate (IR4), despite the fact that paragraph 112 of the Framework requires planning authorities to seek to use areas of poorer quality land in preference to that of a higher quality.

Renewable Energy

17. The Secretary of State acknowledges that the proposal would have an installed capacity of 5MW with the availability of a grid connection and a willing landowner (IR169), and that this would make a significant contribution to the attainment of national and local renewable energy policy objectives and targets. He gives substantial weight to the contribution the scheme would thereby make to the Government’s commitment to mitigate climate change by reducing carbon dioxide emissions and helping to improve the security of energy supply.

Other matters

18. The Secretary of State has also noted the Inspector's comments on commoner grazing rights for cattle (IR173-175), and agrees that the use of the appeal site for sheep grazing would accord with the aim set out in the planning guidance¹ of allowing for continued agricultural use. However, the Secretary of State considers that the use of the BMV land for sheep grazing needs to be seen in the context of other, potentially more productive, uses for the BMV land (see paragraph 15 above), and so he gives it very little weight as a benefit. He does, however, give moderate weight to the bio-diversity benefits of the proposed scheme, as described at IR176 and IR183; and also gives moderate weight to the benefits that would result to the local economy from long term farming security and farm diversification (IR181-182). With regard to the temporary nature of the scheme (IR177), the Secretary of State takes the view that 30 years is a considerable period of time and the reversibility of the proposal is not a matter to which he has given any weight. He considers that a period of 30 years would not be perceived by those who frequent the area as being temporary and that the harmful effect on the landscape would prevail for far too long.

Conditions

19. The Secretary of State has considered the proposed conditions, as set out in the Schedule to the IR, and the Inspector's comments on them at IR184-185. He is satisfied that these conditions are reasonable and necessary and would meet the tests of the Framework and the guidance. However, he does not consider that the imposition of these conditions would overcome his reasons for refusing the appeal.

Planning obligation

20. The Secretary of State has considered the Inspector's comments at IR185 on the S106 Planning Obligation dated 26 June 2015, and agrees that the provisions are compliant with the Community Infrastructure Levy Regulations 2010 as amended.

Overall balance and conclusions

21. The Secretary of State concludes that, as the appeal scheme conflicts with CSDM Policies CP4 and CP5, it cannot be regarded as being in accordance with the development plan; and he is satisfied that, in accordance with paragraph 215 of the Framework, the relevant CSDM policies can be given full weight as being consistent with the Framework. Hence, in accordance with section 38(6) of the Planning and Compulsory Purchase Act 2004, he has gone on to consider whether there are sufficient material considerations to indicate that the appeal should nevertheless be determined otherwise than in accordance with the development plan.

22. With regard to the material considerations in favour of the scheme, the Secretary of State gives substantial weight to the contribution the scheme would make to the Government's commitment to mitigate climate change by reducing carbon

¹ paragraph 5-013-20130327

dioxide emissions and helping to improve the security of energy supply. He also gives moderate weight to the bio-diversity benefits of the proposed scheme and to the benefits to the local economy from long term farming security and farm diversification. However, against those considerations, the Secretary of State considers that, as a “major development”, the scheme fails to accord with the terms of the Framework, particularly paragraphs 112 and 115-116, and he gives substantial weight to that conflict. He also gives substantial weight to the loss of 3.9 ha of BMV land for the appeal scheme in view of the lack of compelling evidence to justify that loss; and moderate weight to the negative impact of the proposal on visual amenity with no weight to the potential reversibility of the proposal.

23. Overall, the Secretary of State considers that the benefits of the scheme are outweighed by the factors weighing against it and that there are no exceptional circumstances that would nevertheless justify the scheme. He therefore concludes that there are no material considerations in favour of the proposal of sufficient weight to justify determining the appeal other than in accordance with the development plan.

Formal Decision

24. Accordingly, for the reasons given above, the Secretary of State disagrees with the Inspector’s recommendation. He hereby dismisses your client’s appeal and refuses planning permission for the construction of a 13.6 hectare solar park, to include the installation of solar panels to generate electricity, with substations, cabins, fencing and other associated works in accordance with application ref: 14/00817 dated 26 September 2014, at Limolands Farm, Vagg Lane, Hordle, Lymington, Hampshire, S014 0FP.

Right to challenge the decision

25. 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. A copy of this letter has been sent to the New Forest National Park Authority. A notification letter/email has been sent to all other parties who asked to be informed of this decision.

Yours faithfully

Jean Nowak

JEAN NOWAK

Authorised by the Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by Robert Mellor BSc DipTRP DipDesBEnv DMS MRICS MRTPI

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

Date: 30 November 2015

Town and Country Planning Act 1990 New Forest National Park Authority Appeal by Locogen Ltd

Site Visit carried out on 12 August 2015

Limolands Farm, Vaggs Lane, Hordle, Lymington, Hampshire SO41 0FP

File Ref: APP/B9506/W/15/3006387

File Ref: APP/B9506/W/15/3006387

Limolands Farm, Vaggs Lane, Hordle, Lymington, Hampshire SO41 0FP

- 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 Locogen Ltd against the decision of New Forest National Park Authority.
- The application Ref 14/00817, dated 26 September 2014, was refused by notice dated 17 December 2014.
- The development proposed is described on the application and appeal forms as: 'Ground mounted solar array; capacity up to 5 megawatts; ancillary infrastructure including fencing, security cameras, inverter kiosks and substation building'.

Summary of Recommendation: That the appeal be allowed.

Procedural Matters

1. The appeal form is dated 9 March 2015 and the accompanied site visit was carried out on 12 August 2015. Necessary additional information about agricultural land quality was sought from the Appellant on 21 August 2015 and was submitted on 3 September 2015.
2. Although under the Town and Country Planning (Determination of Appeals by Appointed Persons)(Prescribed Classes) Regulations 1997, the appeal was to have been decided by an Inspector, the Secretary of State now considers that he should determine it himself. Accordingly, and in exercise of his powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990, on 2 November 2015 the Secretary of State directed that he shall determine this appeal instead of an Inspector.
3. The reason for this direction is because the Secretary of State notes that the appeal site lies within the New Forest National Park. He would therefore wish to consider himself whether or not the proposal would have any impact on the National Park and the appeal is therefore being recovered because of the '*particular circumstances*'.
4. The Appeal Form at Qn.I (part two) states that this is not an agricultural holding. However the application form described the site as agricultural land. It is owned and obviously farmed as a beef unit holding by Mr R Bowring on whom notice was served of both the application and appeal. In the circumstances I have taken the response to Qn.I to be in error. However nobody would thereby be prejudiced. Notice was also served on a Mr S Brewis who has an interest in the adjacent woodland and in the land connecting the 2 fields on the appeal site and on Hampshire County Council in respect of the road access. The application site was described as Grade 3 agricultural land. At the appeal stage, the Inspectorate queried whether this was Grade 3a ('good' – 'best and most versatile') land or Grade 3b 'moderate'. The Appellant submitted a survey report which identifies that 67% is Grade 3b, and 29% is Grade 3a and that the remaining 4% is non-agricultural (mainly access). The Grade 3a land would amount to approximately 3.9ha out of 13.6ha.

Environmental Impact Screening

5. The Authority issued a screening opinion that, having regard to the scale and location of the development and environmental sensitivities, an Environmental Impact Assessment was not required. I concur.

The Site and Surroundings

6. The site lies in enclosed countryside in Sway Parish between the villages of Hordle and Sway. Whilst the site address is given as Vaggs Lane (where the Limolands farmstead is located), the construction and maintenance access would use an existing access point on Arnewood Bridge Road.
7. The appeal site is located in open countryside within the New Forest National Park which, alongside Areas of Outstanding Natural Beauty, has the highest status of protection in relation to landscape and scenic beauty.
8. The site comprises 2 large fields totalling 13.6 hectares which are linked by a narrow strip of land. The northern field is set away from the highway beyond intervening paddocks and a group of farm buildings at Swaylett Farm. It would be linked to Arnewood Bridge Road by an existing access route. Another new access route would link the northern field to southern field. The latter route passes between areas of woodland, one of which is both ancient woodland and a Site of Interest for Nature Conservation (SINC).
9. The 2 fields are enclosed in part by the woodland and otherwise by hedgerows that incorporate mature trees. In some places the hedges already provide a tall and continuous screen. Elsewhere the hedgerow trees have shaded out other vegetation but the trees still provide a screening or filtering function, particularly in longer views.
10. There is a railway line which lies to the north west and immediately to the south of this railway line is a public footpath. In general, the levels within the northern field are relatively flat although the land does drop away towards the north western boundary and to the south eastern corner of the field.
11. The southern field of the appeal site is bounded by similar agricultural pastoral countryside to the east and south, and by ancient woodland to the north. This field benefits from more limited views from the public realm when compared to the northern field. Notwithstanding this, there are sporadic views from the adjoining fields and the land drops away towards the southern and eastern boundaries.

Planning Policy

12. The appeal is required by statute to be determined in accordance with the provisions of the development plan unless material considerations indicate otherwise. The development plan here includes the New Forest National Park Core Strategy and Development Managements Policies DPD (2010) (the CSDM).
13. Other important material considerations include: the National Planning Policy Framework (2012) (the Framework) which postdates the CSDM and replaces national previous policy to which the CSDM refers; and national Planning Practice Guidance (PPG) which expands on Government policy.
14. The appeal site lies within the New Forest National Park. Relevant material considerations therefore also include: the statutory purposes of the National Park Authority; the New Forest Management Plan 2010-2015; and the English National Parks and the Broads Circular 2010 (the National Parks Circular).

Renewable Energy

15. The most directly relevant development plan policy is CSDM Policy CP5 *Renewable Energy* which in summary will permit renewable energy schemes that assist towards national renewable energy targets where they: (a) are small scale; (b) are located and designed to reduce visual impacts; and (c) do not have significant impacts on the special qualities of the National Park.
16. CSDM Policy CP4 *Climate Change* supports proposals to mitigate climate change including through increasing small scale renewable and low carbon energy generation.
17. The encouragement of renewable energy is referred to in the Framework's core planning principles (paragraph 17). At paragraph 93 the Framework describes renewable energy as '*... central to the social, economic and environmental dimensions of sustainable development*'. Paragraph 97 seeks to increase the supply and use of renewable energy and also seeks recognition of the responsibility of all communities to contribute to energy generation from renewable or low carbon sources. Paragraph 98 seeks that an application is approved if its impacts are (or can be made) acceptable.
18. The PPG is guidance rather than policy but it acknowledges that the need for renewable energy does not '*automatically override*' environmental protections. It follows that it is necessary to weigh any environmental harm with the benefits, including the wider environmental benefits. The PPG advises that '*large scale*' solar farms are to be '*focussed*' on previously developed and non agricultural land but does not preclude such development on agricultural land.

Rural Economy

19. CSDM Policy CP17 *The Land Based Economy* seeks to support land-based businesses that help to maintain the overall character and cultural identity of the National Park by measures that include: '*(a)(ii) maintaining the supply of land available for back up grazing on the enclosed lands; resisting the loss of back-up grazing through development or change of use*'; '*(b)(ii) farm diversification where this would help to sustain the existing farming business*' including '*non-agricultural diversification through the use of redundant farm buildings, where the new use would have a low environmental impact*' and '*(iii) helping to support markets for local produce and products*'.
20. CSDM Policy DP1 *General Development Principles* sets out principles for all types of development. It is not specific to renewable energy or farm diversification. It seeks amongst other things to respect the natural environment, landscape character and bio-diversity and to avoid adverse effects to amenity through visual intrusion. Paragraph 112 of the Framework provides that authorities should take into account the economic and other benefits of the '*best and most versatile*' agricultural land. Where significant development of agricultural land is necessary, authorities should seek to use areas of poorer quality land in preference to that of a higher quality.

Landscape

21. In the New Forest Landscape Character Assessment 2015 (the LCA) the site is in character area LCA 18 '*Sway Pasture and Residential Settlements*.' Key characteristics that apply to the area around the appeal site include: '*farmed*

plateaus'; 'small scale landscape with a strong sense of enclosure'; 'ancient field pattern of small pastures and hedgerows [is] an important area for grazing and recreational horse keeping'; 'ancient semi-natural woodlands and roadside oaks give a feeling of being 'in the forest''.

22. The LCA recommended future landscape management guidelines include: *'to protect the mosaic of small scale fields, enclosed by well managed hedgerows'; 'management to retain and enhance the strong hedgerow network'; 'manage and enhance links between the hedgerow network and the area's woodlands to create a complete ecological network'; 'protect the landscape's traditional pastoral character, particularly that associated with areas of historic and traditional field patterns; protect and manage the important stock of pasture for the grazing of commonable animals'.*

Visual Amenity

23. The PPG advises at ID 5-013-20150327 that: *'The deployment of large-scale solar farms can have a negative impact on the rural environment, particularly in undulating landscapes. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively'. It also refers to: 'the potential to mitigate landscape and visual impacts through, for example, screening with native hedges'.*
24. CSDM Policy CP5 provides amongst other things that renewable energy developments are to be *'located and designed to reduce visual impacts'*. The PPG advises at ID 5-013-20150327 that for ground mounted solar panels *'with effective screening and appropriate land topography the area of a zone of visual influence could be zero'.*

National Parks

25. Together with Areas of Outstanding Natural Beauty, National Parks have the highest status of protection in relation to landscape and scenic beauty. The Framework provides at paragraph 115 that *'Great weight should be given to conserving landscape and scenic beauty in National Parks ...'*. Paragraph 116 states that planning permission should be refused for major developments in National Parks except in exceptional circumstances and where it can be demonstrated they are in the public interest. Consideration of such applications shall include an assessment of any detrimental effect on the environment and landscape and the scope for developing elsewhere outside the designated area. There is no policy definition of major development.
26. The statutory purposes of the National Park Authority are: *'(a) to conserve and enhance the natural beauty, wildlife and cultural heritage of the New Forest; and (b) to promote opportunities for the understanding and enjoyment of the special qualities of the area for the public'*. Section 62(2) of the Environment Act 1995 states that in exercising or performing any functions in relation to, or so as to affect, land in a National Park, any relevant authority shall have regard to such purposes. When National Parks carry out these purposes they also have a duty to: *'seek to foster the economic and social well-being of local communities within the National Parks'*.
27. Also of particular relevance to renewable energy development in National Parks is Paragraph 47 of the English National Parks Circular 2010 (the Circular) to which

there is a cross reference at paragraph 115 of the Framework and which provides amongst other things in relation to climate change that: *'Assumptions about the value of the traditional appearance of the countryside may have to be challenged as the needs which shape its future may be different from those which have shaped its past.'* ... *'The Parks should be exemplars in renewable energy. Authorities need to work with local communities to reach a position where renewable energy is the norm in all Parks whilst not compromising their overriding duty under the 1949 Act'* ... *'National Parks offer important opportunities for renewable energy generation which must not be overlooked, including ... solar power installations appropriate to the national value of the landscape'*.

28. The New Forest National Park Management Plan identifies ten core topics for the National Park, including Objective 4 'planning for climate change'. This outlines the aim to plan for the likely impacts of climate change on the New Forest by *"supporting local or community-based initiatives for producing renewable energy"*.
29. The CSDM Policies CP4 and CP5 seek to give effect to these provisions by supporting renewable energy development, subject to criteria. In particular CSDM Policy CP5 will permit renewable energy developments that amongst other things, *'do not have significant impacts on the special qualities of the National Park'*. That does not preclude all adverse impacts.
30. Policy CP5 also provides that renewable energy development should be *'small scale'* but that term is not defined.

Planning History

31. A planning application for the construction of a 14 hectare solar farm, to include solar panels to generate electricity, associated plant buildings, perimeter fencing, CCTV cameras, landscaping and associated works was withdrawn on 15 August 2014. (Council Ref: 14/00470). The appeal proposal relates to a planning application which amended that earlier scheme.
32. The Appellant has drawn attention to 2 solar farm developments of similar scale that in 2011 were permitted elsewhere in the National Park by the National Park Authority at Cadland and Hamptworth. The relevant officer reports are at Documents LIM048 to LIM050 and include a report concerning a permitted extension to the Cadland solar farm in 2013 that postdates the introduction of the Framework.

The Proposal

33. There is a site location plan at Document Limo002. The proposal is to site solar panels in rows within each of the two fields. The existing hedgerows would be retained and reinforced with new planting. A 2m security fence would surround each group of panels leaving land outside the fence for bio-diversity enhancement such as meadow planting. Security cameras would be mounted along the fence at intervals on 2m poles. The open areas between the rows of panels and inside the security fence would be grass seeded for grazing by sheep. A layout plan that also shows the proposals for screening and biodiversity enhancement is at Document LIM005. There are photographs of the site and its surroundings at Document LIM015.

34. The Appellant did not agree the amended description used by the Council. Whilst that described the proposal as a '14 hectare solar farm', the site area on the application form is given as only 13.6 hectares. Moreover the solar panels would cover only part of that area. That would allow grazing by sheep between the panels and would retain areas for bio-diverse planting outside the security fence. The appeal has been determined on the basis of the original description.
35. The Council's Decision Notice described the proposal as a '*resubmission of planning permission 14/00470*'. However the planning application under that reference was withdrawn in August 2014 and no planning permission was granted. In any event the appeal proposal has included amendments to that scheme to reduce its impact compared to that proposal.

S106 Planning Obligation

36. At the appeal stage the Appellant submitted a unilateral undertaking by the developer and the landowner to carry out additional planting of suitable native species in identified tree lines and hedgerows at Limolands Farm. These hedgerows are outside the appeal site but are on land in the same ownership as the appeal site (Mr Bowring). The locations are shown on the application drawing at Document Limo005.

THE CASE FOR NEW FOREST NATIONAL PARK AUTHORITY

Introduction

37. The appeal application was refused for the following reasons:
1. The proposal would have a detrimental impact on the landscape character (in both short and long distance views) of the area by virtue of its existing intermittent boundary screening and the position of array and infrastructure on the slopes within the site. The proposal is considered not to be small scale and would have an adverse impact on the landscape character of the area and the special qualities of the National Park. Notwithstanding the above it is also considered that the proposal would have an unacceptable cumulative impact on the intrinsic landscape character of the National Park. It has not been demonstrated that the scheme could be considered as a form of agricultural diversification that would outweigh setting aside the adverse impact on the landscape of a scheme of this size and the scheme would therefore be contrary to Policies DP1, CP5 and CP17 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010), the National Planning Policy Framework and National Planning Practice Guidance.
 2. The proposed development, by virtue of its scale, would result in the loss of potential back-up grazing land which is essential to the future of commoning, and therefore would be contrary to policy CP17 of the New Forest National Park Core Strategy and Development Management Policies (DPD) (December 2010).

Planning Policy

38. The appeal site is subject to primary legislation and stringent planning policies which seek to maintain the unique character of its countryside, and to avoid the cumulative effect of increasing the level of built development.
39. The Core Strategy was adopted in December 2010 and sets out the spatial vision for the National Park to ensure that at the end of the plan period (2026) the New Forest's outstanding natural beauty has been safeguarded and enhanced. The spatial vision includes ensuring that the Park remains an area with a unique and immediately recognisable sense of place, with a mosaic of landscapes, where traditional land management practices continue to thrive and inherent characteristics and local distinctiveness of villages have been retained and enhanced through the highest standards of design.
40. Land-based business, such as agriculture, commoning and forestry, play an important role in supporting the rural economy and maintaining the characteristic New Forest habitats and landscapes. Where agricultural diversification would be beneficial to the New Forest this should be supported. Furthermore, it is important to ensure that the supply of back-up grazing land is maintained by resisting the loss of back-up grazing through development or change of use. This is because commoning is a traditional practice of the New Forest forming part of the Forest's identity and is integral to the maintenance of the essential landscape character and cultural heritage of the area.

