



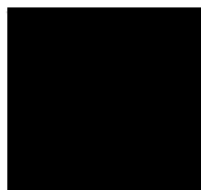
**Objection to development at
Maggotts End, Manuden
(Pelham Spring Solar Farm)**

PINS Reference: S62A/22/0011

20 March 2023



View from Rose Garth looking East up to the proposed site – showing Battles Wood (ancient woodland)



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A OVERVIEW

1. An application has been submitted by Low Carbon 6 Solar Park 6 Limited (the “**Applicant**”) (a dormant subsidiary of Low Carbon UK Solar Investment Company Limited) to the Planning Inspectorate (ref S62A/22/0011) for permission to construct a 49.99 MW solar farm and associated infrastructure on 195 acres of agricultural land (the “**Proposed Development**”). The site (the “**Site**”) is located at land to the South of Berden and to the North of Manuden and in close proximity to a number of Grade II listed heritage assets and two Scheduled Monuments (at the Crump and at Battles Hall).
2. This representation is submitted by “Protect the Pelhams” (an action group set up by local residents opposed to the industrialisation of the countryside) to object to the Proposed Development.
3. The proposal now submitted by the Applicant is substantially unchanged from that which was submitted to Uttlesford District Council in 2021 ref: UTT/21/3356/FUL (the “**Original Application**”). The Original Applicant was refused for a number of reasons which remain valid, including – but not limited to - the following:
 - *The proposal would introduce a sizeable new development to an area of open countryside and would result in an unnatural extension of built form in the locality. The proposals by reason of its sitting, size and scale would have a harmful impact upon the rural character and appearance of the area.*
 - *The proposal would significantly harm the intrinsic character and beauty of the countryside resulting in landscape and visual effects from a number of publicly accessible viewpoints and failing to perform the environmental role of sustainability, contrary to policy S7 of the Adopted Local Plan and the National Planning Policy Framework;*
 - *The existing site positively contributes to the identified heritage assets setting and significance through being open land with views through to the wider agrarian landscape which preserves their sense of tranquillity. The setting of the heritage assets will inevitably be affected by the proposals which would result in an industrialising effect, contrary to the verdant and rural landscape setting and would result in an erosion of the rural character of the designated heritage assets. The proposals would thereby result in 'less than substantial' [harm] through change in their setting.*
 - *Having regard to the guidance in paragraph 202 of the National Planning Policy Framework, the Local Planning Authority has considered the public benefits associated with the development but concludes that these would not outweigh the harm caused to the significance and setting of the designated heritage asset. The proposals are thereby Page 3 of 6 contrary to policy ENV2 and ENV4 of the Adopted Local Plan and the National Planning Policy Framework.*

4. As the numerous appeal decisions referred to in this document demonstrate, any decision to approve a solar farm requires careful balancing of a range of planning considerations including the impact on protected heritage assets and impact on the character and the impact appearance of the landscape. Applicants are also required to produce **the most compelling evidence** to demonstrate that (among other things) there are no suitable sites of lower agricultural quality within the wider area. Whilst many of the appeal decisions referred to below recognise that considerable weight should be given to the benefits of renewable energy schemes, those benefits are **frequently outweighed** by other considerations of the sort which are relevant to the Proposed Development.
5. Although the Applicant stresses the “temporary” nature of the Proposed Development, 40 years is a considerable period of time – a fact which has been recognised by the Secretary of State in at least two appeal decisions, including the appeal in relation to Badsell Road, Five Oak Green, Tonbridge, Kent¹:

*“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”*

6. Overall, the Proposed Development is not appropriate on the Site and does not accord with relevant local and national planning policy and guidance. It is clear that the proposal has not been justified by the **most compelling evidence**. As such, the **APPLICATION SHOULD BE REFUSED** on one or more of the grounds summarised below and detailed more fully in this statement.
7. Should additional information be submitted by the Applicant, we request the opportunity to review and provide further comment.
8. **We also ask that three representatives of Protect the Pelhams should be given the opportunity to speak at any hearing that is convened for the purpose of considering the application.** We further request that **all three of the consultants** who have prepared reports which accompany this document (Alison Farmer, Dr Richard Hoggett and Bruce Bamber) **should be allowed to speak at any hearing.**