The Authority's Case for Dismissal

41. The Authority recognises its responsibility to contribute towards renewable energy production. Paragraph 5.40 of the Core Strategy confirms that the potential for renewable energy within the New Forest National Park will need to be balanced against the potential adverse visual and amenity impacts and that permission should only be granted where it can be demonstrated that the objectives of the National Park designation will not be compromised. Policy CP5 confirms that renewable energy schemes will be permitted where they are small-scale, are located to reduce visual impacts and do not have any significant impacts on the special qualities of the Park.
42. The emphasis within the policy framework is on supporting small-scale community based schemes. Given the size of the proposed scheme set within a 13.6 hectare site together with the proposed energy output it is not thought the proposal could be considered as being small-scale and this is not disputed by the appellant. While larger scale schemes are not explicitly precluded by national policy, the key policy requirement is the demonstration that the objectives of the National Park designation will not be compromised by the development. If there were significant adverse effects on the special qualities of the Park these would need to be clearly outweighed by environmental, social and economic benefits. Given that the scheme is not small scale, consideration therefore needs to be given as to whether there are other policy reasons which would outweigh the presumption in policy CP5 against larger scale schemes.
43. It is considered that there are three main issues in respect of this appeal:

- i) The impact of the proposals on the landscape character of the site, the surrounding locality and the intrinsic landscape value of the National Park generally.
- ii) The wider socio-economic and environmental benefits.
- iii) The loss of back-up grazing land.

(i) Landscape

44. The New Forest is renowned for its diversity of landscapes, natural beauty and amenity value and the combination of heathland, mire and pasture woodlands has a unique cultural identity which has been afforded the highest status of protection. The Authority's primary duty is to deliver the two statutory purposes to conserve and enhance natural beauty, wildlife and cultural heritage of the land within the National Park and promote opportunities for the understanding and enjoyment of its special qualities by the public. The planning system plays a key part in the delivery of these two purposes.
45. The nature of the landscape in the vicinity of the appeal site is one of very sporadic development consisting of dwellings contained in their own defined curtilages and for the most part is characterised by undeveloped fields. It is a landscape with historic origins and of New Forest character, defined by small rectilinear paddocks and fields, which are often used for grazing. It is these ancient field patterns, of small wavy and parliamentary fields surrounded by a network of hedgerows, such as those surrounding the appeal site, which form key positive landscape attributes of this area as is identified by the Landscape Character Assessment (appendix 1).
46. The proposal would result in approximately 20,000 solar panels mounted on rows of metal frames which would have a height of 2m covering a 13.6 hectare area. The development would also require associated infrastructure such as a temporary hardstanding, the upgrading and construction of a new access track measuring a total 900m in length, security fencing of approximately 2m in height together with CCTV mounted on poles of a similar height and plant buildings. The Authority considers the cumulative impact of the proposed development would result in a semi-industrial appearance which would be at odds with the rural character of the appeal site, which is undulating fields with hedgerows typical of the character of this part of the New Forest, harmful to the landscape character of the area and the special qualities of the National Park.
47. The public footpath located to the south of the railway line affords views across the appeal site, particularly towards the northern and north western boundaries of the 'northern field'. There are also sporadic views from the adjoining fields of the 'southern field'. It is acknowledged that the Appellant proposes additional planting to the existing hedgerows as shown on drawing number LIM005 V2 to help screen views of the solar panels and associated infrastructure from the public footpath and has submitted a S106 unilateral undertaking to this effect. However the proposed additional planting would only be effective during the summer months and it is considered views of the northern field would still be afforded from the public footpath due to the topography of the land in the north western corner resulting in an unacceptable harmful visual impact.

48. Even if no public views were afforded of the site this does not mean that landscape impact should be discounted. The Framework acknowledges planning should [recognise] the intrinsic character and beauty of the countryside (para 17). The importance of considering landscape character in decisions, in both designated areas which have the highest level of protection, such as the New Forest National Park, but also non-designated areas, was recently emphasised by the Government in a letter from Brandon Lewis dated March 2015. There are many parts of the New Forest that cannot be seen from public vantage points however this does not confer a propensity for development on those areas. Landscapes seen and unseen from public vantage points are of equal value and are equally protected; it is the mosaic of landscapes within the New Forest National Park which contribute to its unique character. The proposal by virtue of its large scale and unnatural, semi-industrial appearance would have a significant effect upon the fabric, character and quality of the landscape and would become a defining characteristic of the landscape to the detriment of the Park's special qualities and its statutory purposes. The result of the development would therefore be significantly at odds with the weight to be given to conserving the landscape and scenic beauty of the New Forest National Park contrary to local and national planning policy.

(ii) The Wider Socio-Economic and Environmental Benefits

49. Policy CP17 confirms that land based businesses that help maintain the overall character and cultural identity of the National Park will be supported by supporting farming that is beneficial to the Forest through farm diversification as is set out in paragraphs 11.19 and 11.20 of the Officer Report.

50. The information submitted with the application on this matter is not considered to be comprehensive despite this being raised as a concern on the previously withdrawn application. In cases where a genuine farm diversification scheme can be demonstrated the Authority would expect a detailed business plan, both short and long term, setting out the growth of the agricultural holding over the next 3-5 years and how the income achieved from the solar farm would be re-invested back into this agricultural activity to ensure that the agricultural enterprise remains core and the main activity within the site. The Appellant has not therefore validated his intentions and for these reasons the Authority would contend that the proposal would not form part of a well-conceived farm diversification scheme and would have limited wider socio-economic benefits which would not outweigh the harmful impact upon the landscape character of the National Park and its intrinsic landscape character.

(iii) The Loss of Back-Up Grazing Land

51. Commoning has played a vital role in creating the landscapes and habitats of the Forest over many hundreds of years. It is a traditional land management practice which is under threat from increasing competition from different land uses. There are several rights over the forest including: common of pasture, pasture of sheep, mast, fuel wood, marl and turbarry. The most important of these rights today is that of pasture which allows animals (ponies, donkeys and cattle) to be turned out into the open forest. A report undertaken by the Authority in 2013 (appendix 3) found that 57% of these animals were ponies and 36% cattle.

52. Whilst commoners have rights to graze their animals in the open forest, they also require back up grazing areas in the enclosed agricultural lands as this is

essential in providing land for extra winter grazing as well as a supply of fodder for their livestock. The *State of the Park Report* in 2013 estimated that approximately 4,250ha of land was used for back up grazing land to support commoning in the Forest however commoners were still identifying the need for further access to back up land to help support their commoning activity. It is therefore important that agricultural land, especially land which is adjacent to, or has the right of pasture, is not developed or lost to other uses in accordance with policy CP17. Policy CP17 explicitly states the loss of back-up grazing through development or change of uses will be resisted.

53. A large part of the appeal site has been identified by the Verderers as having the right of pasture, shown as parcel numbers 797 and 728 on the map attached as appendix 4. This means that part of the northern field and the southern field have commoners rights to graze animals in the forest. Given therefore the commoning rights which are attached to the land, together with the hectareage of land which would be lost as a result of the proposal, it is important that the land remains in agricultural use to support current and future commoning activity around this area of the forest. The proposal would result in the direct loss of both parcels of land identified by the Verderers as having the right of pasture, together with adjacent parcels of agricultural land, which would support the historic system of commoning unique to the New Forest. The proposal is therefore contrary to policy CP17 and would harm the special qualities of the National Park in that it would fail to maintain not only the character of the National Park but also its cultural identity.

NPA Comments on the Appellant's Grounds of Appeal

Reason No: 1

54. The Appellant states that the fact that the existing and proposed hedgerow planting and existing woodland will help to screen the development and therefore *'the intrinsic qualities that underpin the landscape and scenic beauty of the New Forest will be unaffected'*. It is important to refute the concept that just because a site is not completely visible from a public vantage point then a greater propensity for development is conferred on that site. There are many locations in the New Forest National Park that are not readily visible from public vantage points but that does not make them less sensitive to development. There is also the question of seasonal variations to the screening potential of hedgerows and woodland which is not addressed by the appellant. A hedgerow will have less ability to screen in the winter months than in the summer months.
55. The Appellant states that *'the location of the development avoids harm to the most sensitive and fragile landscapes - namely the extensive areas of unenclosed woodland, grassland and heath and the associated qualities they underpin.'* The New Forest National Park Authority does not zone the area within its boundaries into areas of greater or lesser sensitivity or fragility as the whole of the New Forest is afforded the highest level of landscape protection in both primary legislation and national planning policy. The area within the cattle grids, or the perambulation (where stock grazes freely), referred to by the appellant as unenclosed, is one of the iconic landscapes within the whole New Forest National Park, one that many tourists associate with the New Forest. It is, however, not the only landscape within the boundary of the New Forest National Park and the Authority does not have a lower threshold of sensitivity on the enclosed

landscape that surrounds the perambulation area. Indeed the long process of drawing up the boundary to the New Forest National Park was fully consulted upon at the time and forms part of the legislation that protects the landscape within the boundary, without differentiating between enclosed and unenclosed landscapes.

56. The enclosed landscape which makes up around 50% of the designated National Park has strong historic links to the unenclosed heathland and woodland and is inextricably linked to the function of grazing animals over the centuries that has created the New Forest mosaic of landscape types as we know it today. The enclosed landscape stretched much further north, west and eastwards in centuries past and the recognition of the importance of what remains of this historic landscape and its close relationship to the unenclosed landscape was one of the factors that led to it being included within the National Park boundary.
57. The Appellant states that the two fields are not sloping. The land does slope in a natural way towards the watercourses in the immediate vicinity, as would be expected. The northern end of the northern field lies on the 40 metre contour, the southern end on the 35 metre contour, a drop of 5 metres over an approximate distance of 339 metres. The southern field has a drop of 5 metres between the 35 metre contour and the 30 metre contour over an approximate distance of 138 metres. This would constitute a slope to both fields, one steeper than the other.
58. The two previously permitted schemes referred to by the Appellant are considered to be different to the appeal scheme in that there were considered to be wider socio-economic and environmental benefits unique to those schemes which on balance were considered to support the continuing stewardship of the New Forest. As with every application, these schemes were assessed on their own individual merits. The Authority has recently refused another large solar development within the National Park at Exbury. The Officer's report is attached to the Authority's appeal statement at appendix 5.
59. Furthermore, since the consideration of the two schemes referred to by the appellant the PPG has been updated to emphasise the need to focus large-scale renewable energy developments on previously developed or non-agricultural land. This guidance post dates the applications referred to by the appellant and highlights the change in Government policy and guidance on solar development in the last 2-3 years. The PPG (2014) section on renewable energy for example is clear that local planning authorities should encourage the effective use of land *"...by focusing large scale solar farms on previously developed and non-agricultural land,.."* .
60. The Authority considers that the Appellant mis-represents the Authority's socio-economic duty. This duty is not a third purpose and the wording of the Environment Act 1995 is clear that National Parks should seek to foster the economic and social well-being of local communities within the Park while pursuing the two statutory purposes. The duty is therefore only relevant when the Park purposes are met. The socio-economic benefits of a project cannot be a factor if the proposal does not conserve and enhance the National Park.

Reason No: 2

61. The Appellant has stated that the installation of solar panels would not result in the field not being able to be used as grazing as it would be appropriate for sheep to graze. 93% of the animals turned out into the forest are either cattle or ponies. The number of properties which have rights of common for sheep within the forest is very low and these commoners, as has been identified by the Appellant, do not live within the vicinity of the appeal site. The installation of solar panels on this land would, however, mean that it would not be suitable for the grazing of ponies and cattle which constitutes the main animal stock turned out into the forest. Furthermore, it should be noted that back-up grazing land is not only used for additional winter grazing but also for fodder for the livestock. It would not be possible to harvest hay from these fields if the solar development were to be granted.

Conclusion

62. For the above reasons the Authority contends that the proposed development does not accord with the development plan or the Framework. The Framework's presumption in favour of development acknowledges that National Parks are areas where development may be restricted. The PPG states that the responsibility of all communities to help increase the supply of green energy does not mean that the need for renewable energy automatically overrides environmental protections. The New Forest's landscape has an intrinsic and national value which was a major contribution to its designation as a national park.

63. The proposal fails to comply with CSDM policy CP5 in that it would not be small scale and would have a detrimental impact upon the immediate and intrinsic landscape character of the appeal site. It has not been demonstrated that benefits would outweigh a scheme of this size and it would result in the loss of land that could be used for back-up grazing. The proposal therefore fails to conserve and enhance the natural beauty, wildlife and cultural heritage of the New Forest and would not promote opportunities for the enjoyment or understanding of the Park's special qualities contrary to the two statutory purposes of a National Park. It is therefore requested that the appeal be dismissed.

THE CASE FOR LOCOGEN LTD

Introduction

Overview

64. The application for planning permission was accompanied by:

- A comprehensive drawings package including photographs from ten viewpoints (Documents Limo002 - Limo018 and Limo032 - Limo035); and
- A Supporting Environmental Document (including a Design & Access Statement) and various technical and environmental appendices (Documents Limo019 - Limo030).

Copies of all the aforementioned documents are included as part of this appeal.

The application was refused at the NPA's Development Control Committee on 16 December 2014 (Documents Limo043 and Limo044).

A copy of the decision notice is included at Document Limo047.

Suggested Legal Agreement

65. As first suggested in an email to the planning officer dated 29 October 2014 (Document Limo036), the Appellant considers that the most appropriate means of delivering the proposed off-site mitigation planting, and its ongoing maintenance throughout the life of the solar array, would be through a legal agreement.
66. To confirm, the areas to be planted lie within the wider landholding of Limolands Farm and therefore fall under the ownership of the Bowring Family, which also owns the appeal site.
67. Notwithstanding the comments of the planning officer in his Committee report (Document Limo043), the Appellant offered to enter into discussions with the NPA's legal officers with a view to agreeing heads of terms and/or progressing a draft agreement prior to the Committee date (Document Limo036). Despite repeated subsequent requests, this offer was not taken up.

Business Case

68. Document Limo031 is a Business Case for Limolands Farm. Given that this document contains sensitive financial information, the Appellant requests that it remain confidential.

Background

Need for Environmental Impact Assessment

69. A 'screening' opinion was sought under the EIA Regulations 2011. The NPA's response, dated 21st January 2014, states that "...the proposal does not require EIA procedures, but the size and visual impact of the proposal, including access track and perimeter fencing, as well as the nature of the sensitive area (National Park) would be considered during the course of any planning application submitted" (Document Limo000).

Previous Planning Application

70. An application for a 5MW solar array was submitted to the NPA in June 2014 (Ref. 14/00470). This application was withdrawn in August 2014 to allow the applicant to address the concerns of stakeholders.
71. The second application (which is the subject of this appeal) sought to address the concerns raised through revisions to the layout and design of the solar array, additional supporting information and, further policy justification. Full details are presented in Chapter 3: Work to Date of the Supporting Environmental Document (Document Limo019).

Consultation with Local Residents

72. As detailed in Section 3.3 of the Supporting Environmental Document (Document Limo019), the Appellant consulted with local residents prior to the submission of both applications. No comments were received on either occasion.

73. In response to comments received from representatives of both local Parish Councils following submission of the second application, the Appellant also:
- Attended meetings of both Hordle and Sway Parish Councils to present the proposals and answer questions from the community; and
 - Held a 'walk in' public information event at a locally accessible venue. The event was advertised in the local press, invitations were posted to the nearest residential properties and posters were erected at various public venues in Sway and Hordle.
74. Further details are included in Locogen's update email to the planning officer dated 28 November 2014 (Document Limo037).

Planning Policy Context

Development Plan

75. The reasons for refusal refer to three policies. The Appellant is of the opinion that the proposals meet with the aims and objectives of said policies.
76. Policy CP5: Renewable Energy allows for renewable energy development within the National Park, subject to compliance with specified criteria.
77. It is acknowledged that the proposals cannot be described as small-scale in nature. Notwithstanding, in granting 5MW solar arrays elsewhere (Cadland (Ref. 11/96086/FULL) and Hamptworth (Ref. 11/96148/ FULL) Estates), the NPA has stated that larger-scale schemes are not explicitly excluded in policy terms and the key requirement is to demonstrate that the objectives of the National Park designation will not be compromised by the development.
78. This requirement is demonstrated throughout the Supporting Environmental Document (Document Limo019). For example, the LVIA (Chapter 6) concludes that the immediate locality is physically capable of accommodating the scale of development proposed without adversely affecting the characteristic features and qualities of the New Forest.
79. Turning to visual effects, the ZTVs (Drawings LIM009 assuming bare earth and LIM011 including existing woodland screening) demonstrate that the extent of theoretical and likely visibility is very limited. When the screening effect of the proposed mitigation planting (Drawing LIM005) is taken into account, the solar array will effectively be screened from view from the public realm.
80. Policy CP17: The Land-based Economy confirms that agricultural diversification of land-based businesses that helps to maintain the overall character and cultural identity of the National Park will be supported.
81. The land at Limolands Farm, which has been used for local food production for at least the last thirty years in the form of cattle farming, has not at any time been available as back-up land for commoning in the living memory of the current and previous owners (a period of some eighty years). However, this project now intends to make grazing land available to commoners and hence increase the available potential back-up grazing pool.
82. It is therefore considered that the project will help to ensure the future viability of commoning through the provision of previously unused grazing land into the

- back-up grazing pool for commoners raising sheep (of which there are five in the New Forest).
83. As detailed in the Business Case (Confidential Document Limo031), the additional lease income generated by the development is the minimum required to secure the future viability of the existing beef business at Limolands. This will enable the Bowring Family to continue their stewardship of this part of the New Forest, thus contributing towards maintaining its key characteristics and producing local produce.
 84. In this respect, the Committee report relating to an extension to an existing solar array at Cadland Estate states, *"...even if there was a technical argument that the scheme does not apply with Policy CP5 by virtue of not being small-scale it is arguable that there are good reasons that outweigh this consideration with specific regard to Policy CP17 and also the duty of the National Park, in pursuing its purposes to foster economic and social well being of communities"*. (Document Limo049)
 85. The solar array would result in only a marginal reduction (6%) in the net grazing area for a temporary period of thirty years. Almost a third of the site would be given over to ecological enhancement while the land between the panels will be used to graze sheep.
 86. This is consistent with the approach taken by the NPA in granting planning permission for solar arrays on sites elsewhere in the New Forest which were agricultural land including grassland prior to their installation.
 87. Where applicable, the submitted scheme has been prepared to comply with the requirements of Policy DP1 General Development Principles.
 88. The Site Selection Methodology identifies no suitable or available alternative sites located on non-agricultural or 'brownfield' land in the region, including areas outwith the National Park. In then considering 'greenfield' sites, the search focused on lower quality agricultural land that is generally flat and well screened by established woodland/treebelts – the site meets all of these criteria.
 89. The proposals have been carefully designed (including additional planting) to minimise visual intrusion and to respect the character of the surrounding landscape.
 90. Subject to the recommended mitigation measures and compliance with best practice, there would be no adverse effects on the natural and built environment and there have been no objections from statutory consultees in this regard.
 91. The construction of the solar array would be carefully managed to ensure no adverse impacts in terms of traffic generation, noise, dust etc. Once operational, there will be no visible security lighting thus preserving the rural character of the area.

Rebuttal of the Reasons for Refusal

92. The appellant has already justified the proposals in detail in the documents submitted in support of the application. In rebutting the two reasons for refusal, the appellant respectfully draws attention to the following:

- a) Document Limo019 – Supporting Environmental Document (specifically Chapter 3: Work to Date)
- b) Document Limo031 – CONFIDENTIAL Limolands Farm Business Case
- c) Document Limo036 – Locogen email to NPA dated 29th October 2014
- d) Document Limo037 – Locogen email to NPA dated 28th November 2014
- e) Document Limo045 – Locogen email to Committee members dated 11th December 2014

Reason No 1

93. In the opinion of the Appellant's chartered landscape architect, the trees and woodland blocks that surround the site and the pattern of extensive areas of built development and woodlands throughout the wider landscape will, in practice, limit the opportunity for open views of the proposed development and associated changes to the National Park. The intrinsic qualities that underpin the landscape and scenic beauty of the New Forest will therefore be unaffected. The location of the development avoids harm to the most sensitive and fragile landscapes - namely the extensive areas of unenclosed woodland, grassland and heath and the associated qualities they underpin. The Landscape and Visual Impact Assessment (LVIA) (Document Limo019) concludes that the effects on LCA 18 would be moderate-minor to minor (adverse) and that adjoining landscape character areas would not be affected.
94. The solar array will be in situ for a maximum period of thirty years. At the end of its operational life, the array will be decommissioned and the site reinstated. The proposals will not therefore result in the permanent 'urbanisation' of this part of the National Park.
95. It is acknowledged that, without mitigation, glimpsed views of the panels within the northern part of the northern field may be possible from the public RoW that runs alongside the railway line. However, once the supplementary planting on the western boundary of the northern field and along two field boundaries within the intervening landscape have established and grown to approximately 2m in height (Document Limo005), the development would effectively be screened from view from the public realm. In this latter regard, the solar arrays at Cadland and Hamptworth were both deemed to be acceptable subject to inter alia the provision of additional planting to further filter views from local footpaths.
96. More generally, the proposed mitigation planting of native species trees and hedgerows at various locations around the boundary of the site would effectively screen the solar array and its associated infrastructure from nearby areas and help integrate the development into the surrounding landscape fabric. It is predicted that these measures would only result in occasional glimpses of the development through vegetation and would also serve to conserve and enhance the intrinsic character of the local landscape.
97. The PPG seeks to avoid the siting of solar arrays in 'undulating' rural landscapes. While it is accepted that there are a few metres difference in the levels across the site, neither field could reasonably be described as 'sloping'. In addition, great care has been taken in the layout of the scheme to focus the panels on the flatter central areas of the fields.