1 PINS reference:2226557 dated 30 November 2015 – Provided in **Appendix 2**

A1: Summary of grounds for refusal

Ground 1: Unnecessary use of BMV Land

9. As explained in **Section D** below no evidence has been submitted to demonstrate the need to use Best and Most Versatile agricultural land at this location. In particular:
- The Applicant has attempted to justify the choice of site AFTER it has been selected;
 - The scope and manner of the ex-post site selection exercise undertaken by the Applicant is inadequate;
 - The Site fails multiple of the criteria put forward as the basis for site selection; and
 - There are more suitable sites which have not been considered by the Applicant.
10. The and the Proposed Development should therefore be refused for the following reason:

The Proposed Development is unacceptable due to its location on Best and Most Versatile agricultural land. The Applicant has not demonstrated that (i) the proposed use of agricultural land is necessary and (ii) that poorer quality land has been used in preference to higher quality land. The proposal is therefore contrary to the provisions of the National Planning Policy Framework, Policy ENV5 of the Uttlesford Local Plan, Planning Practice Guidance and Government Guidance contained within the Ministerial Statement of March 2015.

Ground 2: Unacceptable impact on the appearance and character of the locality

11. **Section E** demonstrates that permission should also be refused due to the impact on the appearance and character of the locality by reason of the size, scale, incongruous appearance, and inappropriate nature of the proposals. As is explained in the LVIA which accompanies this document (see **Appendix 12**), the effects of the Proposed Development have been significantly underestimated by the Applicant. In particular:
- The fact that the Site comprises valley slopes which drop in height from c. 122m AOD to 108 AOD in the western part of the site and c. 118m AOD to 106m AOD in the east of the site indicates a high susceptibility;
 - The susceptibility assessment does not adequately describe the area as comprising the upper reaches of the Bourne Brook, the slopes of which form a distinct 'bowl' or 'amphitheatre' of land around the historic hamlet of Brick House End;
 - The amphitheatre nature of the topography means this landscape is susceptible to south facing solar panel development where lines of panels inevitably run against, rather than along the contours, and where mitigation through planting is harder to achieve due to rising landform;
 - The open agricultural slopes surrounding the upper reaches of the Bourne Stream comprises a broad inward looking and settled landscape which is a perceived

landscape unit, and that the proposed development will extend across a significant proportion of it;

- No consideration is given to historic features such as the hamlet of Brick House End and associated historic enclosure patterns comprising pre 18th Century Irregular Enclosure, linear common associated with Park Green, ancient woodland and historic routeways/tracks such as Blaking's Lane;
- The landscape and visual effects conflict with a series of policy tests at the Local Plan and NPPF levels, and in that context are deemed to be unacceptable. The visual effects of the Proposed Development are especially evident in the eastern half of the proposed site when viewed from the west. In these views the orientation of solar panels, relative to the valley slopes, and the surrounding nature of the development in relation to the hamlet of Brick House End, would result in **significant adverse effects**.

12. Overall, the adverse landscape and visual effects of this scheme would be contrary to the NPPF and Local Plan Policy and should weigh against any benefits of the scheme. The Proposed Development should also be refused for the following reason:

The Proposed Development would be harmful to the appearance and character of the locality by reason of the size, scale, incongruous appearance, and inappropriate nature of the proposals; particularly with regards to the disproportionately detrimental effects upon landscape, residential amenity and experience of users of the local footpath network. As such, the proposal is contrary to the requirements of Policy S7, Policy ENV15 and Policy GEN2 of the Uttlesford Local Plan and paragraph 174 of the National Planning Policy Framework.

Ground 3: Harm to the significance of heritage assets

13. **Section F** considers the impacts of the Proposed Development on a number of heritage assets which are located in close proximity to the site. These include:

- A Scheduled Monument known as "The Crump"
- Battles Hall Scheduled Monument -
- Grade II listed Battles Hall, Grade II listed Dovecote and Grade II listed Cartlodge -
- Grade II listed Brick House; and
- Grade II listed Rose Garth

14. A report prepared by Dr Richard Hoggett is attached to this document as **Appendix 13**. Dr Hoggett concludes that the dramatic change of landscape character which would be brought about by the Proposed Development, from the current (and historical) agricultural character to a landscape of industrialised energy production on a very large scale, would have a much greater impact than is stated by the Applicant. The Proposed development (if permitted) will give rise to less than substantial harm. in relation to each of these heritage assets.