98. It is acknowledged that the proposals do not constitute small-scale renewable energy development (Policy CP5). Notwithstanding, the NPA has made clear in the past that larger-scale schemes are not explicitly excluded in policy terms (Cadland and Hamptworth are comparable to the appeal proposals in terms of overall electricity generation and the landtake needed to accommodate the array infrastructure). The key requirement is to demonstrate that the objectives of the National Park designation will not be compromised by the development. In this respect, the environmental and technical assessments demonstrate that there would be no demonstrable adverse effects on natural beauty, wildlife or cultural heritage. The proposals do not therefore contravene the overriding objective of National Park designation. In taking forward the purposes of National Park designation, it is relevant to note that there is also a duty to foster economic and social well-being.
99. Consistent with Policy CP17, the proposals comprise an appropriate form of agricultural diversification that will help support an established farming business and the landowner's ongoing rural stewardship of this part of the New Forest.
100. Ensuring the financial viability of his farming business in the long-term is the landowner's key consideration in seeking to diversify into solar electricity generation. To be clear, the additional lease income generated by the proposals is the minimum required to ensure the future viability of the existing cattle business.
101. Traditional farming in this part of the National Park has seen significant decline in recent years as a result of competition for land for non-farming uses (especially equestrian activities) and a reduction in financial viability. Policy CP17 acknowledges that farming contributes to the landscape character and cultural identity of the New Forest and is under threat. The landowner is committed to continuing his farming operations at Limolands and the submitted Business Case (Confidential Document Limo031) demonstrates that the proposed solar array is the only viable means of diversifying and supporting the existing business.

Reason No 2

102. The Appellant considers that this part of Policy CP17 has been misapplied in this instance as the wording of the policy relates specifically to (A) maintaining the supply of land available for back-up grazing on the enclosed lands and (B) resisting the loss of back-up grazing through development or change of use.
103. With respect to (A), the Appellant is actively attempting to make the circa 10 hectares of land around the proposed solar panels available to New Forest commoners as back-up grazing or as grazing for their flocks. This is a key point about the proposed solar farm in that the land can still be used as grazing. With the help of the New Forest Land Advice Service, five commoners have been identified who have the right to turn sheep out onto the Forest. At the current time, these commoners have not committed to using the appeal site either because they live too far away in the north of the Forest or have adequate existing land supply. However, they may be interested in future and the Appellant is also currently exploring options to support other small-scale local farmers with this grazing land. For this reason, it is considered that the proposals will not only maintain the supply of land available but, subject to interest from commoners, will also increase the supply of land available for back-up grazing by making this land available to commoners for the first time.

104. With respect to (B), the land at Limolands Farm, which has been used for food production for at least the last thirty years in the form of cattle farming, has not at any time been available as back-up land for commoning in the living memory of the current and previous owners (a period of some eighty years). In addition, the supporting narrative to Policy CP17 states that commoners “require back-up grazing areas in the enclosed agricultural lands (and) consequently it is important that agricultural land, which is used for these purposes, is not developed or lost to other uses”. This implies that the land to be protected is that which is already used as back-up grazing for commoners. For this reason it is considered that the proposals will not in any way result in the loss of back-up grazing and in fact offers a net gain of back-up grazing to the New Forest commoners.
105. Lastly, by way of providing background information to the terms used when discussing commoning in the New Forest, it is useful to understand the following definitions:
- a) Open Forest – The open heath and woodland of the New Forest where animals are seen to roam freely.
 - b) Rights of Common – The right to graze animals on the Open Forest. These rights are not held by individuals directly but are attached to land holdings. If an individual purchases a piece of land that has Rights of Common attached to it, that individual is then entitled to graze animals on the Open Forest.
 - c) Commoner – An individual who owns the title to land to which Rights of Common are attached.
 - d) Active Commoner – A Commoner who exercises their right to graze animals on the Open Forest.
106. Then in the context of the Limolands proposed solar array, part of the appeal site has Rights of Common attached to it, making the landowner, Mr Bowring, a Commoner. If he so wished he could turn his animals out on to The Forest to graze. However he does not currently turn his animals out on to The Forest so he is not considered to be an Active Commoner.

Appellant’s Response to the National Park Authority Statement

Landscape and Visual Amenity

107. The NPA has again over-stated the scale of development proposed. While the overall site area does indeed measure 13.6 hectares, only a quarter would be occupied by the solar array infrastructure. Almost one third would be devoted to habitat enhancement with the remainder given over to livestock grazing.
108. With regard to the proposed access track, only the first section (as far as the sub-station location) within the northern field would be maintained during the life of the project. The remainder would be temporary in nature and returned to an un-surfaced access route once construction is complete.
109. The Appellant appointed a chartered landscape architect to undertake a Landscape & Visual Impact Assessment (LVIA) (Document Limo019). Contrary to the views of the NPA, this assessment finds that the physical features that underpin the intrinsic character of the Sway Pasture & Residential Settlements LCA would be protected, and with the mitigation planting proposed, enhanced.

110. From the RoW adjacent to the railway line (viewpoint VP2), the Appellant's LVIA acknowledges that, before mitigation, significant landscape and visual effects would be experienced. However, after the proposed tree and hedgerow planting (Document Limo005) has established, the solar array and associated infrastructure would be much less visible and limited to glimpses through intervening vegetation. Therefore, even during the winter months (to be clear, the study considers the 'worst case') when the existing and proposed planting will not be in leaf, the LVIA finds that the landscape and visual effects would not be significant.
111. It is acknowledged that some of the proposed mitigation planting falls outwith the 'red line' site boundary. In order to ensure that this planting is provided and maintained throughout the life of the solar array therefore, a S106 Unilateral Undertaking has been prepared and signed by the Appellant and the landowner.
112. Contrary to the views of the NPA, the proposals have been carefully sited and designed to avoid significant landscape and visual impacts. As detailed in the appellant's LVIA, the intrinsic qualities that underpin the landscape and scenic quality of the National Park would not be significantly affected. The scale of development proposed respects the field pattern and the landscape framework in this part of the New Forest. The landscape fabric of woodland, trees and hedgerows would remain intact and, with mitigation planting, strengthened.
113. The appellant is of the opinion that the proposals conserve and enhance the intrinsic character of the surrounding landscape and the National Park designation. Accordingly, the duty to "...foster the economic and social well-being of local communities..." comes into play.

Farm Diversification

114. Policy CP17 acknowledges that traditional farming contributes to the landscape character and cultural identity of the New Forest and is under threat. The landowner is committed to continuing his Limousin beef farming operations at Limolands and his associated stewardship of this part of the National Park. The support given to farm diversification through Policy CP17 is not limited to powerful estates with vast amounts of land. In this respect, the importance of the solar array at Limolands as a viable means of providing additional income to support the established farming enterprise should not be so easily dismissed by the NPA.
115. The NPA states that the landowner's reasons for seeking to diversify his farming business and the associated socio-economic benefits have not been fully articulated. The Appellant disagrees with this. As detailed in the Business Case (Confidential Document Limo031) and summarised in the Supporting Environmental Document (Document Limo005), the additional lease income generated by the development is the minimum required to secure the future viability of the existing beef business at Limolands Farm.
116. The solar array would provide regular additional income to allow the landowner to continue his farming operations. In turn, this would support his continued stewardship of this part of the New Forest, thus contributing towards maintaining its key characteristics. The NPA supports traditional farming practices as a means of conserving the character and identity of the New Forest. While the landholding at Limolands is not a vast acreage, the appellant considers that

support should be given to diversification schemes that help to stem the incremental loss of more modestly sized farms to other land uses. In this respect, Policy CP17 makes no distinction between large estates and smaller farming enterprises.

Commoning and Back-up Grazing

117. The Appellant's position in relation to commoning and loss of back-up grazing land is set out in the Appeal Statement. In response to the additional comments of the NPA, the appellant wishes to respond as follows:

118. The NPA states that: "...it is important that the land remains in agriculture use to support current and future commoning activity around this area of the forest". This appears to run contrary to the text that accompanies Policy CP17 which states that commoners "require back-up grazing areas in the enclosed agricultural lands (and) consequently it is important that agricultural land, which is used for these purposes (emphasis added), is not developed or lost to other uses". The latter implies that land to be protected is that which is already used as back-up grazing for commoners.

119. Notwithstanding the right of pasture tied to part of the appeal site, the land at Limolands has not at any time been used as back-up land in the living memory of the current and previous owners (a period of some eighty years). Additionally, neither the current nor the previous owner has any recollection of having been approached by a commoner(s) seeking to rent the land for grazing animals (be they ponies, cattle or sheep) or for producing fodder.

120. Furthermore, permission is sought for a period of thirty years and once the solar array is decommissioned, the site will be returned to its current use. In the meantime, the land between the panels would be available as back up grazing to commoners who have the right to turn sheep onto the New Forest.

Use of Agricultural Land

121. A Site Selection Methodology (Document Limo023) was submitted as part of the planning application. In summary, the Methodology demonstrates that there are no suitable and/or available 'brownfield' or non-agricultural sites capable of accommodating the proposals within the search area (that extends far beyond the administrative boundary of the National Park Authority, consistent with previous appeal decisions). As it is not referred to in the reasons for refusal, it is contended that the NPA is satisfied this document provides sufficient evidence of a sequential approach to site selection having been undertaken.

122. The NPA infers that consideration of the appeal proposals ought to be different to the NPA's determination of the solar arrays at Cadland and Hamptworth, given the publication of PPG in the intervening period. The Appellant does not agree with this as the statutory purposes of National Park designation are the main considerations in the determination of development proposals within the New Forest. In any case, as detailed above, a site selection process has been undertaken that complies with the PPG.

Appellant's Response to Consultee & Third Party Comments

123. The comments of statutory consultees are summarised in the Committee report (Document Limo043) and the Appellant's responses are set out in an email to the planning officer dated 28 November 2014 (Document Limo037).
124. The Highway Authority (Hampshire County Council) lodged a late objection to the proposals. In response, the Appellant commissioned transport consultants JMP to demonstrate that a suitable access arrangement was achievable. Having reviewed the drawings provided (Documents Limo038-Limo040) and discussed matters further with JMP, the Highways Authority withdrew their objection (Document Limo041) just prior to the Committee meeting. This was reported verbally to Committee so the third reason for refusal was dropped (Document Limo044).
125. For completeness, the NPA Tree Officer was advised of the required tree works at the site entrance following JMP's further assessment. She subsequently confirmed that she too had no objections (Document Limo042).
126. As detailed in the Committee report, the planning application generated just 4 letters of objection from interested persons and 1 letter of support.
127. The comments of interested parties (Hordle Parish Council, Sway Parish Council and the New Forest Association) largely reflect the concerns of other interested persons. Responses were prepared and form part of Document Limo037.
128. Most of the points raised by interested parties and persons at the appeal stage are addressed elsewhere. Those remaining (where they are 'material' considerations and relevant to the determination of the appeal) are responded to as follows.
- a) The development will result in a modest increase in traffic during construction. Once operational, the solar array would require only limited maintenance. There are no objections from statutory consultees in relation to traffic matters.
 - b) One interested person has included a photograph taken from a field gate off Vaggs Lane and commented that "*the development would extend across the entire view*". To be clear, the field in the foreground is not the appeal site. The photograph taken from the RoW along the railway line (viewpoint VP2) is considered to represent the 'worst case' and was assessed as part of the LVIA for this reason.
 - c) The LVIA concludes that the additional planting proposed would need to grow to a height of 2.5 metres to screen much of the development from view.

WRITTEN REPRESENTATIONS FROM INTERESTED PARTIES AND PERSONS

Application Stage

129. The original planning application letters are not on file but are summarised in the Officer Report. At the planning application stage Hordle Parish Council advised that it would be happy to accept the decision reached by the Planning Officers but to increase community engagement, the parish requested officers to thoroughly scrutinise the site's placement. In addition it asked for the company to have more rigid outlines for the proposed ecological aspect of the site.

130. Sway Parish Council recommended refusal on the basis that the location is inappropriate inside a National Park, adjacent to an Ancient Woodland, over a watercourse, and not far from a public right of way. The parish considered that the development is not small scale and it would have an adverse effect on the landscape character and local ecology. There had been insufficient local consultation within Sway and the development was not supported by the Sway Village Design Statement (not submitted in evidence). It would therefore contravene various development plan policies and paragraph 115 of the Framework.
131. There was one letter of support from an interested person on the basis in summary that: there is national public support for green energy; no views would be available from passing trains or from the houses of those who oppose the development; and the landowner should be commended for his support of an agricultural way of life for so long when other land was being converted to horse paddocks. The diversification would allow him to continue to farm.
132. There were 4 letters of objection from local residents. The grounds for objection included that this would be unnecessary and inappropriate development in a National Park or the countryside. Land should be used to grow crops, fruit and vegetables. The ugly rows of panels, plant and fencing would be a bad precedent.
133. There was also a letter of objection from the New Forest Association on the grounds that the proposal is not small scale, that some of the land enjoys the right of common pasture and that the intrinsic value of the site would be harmed.

Appeal Stage

134. The appeal stage representations are on file. There is one letter of support which also encloses that submitted at the time of the application. There are again 4 objections from local residents. One supports sustainable energy but not in this location. Two object to any industrialisation of the New Forest and any traffic increase and consider that the development would create a precedent. The fourth sets out a detailed response to the Appellant's appeal submission and concludes that the development is considered to be contrary to local and national policy and the wishes of local people. It would set a precedent that could destroy the landscape character of the area.
135. There is a further appeal stage representation from the New Forest Association (NFA). This explains that the NFA did not oppose the permitted Cadland solar farm because it was close to existing intrusive electricity paraphernalia and was made invisible by previous planting of field margins. The officer report for the first solar farm at that site reports that the Association commented then that '*well hidden sites will clearly not have a major impact*'. The NFA claims that it opposed the permitted Hamptworth solar farm and all other applications. However the officer report for the 2013 extension to the Cadland site records that there were no representations. The NFA disputes whether it would be feasible to use the appeal site for sheep grazing. There are comments about pressures for housing and recreation that are not directly relevant to the appeal proposal.

INSPECTOR'S APPRAISAL

The figures in square brackets [] refer to paragraphs elsewhere in this report.

136. The main issues are considered to be:

- a) what effect the development would have on: landscape character, visual amenity, the special qualities of the New Forest National Park, agricultural land of good quality, and commoner grazing rights; and
- b) whether any identified harm in these regards would be outweighed by any environmental or economic benefits of the proposed development.

Landscape Character

137. The manufactured and industrial character of the panels and other structures and equipment would inevitably affect the character of the landscape within the 2 fields [45]. However that would apply to almost any solar farm development in any rural area. The effect of the development on the overall character of the landscape character area would be limited because of the mitigating effects of existing and proposed screening that would contain most effects to within the 2 fields. The key characteristics of the local landscape would also be retained. These include the retention of the traditional field pattern and the retention and reinforcement of the characteristic hedgerows [45, 93].

138. The reference in the PPG to the effect of large scale solar farms in 'undulating' landscapes [23, 46, 57, 97] must relate to the possibility in such areas either that longer distance views may be available from higher ground towards lower ground, or that a solar farm may become more visible when it is located on sloping ground that is angled towards the viewer.

139. The appeal site is not described as 'undulating' in either the landscape character area assessment or in the officer report on the application. Instead the latter report described the northern field as '*level in the main*' but '*drops away towards boundaries*' whilst the southern field '*drops away more significantly from west to east and to a lesser extent from north to south*'. There are height variations within each field of about 5m and the land may arguably be described as gently undulating. However the undulations are so slight that existing mature trees and hedgerows still limit long views and avoid the above effects of increased visibility, even when the vegetation is not in leaf [54]. The proposed new planting to reinforce this screening should also be effective.

140. Whilst the opportunities for grazing by larger animals would be reduced by the development, grazing by sheep would be accommodated and the development would enable the continuation of the remainder of the agricultural holding for the pastoral grazing of Limousin beef cattle. That would accord with another management aim of the Landscape Character Assessment [22, 56, 115].

141. The Authority suggests that no part of the National Park has greater or lesser landscape sensitivity [55-56]. However the sensitivity of the different landscape character areas within the Park will inevitably vary. An example would be the contrast between the open unenclosed parts of the Forest (where any development would be widely visible and would be bound to influence landscape character over a wide area) and these more enclosed areas where the landscape

has already absorbed significant buildings and other man-made development but the woodland and hedgerow screening avoids similarly widespread effects on the area's character. The landscape character area around the appeal site already contains many scattered buildings, glasshouses, caravans and overhead power lines but these are generally hidden from wider public view or only partially visible from limited locations.

142. The potential to mitigate landscape and visual impacts by screening with native hedges is recognised as a relevant factor in the PPG [23-24]. The effectiveness of tree and hedge screening was also recognised by the Authority when previously approving 3 planning applications for solar farms in enclosed or woodland locations within the Park [58]. Thus the Authority has already accepted that such locations can have potential for development without detriment to the Park's special landscape qualities and purposes. That some change to traditional landscapes can be acceptable and that solar power installations can be appropriate to the national value of the landscape is also recognised by the National Park's Circular [27].
143. I therefore concur with the conclusions of the Landscape and Visual Impact Assessment (LVIA) that there would be effects on LCA 18 particularly within the 2 fields but the overall landscape character effects would only be moderate-minor to minor (adverse). Adjoining landscape character areas would not be affected [93].

Visual Amenity

144. The Council's case does not distinguish between effects on landscape character and effects on visual amenity as is advised in the Landscape Institute's Guidelines for Landscape and Visual Impact Assessment. However the matters were distinguished in the Landscape and Visual Impact Assessment submitted with the application. No harmful visual impacts on residential amenity were identified. The main considerations related to the possibility of views from public places such as roads and paths.
145. The appeal site is already hardly visible from any road or private dwelling. This is partly due to distance but also because woodland and hedgerows already provide significant screening. Whilst that screening is most effective when the deciduous vegetation is in leaf, views are also filtered at other times, as the leafless Viewpoint images in Limo015 demonstrate [33]. The woodland is thick enough to provide substantial screening even when the deciduous trees are not in leaf. The southern field is especially well screened. These factors already limit the site's current visual influence and its contribution to the area's visual amenity. They would similarly facilitate the screening of the proposed development and limit its effect on visual amenity.
146. There are currently filtered views of the northern field from a public footpath that follows a roughly north-south route one field distant to the west of the appeal site [47]. This is the view seen from Viewpoint 2 in Document Limo015 and is fairly described by the Appellant as the worst case. Recreational walkers moving slowly through the countryside and looking about them are considered to be sensitive to views of the landscape. In this case the LVIA concludes that such walkers would experience '*moderate-major*' visual effects before mitigation and '*moderate to moderate-minor*' effects after mitigation. That refers to the on-site mitigation planting along the site's western edge.

147. The LVIA does not distinguish between well-used and lightly-used footpaths. The subject public footpath is relatively short and it does not connect to other public footpaths at either end (see location plan at Limo002). Any recreational walkers using the route and seeking to continue their journey would consequently need to walk on the narrow and relatively busy roads to the north and south. That would be hazardous. As a consequence the footpath appears to be only lightly-used and thus few people are likely to experience any adverse visual effects. Only the northern field is partially visible at present, being partially seen from the path, and this would be much mitigated by the proposed reinforcement of existing field hedgerows and tree lines. Even if visible, any view of the solar panels would not be dissimilar in character to the view of the large nearby glasshouses to the west of the railway that is available from some locations.
148. Additional off-site mitigation planting and gap filling has been proposed since the LVIA was carried out and is the subject of a S106 Planning Obligation [36,111]. It should further mitigate those visual effects such that there would usually be either 2 or 3 reinforced hedgerows with trees between the viewer on the public footpath and the solar panels and other works within the northern field. There are public rights of way in similar or closer proximity to the solar farms that have previously been permitted by the National Park Authority and they are referred to in the relevant officer reports. In each case some similar mitigation planting was agreed to reinforce existing screening.
149. To the west of the footpath is the London-Weymouth main railway line. Any adverse effects in relation to views from the railway were addressed in the LVIA and the Council's appeal statement does not claim such harm. I saw that the railway is here mainly in a cutting which would limit views east from the railway towards the appeal site. However the land dips at one point and that could allow a glimpsed view in the direction of the appeal site although a railway user maintains that no views are available [153]. In any case no more than a brief view could be available only for those passengers facing north on the near side of what are likely to be fast moving trains. For passengers facing south any views would be highly oblique such that they would need to turn round in their seats. Rail passengers are not travelling primarily to view the landscape and may not even be looking out of the window at the time when any glimpsed view may be available. Thus they are assessed as of medium sensitivity. The LVIA concludes that rail users would experience minor visual effects before mitigation planting but none afterwards. That latter conclusion would be reinforced by the additional off-site planting which is now proposed and which would be secured by the planning obligation. That was not proposed at the time of the LVIA.
150. For the above reasons the existing hedgerows and trees would provide significant screening for the solar panels and other infrastructure. There is potential to further mitigate the visual impact of the proposed development in views from the footpath and railway by reinforcing the existing hedgerow planting as proposed. The officer report itself concluded that such planting *'might well close off views into the site.'* In respect of the on-site hedgerows that could be secured by a planning condition. The completed S106 unilateral undertaking also allows for the reinforcement of off-site hedgerows by native planting. It does not otherwise detail the form that this would take and I saw that it is unlikely that conventional hedgerow planting would succeed at the field edge under the canopy of mature trees where the ground would be dry and light

limited. However it should be possible to establish suitable planting outside the tree canopies. That would screen or filter any views under the tree canopies towards the appeal site. As land ownership and the unilateral undertaking provide sufficient control, the details of the planting can be made subject to approval by means of a planning condition.

151. The LVIA also identifies minor visual effects on road users of medium high sensitivity should they glimpse the development in one view north from a 50m stretch of Silver Street (Viewpoint 4 in Limo015). However that road is about 400m south of the southern field and the development would be largely shielded by woodland and other trees. The view would be at right angles to the direction of travel and typically only glimpsed by passengers of fast moving vehicles. On the same journey they would already be able to glimpse views of many other man made structures in the local area.
152. Overall it is concluded that the visual effects would be substantially mitigated by existing and proposed planting. The development would be located and designed to reduce visual impacts as required by CSDM Policies CP5(b) [15] and DP1 [20]. However there would be some very limited residual harm to weigh in the planning balance.

National Park

153. As a nationally designated landscape the National Park is highly sensitive to change. But the Government National Parks Circular nevertheless acknowledges both that the appearance of the countryside in National Parks may need to change and also that solar power installations may be appropriate to the national value of the landscape [27]. National policy does not preclude the development of solar farms in national parks. Neither does it accord higher status to the landscape of national parks than to areas of outstanding natural beauty where such development is also not precluded.
154. The main parties agree that the current proposal is not small scale [58, 119]. However the Appellant points out that the National Park Authority has previously permitted solar farm developments of similar scale to the appeal proposal within the National Park at Hamptworth Estate (near Normansland) (5MW) and at the Cadland Estate (near Langley) (5MW - 12ha) [32, 98]. A large 2.5MW extension to the latter development has also been permitted subsequently in 2013. The NPA concluded then that the scale was outweighed by socio-economic and environmental benefits [84]. That extended 7.5MW development is 50% larger than the appeal proposal.
155. The Report for the Hamptworth Solar Farm similarly concluded that there were good reasons to outweigh its scale conflict with Policy CP5 with specific regard to Policy CP17 to support farming that is beneficial to the forest through diversification and the duty of the National Park, in pursuing its purposes, to foster the economic and social well-being of local communities.
156. Apart from scale, other characteristics that the 3 permitted developments share with the appeal site are: all have claimed economic diversification benefits, all are close to the edge of the Park; the Cadland Estate site (like the appeal site) is apparently within an area of enclosed farmland; and all are likely to be screened from most public views, but may be more visible from a nearby public right of way unless mitigated by new or existing planting. The

Hamptworth Estate site is in a clearing in woodland whereas the other sites adjoin woodland. Nevertheless it closely adjoins a byway.

157. Apart from the Langley substation it is not obvious that there is any major electricity infrastructure close to the Cadland site, as claimed by the New Forest Association [135], and no other infrastructure is referred to in the officer reports for that scheme. The officer report for the first solar farm at that site reports that the New Forest Association commented then that *'well hidden sites will clearly not have a major impact'* [135].
158. The 3 solar farm locations are far removed from one another and it is very unlikely that more than 1 of the sites would even be glimpsed in the same journey unless the viewer was deliberately seeking the sites out. Thus there would be no material cumulative visual or landscape effects and no basis for concluding that the National Park had already reached its maximum capacity for such developments.
159. Neither the statutory duties in respect of the National Park [26], nor national policy in the Circular concerning renewable energy in national parks [27] nor national policy concerning major development in National Parks, has changed since the approval of the previous solar farm developments.
160. The Authority has drawn attention to its recent refusal of a scheme for a 9ha solar farm within the National Park on the Exbury Estate (Ref 14/01004/FULL) [58]. The officer report was appended to the Authority's appeal statement. However there are clear differences between that proposal and the appeal scheme. In particular, and notwithstanding a submitted agricultural land survey, the Authority noted that the Exbury site is within an area of Grade 2 best and most versatile land. The appeal site is a mix of part Grade 3a and mainly Grade 3b land. The NPA has not objected to this development on agricultural land quality grounds. Also there was an ecological objection by the Authority at the Exbury site but not at the appeal site. Both a bridleway and a public footpath on a popular circular route pass close to the Exbury site. That site would have been screened only by an ivy clad fence rather than by reinforced native hedgerows and treeline. That may explain why the Exbury application attracted much more public interest than the current appeal scheme with 55 letters of objection, 9 letters of support and 3 other comments.
161. In this case I agree with the LVIA that most of the intrinsic qualities that underpin the landscape and scenic beauty of the National Park would be unaffected and that it would avoid harm to the most sensitive and fragile landscapes [93]. The effect would thus be moderate-minor adverse and not *'significant'* in the terms of CSDM Policy CP5.
162. Paragraph 116 of the Framework seeks that 'major' development is only permitted in a national park in exceptional circumstances and where they are demonstrated to be in the public interest [25]. It does not define major development and the PPG confirms that is a matter for the decision-maker. Nevertheless such decisions need to be consistent when considering similar types of development. That other solar farms of similar scale have been permitted in the National Park indicates that development of this scale is capable of being acceptable.

163. Paragraph 116 of the Framework provides that consideration of applications for major development should include (in summary): the need for the development and the impact on the local economy; the cost of or scope for developing outside the designated area or meeting the need in another way; and any detrimental effect on the environment, the landscape and recreational opportunities and the extent to which they can be moderated. Relevant matters are addressed under other headings.

Use of Agricultural Land and Availability of Suitable Alternative Sites

164. Paragraph 112 of the Framework provides that authorities should take into account the economic and other benefits of the '*best and most versatile*' agricultural land. Where significant development of agricultural land is necessary, authorities should seek to use areas of poorer quality land in preference to that of a higher quality [20]. In that regard the land has only been described in the application as Grade 3 agricultural land. The officer report to the National Park Authority did not question the classification and the Authority has not objected to the development on land quality grounds.

165. Following the appeal site visit the Appellant was asked to identify whether the site is classified as Grade 3a (best and most versatile land - as defined in the Framework) or Grade 3b. A survey report was submitted which identifies that 67% is Grade 3b, and 29% is Grade 3a and that the remaining 4% is non-agricultural (mainly access). The Grade 3a land would amount to approximately 3.9ha [4].

166. Should the development go ahead some of that Grade 3a land (and also the moderate quality 3b land) would be used for less intensive sheep grazing. It could be returned to other agricultural use in the future when the temporary development ceases. If the solar farm development did not go ahead, and if the beef unit continued to operate, it is likely that the land would remain in use for cattle grazing rather than for more intensive use such as arable crops. Should the beef unit cease operation then it is possible that another non-agricultural use such as horse grazing would be sought as this is common in the area.

167. The PPG is guidance rather than policy. It advises that '*large scale*' solar farms are to be '*focussed*' on previously developed and non agricultural land but does not preclude such development on agricultural land [18]. '*Large scale*' is not defined in the PPG but the Council and the Appellant agree that this proposal is not '*small scale*' in the terms of CSDM Policy CP5. Neither national policy nor the PPG set out a formal sequential test such as that required for town centre development or flood risk. However the Appellant has demonstrated through a site-selection process that previously-developed and non-agricultural land to accommodate a '*large scale*' solar farm is very scarce in a broad search area covering southern Hampshire, the Isle of Wight and East Dorset [121]. This is an area with a substantial urban population including Southampton, Bournemouth, Poole and the extensive coastal development bordering the National Park. There are consequently high local energy demands. Much of the open land between the urban areas is variously within the National Park, the equally protected landscapes of Areas of Outstanding Natural Beauty, or the Green Belt. There are also extensive areas of national or international importance for nature conservation such as the heathland near Poole.

168. Even on land outside these designated areas, landscape effects can be an important material consideration, as the Minister highlights in a letter to the Planning Inspectorate on 27 March 2015 to which the Authority has referred [48]. The local opportunities for onshore development for renewable energy outside designated areas are thus also limited, whether for solar or wind energy. Development consent has also recently been refused for a major offshore wind energy scheme at Navitus Bay, further reducing the local opportunities to provide significant amounts of renewable energy.
169. The proposed development would generate up to 5MW within a 13.6ha site. No comparably large areas of rooftop were identified in the site selection process. Those non-agricultural sites that were identified are likely to be used for higher value purposes such as housing or minerals extraction. Other important considerations for siting solar energy developments are the availability of a grid connection and, not least, a willing landowner. The site selection process also sought to avoid higher quality agricultural land and sites in more widely visible locations. The conclusions of the site selection process have not been disputed by the National Park Authority.
170. The officer report on the Exbury solar farm application [58] suggested that the site of the former Fawley oil-fired power station should have been considered as an alternative location for that development. But that location outside the National Park has not been suggested by the Authority as an alternative in the present appeal. Moreover there is no evidence from the Authority to confirm if or when that site could be developed. Neither is there any evidence that it would be allocated by the New Forest District planning authority or otherwise protected for development as a solar farm, rather than be redeveloped for alternative higher value purposes.
171. That the Circular acknowledges the need for renewable energy including solar energy within national parks does not support a contention that solar farm developments should only be sited elsewhere as some interested persons suggest [130, 132-133, 135]. In any event the overall local or national need for renewable energy will not be met by this one development.
172. It is concluded that the site selection evidence has demonstrated that the use of agricultural land is necessary in this case. Having regard to the relatively small proportion of best and most versatile land on the site and to the likely future use of that land for grazing both during and after the development, it is not considered that its inclusion in the development would of itself warrant the dismissal of the appeal. However the partial and temporary loss of that part of the site to agricultural use would be a factor to weigh in the overall planning balance.

Grazing Rights

173. Part of the appeal site benefits from commoner grazing rights within the open unenclosed part of the New Forest that lies to the north of Sway village [51-53, 61, 102-106, 133, 135]. The Appellant reports that the landowner has not exercised these rights for his cattle in living memory and disputes that the land has ever constituted part of the 'back-up grazing pool'. Neither has the grazing been rented to other commoners. Instead it will have been used either for grazing the landowner's own animals or harvested for fodder such as hay.

174. The Authority has submitted *The State of the Park Report 2013* [52] which noted that there have been significant increases in recent years in the number of practising commoners and also in the numbers of ponies that are 'depastured' in the open Forest. This may be linked to the conversion and subdivision of other farms for equestrian use. The neighbouring landowner points out that a nearby farm has only recently been split into multi-ownership horse paddocks.
175. In relation to solar farms the PPG at paragraph 5-013-20130327 supports continued agricultural use of solar farm sites and/or encourages biodiversity improvements around arrays. If the development goes ahead the Appellant intends that sheep grazing would be carried on between the rows of panels within the security fence. There are separate common rights for sheep from other grazing animals. Comparatively few sheep are grazed in the forest, particularly in the south. However it does not follow that such grazing would be of no benefit. The higher land within the proposed security fence could be grazed by sheep whether or not those sheep also use common land elsewhere. Such continued agricultural use would accord with an aim of the PPG.
176. Land outside the fence would be managed for bio-diversity, such as by planting as meadows and additional hedge planting. That would accord with relevant aims of Policy DP1 and the PPG and the statutory purpose of the National Park to conserve and enhance wildlife.
177. The proposed development would be for a temporary 30 year period and the land would be available for more intensive agricultural use again in the future, subject to the preferences of the landowner at that time.

Benefits

178. The development plan, the National Parks Circular and the Framework all provide in-principle support for renewable energy.
179. Although not definitively small scale in the terms of CSDM Policy CP5, the scale would be similar to the Hamptworth solar farm and smaller than the extended Cadland solar farm in the National Park [32]. That scale would '*assist towards national renewable energy targets*' in the terms of Policy CP5 [15]. If it were significantly smaller, more schemes would be needed to achieve equivalent energy output with potentially wider ranging impacts in more locations. Policy CP5 does not identify what scale of development would qualify as small scale. But if for example development in the National Park were limited to small domestic installations, the maximum generation from the appeal scheme would be equivalent to the output from 1,250 individual properties with 4kw panels (or a larger number with smaller output panels). In any event, to allow the appeal scheme to proceed would not prevent other smaller schemes from being installed where appropriate.
180. The Government is committed to national targets for renewable energy to 2020 and 2050 and these are also subject to international obligations. It has not been confirmed that sufficient renewable energy installations will be in place to meet the 2020 target and solar schemes of this type are likely to be needed as part of the energy mix. The renewable energy targets are intended to mitigate the environmental effects of climate change. The energy produced would also have other economic benefits including reducing energy imports and improving the security of supply. These benefits all merit substantial weight, particularly as

the encouragement of renewable energy is referred to in the Framework's core planning principles (paragraph 17) and is described in paragraph 93 as central to the economic, social and environmental dimensions of sustainable development [17].

181. Limolands Farm produces local New Forest Limousin beef as one of only a few surviving agricultural holdings in the local area [114]. It is apparent that many former farms in the vicinity of the appeal site are no longer in agricultural use and have instead been given over to horse grazing or other non-agricultural purposes. The surviving beef farm contributes to the area's cultural identity in accordance with Policy CP17.
182. The proprietor of Limolands Farm is a farmer in the later part of his career and approaching retirement, which I am aware is the case across much of the agricultural industry. The operation of the beef unit is consequently becoming more physically demanding for him. If the development goes ahead it would significantly boost the income of the holding and enable the farmer to afford to employ necessary additional labour in order to continue beef production [116]. That would be of economic benefit and would help to sustain the farming business in accordance with the above aims of CSDM Policy CP17 to support agriculture, local food production, and cultural identity and the cultural heritage of the National Park [19]. That is relevant to the economic and social well-being of the area which National Park Authorities have a duty to foster when carrying out their statutory purposes [26] and it merits significant weight.
183. The development would also provide an opportunity for bio-diversity enhancements through the additional planting in the hedgerows and diverse planting on the land outside the security fence. Those are further environmental benefits.

Conditions and Obligation

184. The Authority and the Appellant have both suggested conditions to be applied in the event that the appeal is allowed. The attached schedule of conditions amalgamates the conditions suggested by each party. Some have been reworded in the interests of clarity and to reflect the tests for conditions in the Framework. Reasons for each condition are included on the schedule. Not all of the drawings listed on the decision notice have been referred to as many of those do not show the proposed development but are rather supporting information.
185. It is considered that the submitted S106 unilateral undertaking referred to above [36, 111, 148] does accord with the tests for planning obligations in the Community Infrastructure Levy Regulations 2010 (as amended) and it has been taken into account in this report.

Planning Balance and Conclusions

186. Overall it is concluded that, after mitigation in the form of reinforced landscape screen planting both on and off-site, there would remain some limited harm to landscape character within a small area and mainly within the 2 fields of the appeal site which are generally hidden in wider views and make little contribution to the area's landscape character. Whilst the associated harm to the landscape and natural beauty of the National Park within the appeal site merits great weight, it is limited and not considered to be 'significant' in the terms of CSDM Policy CP5.

In relation to the other special qualities of the National Park the bio-diversity enhancement would benefit and not harm wildlife. The support for a local beef producer would conserve part of the area's cultural heritage and economic and social well-being.

187. Existing glimpsed views from a railway are likely to be screened by the planting [171]. If the proposed screen planting is not entirely effective over its full length, more especially in winter, there could be some residual visual harm in filtered views, albeit from a lightly-used public footpath [146-148] and in glimpsed distant and filtered views from a road [151]. Nevertheless these glimpsed views would be representative of glimpsed views of other man-made structures in the same landscape character area and the well-screened development would not materially affect public enjoyment of the park's special qualities.
188. The National Parks Circular acknowledges that development for renewable energy is desirable in National Parks and that solar power installations can be appropriate to the national value of the landscape [27]. Whilst CSDM Policy CP5 seeks to promote only undefined 'small scale' renewable energy schemes, solar farm schemes of similar or greater scale as the appeal proposal have already been permitted by the National Park Authority elsewhere in the Park on sites which are similarly concealed from wider views [98]. In carrying out its duties the Authority is also enjoined to have regard to the social and economic well-being of local communities. The previously approved solar farms schemes were on large estates where the Authority took into account the economic diversification benefits of the development. There would similarly be economic diversification benefits from the appeal proposal for one of the area's few active farms [98-101]. Income from the renewable energy produced is likely to support the continuation of the beef unit on the rest of the farm with local social and economic benefits [101].
189. During the life of the development the partial occupation of some Grade 3a agricultural land and reduced grazing opportunities for larger commonable animals represents some potential for harm. However the Grade 3a land only accounts for a minority of the site which is mainly Grade 3b and it has not been used for more versatile purposes than grass or grazing in the past. Moreover the common grazing rights and back-up grazing have not been exercised on this land in living memory and are unlikely to be so used whilst the beef unit continues. Some grazing by sheep would continue on site during the life of the development [102-106]. As the development would be temporary, the land can be restored to grazing of larger animals in the future and its partial Grade 3a status would be unaffected in the longer term. Therefore there would not be material harm to development plan objectives in relation to currently available back-up grazing or to PPG objectives to prefer the use of poorer quality land.
190. Against the identified harm the renewable energy would contribute significantly to as yet unmet national and international targets for renewable energy to combat climate change [179]. That also merits great weight, particularly as the Appellant's site selection exercise illustrates the constraints to development of solar energy in the sub-region [88, 167-169]. Other forms of renewable energy are also likely to be constrained [168].

191. Whilst the matter is finely balanced it is concluded overall that the impacts have been satisfactorily addressed and that this is a well-designed and well-screened development. Whilst it is not a 'small scale' development and, like the other approved solar farms thus does not literally accord with that criterion of CSDM Policy CP5, it does generally accord with the overall objectives of the development plan and the National Parks Circular to support renewable energy whilst protecting the Park's special qualities in accordance with the statutory objectives. The diversification would help to sustain an existing farming business and local produce in accordance with CP17(b) and fostering the economic and social well-being of the local farming community in the National Park. Use for grazing would be sustained alongside the development. The development would also accord with the objectives of CSDM Policy DP1 to respect the natural environment, landscape character and bio-diversity and to avoid adverse effects to amenity through visual intrusion [20]. In these respects the circumstances are very similar to those that applied when 3 similar developments were permitted by the National Park Authority. This would be an environmentally and economically sustainable development in the terms of national policy in the Framework. The public benefits outweigh the identified harm and exceptionally support this major development within the National Park.