15. Dr Hoggett notes that the Applicant fundamentally misunderstands the significance of the Brick House. The Brick House has its origins as the principal dwelling for Brickhouse Farm, which encompassed much of the surrounding land. This is clearly demonstrated by a 1732 map of Brickhouse Farm, which was then owned by Christ's Hospital, London. This map clearly indicates that some of the land to the east of the house, as well as all of the land to the south and the west of the house was formerly part of the farm, including all of the land on which the western part of the solar farm and substation are proposed to be built.
16. Dr Hoggett notes that Scheduled Monuments are among the highest categories of designation and are of national significance. As such, under paragraph 202 of the NPPF, the harm to these heritage assets needs to be weighed against the public benefits of the proposal including, where appropriate, securing its optimum viable use. Under paragraph 197 of the NPPF, when considering the impact of a Proposed Development on the significance of a designated heritage asset, 'great weight' should be given to the asset's conservation and the more important the asset, the greater the weight should be. Likewise, Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 and subsequent legal judgements indicate that this harm should be given 'considerable importance and weight' when the decision-maker carries out the balancing exercise.
17. The Proposed Development should also be refused for the following reason:

The Proposed Development would cause harm to the significance of heritage assets which is not clearly outweighed by the benefits of the proposal. As such, the proposal is contrary to the requirements of Policies ENV1, ENV2, ENV4 and ENV9 of the Uttlesford Local Plan, paragraphs 199, 200, 202 and 203 of the National Planning Policy Framework and Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

Ground 4: Unacceptable Cumulative Impacts

18. **Section G** considers the cumulative impact of the Proposed Development – particularly in combination with the Berden Hall Solar Farm. The following cumulative impacts are of particular importance:
- **The succession of views and sequential cumulative effects is significant** - not just from Viewpoint 8 but also in terms of perceptions of the landscape when using Brick House End Lane and footpaths in the area, where one would first experience the solar farm contemplated by this application and then immediately Berden Hall Solar Farm. This would substantially extend the effects of solar farm development in the area and increase perceptions of travelling through a solar farm landscape over 2km in extent.
 - The submitted Heritage Statement fails to consider the possible cumulative impacts of the two schemes, both of which would result in 'less than substantial harm' to the setting of The Crump Scheduled Monument, which lies between the two schemes. The Berden Hall scheme is due to be determined before the current scheme, and its

outcome should also be a material consideration in determining the heritage harm of the current proposals.

- The latest construction route proposed for the Berden Hall Farm development includes the route between Newport and Clavering. Together, the two developments have the potential to lead to **severe cumulative impacts** on the sensitive receptors such as the primary school in Clavering, on the sections of carriageway unable to accommodate two large vehicles such as those within Clavering village or at the highly constrained B1038/B1383 junction in Newport;

19. The Proposed Development should also be refused for the following reason:

The cumulative visual and heritage impacts of the Proposed Development when considered in combination with Berden Hall Solar Farm would cause significant harm which is not clearly outweighed by the benefits of the proposal. As such, the proposal is contrary to the requirements of paragraphs 155 of the National Planning Policy Framework.

Section H

20. In Section H we flag a number of concerns regarding the Applicant's proposed approach to dealing with construction traffic, noting that the Site is located on a small country lane which can only be accessed via other equally unsuitable roads. The report of Bruce Bamber (at **Appendix 14**) also flags some material shortcomings of the Applicant's Construction Management Traffic Plan.

21. Lastly, we highlight the failings of the Applicant's approach to "community consultation" and note that overwhelming response from local residents is that the Site is the wrong location for a solar "farm".

22. The Planning Inspector should therefore have regard to the speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013 in which the Minister makes the following comments:

"But not at any cost... not in any place... not if it rides roughshod over the views of local communities. As we take solar to the next level, we must be thoughtful, sensitive to public opinion, and mindful of the wider environmental and visual impacts."

B GENERAL POLICY CONTEXT (INCLUDING THE IMPORTANCE OF PROTECTING HIGH QUALITY AGRICULTURAL LAND)

B1: The focus of the Government's renewable energy strategy is off-shore wind - there is no explicit support for ground-mounted solar

23. Protect the Pelhams acknowledges the importance of increasing the amount of renewable generation in the UK. However, whilst there is strong encouragement to develop additional renewable energy resources, this encouragement does not amount to unqualified support for development of ground-mounted solar "farms". The focus of the Government's renewable energy strategy is on (i) off-shore wind generation and (ii) smaller scale solar energy.