Recommendation

192. For the above reasons it is recommended that the appeal be allowed and planning permission granted subject to the conditions set out in the attached schedule.

R P E Mellor

INSPECTOR

APPEARANCES AT THE ACCOMPANIED SITE VISIT

FOR THE APPELLANT:

Mr J Orme	Head of Solar Team, Locogen Ltd
Ms J Plant	Planner, Locogen Ltd

FOR THE LOCAL PLANNING AUTHORITY:

Ms K McIntyre	Planning Officer, National Park Authority
Ms S Kelly	Landscape Officer, National Park Authority

SCHEDULE OF CONDITIONS

Time Period

- 1) The development hereby permitted shall begin not later than three years from the date of this decision.

Reason: To comply with Section 91 of the Town and Country Planning Act 1990 as amended by Section 51 of the Planning and Compulsory Purchase Act 2004.

Drawings

- 2) The development hereby permitted shall be carried out in accordance with the approved drawings listed below:

- LIM001 Site Location Plan
- LIM002 v1 Planning Application Boundary
- LIM003 v2 Site Layout Plan
- LIM004A v2 Cross Section Location Plan
- LIM004B v2 Typical Cross Sections
- LIM005 v2 Landscaping and Biodiversity Plan
- LIM006 v2 Frame and Inverter Design
- LIM007 Substation Building
- LIM008 v2 Security Components

Reason: In the interests of certainty as to what is permitted.

- 3) The solar array hereby approved shall be removed from the land on which it is sited within six months of it no longer being required for generating electricity or 30 years from the date that the development is first connected to the grid, whichever is sooner, and the land shall be restored to a condition which has first been agreed in writing by the New Forest National Park Authority. The date of the first production of electricity shall be notified in writing to the Local Planning Authority within 28 days of the event occurring.

Reason: Because permission has been sought for a temporary period and to protect the visual amenities of the area.

Tree Protection

- 4) No development hereby permitted shall commence (including site clearance and any other preparatory works) until a scheme for the protection of trees in accordance with the submitted Arbtech Consulting's Arboricultural Method Statement and Tree Protection Plan (Drawing TPP 01) dated 22nd July 2014 has been implemented. This shall include a requirement for a pre commencement site meeting with the New Forest National Park Authority to consider the details. The protection measures shall continue to be implemented throughout the construction period.

Reason: To safeguard trees and natural features which are important to the visual amenities of the area.

Biodiversity

- 5) No development hereby permitted shall commence, including vegetation management, until a final scheme of biodiversity mitigation has been submitted to and approved in writing by the New Forest National Park Authority. Details shall include measures for nesting birds, hedgerow removal and confirmation of method statements for reptiles and amphibians based on measures outlined in ecology reports by BSG and CGO Ecology. Development shall be implemented in accordance with the agreed details unless otherwise agreed in writing.

Reason: To enhance biodiversity.

- 6) No development hereby permitted shall commence until a final plan for biodiversity enhancement has been submitted to and approved in writing by the New Forest National Park Authority in the form of a Habitat Management Plan, this shall include amongst other details; plans of badger gates and proposals for long term habitat management & maintenance for the whole development area. The Habitat Management Plan shall include a specification and timetable of operations to meet agreed aims and objectives as well as measures for monitoring and reactive management. The plan shall be reviewed and programme of annual works for the following 12 months agreed with the Authority at an annual management meeting organised by the developer.

Reason: To enhance biodiversity.

Drainage

- 7) No development hereby permitted shall commence until details of the means of disposal of surface water from the site shall be submitted to and approved in writing by the New Forest National Park Authority. Development shall only take place in accordance with the approved details.

Reason: In order to ensure that the drainage arrangements are appropriate.

Ancillary structures

- 8) Notwithstanding any details in the submitted drawings, no development shall take place until full details of the photovoltaic collectors, security cameras, ancillary infrastructure buildings, fencing and boundary treatments (including badger gates), and access arrangements (including water course crossings) have been submitted to, and approved by, the New Forest National Park Authority. Development shall be carried out in accordance with the approved details.

Reason: To protect the character and appearance of the area.

Lighting

- 9) No external lighting shall be installed on the site until details of such proposals have first been submitted to and approved in writing by the New Forest National Park Authority.

Reason: To protect the visual amenities of the area and wildlife.

Construction Traffic Management Plan

- 10) No development hereby permitted shall commence until a Construction Traffic Management Plan, to include details of provision to be made on site for contractor's parking, construction traffic access, the turning of delivery vehicles, lorry routeing and a programme of works has been submitted to and approved

in writing by the New Forest National Park Authority. The approved details shall be implemented before the development hereby permitted is commenced and retained through out the duration of construction.

Reason: In the interests of highway safety.

Landscaping

- 11) No development hereby permitted shall commence until a scheme of landscaping of the site and for the off-site planting identified in the accompanying Section 106 unilateral undertaking has been submitted for approval in writing by the New Forest National Park Authority. This scheme shall include:
- a) the existing trees and shrubs which have been agreed to be retained;
 - b) a specification for new planting across the site and along those hedgerows on the appeal site and identified elsewhere in the accompanying unilateral undertaking to mitigate the visual and landscape effects of the development (species, size, spacing and location);
 - c) areas for hard surfacing and the materials to be used;
 - d) other means of enclosure;
 - e) location of trenches for cabling and depth/width of trenches; and
 - f) a method and programme for its implementation and the means to provide for its future maintenance including the heights at which the hedgerows are to be maintained.

Reason: To protect the character and appearance of the area.

- 12) All planting, seeding or turfing comprised in the approved details of landscaping shall be carried out in the first planting and seeding seasons following the completion of the development. Any trees or plants which within a period of 5 years from the completion of the development die, are removed or become seriously damaged or diseased shall be replaced in the next planting season with others of similar size or species, unless the New Forest National Park Authority gives written consent to any variation.

Reason: To protect the character and appearance of the area.

Archaeology

- 13) No development shall commence until a programme of archaeological recording work including a Written Scheme of Investigation has been submitted to and approved by the New Forest National Park Authority in writing. Details shall include:
- a) the programme and methodology of site investigation and recording;
 - b) the programme for post investigation assessment;
 - c) provision to be made for analysis of the site investigation and recording;
 - d) provision to be made for publication and dissemination of the analysis and records of the site investigation;
 - e) provision to be made for archive deposition of the analysis and records of the site investigation; and

- f) nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the approved Written Scheme of Investigation.

Reason: To protect and/or record any items of archaeological interest.



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).

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.

3138266

New Fen Dike,
Sutton St James,
Spalding,
Lincolnshire

1 January 2016



Department for
Communities and
Local Government

Our Ref: APP/A2525/W/15/3138266

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

1 November 2016

Dear Madam

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78
APPEAL MADE BY LITTLE EAU SOLAR LIMITED
LAND AT NEW FEN DIKE, SUTTON ST JAMES, SPALDING, LINCOLNSHIRE
APPLICATION REF: APP/A2525/W/15/3138266**

1. I am directed by the Secretary of State to say that consideration has been given to the report of B Hellier BA (Hons) MRTPI who held a hearing on 14 and 15 June 2016 into your client's appeal against the decision of South Holland District Council to refuse planning permission for the installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access track, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure in accordance with application ref: H20-0128-15 dated 27 January 2015.
2. On 26 January 2016 this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act 1990, because the Secretary of State notes there is a large-scale solar farm nearby, and he wishes to consider the cumulative impact of the proposed scheme.

Inspector's recommendation and summary of the decision

3. The Inspector recommended that the appeal be dismissed. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions except where stated, and agrees with his recommendation. He has decided to dismiss the appeal and refuse 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 reaching his decision, 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.
5. In this case the development plan consists of saved policies of the South Holland Local Plan. The Secretary of State considers that the development plan policies of most relevance to this case are those set out at IR15-17. The Secretary of State agrees that little weight can be given to the policies of the South East Lincolnshire Local Plan 2011-2036 for the reasons given by the Inspector at IR18.
6. Other material considerations which the Secretary of State has taken into account include the National Planning Policy Framework ('the Framework') and associated planning guidance ('the Guidance'), as well as the Written Ministerial Statement of March 2015, which, amongst other matters, concerns solar energy and the protection of the local and global environment.
7. In accordance with section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the LBCA Act), the Secretary of State has paid special regard to the desirability of preserving those listed buildings potentially affected by the appeal scheme or their settings or any features of special architectural or historic interest which they may possess.

Main issues

8. The Secretary of State agrees with the Inspector that the main issues are those set out at IR70.

Character and appearance

9. The Secretary of State agrees with the Inspector's analysis at IR71-78 regarding the impacts on the character and appearance of the countryside. For the reasons given at IR72 he agrees that this is a landscape of considerable value and which would have moderate to high sensitivity to this type of development. For the reasons given at IR73 he agrees that the proposal would lead to a significant alteration to the inherent character of the landscape. He further agrees that visual screening of the development through hedging would foreshorten views and create a sense of enclosure which would also have a significant adverse effect on the open landscape character (IR74). For the reasons given at IR76 the Secretary of State agrees that the loss of openness would detract from the quality of views from locations including Smiths Farm, the road network, the Bad Gate bridleway and from south of the site.
10. The Secretary of State notes that the proposal would be seen in combination with Fendyke Farm solar farm. He agrees with the Inspector that the two sites in combination would have a substantial adverse effect on the openness of the landscape to the south of Sutton St James, resulting in considerable cumulative landscape harm (IR75). He further agrees, for the reasons given at IR76, that the development in combination to the Fendyke Farm site would also result in additional cumulative visual harm. However, for the reasons given at IR77 he agrees that there would not be a significant cumulative effect in relation to Horsemoor Drove solar farm, or to the two commercial wind farms which are visible in the distance.

11. As such he agrees with the Inspector (IR78) that there would be a substantial adverse effect on the character and appearance of the countryside between Sutton St James and Sutton St Edmunds and that the proposal would fail to protect or enhance a valued landscape, contrary to the objectives of the Framework.

Listed Buildings

12. The Secretary of State agrees with the Inspector's assessment at IR79 regarding the impact on the heritage significance of the nearby Grade II Listed Sandy Gate Farm House and Guanock House. He notes that it is not disputed that the proposals would have only a minor impact on their heritage significance. He agrees that the harm to the listed buildings would be less than substantial, should be weighed against the public benefit of the proposal and, in so doing, should be given special weight and considerable importance.

Agricultural Land

13. The Secretary of State agrees with the Inspector's assessment at IR80-81 regarding the use of Best and Most Versatile land (BMV) for the development. He agrees that the use of BMV land must count against the proposal, and would be contrary to the Framework. However, due to the small proportion of the site that is BMV land, the lack of other lower quality land in the area and the continued use of the land for grazing, the Secretary of State concludes that there would be only limited harm to agriculture.

Benefits

14. The Secretary of State agrees that the proposal would make a small but important contribution towards the Government's commitment to renewable energy generation and assist in tackling climate change (IR82). He further agrees (IR82) that there would be a small economic benefit in support of the viability of the landholding. He does not give any weight to the introduction of new hedgerows for the reasons given at IR83.

Other Matters

15. The Secretary of State agrees that the scheme would not result in significant harm to living conditions or conflict with Local Plan Policy SG17, for the reasons given at IR84.

Planning conditions

16. The Secretary of State has given consideration to the Inspector's analysis at IR85-87 of the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 206 of the Framework and the relevant Guidance. He is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 206 of the Framework. However, he does not consider that the imposition of these conditions would overcome his reasons for dismissing this appeal.

Planning balance and overall conclusion

17. For the reasons given above, the Secretary of State considers that the appeal scheme is not in accordance with Policy SG4 of the development plan, and is not in accordance with the development plan overall. He has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in accordance with the development plan.

18. Weighing in favour of the proposal is the proposal's contribution towards achieving national targets for renewable energy generation, and the economic benefit in support of the viability of the landholding. The Secretary of State places significant weight on these benefits.
19. Weighing against the proposal is the limited harm from the use of BMV land. The minor impact on two nearby listed buildings also weighs against the proposal, and the Secretary of State attaches special weight and considerable importance to this harm. The Secretary of State finds substantial harm to the character and appearance of the countryside, both alone and cumulatively with the Fendyke Farm site, and attaches significant weight to this.
20. The Secretary of State concludes that the overall balance is against the proposal. For the reasons given above, the Secretary of State considers that the appeal scheme would not amount to sustainable development. He further concludes that neither the mitigation measures proposed nor the use of conditions could make the impact acceptable and that as such Framework paragraph 98 indicates that the proposal should be refused.

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 installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access track, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure in accordance with application ref: H20-0128-15 dated 27 January 2015.

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 6 weeks from the day after 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 South Holland District Council and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

Philip Barber

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by B.Hellier BA(Hons) MRTPI

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

Date: 27 July 2016

TOWN AND COUNTRY PLANNING ACT 1990
SOUTH HOLLAND DISTRICT COUNCIL
APPEAL BY
LITTLE EAU SOLAR LIMITED

Hearing held on 14 and 15 June 2016

New Fen Dike, Sutton St James, Spalding, Lincolnshire

File Ref: APP/A2525/W/15/3138266

File Ref: APP/A2525/W/15/3138266

New Fen Dike, Sutton St James, Spalding, Lincolnshire

- 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 Little Eau Solar Limited against the decision of South Holland District Council.
- The application Ref H20-0218-15, dated 27 January 2015, was refused by notice dated 11 September 2015.
- The development proposed is installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access tack, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure.

Summary of Recommendation: The appeal be dismissed

Procedural Matters

Recovery by the Secretary of State

1. The appeal was recovered for decision by the Secretary of State for Communities and Local Government by a letter dated 26 January 2016. The reason for this direction is because the Secretary of State notes there is a large-scale solar farm nearby and he wishes to consider the cumulative impact of the proposed scheme. The appeal is therefore being recovered because of the particular circumstances.

Costs application

2. At the Hearing an application for costs was made by the appellant against the Council. This application is the subject of a separate Report.

Reasons for refusal

3. Planning permission was refused for the following reason.

The proposal would result in a dominant and uncharacteristic form of development, which would introduce a series of utilitarian structures that are considered to be at odds with the immediate surroundings of the site, which is notable for its flat, open landscape with extensive vistas to level horizons. The visual impact would be particularly unacceptable when viewed from the south of the site approaching on Broad Gate. Furthermore, in association with the previously approved Fen Dike Farm solar farm scheme to the north of the site, it is considered that there would be an unacceptable cumulative impact upon the wider landscape setting.

Little Eau Opposition Group (LEOP)

4. Local residents established LEOP which was represented at the Hearing. LEOP supported the landscape and visual effects grounds of refusal set out in the refusal notice. It also objected on grounds of loss of agricultural land, heritage impact and the effect on residential amenity.
5. The decision to refuse was contrary to the recommendation of officers to the Planning Committee. The same officers attended the Hearing on behalf of the Council. They took a passive role in addressing the reason for refusal. In practice they relied on LEOP to put the case for the Council although it needs to be made clear that LEOP were not representing the Council in a formal sense.

The Site and Surroundings

6. The site has an area of some 11.75ha roughly in the shape of a diamond aligned north-south. It is currently three arable fields bounded on three sides by roads, New Fen Dike (south-west), Gooch Gate (north-west) and Sandy Gate (south-east). The land is essentially flat for miles around. The roads are about 2m above ordnance datum (AOD) and the land between 0.6 and 1.6m AOD. There are drainage ditches between Gooch Gate and the site, separating the fields and forming the north-east boundary. All the fields are unenclosed although there are a few trees on New Fen Dike and Gooch Gate. There is a larger group of trees surrounding a derelict building at the southern tip of the site¹.
7. The surroundings are reclaimed fenland. It is an arable landscape. At the time of my visit there was a mostly green mosaic of cereals and flowers, overlain by a geometric road network following the line of drainage ditches. There are open skies and extensive views into the distance. Interrupting these views are isolated dwellings usually partially hidden by associated tree planting. There is a dwelling under construction at Smiths Farms immediately to the south of the site and two existing dwellings on Broad Gate about 350m to the north-west. There are two nearby listed Grade II properties: Sandy Gate Farm, 800m to the north-east; and Guanock House, 950m to the south.
8. There are few hedgerows. Clusters of shelter belt planting break the horizon. This includes distinctive lines of poplars at Bardlings Drove associated with a deer farm which is no longer operational, at Hallgate Farm and at Coronation House. Some 2km to the north there are glimpses of the linear village of Sutton St James and a line of pylons on the skyline. In the distance is a commercial wind farm near Sutton Bridge about 8km to the north-east and another is visible to the south in Cambridgeshire, over 10km away.
9. Local traffic between Sutton St James and Sutton St Edmunds uses Broad Gate which at its nearest point passes some 100m to the west. Otherwise the roads are little used. On my site visit, in the middle distance, a team of a dozen or so workers were harvesting peonies. There are few off-road public rights of way. The setting is one of working farmland with a remote and tranquil feel to it.
10. The appellant has a planning permission² granted in 2014 for a 17.5MW solar farm (known as Felldyke Farm) on 19ha of land on Bardlings Drove adjacent to the deer park and about 550m to the west of the appeal site. Construction work has not yet commenced. There is a recently completed 10MW solar farm at Horsemoor Drove close to the built up area of Sutton St James.

The proposal

11. The solar farm would consist of panels erected on ground mounted frames fixed to pile-driven steel supports and arranged in rows running east-west. The submitted plans show a height of between 2.0m and 2.4m. At the hearing the appellant confirmed that they would not exceed a height of 2.0m above ground level. The associated infrastructure includes a sub-station with a footprint of 8.3m x 5.2m and a height of 3.9m situated on Gooch Gate at the north end of the site. It was confirmed that, as set out in the description of development,

¹ In a different ownership and outside the site boundary

² Council Ref H20-0764-14. Approved 8 December 2014

- there would be a need for three transformers/marshalling cabinets. There are no plans of these but they would be about 2m in height.
12. The Environment Agency requires the sub-station and transformers to be located above the predicted flood level and no lower than 300mm above the existing floor levels. It is not clear what the predicted flood level is but the Council indicated that in practice it would have treated the figure of 300mm as the requirement.
 13. The panel area would be surrounded by a 1.8m high security fence with four CCTV cameras on 3m poles. The electricity generated would be fed into a sub-station approximately 4km to the north. It is anticipated that this would be by underground cable making use of links created or to be created in the future by the Felldyke Farm and Horsemoor Drove solar farms. A new access point would be made close to the junction of New Fen Dike and Gooch Gate, being the closest point to the approach along Broad Gate.
 14. Land under the solar panels would be grass seeded and utilised either for sheep grazing or for silage production. Mitigating landscaping is proposed in the form of a perimeter hedge planted around the whole site.

Planning policy

Development Plan

15. The development plan consists of the saved policies of the South Holland Local Plan (LP). Policy SG4 is concerned with development in the open countryside. It states:
Planning permission will only be granted for development in the open countryside which is essential in the proposed location and cannot reasonably be located within defined settlement limits. Development proposals that would result in an unacceptable impact upon the landscape character of an area, either individually or cumulatively, will only be permitted where:
 - i) the need for the development in that location outweighs its impact; and*
 - ii) no other site or solution exists to accommodate the proposed development.*
16. LP Policy SG17 seeks to protect residential amenity, including any overbearing or overshadowing effect on outlook. LP Policy SG18 expects new development to incorporate appropriate landscaping and biodiversity habitats. LP Policy EC4 supports farm diversification having regard to a number of considerations, including the impact of development on the surrounding environment.
17. I consider the first part of LP Policy SG4 is overly restrictive in the light of the presumption in favour of development as currently described in the National Planning Policy Framework (NPPF). The second part of this policy and the remaining LP policies are in line with national policy and should be given due weight accordingly.
18. Work is underway on a South East Lincolnshire Local Plan 2011-2036 which will replace the existing LP. It covers the districts of South Holland and Boston. It is anticipated that its public examination will take place in November 2016 with adoption in the early part of 2017. Little weight can be given to its policies at this stage.