24. The Government's "Ten Point Plan for a Green Industrial Revolution" (published in November 2020²) contains NO explicit references to ground-mounted solar. The focus of this strategy document is "Advancing Offshore Wind", with an explicit commitment to produce 40GW of offshore wind by 2030, including 1GW of innovative floating offshore wind in the windiest parts of our seas. Further, Point 9 of the strategy (Protecting Our Natural Environment) recognises the role of the natural environment as "one of the most important and effective solutions we have for capturing and sequestering carbon long-term".

25. The focus of the government's Energy White Paper (published in December 2020) is, once again, rooftop solar (see page 22):

"Consumers can also generate their own electricity through roof-top solar panels, store it in batteries, and even sell any excess power back to the grid to generate a profit at times of higher demand".

26. The Government's Net Zero Strategy (published in October 2021) repeats the commitment to 40GW of offshore wind by 2030. In a document of 386 pages, there are only 24 references to "solar" and the focus of that text is exclusively on "roof-top solar and community led solar projects. There is not a single reference to large scale "ground-mounted" solar:

"We will seek to ensure a facilitative environment for the deployment of unsubsidised rooftop solar (para 36)"

"Decarbonisation of our buildings, transport systems and energy system will require significant action at a regional and local level. Generation and storage are becoming increasingly decentralised, with solar and batteries being deployed in buildings, vehicles, and local communities (p 266)"

"Government has provided support to community energy projects through the Rural Community Energy Fund (RCEF), a £10 million fund to supporting community-run projects in England that benefit the energy transition to net zero. The fund has

2 <https://www.gov.uk/government/publications/the-ten-point-plan-for-a-green-industrial-revolution>

provided development stage grants to projects focusing on a variety of technologies including solar, wind, low carbon heating and electric vehicle charging. Communities have predominantly financed their schemes commercially through share offers and borrowing” (p 271- 272)

27. The focus of the British Energy Security Strategy (published in 7 April 2022)³ continues to be on off-shore wind and nuclear energy:

“Offshore wind: Our island’s resources, with its shallow seabeds and high winds offers us unique advantages that have made us global leaders in offshore wind and pioneers of floating wind. With smarter planning we can maintain high environmental standards while increasing the pace of deployment by 25%. Our ambition is to deliver up to 50GW by 2030, including up to 5GW of innovative floating wind”

“Nuclear is the only form of reliable, low carbon electricity generation which has been proven at scale and returns more than 100 times as much power as a solar site of the same size”

“increasing our plans for deployment of civil nuclear to up to 24GW by 2050 – 3 times more than now and representing up to 25% of our projected electricity demand”

28. 50GW of power is stated to be more than enough to power every home in the UK.
29. In relation to ground-mounted solar, the 2022 document makes the following commitment.

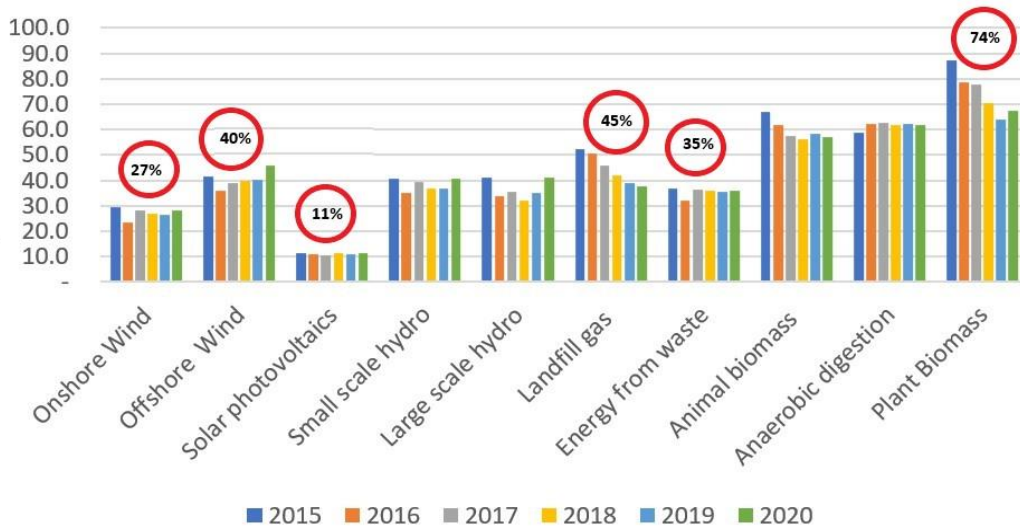
*“We will continue supporting the effective use of land by **encouraging large scale projects to locate on previously developed, or lower value land**, where possible, and ensure projects are designed to avoid, mitigate, and where necessary, compensate for the impacts of using greenfield sites”.*

30. The focus on wind generated renewable energy is unsurprising given the inefficiency of solar generated energy. Self-evidently, solar panels only generate power during daylight hours and at certain times of the year. The Government records the efficiency of sources of renewable energy and publishes the relevant data⁴. The percentage of the time during which a renewable source is actually producing energy is referred to as its “load factor”. The illustration below (which uses government data) demonstrates that a large-scale **solar development of the sort proposed by the Applicant is the least efficient form of renewable energy (at only 11%)**. The most efficient form of energy is renewable energy from plants (74%). The Site would be much better used for the production of crops which could then be used to generate electricity via a biomass process.

3 <https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-security-strategy#renewables>

4 [6.5 Load factors for renewable electricity generation - GOV.UK](#) dated 29 July 2021

Load factors for renewable energy generation 2021



B2: Targets set for solar energy generation can be met without a significant expansion in ground-mounted solar

31. **Annex A** provides further details of viable solutions to the generation of significant quantities of renewable energy which do not involve the sacrifice of productive agricultural land. It should be noted, for example, that as at June 2022, Germany had just under 43 GW (43,000 MW) of rooftop solar power.

B3: Government policies require the use of high-quality agricultural land for food production

32. Since the Agriculture Act of 1947, Government policy has consistently aimed to “promote a healthy and efficient agriculture capable of producing that part of the nation's food which is required from home sources...”⁵, by protecting agricultural land and farm businesses. More recently, Government policy has reiterated this aim, with particular reference to solar developments.

33. In its 2018 Policy Document; “Green Future: Our 25 Year Plan to Improve the Environment”, the Government stated as follows:

*“New development will happen in the right places, delivering maximum economic benefit while taking into account the need to avoid environmental damage. We will protect ancient woodlands and grasslands, high flood risk areas and **our best agricultural land**”*

5 hansard/commons/1945/nov/15/agriculture-government-policy

34. The 2020 Agricultural Act also underlines the Government's commitment to the countryside by promoting environmental stewardship and rewarding improvements in soil health and biodiversity while boosting the farming industry's productivity and competitiveness. The recent report from the Trade and Agriculture Commission⁶ (established to advise the government on how best to advance the interests of British farmers, food producers and consumers in future trade agreements) contains the following passage:

"farmers are not just producers of food, but custodians of our countryside, natural environment and biodiversity, and the bedrock of rural communities"

35. The Government's Energy Security Strategy (07 April 2022) also notes that:

"We will continue supporting the effective use of land by encouraging large scale projects to locate on previously developed or lower value land⁷".

36. The Government Food Strategy, published on 13 June 2022, also highlights the importance of productive agricultural land and notes that

"there is a need for a combination of "intensification, land sharing and land sparing to deliver government objectives and feed a growing population".

*"We have some of the best performing farms in the world, with 57% of agricultural output coming from just 33% of the farmed land area. It follows from this that it is possible to **target land-use change at the least productive land**, to increase the environmental benefit from farming and to increase yields with minimal impact on food production⁸".*

37. The importance of protecting our soils and the services they provide in their own right is also highlighted by the Government in its Natural Environment White Paper 'The Natural Choice: securing the value of nature' (June 2011), which at paragraph 2.35 emphasises the protection of Best and Most Versatile (BMV) agricultural land.

38. The methodology for identifying Best and Most Versatile (BMV) agricultural land in England and Wales is part of a common grading system used in the two countries to enable comparison of the quality of agricultural land. Government policy in both nations affords BMV land protection from significant, inappropriate development and requires that planning decisions should take account of the economic and other benefits of BMV agricultural land.