National policy

19. The LP has no saved policy on renewable energy. Where the development plan is silent the NPPF³ states that permission should be granted unless any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in the NPPF as a whole, or specific policies in the NPPF indicate development should be restricted.
20. Government policy is to support the development of renewable energy sources, including solar power, to help to ensure that the country has a secure energy supply and to reduce greenhouse gas emissions. Reflecting Government policy the NPPF advises that an application for renewable energy should normally be approved if its impacts are, or can be made, acceptable⁴. However it should be assessed against the NPPF objective of achieving sustainable development as a whole which includes the need to recognise the intrinsic character and beauty of the countryside. The NPPF also states that the planning system should protect and enhance valued landscapes⁵.
21. The NPPF indicates that local planning authorities should take into account the economic and other benefits of the best and most versatile (BMV) agricultural land⁶. Where significant development of agricultural land is demonstrated to be necessary, local planning authorities should seek to use areas of poorer quality land in preference to that of a higher quality. A written ministerial statement (WMS) from the Secretary of State for Communities and Local Government in March 2015⁷ advises that use of BMV agricultural land would need to be justified by the most compelling evidence.
22. Current national web based Planning Practice Guidance (PPG) makes it clear that the need for renewable energy does not automatically override environmental protections and the planning concerns of local communities. It states that cumulative impacts require particular attention, especially the increasing impact of wind turbines and large scale solar farms on landscape and local amenity as the number of turbines and solar arrays in an area increases⁸.
23. The PPG also sets out particular considerations that relate to large scale solar farms⁹. They should preferably be on previously developed land, on non-agricultural land or on buildings. There is a need to justify any use of agricultural land.
24. When development may affect a heritage asset or its setting the NPPF requires the decision maker to: identify and assess its heritage significance; consider the impact of the proposed development on the significance; and finally establish whether this would result in harm to the significance. Any harm should require clear and convincing justification. Where there is less than substantial harm then this harm should be weighed against the public benefits of the proposal¹⁰.

³ Paragraph 14

⁴ NPPF Paragraph 98

⁵ NPPF Paragraph 109

⁶ NPPF paragraph 112

⁷ Planning Update: Written Statement HCWS488 by the Secretary of State for Communities and Local Government. 25 March 2015

⁸ Planning Practice Guidance: *Renewable and low carbon energy* Paragraph: 007 Reference ID: 5-007-20140306

⁹ PPG: Paragraph: 013 Reference ID: 5-013-20150527

¹⁰ NPPF Paragraph 134

Statutory duty

25. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 contains the following duty. *In considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the Secretary of State shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.*
26. A Court of Appeal judgement¹¹ found that a decision taker, having found harm to a heritage asset, must give that harm considerable importance and weight. This is the case even when the harm in NPPF terms is less than substantial.

Agreed matters

27. The Council and the appellant have signed a Statement of Common Ground. Other matters were agreed in the written statements or at the hearing. However, having regard to the objections from LEOP, overall agreement of the parties was limited to the matters set out below.
- The application is for temporary permission for a period of 25 years. At the end of this period the site would be cleared and restored to solely agricultural use.
 - The appellant carried out a site specific agricultural land classification assessment of the appeal site informed by a soil survey. This concludes that the land is Grade 3b (72.6%), Grade 3a (12.3%) and other uses, mainly drainage ditches (15.3%). The Grade 3a land is classed as BMV land.
 - The proposed development would make a significant contribution to meeting national climate change objectives and reducing carbon emissions. It would produce electricity equivalent to the usage of about 940 households and save approximately 2714 tonnes of CO₂ from being produced each year.
 - The site lies within National Character Area 46: *The Fens*. The most up to date regional landscape character assessment is the East Midlands Regional Landscape Character Assessment produced in April 2010. This shows the site within Landscape Character Type 2B *Planned and Drained Fens and Carrlands* (LCT 2B). The appellant used an older study¹² which includes the site within a *Peaty Fens* LCT. In practice the boundaries are similar to those of LCT 2B as are the descriptions of landscape character.
 - Subject to conditions there is no objection to the proposal on grounds of traffic generation, the effects of glint and glare or impact on biodiversity, drainage or archaeology.

The case for the appellant

The material points are:

Character and appearance

28. The submitted landscape and visual assessment (LVIA) was professionally carried out. It concludes that the development would have a moderate negative impact resulting from the loss of agricultural land and from the introduction of a new

¹¹ Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG [2014] EWCA Civ 137

¹² Strategic Landscape Capacity Study for South Holland. John Campion Associates. July 2003

- large scale engineered structure, a sub-station and perimeter fencing. With the proposed mitigation measures in place agriculture would be the only key landscape receptor where there would be a moderate negative change. However this is not a permanent change and the site would still partly retain its agricultural use through grazing sheep underneath the solar modules.
29. The landscape is of good/medium quality. It is not designated and it is not noted for its scenic quality. It has a flat topography, dominated by the horizon. The region around Sutton St James is physically remote and does not attract visitors. Arable farming dominates. Lines of poplars have introduced uncharacteristic, visually prominent vertical elements. There are instances where modern agricultural buildings, including glass houses and a piggery unit, have been introduced. It is an evolving landscape.
 30. The solar farm would consist of multiple rows of solar panels with associated metal infrastructure. The LVIA noted that this would introduce an industrial type land-use. Mr Ayres disassociated himself with this description pointing to the impact of modern agricultural buildings. In comparison to these the solar panels would be low-lying and would be in keeping with the horizontal character of the landscape.
 31. In addition any change to landscape character would only affect the immediate area of the solar park development which is located at the northern edge of the LCT. Subtle changes are typical of this area due to the merging of different landscape types. Hedgerows are a local feature of the *Peaty Fens* LCT. Within sight of the appeal site both the glass houses at Poplar Farm and the deer farm on Bardlings Drove are enclosed by high hedges and there is a roadside hedgerow between the site and Guanock House. The proposed hedge planting is likely to be viewed by the general public as a slightly beneficial landscape change. Indeed the Council has required hedge planting as a condition of approval for the two nearby solar farm sites. There are also grants available to encourage replanting hedgerows and the owner could plant hedges without the need for any consent.
 32. Six representative viewpoints were selected all within a 2km radius of the site. At the two closest on New Fen Dike and on Broad Gate approaching from the south there would be a moderately adverse effect on passing drivers. Poor weather precluded taking in views from the east and it is agreed that there would be a greater impact on occupiers of the new property at Smiths Farm and on any one travelling on horseback, on foot or cycling. However these are short distance views and although the land is flat there are minor variations in levels which would reduce the impact to a degree. Whilst there would be an initial harmful visual effect this would alter to a slight beneficial effect once the proposed hedge planting matures.
 33. There are two other solar farms in the vicinity. Grange Farm¹³ which is constructed is about 3.3km away and would not be seen either simultaneously or successively from the appeal site. At this distance one would need to travel several minutes on a contrived route to see both developments
 34. The Fendyke Farm development is yet to be constructed. There would be inter-visibility with the appeal site from the local road network. However the existing

¹³ Elsewhere referred to as Horsemoor Drove

views across the sites are constrained by slight variations in ground level and existing tree belts/vegetation. The provision of hedgerow screening that is provided by the consented Fendyke development and proposed for the appeal site will not permit any inter-visibility in the longer term. In any event it is the case for the appellant that neither scheme would have a significant harmful landscape or visual effect and that the combined effect would not be significant.

Listed Buildings

35. As Grade II listed buildings Sandy Gate Farm and Guanock House are considered to be a heritage asset of medium value. However there is no inter-visibility between these properties and the proposed development because of their shelter belts. The magnitude of change is therefore considered to be low. Nonetheless there would be a partial loss of the wider agricultural setting which is considered to have a minor adverse effect on the heritage significance of these properties.
36. The harm would be less than significant and in accordance with NPPF paragraph 134 would need to be weighed against the scheme benefits. The Conservation Officer concluded that the most strongly felt harm would be to the local distinctiveness of a surviving traditional fen landscape that includes two historic buildings as part of the immediate landscape setting. This is different in emphasis than making the case for the setting of the listed buildings themselves.
37. The S66 statutory duty is acknowledged. However English Heritage did not object and, having regard also to the views of the Conservation Officer, it is concluded that little weight should be given to the impact on the setting of the listed buildings.

Agricultural land

38. Only a relatively small part of the site is BMV land and that is Grade 3a. Most land in South Holland is shown on the regional ALC maps as Grade 1 and 2. This is therefore some of the lowest value land in the district. In his speech of 25 April 2013 Greg Barker, as Minister for Energy and Climate Change, stated that where solar farms are not on brownfield land you must be looking for lower grade agricultural land.
39. A sequential site selection exercise was undertaken. The initial step on a district by district basis was to identify suitable grid connection locations. The area around Sutton St James was one of the few such locations with existing spare capacity. Having identified a grid connection then there was high level sensitivity mapping of site constraints which had reasonable access. Included in these constraints was whether the site was brownfield/greenfield and, if greenfield, its agricultural land classification. The appeal site scored well on most counts. Whilst it includes some BMV land this is a small part of the total area. The land would still be used for agriculture even though not as intensively. After 25 years it would revert to farmland with a soil structure that may well have benefitted from a period of grazing.
40. The appellant was unable to identify any suitable brownfield sites. Whilst there was brownfield land it was in or adjacent to urban areas and has been earmarked for housing or other building uses. The land values are too high to allow for a viable solar farm. Roof top solar has great potential but its drawback is that owners are often not prepared to enter into a 25 year commitment and the

capacity of roof top installations is usually less than 500KW. There is a need for both brownfield and greenfield sites. There are no known roof top or brownfield sites available within the catchment of the Sutton St James grid connection.

41. In the above circumstances the use of a greenfield site which includes a small area of BMV should not count against the proposal.

Planning balance

42. The presumption in favour of sustainable development is a golden thread running through the NPPF and PP. Renewable energy is inherently sustainable and must benefit from this presumption. There has to be change. Those who have objected have failed to recognise that to achieve the national policy requirements there is a need for significant weight to be given to the support of renewable energy developments.
43. There would also be benefits to the landowner who lives in the village and from this base farms some 60ha of cereals. This is a relatively small amount of land and can only be maintained as a viable concern with other sources of income. These proposals would secure that. It is also hoped that the landscaping and landscaping maintenance would provide some local employment.
44. It is accepted that the site selected must be, or can be made to be, an acceptable one. In this case there is only moderate landscape and visual harm and after mitigation this would be negligible. The introduction of hedgerows would be environmentally beneficial. The temporary use of a small amount of BMV land which is at the lower end of the BMV scale and which will continue to be used for agriculture should not count against the proposal. Similarly the practical harm to the setting of the two affected listed buildings is very small. There would not be a significant effect on the new dwelling at Smiths Farm.
45. The balance in this case lies clearly in favour of the proposal.

The case for the Council

Character and appearance

46. The Council decision to refuse the application which was against the recommendation of officers was because Members felt that the visual/landscape impact and cumulative impact of the proposal overall could not be made acceptable. The Council had before it the advice of its consultant Landscape Officer who found the proposal acceptable and that of its consultant Conservation Officer who did not. It was not possible for the Conservation Officer to attend the Hearing.

Listed buildings

47. The Conservation Officer found harm to a historic landscape but did not conclude that there would be harm to the listed buildings or their setting. In her view the impact on the listed buildings should rely heavily on proximity and inter-visibility. She did not feel that proximity has much weight and there is no inter-visibility with Guanock House. Given that her conclusion is that little weight should be given to the setting of the listed buildings it is not considered there is justification to refuse the application in respect of this particular impact, under the provisions of NPPF paragraph 134.

Agricultural land

48. The appellant provided a sequential site selection report. It includes a number of alternative sites and the reasons for discounting them. The study area was limited to South Holland and relied heavily on the availability of a grid connection point. However there is no clear guidance as to the form that any sequential test should take and appeal decisions are an inconsistent guide. On balance the information submitted is considered adequate.
49. The Council has no reason to doubt that the submitted ALC survey is not sound. In South Holland much of the land is Grade 1 or 2. The land in question is predominantly not BMV and since its loss would be temporary there would be no significant or demonstrable adverse impacts in this respect that would counterbalance the presumption in favour of sustainable development. There would be no conflict with the relevant part of LP Policy SG4.

Planning balance

50. Government policy is to support the development of renewable energy sources, including solar power. However it is clear that environmental considerations must not be overridden or disregarded and that issues of landscape/visual amenity must be given significant weight. In this case it is considered that the harm from the landscape/visual effects of the proposal when considered cumulatively would significantly and demonstrably outweigh the benefits.

Case for Little Eau Opposition Group

Character and appearance

51. LEOP commissioned a review of the submitted LVIA. This concluded that:
- the assessment of landscape impacts does not follow the methodology set out in the submitted Environmental Report (ER) or in industry guidance;
 - the submitted photographs do not follow industry guidance;
 - the LVIA does not consider the impact of the development on the characteristics and qualities of the host landscape character area;
 - the baseline character assessment information is out of date; and
 - the impact of the proposed mitigation measures is not assessed.
52. One of the key landscape characteristics of LCT 2B is its strong sense of remoteness with a simple land use palette giving a strong sense of visual unity and sense of identity. Large scale expansive views are typical. These are all characteristics with the potential to be adversely affected by the development proposed. The strategy for this LCT includes protecting *the distinctive character of the landscape. New residential, commercial and industrial development should generally be encouraged within and around existing settlements, limiting widespread incremental development.* The forces for change for this LCT include *marked evidence of agricultural intensification and farm amalgamation, accompanied by a move towards arable production. Due to the flat, featureless topography of the area, specifically the lack of hedgerows, the implications of agricultural intensification is generally expressed in improvements to dykes and embankments*¹⁴.

¹⁴ See Document C1 Appendix B

53. LEOP considers the landscape to be of considerable value. Its unspoilt nature and sense of openness and remoteness is a rare combination. It would be highly sensitive to a large scale solar development. LEOP agrees with the views of the Conservation Officer that the development could not be successfully assimilated into this landscape. Its industrial character would have a significant impact which would extend well beyond its immediate environs when viewed from the south. Whichever way it was viewed, from far or near, it would be an incongruous feature which would detract significantly from the landscape as a whole.
54. Hedges are not a feature in the local landscape nor are they a typical feature of the LCT. Consequently the proposed mitigation would itself have an adverse effect on the open landscape character.
55. In terms of visual impact the LVIA considers that the development would appear similar to an electricity sub-station but this underestimates the extent of the site which in addition to the panels would include a sub-station, CCTV columns, transformers and perimeter fence. The LVIA assumes that visual receptors would be drivers whose attention is not focussed on the landscape. This does not take account of the many cyclists and horse riders who use the quiet road and bridleway network. The effect of near views of the development on these receptors has been seriously underplayed.
56. Whilst LEOP considers new screen hedgerows to be uncharacteristic it also points out that they would fail to act as an adequate screen for at least half the 25 year temporary period. Best practice is to assume planting will take 15 years to achieve its intended landscape impact.
57. Cumulatively there would be considerable inter-visibility with the approved Fendyke Farm solar farm. Sequentially the traveller would also see on, the outskirts of Sutton St James, the Horsemoor Drove solar farm, a wind turbine and, on the horizon, commercial wind farms to the north east and south. These and other modern agricultural and horticultural buildings are gradually eroding the character of the area.
58. LEOP therefore concludes that there would be considerable landscape and visual harm singly and cumulatively arising from the proposed development.

Listed buildings

59. Paragraph 132 of the NPPF notes that as heritage assets are irreplaceable then any harm or loss should require clear and convincing justification. The appellant has acknowledged that there would be a degree of harm to the setting of both Guanock House and Sandy Gate Farm House. LEOP accepts that the harm would be less than substantial and that therefore the proposal should be assessed in accordance with NPPF paragraph 134. However case law is now very clear that any degree of harm must be given considerable importance and weight.
60. In assessing impact on the setting there are many places where the listed buildings are seen in association with the appeal site, including views from the bridleway along Bad Gate. Whilst Sandy Gate Farm House is enclosed by trees it is possible to get glimpses of the appeal site within the open land to the south from gaps between the trees.

Agricultural land

61. The fact that a relatively small portion of land is BMV land is immaterial. Government policy is clear that ground mounted solar arrays should not be located on BMV land and should be located on land of lesser value. The WMS of March 2015 and the subsequent amendments to the PPG reinforce this position. Furthermore the appellant has not provided satisfactory evidence that there are no better alternative sites having concentrated on only one grid connection point. A recent solar farm proposal in Mid-Devon was refused because of a similar inadequate assessment of sites¹⁵.
62. LEOP do not accept that the temporary nature of the proposal should be given weight. In a recent appeal decision¹⁶ the Secretary of State took the view that a proposed 30 years temporary period is a considerable period of time and the reversibility of the proposal is not a matter that should be taken into account.

Planning balance

63. There would be considerable landscape and visual harm added to which is the unjustified use of BMV land, the harm to the setting of the listed buildings and to the residential amenity of the house at Smiths Farm. This harm clearly outweighs the benefits associated with the solar farm and the appeal should be dismissed.

Other third party representations

The Rt.Hon.John Hayes MP

64. Shares the concerns of his constituents about the detrimental impact of the proposal on the fenland landscape. Refers to the particularity of the landscape, its openness, the droves, dikes and sparse settlement pattern reflecting the history of its drainage and reclamation for agriculture. The area around Sutton St James is suffering from creeping industrialisation which is harming its open, unspoilt character. There are already two solar farms. The cumulative effect of one more would be too much.
65. The site is good agricultural land. The proposal fails to show that there are not better located sites. Government policy clearly now favours use of previously developed land and buildings. The proposal is careless of the interests of the local community and their amenity.

Mr Coleman, Sutton St Edmonds Parish Council

66. Both Sutton St James and Sutton St Edmonds Parish Councils object. The Parish Council does not wish to put forward any technical arguments but would point out that the residents of Sutton St Edmonds make regular journeys to use the shops and facilities of Sutton St James. Cyclists, walkers and horse riders also pass through the village heading north. These journeys would take them past two solar farms which at their boundaries are less than 600m from one another. Once inside Sutton St James they will encounter a third solar farm very close to the centre of the village.

¹⁵ Ref 14/01949/MFUL Willand Road, Collumpton Road, Devon

¹⁶ Ref APP/M2270/A/14/2226557 Badsell Road, Five Oak Green, Tonbridge

67. This part of the fens is an ancient landscape that has changed little since Roman times. The introduction of large scale industrial hardware into this landscape is damaging to its character. Screening it with hedging will introduce another foreign element which is uncharacteristic and in any case will not provide effective cover for over half the working lifespan of the scheme.

Mr Cockerton, Sandy Gate Farm House

68. Submitted a statement and spoke in support of the LEOP case

Written Representations

69. At the application stage objections were received from occupiers of 17 properties and there were 35 letters of support on a standard pro-forma. At the appeal stage there were a similar number of objections although no additional letters in support. These written representations do not raise any additional planning matters that need to be addressed.

Conclusions

References are made, where appropriate, to sources of material in earlier parts of the report by indicating the relevant paragraph number thus: []

Main considerations

70. Having regard to the reason for refusal and representations from local people I consider the main issues are:
- the effect of the proposed development on the character and appearance of the surrounding countryside, both as a discrete development and cumulatively, in combination with other renewable energy developments;
 - the effect on the heritage significance of the setting of Guanock House and Sandy Gate Farm House;
 - the effect on agriculture; and
 - whether any harm identified would be such as to clearly outweigh the benefits of the proposal, including those associated with renewable energy production and the reduction of greenhouse gas.