6 <https://www.gov.uk/government/publications/trade-and-agriculture-commission-tac/trade-and-agriculture-commission-final-report-executive-summary>

7 <https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-securitystrategy#:~:text=We%20will%20continue%20supporting%20the,impacts%20of%20using%20greenfield%20sites.Solar%20and%20other%20technologies>

8 <https://www.gov.uk/government/publications/british-energy-security-strategy/british-energy-securitystrategy#:~:text=We%20will%20continue%20supporting%20the,impacts%20of%20using%20greenfield%20sites.Solar%20and%20other%20technologies>

39. The interactions between solar farms and agriculture are likely to shift with climate change and the risks associated with it. The UK Government’s third review of those risks was published in January 2022⁹. In terms of food and energy production, three priority risk areas were identified:

- Risks to crops, livestock and commercial trees from multiple climate hazards;
- Risks to supply of food, goods and vital services due to climate-related collapse of supply chains and distribution networks; and
- Risks to people and the economy from climate-related failure of the power system.

40. In December 2022, the House of Lords Land Use in England Committee published a report entitled: “Making the most out of England’s land¹⁰”. One of the conclusions of this report (see paras 132 and 133) was as follows:

Although there are provisions within the NPPF to dissuade the development of solar farms on Best and Most Versatile land, from the evidence received we are concerned that too many exceptions are being made. We believe that a consistent policy toward encouraging the installation of solar panels on industrial, commercial and domestic buildings is needed and would negate the need for largescale ground mounted solar farms. Alongside that, we would like to see stricter regulations put in place to prevent the development of solar farms on BMV land. We also believe onshore wind turbines still have a crucial role to play in achieving national energy self-sufficiency.

Energy and other large-scale infrastructure projects should be incorporated into a land use framework. The Land Use Commission would be tasked with doing this in close cooperation with relevant bodies including the National Infrastructure Commission

41. Also in December 2022, the Government published a document entitled “Levelling-up and Regeneration Bill: reforms to national planning policy¹¹”. Once again, the focus of this policy document is the importance of ensuring an expansion in wind generated power. There is no mention of solar generated energy. There is, however, an explicit acknowledgement of the importance of preserving high-quality land for farming. Under the heading “**Recognising the food production value of farmland**”, the paper states (at paras 10-11):

“The government’s food strategy highlights that the UK maintains a high degree of food security. The strategy sets out an aim to broadly maintain domestic production at current levels to build the UK’s resilience to future crisis and shocks. We have some

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1047003/climate-change-risk-assessment-2022.pdf

10 <https://publications.parliament.uk/pa/ld5803/ldselect/ldland/105/105.pdf>

11 <https://www.gov.uk/government/consultations/levelling-up-and-regeneration-bill-reforms-to-national-planning-policy>

of the best performing farms in the world, with 57% of agricultural output coming from just 33% of the farmed land area. To emphasise the important role that our best performing farms have on food security, alongside imperatives such as energy security, we are seeking initial views on increasing the consideration given to the highest value farmland used for food production in the Framework for both plans and decision making.

The Framework currently expects that planning policies and decisions should contribute to and enhance the natural and local environment by recognising the wider benefits from natural capital and ecosystem services including the economic and other benefits of the best and most versatile agricultural land. Best and Most Versatile land is defined as grades 1-3a in the Agricultural Land Classification. To build on this, we propose a change to the current Framework footnote 58 by adding detail on the consideration that should be given to the relative value of agricultural land for food production, where significant development of higher quality agricultural land is demonstrated to be necessary, compared to areas of poorer quality land”.

42. The proposed changes to footnote 58¹² are as follows:

*Where significant **development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.***

B4: Multiple Government ministers have emphasised the importance of protecting BMV land

43. Since 2015, Government ministers have repeatedly stated the need for particular attention to be paid to the sensitivity of sites being considered for large scale solar development. Eric Pickles, Secretary of State for Communities and Local Government (25th March 2015)¹³

“Meeting our 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. Protecting the global environment is not an excuse to trash the local environment.”

44. Robert Jenrick, Secretary of State for Housing Communities and Local Government (16th August 2021)¹⁴

“The National Planning Policy Framework expects local authorities to protect and enhance valued landscapes and sites of biodiversity and recognise the character and

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1126647/NPPF_July_2021_-_showing_proposed_changes.pdf

13 <https://questions-statements.parliament.uk/written-statements/detail/2015-03-25/HCWS488>

14 Letter to Sir Oliver Heald QC

beauty of the countryside and the benefits of the best and most versatile farmland in their policies and decisions.

A number of proposals for solar farms in the countryside have been rejected as causing visual harm, harm to amenity or harm to openness.... Local authorities should protect all that we value in landscapes and natural capital, as indicated above.