Character and appearance

71. I find that the submitted LVIA should not be entirely relied on because it does not establish landscape value or the susceptibility of the landscape to a solar farm development so as to arrive at a measure of sensitivity. It then assesses the effect of the proposal on landscape elements but not on landscape character [51][28].
72. The landscape is not designated. It is very much a man-made landscape and one that is not notably scenic. Nonetheless my judgement is that it has considerable value. It is a traditional fen landscape characterised by openness and uninterrupted views to the horizon particularly, in this case, to the south. Its vast skies and strong sense of remoteness are well known and appreciated. The immediate surroundings are relatively unspoilt with few modern interventions. There are occasional isolated dwellings and farm buildings, including two listed buildings. I consider the clutter associated with the solar panels and associated infrastructure would be an alien feature in this open and large scale setting. I find that the landscape has a moderate to high sensitivity to such development.
73. The proposal would introduce a large engineered construction across three unenclosed fields in a particularly open location. It would be a low structure but nonetheless one that would sit above the level of the surrounding crops. The sub-station and transformers would be built up above flood level on plinths and would be separate vertical elements. The manufactured symmetry of the panel arrays and the strong outline of the rear and side elevations of the structure would be at odds with the subtle colours, movement and variety of crops in the surrounding fields. There would be a significant alteration to the inherent character of the landscape.
74. In accordance with the advice in the PPG mitigation is proposed by planting a perimeter hedge. This would take time to grow but eventually it should provide a visual screen to the development. However this is a part of the fens where hedges are not typical features and I found no evidence to support the assertion by the appellant that they are [31] [54]. The hedges would foreshorten views

and create a sense of enclosure that would itself have a significant adverse effect on the open landscape character.

75. The site lies close to the larger approved Fendyke Farm solar farm and would be seen in combination with it [34][57]. The combined area of the two sites is in excess of 30ha. The Fendyke Farm site is partially screened being immediately north of trees around the deer farm. The appeal proposal would extend solar development into countryside that is more open. The two sites in combination would have a substantial adverse effect on the openness of the landscape to the south of the village of Sutton St James resulting in considerable cumulative landscape harm.
76. In terms of visual impact the appeal site is open and exposed from all sides. On my site visit I found that from a radius of about a kilometre the development would be prominent and intrusive when viewed from locations which include the property at Smiths Farm, the road network and the Bad Gate bridleway. From the south the panel arrays would be likely to appear on the skyline. Even after the new hedgerows mature the loss of openness would detract from the quality of these views. From Broad Gate the Fendyke Farm site would be seen to the north-west and would result in additional cumulative visual harm.
77. Further north where the Horsemoor Drove solar farm is situated the landscape is more settled and less open. Road users travelling north from the appeal site would be aware that they are moving into a different setting. I am not persuaded that they would experience a significant sequential cumulative effect. The two commercial wind farms which are visible are far away in the distance and detract little from the enjoyment of the appeal site setting [33][57].
78. This is a relatively unspoiled part of the fens distinguished by its openness and its extensive vistas. I conclude that the proposal when considered cumulatively with the nearby Fendyke Farm solar farm, would result in considerable detriment to landscape character and cause significant local visual harm. Overall there would be a substantial adverse effect on the character and appearance of the countryside between Sutton St James and Sutton St Edmunds and the proposal would fail to protect or enhance what is clearly a valued landscape contrary to the objectives of the NPPF.

Listed buildings

79. The appeal site is part of the wider setting of Sandy Gate Farm House and Guanock House but it would not affect their immediate setting. Both properties are well screened by encircling vegetation which cuts them off from the surrounding countryside. There is no dispute that there would be only a minor impact on their heritage significance [35][59]. Thus the harm would be less than substantial and in accordance with NPPF paragraph 134 it should be weighed against the public benefit of the proposal. In undertaking this balance considerable weight and importance should be given to the identified harm.

Agricultural land

80. The starting point of the search by the appellant for a site was to identify viable grid connection points in the South Holland district area. This is reasonable although no evidence was produced to show where those points were and whether the focus on the Sutton St James area was justified. Having discounted

brownfield and rooftop sites there was then a search for lower value agricultural land. The Council could not suggest any available brownfield sites and, subject to a sequential approach, there is no policy constraint on the use of greenfield land [39][40]. Notwithstanding the concentration of the search effort in the Sutton St James area [61] I consider the appellant has carried out an adequate sequential assessment of sites.

81. Agricultural land in South Holland is almost all Grade 1 and 2. To find a site that is for the most part Grade 3b and not BMV land is very much in its favour [38][49]. LEOP submits evidence that the site is capable of producing a good cereal crop but this is not evidence of the intrinsic quality of the land provided by the borehole survey and analysis. The use of BMV land must count against the proposal and would be contrary to NPPF Paragraph 212 [61]. However, taking account of the small proportion of the land that is BMV, the lack of other lower quality land in the district and the continued use for sheep grazing during the operational period I find that there would be only limited harm to agriculture.

Benefits of the scheme

82. There is no dispute that the development would produce energy from a renewable source and by doing so assist in tackling climate change [27]. As a result of EU Directive 2009/28/EC, the UK is committed to a legally binding target to achieve 15% of all energy generated from renewable resources by 2020. The 2006 Energy Review has an aspiration of 20% of electricity from renewable resources by 2020. The 2009 UK Renewable Energy Strategy and the UK Low Carbon Transition Plan has as a lead scenario that this figure should increase to 30% although this is not a commitment. None of these documents sets a ceiling and there is an on-going need for renewable energy projects. Meeting the electricity needs of the equivalent of some 940 people and the saving of the associated CO₂ emissions would make a small but important contribution to this objective. There would also be a small economic benefit in support of the viability of the landholding [43]. These benefits attract significant weight.
83. The appellant claims a positive landscape gain from the introduction of new hedgerows. However, as noted above hedgerows are not characteristic of the landscape and would be inappropriate features.

Other matters

84. LEOP and the owner of the house under construction at Smiths Farm express concern over the effect on the outlook from this property. It would have direct views of the back two thirds (approximately 140m) of the total length (approximately 212m) of the Sandy Gate edge of the development. This would be a partial view and take up a small part of the total outlook. There is no right to a view and the impact would not be overly oppressive. In any case a perimeter hedge is proposed to a height of 3m which would effectively screen the site from the property. There would therefore not be any significant harm to living conditions or conflict with LP Policy SG17.

Conditions

85. I have considered what conditions would be necessary should the Secretary of State decide to allow the appeal. They are based on those suggested by the

Council¹⁷, further discussion at the Hearing, and the tests set out at NPPF paragraph 206.

86. There would be a need for a standard commencement condition and for one listing the approved plans. However, since the submitted details are generic, further scheme specific details of the panels, associated structures, internal tracks and cable runs would be needed. It was agreed that, as the development would be time limited, a reinstatement condition would be necessary. Further details of landscaping and ecological works and their maintenance would be required. The agreed flood risk mitigation measures should also be secured by condition.
87. The highway authority reasonably seeks improvements to Fen Dike Road, the provision of off-road parking and unloading, and access arrangements that avoid using Sandy Gate or Gooch Gate. To protect residential amenity hours of working, noise emissions and a protocol for dealing with complaints of glint and glare should be conditioned.

Planning balance and conclusions

88. I conclude that, having regard to the effect of the proposal both alone and cumulatively with the Fendyke Farm site, there would locally be substantial harm to the character and appearance of the countryside which in this case would clearly and demonstrably outweigh the benefits. There would be additional limited harm from the use of BMV land and a minor impact on two nearby listed buildings which should be given special weight and considerable importance in the planning balance. However these latter two considerations alone would not have outweighed the benefits if the landscape and visual impacts had been acceptable.
89. As the overall balance is against the proposal it would not be sustainable development as described in paragraph 14 of the NPPF and the countryside harm would be contrary to LP Policy SG4. Neither the mitigation measures proposed nor the use of conditions would make the impact acceptable and NPPF paragraph 98 would indicate that the proposal should be refused.

Recommendation

90. I recommend that the appeal for installation of ground-mounted photovoltaic solar arrays to provide 5MW generation capacity together with transformer stations, internal access tack, electricity sub-station, landscaping, fencing, security measures, access gate and ancillary infrastructure be dismissed. In the event that the Secretary of State disagrees with me, I recommend that any permission be made subject to the conditions in the Appendix below.

Bern Hellier

INSPECTOR

¹⁷ Document B1

APPENDIX

SUGGESTED CONDITIONS IF PLANNING PERMISSION IS GRANTED

1. The development hereby permitted shall begin not later than three years from the date of this decision.
2. The development hereby permitted shall be carried out in accordance with the following approved plans: Drawing 1495.j/D001 (indicative site plan) and Appendix 2 (site location plan).
3. This permission shall expire after 25 years following the date that the development is first connected to the electricity grid. The local planning authority shall be notified of such date in writing not later than one month from the event taking place. Within 6 months of the end of the 25 year period, or if the solar array ceases to be operational for a continuous period of 6 months at any time prior to this, the solar array and its associated infrastructure shall be removed from the site and the land reinstated to a condition that has been first agreed in writing by the local planning authority.
4. Development shall not commence until details of the position, layout, scale and external appearance of the solar panel arrays, sub-station, transformers, marshalling cabinets and CCTV poles, including a schedule of external materials, has been submitted to and approved in writing by the local planning authority. The development shall thereafter be carried out in accordance with the approved details.
5. Notwithstanding the submitted typical details the height of the panel arrays shall not exceed 2.0m
6. Development shall not commence until construction details of the internal access roads have been submitted to and approved in writing by the local planning authority. The access roads shall be constructed in accordance with the approved details
7. Development shall not commence until details of the method of installing all cabling has been submitted to and approved in writing by the local planning authority. All cabling shall be installed in accordance with the approved details.
8. Notwithstanding the submitted landscape mitigation development shall not commence until a detailed scheme for hedge planting and boundary treatment including access gates, fences, and fence openings for wildlife protection has been submitted to and approved in writing by the local planning authority. The scheme shall include a hedgerow on all sides of the site and shall specify species, density, planting size and layout. The scheme shall include a timetable for implementation and shall be carried out as approved.
9. The new hedge planting shall be allowed to reach a height of at least 3 metres and shall thereafter be retained at that height. It shall be maintained by the owner(s) of the land and in the event that plants die, are removed or become seriously damaged or diseased others of the same species and size shall be planted in the same place in the next planting season.
10. Development shall not commence until a biodiversity management plan including long term design objectives, management responsibilities, maintenance schedules for the ground cover and details of habitat enhancement and protection, including a monitoring programme, has been submitted to and approved in writing by the local planning authority. The plan shall be implemented as approved.
11. Development shall not commence until the section of New Fen Dike between the Junction with Broad Gate and the site entrance has been improved in accordance with details

which shall first have been submitted to and approved in writing by the local planning authority.

12. Development shall not commence until details of the site access and a construction parking and off-loading area have been submitted to and approved in writing by the local planning authority. The works shall be carried out prior to construction commencing and all parking and off-loading associated with the development shall be contained and carried out within the site.
13. There shall be no use of Gooch Gate or Sandy Gate by vehicles associated with the installation of the development hereby permitted. Temporary signs shall be erected to advise drivers of this requirement and temporary directional signage shall also be erected on the agreed route for the delivery vehicles.
14. The development hereby permitted shall be carried out in accordance with the submitted Traffic and Construction Management Plan outlined in Section Q of the Environmental Report. For the avoidance of doubt no machinery shall be operated, no processes shall be carried out and no deliveries shall be taken at, or despatched from the site outside the hours of 08:00 and 17:00 Mondays to Fridays inclusive, 08:00 and 13:00 on Saturdays, and not at any time on Sundays and Bank or Public Holidays. Furthermore there shall be no HGV movements to or from the site outside the hours of 10:00 and 14:30 Mondays to Fridays inclusive.
15. The development shall be carried out in accordance with the flood risk assessment contained within the Environmental Report and in particular the following flood risk mitigation measures detailed within:
 - all sensitive equipment shall be located above the predicted flood level and no lower than 300mm above existing ground levels;
 - permeable materials and methods shall be used for the construction of all roadways;
 - the topography of the post-development site shall not be altered from that of the pre-development site; and
 - the run off from the sub-station and control rooms shall filter into a sustainable drainage system.These mitigation measures shall be fully implemented prior to the development being first connected to the grid.
16. Noise from fixed plant and machinery shall not exceed the background noise level by more than 5dB(A) when measured as a 15 minute LA(eq) at any residential boundary.
17. There shall be no external lighting on the site at any time once the development is operational.
18. Within 28 days of the receipt of a request from the local planning authority following a complaint to it concerning glint/glare the solar farm operator shall submit details of proposed mitigation measures and a timescale for their implementation. These measures shall be approved in writing by the local planning authority and shall be carried out in accordance with the approved details.

APPEARANCES

FOR THE APPELLANT:

Mr R Ayres	Managing Director, BE Renewables
Ms N Claxton	BE renewables

FOR THE LOCAL PLANNING AUTHORITY:

Mr R Fidler	Development Manager
Mr P Norman	Principal Planning Officer

INTERESTED PERSONS:

Rt Hon John Hayes	Member of Parliament
Mr R Barfoot	Planning Consultant for LEOP
Mr M Coleman	Sutton St Edmunds Parish Council
Mr R Cockerton	Sandy Gate Farm House

Other residents were present and participated

DOCUMENTS

A. Submitted with Statement of Case for the appellant

- A1 Original Planning Application documents Appendices 1 to 23
- A2 Planning Statement
- A3 Design and Access Statement
- A4 Statement of Community Involvement
- A5 Environmental Report (revised 9 April 2015)
- A6 Indicative site plan 1495.j/D001 dated 27 May 2015
- A7 Response to public comments letter dated 23 April 2015
- A8 Other pre determination correspondence between the appellant and the Council

B. Submitted with the Statement of Case for the Council

- B1 Draft planning conditions

C. Submitted with the Statement of Case for LEOP

- C1 Objection response from LEOP (August 2015)
- C2 Additional response from LEOP (also dated August 2015)

D. Other documents

- D1 Statement of Common Ground
- D2 South Holland Local Plan Policies SG4, SG17, SG18 and EC4
- D3 Third party representations on the appeal
- D4 Third party representations on the application

E. Documents submitted at the Hearing

- E1 Written statement by Mr Coleman, Sutton St Edmunds Parish Council
- E2 Written statement by Mr and Mrs Cockerton
- E3 Photograph of site with wheat crop
- E4 Peer review of submitted ALC report from Hyder Consulting
- E5 Secretary of State appeal decision letter Ref APP/D0840/A/14/2229290



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).

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 day after 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 day after 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.

2229290

Butteriss Farm,
Edgcumbe,
Penryn

28 January 2016



Department for Communities and Local Government

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

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

Your Ref: Antigua Appeal

28 January 2016

Dear Madam,

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

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

Inspector's recommendation and summary of the decision

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

Procedural matters

4. An application for costs was made by the appellant against the Council (IR2). This application is the subject of a separate decision letter.

Policy and Statutory considerations

5. In deciding the appeal, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act 2004 which requires that proposals be

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

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

Main issue

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

Character and appearance

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

Benefits

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

Heritage assets

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

Other matters

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

Conditions

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

Overall conclusions

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

Formal Decision

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

Right to challenge the decision

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

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

Yours faithfully

Jean Nowak

Authorised by Secretary of State to sign in that behalf

Report to the Secretary of State for Communities and Local Government

by J M Trask BSc(Hons) CEng MICE

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

Date: 26 November 2015

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

Mr D Adair of Antigua Solar Limited

Against a decision to refuse planning permission by Cornwall Council

Site visit made on 17 March 2015

Butteriss Farm, Edgcumbe, Penryn TR10 9EF

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

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

Butteriss Farm, Edgcumbe, Penryn TR10 9EF

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
- The appeal is made by Mr D Adair of Antigua Solar Limited against the decision of Cornwall Council.
- The application Ref PA13/11664, dated 19 December 2013, was refused by notice dated 16 June 2014.
- The development proposed is solar photovoltaic panels and associated works including inverter housings, security fencing and cameras.

Summary of Recommendation: The appeal be dismissed.

Procedural Matters

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

The Site and Surroundings

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

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

Planning Policy

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

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

The Proposals

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

The Case for the appellant

The material points are:

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

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

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

25. The development also provides additional sustainability resulting from the farm diversification and considerable increase in the ecological and bio-diversity of the site.
26. The proposal would not adversely or significantly impact on landscape, historical character and amenity in the area. It would contribute renewable energy to the national grid and contribute towards the Government's renewable energy and CO₂ reduction targets. Accordingly the proposal is consistent with national and local planning policy and planning permission should be granted.

The Case for the Council

The material points are:

27. The main issues are whether the siting, either singly or in combination, adversely affects the landscape character and visual appearance of the locality and whether the benefits of the scheme outweigh such concerns.
28. The Council generally supports the provision of energy from renewable sources.
29. The site area totals 4.5ha which places it in the small¹ category. However, it is adjacent to an operational solar panel development and, with no separation, the two will inevitably be viewed as one. The combined area of the two would be in the order of some 20ha which exceeds the large category.
30. The proposal is not sited in any dip or fold in the undulating landscape but is an elevated open area of land which has a remoteness engendered by its open nature. There is no significant tree cover and the site can be seen from a number of viewpoints as well as from along the A394.
31. The site is in an area where the strategy is to encourage clear separation between renewable energy developments. The current relatively open agricultural landscape will change to a more industrialised form of landscape. This would result in a landscape where renewable energy development becomes a significant and defining characteristic in this particular locality. This is not the aim of Government advice in the Framework.
32. Tackling climate change is a key Government policy through the development and deployment of alternative sources of energy production. The proposed pv development would make a small but nonetheless important contribution to the reduction in greenhouse gases and farm diversification.
33. These considerations need to be weighed in the balance against the harm to the landscape and those who enjoy the area for its sense of openness. The proposal is in conflict with the aims and intentions of the Framework, the PPG and other Government documents relating to energy from renewable sources which emphasise the importance of landscapes. The scheme would result in a public benefit that would not outweigh the harm to the landscape character and appearance of the area.

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

Written Representations

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

Conditions

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

Conclusions

My conclusions are as follows:

Main Issue

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

Landscape Character

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

same development. The existing adjacent solar farm has an area of 11.33ha and while the full extent of the existing solar farm would not be visible from a single viewpoint that also encompasses the full extent of the proposed solar farm (as discussed below), the fact remains that the combined area of the adjoining solar farms would fall within the large scale². Therefore the proposed development would not be in accord with the landscape strategy for the area.

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

Visual Amenity

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

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

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

Conclusions on Character and Appearance

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

Benefits

52. The appellant advises that the proposed development has a designed capacity of 2.1MW. The appellant considers the scheme would generate enough energy to power the equivalent of about 1200 homes and would offset approximately 1300 tonnes of CO₂ emissions. However, having regard to other factors such as lifetime degradation the Council estimates there would be enough to supply around 391 houses in Cornwall. Whatever the ultimate number of houses supplied turns out to be the scheme would result in carbon dioxide savings and would contribute towards targets of installed renewable electricity production. The proposed development would provide a valuable contribution to cutting greenhouse gas emissions. The proposal would also support the Government's obligations in terms of renewable energy requirements.
53. The appellant has also referred to benefits associated with the enhanced ecology and biodiversity as well as farm diversification. These benefits warrant significant weight.

Planning Balance

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

Other Matters

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

Recommendation

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

J M Trask

INSPECTOR

Appendix – Conditions

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

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

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

SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

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

Challenges under Section 288 of the TCP Act

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

SECTION 2: ENFORCEMENT APPEALS

Challenges under Section 289 of the TCP Act

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

SECTION 3: AWARDS OF COSTS

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

SECTION 4: INSPECTION OF DOCUMENTS

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

3142020

Land at Woodhall Farm,
Wichenford,
Worcestershire

23 February 2017

Appeal Decision

Hearing held on 12 October 2016

Site visit made on 13 October 2016

by Kay Sheffield BA(Hons) DipTP MRTPI

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

Decision date: 23 February 2017

Appeal Ref: APP/J1860/W/16/3142020

Land at Woodhall Farm, Wichenford, Worcestershire, WR6 6YE

- 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 KS SPV47 Limited against the decision of Malvern Hills District Council.
 - The application Ref 14/01658/FUL, dated 21 November 2014, was refused by notice dated 12 August 2015.
 - The development proposed is the construction of a solar park with attendant infrastructure including substation, replacement tower, centre station, inverters, cameras and fencing.
-

Decision

1. The appeal is dismissed.

Preliminary and Procedural Matters

2. The application was accompanied by an Environmental Statement (ES) and a Supplement was submitted as part of the appeal. The ES and the Supplement were together found satisfactory in meeting the requirements of the Town and Country Planning (Environmental Impact Assessment) Regulations 2011 and have been taken into account in the determination of the appeal.
3. Although in force at the time the Council made its decision, the Malvern Hills District Local Plan 1996–2011 was replaced by the South Worcestershire Development Plan (SWDP) on 25 February 2016. The SWDP is therefore the relevant development plan for the purposes of determining the appeal and was addressed by the parties in their evidence.
4. During the application process the size of the site and the distance between the arrays were reduced which led to an overall reduction in the number of panels. The Council determined the application on the revised details and I have determined the appeal on the same basis.