Local planning authorities are asked to encourage re-use of brownfield land provided that it is not of high environmental value, to recognise the character and beauty of the countryside.”

45. Eddie Hughes MP, Ministry of Housing, Communities and Local Government (2nd June 2021)¹⁵

“Where high-quality agricultural land is involved, this would need to be justified by the most compelling evidence.”

46. Greg Hands, Minister of State for Minister for Energy, Clean Growth and Climate Change (22nd February 2022)

“The Government recognise the importance of preserving the most productive farmland. Planning guidance is clear: where possible, large solar farms should use previously developed land, and projects should be designed to avoid, mitigate, and where necessary compensate for impact”.

47. In August 2022, the (now) Prime Minister was asked about his policy in relation to solar farms on agricultural land. Writing in the *Daily Telegraph* on 18 August 2022, Mr Sunak commented that:

“On my watch, we will not lose swathes of our best farmland to solar farms. Instead, we should be making sure that solar panels are installed on commercial buildings, on sheds and on properties

48. On 27 October 2022, the Government debated a motion in relation to the National Food Strategy and Food Security (put forward by Esther McVey and Kerry McCarthy). The debate concluded with a resolution confirming that

“the Government recognises that food security is a major concern to the British public and that the impact of the Covid-19 pandemic, the cost of living crisis and the conflict in Ukraine has made UK food security more important than ever before; further recognises the strain on the farming sector due to rising farming and energy costs; supports the Government’s ambition to produce a National Food Strategy white paper and recognises the urgent need for its publication; notes that the UK food system needs to become more sustainable; and calls on the Government to recognise and promote alternative proteins in the National Food Strategy, invest in homegrown opportunities for food innovation, back British businesses and help future-proof British farming”.

15 Letter to Kemi Badenoch, MP

49. Lastly, in response to a question regarding the steps being taking to increase food production, The Secretary of State for Environment, Food and Rural Affairs (Dr Thérèse Coffey) answered (17 November 2022) as follows

*“It is really important that we make the best use of our land, to have the food security that was referred to earlier. It is also important, when considering land use, that we think about the best place to put renewable energy. By and large, I think most people in this country would agree: **let us have good agricultural land for farming, and let us use our brownfield sites for other energy projects too**”.*

C RELEVANT PLANNING POLICIES

C1: Uttlesford's Local Plan remains relevant

50. Section 38(6) of the Planning and Compulsory Purchase Act 2004 requires that a determination made under the planning acts must be made in accordance with the [applicable] development plan unless material considerations indicate otherwise.
51. The Uttlesford Local Plan was adopted in 2005. In December 2007, the Secretary of State issued a direction pursuant to Schedule 8 of the Planning and Compulsory Purchase Act¹⁶ saving a significant number of Local Plan Policies including all of those referred to below.
52. It is understood that Paragraph 11 d) of the NPPF (often referred to as the “titled balance”) sets out that:

“where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date [permission should be granted] unless:

- i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or*
- ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.”*

53. Whilst it is accepted that the Uttlesford Local Plan is time expired, this does not mean that the local plan policies cease to be relevant. In the 2020 case of Peel Investments (North) Ltd v Secretary of State for Housing, Communities and Local Government and another¹⁷ the Court of Appeal considered the extent to which a local plan which had expired in 2009 was automatically out-of-date such that the policies within that plan should be disregarded. Dismissing the appeals, the Court held that:

“There was nothing in para 11d of the NPPF.... to suggest that the expiry of the period of the plan automatically rendered the policies in the plan 'out-of-date'. A policy was not out-of-date simply because it was in a time-expired plan and, if the NPPF had intended to treat as out-of-date all saved but time-expired policies, it would not have used the phrase 'out-of-date' but rather the language of time-expired policies or policies in a time-expired plan.”