Main Issues

5. The main issues in the appeal are the effect of the development on:
 - landscape character;
 - visual amenity particularly that of users of local public right of ways;
 - the setting of heritage assets in the locality; and
 - whether or not any identified adverse effects would be outweighed by the renewable energy and other benefits of the proposal.

Reasons

6. The appeal site forms part of Woodhall Farm which lies approximately 2.5 km south of Wichenford and a similar distance west of Lower Broadheath. The area is one of mixed farming with farmsteads and groups of dwellings scattered across the area some of which are Listed Buildings (LB). There is also a Scheduled Ancient Monument (SAM). The house and various outbuildings which formed Woodhall Farm are set back some distance from the B4204 Martley Road and are accessed from it by a private lane which then continues in an easterly direction as a farm track. The track is also the route of a public footpath. Most of the older outbuildings previously associated with the farm have been converted to residential use.
7. The site covers fifteen fields and extends to approximately 69 hectares of land currently in arable use. The site lies to the south of the public footpath, with the exception of one field which lies to the north. Although visually the land appears to be gently undulating, the topography generally falls from north west to south east and the ES records an overall cross fall of approximately 16m. There are scattered blocks of woodland and whilst the majority of fields comprising the site are bounded by existing hedges, a large section of the boundary with the footpath is open.
8. The lower edge of the proposed arrays of photovoltaic panels would be approximately 0.8 m off the ground and the upper edge a maximum of 3.0 m. There would be 33 inverter stations scattered across the site and the substation would be sited on the southern edge of an area of woodland with the centre station a short distance further south. The inverter stations at approximately 2.9 m above ground would be comparable in height to the top of the arrays. The approximate maximum heights of the substation and centre station would be 6.7 m and 4.8 m respectively. Connection to the grid would be into the power lines which traverse the site via a replacement tower.
9. The perimeter of the site would be enclosed by a timber post and wire security fence with cameras positioned at intervals along its length. Although the height of the fence is stated in the written evidence to be 3 m the Appellant indicated at the hearing it would be 2 m and the poles for the cameras would be 3 m. New boundary hedge planting would take place around the site where there is presently none and gaps within the existing boundary and internal hedges would be strengthened with new planting. All hedging would be allowed to grow to a maximum height of 3 m.

Landscape character

10. Policy SWDP 27 of the SWDP gives favourable consideration to stand-alone renewable energy schemes subject to regard being given to other relevant policies. These include Policies SWDP 21 and SWDP 25 which seek to protect landscape character by ensuring proposals are appropriate to, and integrate with, the character of the landscape setting. Moreover, demonstration that full account has been taken of the latest Landscape Character Assessment and its guidelines is required. A Landscape and Visual Impact Assessment (LVIA) formed part of the ES.
11. Although not covered by any national or local landscape designations, the site lies approximately 5 km to the north of the Malvern Hills Area of Outstanding Natural Beauty (AONB) at its nearest point. In the Council's Landscape

Character Assessment – Supplementary Guidance, 2012, the site falls within the Principal Timbered Farmlands landscape type. These are described as rolling landscapes with occasional steep sided hills and low escarpments. They have a small scale, wooded, agricultural appearance characterised by filtered views through densely scattered hedgerow trees. They are complex, in places intimate, landscapes of irregularly shaped woodlands, winding lanes and frequent wayside dwellings and farmsteads.

12. The proposed development would result in a large area of open land being covered with raised straight lines of panels on metal supports which, together with the attendant infrastructure, would all be enclosed by metal fencing with CCTV cameras. It is accepted that the development would be within the existing field layout and the hedges would be retained and allowed to grow in height. The new hedgerow planting would also in time help screen the development. These measures would generally accord with the guidelines for the Principal Timbered Farmlands as set out in the Council's Landscape Character Assessment. Nevertheless, the general scale of the proposal, the extensive coverage of the fields by panels and the attendant substation and other structures dotted across the development would, in my opinion, create an industrialised landscape which would not be made acceptable by the mitigation.
13. The Council agrees with the LVIA that the landscape has a medium sensitivity to change and I accept that it has the potential to tolerate some change. However, in this instance I consider the scale of the proposal would constitute a fundamental change to the character of the landscape and the magnitude of the impact would be high. Taking into account the medium sensitivity of the landscape to change, I conclude the overall significance of the landscape effect would be moderate/major.
14. Whilst at the time of the planning application there were no known developments of a similar nature in the area, the Council has subsequently granted planning permission for a solar panels on land at Allsetts Farm. Plans submitted to the hearing confirmed that the developments share a common boundary and if both went ahead they would appear as one continuous development in the landscape. Although the approved scheme is significantly smaller than the appeal proposal, cumulatively the effect on the character of the landscape would be heightened.
15. On this basis I conclude that the development, individually and cumulatively with the approved scheme on Allsetts Farm, would have a significant adverse effect on the rural character of the area, contrary to Policies SWDP 21, SWDP 25 and SWDP 27 of the SWDP and the guidance given within the National Planning Policy Framework (the Framework) and National Planning Practice Guidance (NPPG) which seek the enhancement of the natural and local environment by protecting and enhancing valued landscapes.

Visual amenity

16. The LVIA considered the potential visual effect of the development on receptors using public rights of way and roads in the vicinity of the site and occupants of nearby properties. However the Council disputed the high visual sensitivity attributed in the LVIA to road users in the assessment of viewpoint 1 and the medium visual sensitivity of those using the public rights of way in viewpoints 2, 3, 7 and 8.

17. The Guidelines for Landscape and Visual Impact Assessment third edition (GLVIA3), on which the LVIA was based, states in paragraph 6.33 that visual receptors most susceptible to change are generally likely to include residents at home and people engaged in outdoor recreation, including use of public rights of way, whose attention or interest is likely to be focussed on the landscape and on particular views. Travellers on road, rail or other transport routes tend to fall into an intermediate category of moderate susceptibility to change. It is recognised that in reality there will be a gradation in susceptibility to change and the basis for the judgements made must be clear and linked back to the evidence from the baseline study.
18. Whilst the baseline visual sensitivity of road users is identified in paragraph 4.5.15 of the LVIA as high, the definitions given in Table 4-3 rate it as low and the assessment is made on the same basis. I am therefore satisfied that the LVIA was consistent in its assessment of the visual sensitivity of road users.
19. The views from public rights of way are accorded a medium level of sensitivity in table 4-3 of the LVIA whereas the Council is of the opinion they should be rated as high. The guidance in GLVIA3 in identifying receptors using public rights of way as most susceptible to change suggests that their sensitivity should be high, particularly as in the case of the appeal site the attention of walkers would be focussed on the landscape and views towards distant hills.
20. In the absence of any satisfactory clarification by the Appellant at the hearing, I do not consider that the LVIA clearly justifies its reasons for attributing receptors of the right of way with medium susceptibility to change. I agree with the Council that the LVIA has underestimated the effect of the proposal on the visual amenity of receptors using the public rights of way in the area.
21. Although the map showing the Zone of Theoretical Visibility (ZTV) indicates that the development would be visible over a large part of the study area, it is based on bare terrain topographical data. In reality the woodlands and hedgerows in the local landscape would restrict many views of the development to the extent it would only be readily apparent within 1 km of the site. It is the receptors closest to the site that have the potential to be affected to the greatest degree and in particular those using the public footpath which follows the northern boundary of the site for approximately 2 km.
22. From the west the footpath crosses open fields before following the farm track to the eastern end of the site. It is a pleasant route which takes approximately 30 minutes to walk. Although the path is bounded or passes through three areas of woodland, the lack of hedges along a large proportion of the southern boundary presently allows walkers open views across the fields and towards the Malvern Hills, Ankerdine Hill and Suckley Hills.
23. The proposal would alter this view and instead receptors would see the development on their southern side. These views would include the fence with the 3 m high solar arrays beyond it. On some parts of the footpath the panels would only be approximately 10 m away. As the panels would face south the view for large sections of the route would be of the structural supports as illustrated by the photomontage for viewpoint 3. The new hedge planting and increase in the height of the existing hedges would help screen the panels. However, the planting would take time to become established and it is likely that it would be longer than the 10 years indicated by the Appellant before it effectively screened the development. In the meantime the existing rural view

- from the footpath would be replaced with one more akin to an industrial landscape and once the planting had reached the required height would provide a different and more enclosed experience to that currently enjoyed by walkers.
24. The setting back of the fence line some distance from the track on sections of its southern side and the wild flower verges would enhance the character and biodiversity of the right of way. Nevertheless, I consider that the change which would be brought about by the development would have a significant adverse impact on the visual amenity of receptors walking the route, which would remain throughout the development. This would be contrary to paragraph 75 of the Framework which states that planning policies should protect and enhance public rights of way.
25. The development would also feature in views from the right of way to the south of the site which follows Frenchlands Lane and passes the SAM and continues through The Elms, a LB. Views of the development would be possible from this direction and would include the substation. However, it would generally be the faces of the panels which would be seen and there would be greater separation between them and the receptors. Consequently the effect on visual amenity would not be as great as that experienced on the footpath to the north.
26. From longer distances the proposal would be visible from high points in the landscape, as demonstrated by the visualisations for the elevated view from North Hill within the AONB (viewpoint 12). However, given the separation distance, the exact nature of the development would only be discernable by the change in colour and texture of the existing field patterns. It would also form only a small part of the panoramic view of the wider landscape. I found the effect to be similar from other elevated viewpoints referenced in the evidence and one on the B4197 south west of Martley brought to my attention by a local resident. The AONB Partnership was satisfied that, subject to the panels and frames being black, the development would not be unacceptably visible from within the AONB. I agree with its conclusion and consider the effect of the proposal on visual amenity in these wider views would be minor.
27. Intermediate distance views of the site would be possible from several highways and public rights of way. However, depending on the vantage point, the views would be glimpsed and not extend to the entire solar park. I agree with the Council that there would be negligible impact on visual amenity in these views. There are also several residential properties within the vicinity of the site. However, the local topography and landscaping, intervening buildings and direction of view would effectively reduce the impact of the proposal on the visual amenity of residents.
28. Whilst in the longer and intermediate distance views the effect of the proposal on visual amenity would be minor or negligible, in views from the neighbouring public right of way the effect on receptors would be major. On this basis, I conclude that the development would cause significant harm to visual amenity, contrary to Policies SWDP 21, SWDP 25 and SWDP 27 of the SWDP and the guidance given within the Framework and NPPG which recognise the intrinsic character and beauty of the countryside.

Heritage assets

29. The ES statement identified 13 heritage assets within 1 km of the site which comprise one Scheduled Ancient Monument (SAM) and 12 Grade II LBs.

Interested parties noted that one of the submitted drawings incorrectly recorded Woodend Farm and Hucks Farm as non-designated assets instead of LB and in respect of The Kedges only 3 of the 4 LB were identified. However, the assets were correctly identified in the text of the ES and the assessment was made on that basis.

30. There is no dispute between the parties that the significance of the heritage assets detailed in the ES is their evidential and historical values. Whilst the development would not physically impact on the heritage assets, it would bring about a fundamental change to the landscape in which they are set. There is a clear connection between the agricultural past of the area and the current buildings and the change in the landscape as a result of the development would have an effect on the setting of the heritage assets.
31. The importance of setting lies in what it contributes to the significance of the heritage asset and the degree of change to the setting would be dependent on the surroundings of the individual assets and their relationship to the proposal. Whilst I accept that the development would not harm the setting of most of the heritage assets in the local area, those nearest the site have the potential to be adversely affected. These include the SAM and the Grade II LBs at Woodhall Farm and The Elms.
32. The SAM is one of several moated sites in the area and from the number of pathways which are shown to converge on it in the historic maps, it is considered to be a site which was of great importance in the past. The SAM lies to the south east of the appeal site and is contained within wooded boundaries which limit the views out over the surrounding landscape. The reduction in the size of the appeal site and the relocation of the substation during the application process increased the separation distance between the development and the SAM. Although the proposed hedge planting would help screen the development it would nevertheless feature in views of the SAM from within the landscape, including the right of way along Frenchlands Lane. I consider that this would result in adverse changes to its wider setting of the heritage asset although the level of harm would be less than substantial.
33. Whilst the development would be glimpsed from upper floor windows in Woodhall Farm, the views would generally be restricted by tree planting and the range of outbuildings in residential use which are curtilage buildings. These factors, together with the separation distance, affect the relationship of the LB with the appeal site. I am satisfied that the proposal would not harm the setting of the LB.
34. The Elms comprises the farmhouse, attached cider house and animal sheds. Subject of a separate listing are the range of farm buildings including the dovecote. The farmhouse was clearly designed to oversee and create great connectivity with the surrounding landscape, which is still evident. In views from the north the range of buildings which make up The Elms present a prominent feature within the landscape and from the frontage of the buildings the view is presently uninterrupted by modern intrusions.
35. Views from The Elms would feature all the elements of the proposed solar park, including the substation, changing those rural views to ones of a more industrialised landscape. Although the impact this change would have on the setting of the assets is acknowledged in the ES, I disagree with the conclusion reached that the change would be minor. I consider the visual impact would be

moderate with a moderate overall effect which would cause less than substantial harm.

36. According to the Framework where a proposed development would lead to less than substantial harm to the significance of a designated heritage asset, this harm should be weighed against the public benefits of the proposal, including its optimum viable use. Although the production of a substantial amount of electricity and the limited life of the development would constitute public benefits I do not consider these outweigh the harm I have identified to the heritage assets.
37. An interested person contended that the introduction of new hedges would alter and cause detriment to the historic landscape. Whilst this may be the case, the landscape is constantly evolving and new hedges could be planted whether or not the development went ahead.
38. On balance I conclude that the proposed development would fail to preserve the setting of heritage assets, contrary to Policy SWDP 6 and SWDP 21 of the SWDP and the guidance given within the Framework and NPPG which seeks to conserve heritage assets in a manner appropriate to their significance.
39. I am required by s66(1) of the Town and Country Planning (Listed Buildings and Conservation Areas) Act 1990 to have special regard to the desirability of preserving the setting of the listed buildings. The courts have held that in this context 'preserving' means doing no harm. Where, as in this case, a degree of harm has been found, that harm must be given considerable importance and weight in the overall balancing exercise.

Benefit arising from the provision of renewable energy

40. The provision of renewable and low carbon energy is central to the economic, social and environmental dimensions of sustainable development set out in the Framework. There is strong national policy support for the development of renewable energy sources, including solar power, to ensure the country has a secure energy supply, and to reduce greenhouse gas emissions. Moreover the Appellant is not required to demonstrate the overall need for the proposal.
41. It is anticipated that the proposed scheme would generate 45 MW which, on the basis of average household electricity consumption, has the potential to produce sufficient electricity for 12,000 homes. The development would produce only negligible CO₂ emissions and would therefore provide significant savings in carbon emissions over its life time when compared with existing established methods of energy production.
42. Whilst the scheme would provide a valuable contribution to cutting greenhouse emissions the policy support for renewable energy given in the Framework is caveated by the need for the impacts to be acceptable or capable of being made so. Moreover local policies require development which is clearly appropriate to and integrates with the character of the landscape setting. Nevertheless the renewable energy benefit of the proposal must be accorded substantial weight in favour of the appeal.

Other material considerations

43. Whilst many of the interested parties contended that the use of open land for a solar park was unacceptable, according to NPPG it is an appropriate use of

greenfield land. However NPPG advises that poorer quality land should be used in preference to higher quality, and proposals should allow for continued agricultural use. The Agricultural Land Report submitted by the Appellant classified the land as grade 3b and although currently in arable use the development would allow sheep to graze the land below the arrays. I am not persuaded that the wild flower margins to many of the fields would prevent such grazing from taking place.

44. Interested parties found fault with the methods used to assess the quality of the land and the awards received by the former tenant of the farm were cited as proof that the land was better quality than grade 3b. Whilst the awards may be evidence of the past productivity of the farm, the appeal site forms only part of the total holding which amounts to approximately 130 hectares. Furthermore, there is no substantive evidence that the report was incorrect in its conclusion that the land subject of the appeal is grade 3b.
45. Although the site falls within Flood Zone 1 it is within a short distance of the Laugherne Brook. Interested parties expressed concerns regarding surface water run-off and the potential to exacerbate existing problems of flooding of nearby land. It was confirmed that the appeal site had not flooded in the past. Furthermore there is no substantiated evidence that an appropriate sustainable surface water drainage scheme could not be designed for the development, a matter which could be addressed by condition. I am therefore satisfied that suitable arrangements could be put in place to ensure the development would not exacerbate existing problems from flooding.
46. Whilst other cases drawn to my attention raise similar issues to the appeal, there are significant differences in the detail. I have therefore been unable to draw any meaningful comparison between them and the appeal, which has been determined on its merits.

Conclusions

47. The Framework sets out a presumption in favour of sustainable development and renewable energy is central to achieving a sustainable future. The scale of the development would ensure that it would make a valuable contribution to cutting greenhouse gas emissions, and this attracts substantial weight.
48. Set against this the development would cause significant harm to the character of the landscape and to receptors using the public footpath to the north of the site. The setting of heritage assets would also be harmed. Whilst these effects would be reversible, the harm would extend over a substantial area and for a significant period of time. Furthermore the impacts would not be made acceptable by the mitigation proposed. This would not be in line with national policy which advises that renewable energy projects should be located where impacts are, or can be made, acceptable. On balance the harm identified is not outweighed by the benefits.
49. For the reasons set out above, and having had regard to all other matters raised, the appeal is dismissed.

Kay Sheffield

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Alexander Arcache	Managing Director of Kronos Solar Projects
Frank Bohne	Director of Kronos Solar Projects

FOR THE LOCAL PLANNING AUTHORITY:

Stuart Castle BSc(Hons) MA MRTPI	Senior Planning Officer
Aidan Smyth	Conservation Officer
Charles Potterton BA DipLA CMLI	Director of Potterton Associates

INTERESTED PERSONS:

Heather Rendall BS(Hons) MPhil	Representing Kenswick and Wichenford Parish Council and Wichenford Local Heritage Group
Georgina Britten-Long	Representing Kenswick and Wichenford Parish Council
Peter Parson	Local Resident
Victor Reed	Local Resident
Nigel Bruen	Local Resident
Peter Burgoyne	Local Resident

DOCUMENTS

- 1 List of suggested conditions
- 2 Location and site plans, Allsetts Farm submitted by the Council
- 3 Consultation response by Charles Potterton on Allsetts Farm submitted by the Council
- 4 Estate Plan submitted by the Council
- 5 Diagram of layout of Medieval fields submitted by the Council
- 6 Photographs taken from the B4204 submitted by Kenswick and Wichenford Parish Council
- 7 Appeal Decision APP/J1860/W/15/3016539 submitted by the Council
- 8 Appeal decision APP/J3720/W/15/3029788 submitted by the Council
- 9 Location of views of the development from footpath along Frenchlands Lane submitted by Kenswick and Wichenford Parish Council
- 10 Map showing public rights of way submitted by the Council
- 11 Plan and geophysical survey of the site
- 12 Details of heritage assets in the area submitted by Kenswick and Wichenford Parish Council
- 13 Schedule of the history of the area submitted by Kenswick and Wichenford Parish Council
- 14 Letter from William Banks, undated
- 15 Summary of the representations made by local residents
- 16 Letter of August 2016 from Department for Environment Food & Rural Affairs submitted by Kenswick and Wichenford Parish Council
- 17 Examples of solar parks next to public rights of way submitted by the Appellant
- 18 Analysis of scenic interests and nature reserves near solar parks submitted by the Appellant