“The contention that the policies in a plan which was past its expiry date were in every case out-of-date was not a correct reflection of the NPPF”

16 https://www.uttlesford.gov.uk/media/1211/Secretary-of-State-s-direction-and-schedule-of-saved-policies-2007/pdf/SavedPoliciesDirection_GoEast_2007.pdf?m=637471937043270000

17 [2020] EWCA Civ 1175

“Furthermore, it was obvious that many policies would not expire with the plan but, rather, would survive beyond the plan period. The policy under consideration in the present case, which addressed environmental protection, clearly had a life beyond the expiry of the plan”

54. In Wavendon Properties Ltd v Secretary of State for Housing Communities and Local Government and another¹⁸ Dove J. considered whether it was correct to construe the language of para 11d) of the NPPF such that if one of the policies that was among the most important for determining the application was out-of-date, the tilted balance automatically applied. He rejected that argument, pointing out that the first step in the exercise is to identify the policies that are the most important for determining the application; the second is to examine each of those policies to see if it is out-of-date; and the third is to stand back and assess whether, taken overall, those policies could be concluded to be out-of-date for the purposes of the decision.
55. Accordingly, paragraph 11(d) is only engaged where there are no development plan policies relevant to the determination of the application which are up to date. As Lady Justice Andrews commented in Paul Newman New Homes Ltd v SSHCLG¹⁹ (in which the Court of Appeal confirmed that the principle established in Wavendon Properties):

The first “trigger” for the application of the tilted balance under paragraph 11d) is “where there are no relevant development plan policies”. That describes the situation where there is no policy in the development plan that is relevant to the decision whether the application should be granted or refused. Obviously, that is wide enough to embrace, by way of example, the scenario where there is no development plan at all; or where there is such a plan, but it pre-dates the 2004 Act, and none of the policies in it that might have been relevant has been saved”;

“The second “trigger” for the application of the tilted balance is “where the policies which are most important for determining the application are out-of-date.” That necessarily involves an evaluation by the decision maker of which of the relevant policies in the local plan are the most important, and whether they accord with current national policy.”

56. In July 2012 UDC commissioned a review of the extent to which its Local Plan remained compatible with the NPPF²⁰. The review was undertaken by an independent planning consultant, Ann Skippers (a chartered town planner with over twenty years’ experience in a career spanning local government, academia and private consultancy and a former President of the Royal Town Planning Institute). Her conclusions in relation to the key policies relevant to this application are set out below:

18 [2019] EWHC 1524

19 [2021] EWCA Civ 15

20 https://www.uttlesford.gov.uk/media/1478/Uttlesford-Local-Plan-2005-National-Planning-Policy-Framework-Compatibility-Assessment/pdf/Local_Plan_NPPF_Review_Sept_2012.pdf?m=635095747640200000

Policy no	Policy area	Finding	Comments
Policy ENV2	Development affecting Listed Buildings	Consistent	The policy is consistent because of the great weight given to the conservation of a designated heritage asset when considering its, or its setting's, significance.
Policy ENV4	Ancient Monuments and Sites of Archaeological Importance	Consistent	The policy is consistent because of the great weight given to the conservation of a designated heritage asset when considering its, or its setting's, significance.
Policy ENV 5	Protection of Agricultural Land	Consistent	The effective use of land is encouraged by reusing previously developed land provided it is not of a high quality
Policy ENV 15	Renewable Energy	Partly consistent	The NPPF requires positive promotion, including the identification of sites and support of community-led objectives, to maximise renewable and low carbon energy development while ensuring that adverse impacts are addressed satisfactorily. Applications should be approved if impacts are, or can be made, acceptable.
Policy GEN2	Design	Generally consistent	This policy covers many aspects of the NPPF, but does not emphasise sense of place, mix of uses, function and other criteria in paragraph 58 of the NPPF. The NPPF can therefore be used in conjunction with this policy to strengthen it as the NPPF states that permission should be refused for development of poor design that fails to take the opportunities available for improving the character and quality of an area and the way it functions
Policy GEN4	Good Neighbourliness To prevent	Consistent	

	unacceptable risks from pollution		
Policy GEN7	GEN7 Nature Conservation	Partly consistent	The NPPF offers detailed advice on conserving and enhancing the natural environment and updates, clarifies and strengthens this general policy. Therefore the NPPF should be read in conjunction with this policy and used for development management purposes. Circular 06/2005 gives further guidance on the statutory obligations for biodiversity and geological conservation and the planning system.
Policy S7	The Countryside	Partly consistent.	The protection and enhancement of natural environment is an important part of the environmental dimension of sustainable development, but the NPPF takes a positive approach, rather than a protective one, to appropriate development in rural areas. The policy strictly controls new building.

57. More detailed consideration of the Local Plan policies which are relevant to this application are considered more fully later in this document.

C2: Policy S7 should be afforded significant weight

58. Uttlesford Policy S7 requires (inter alia) that development should only allowed where its appearance protects or enhances the particular character of the countryside within which it is set, or if there are special reasons why such development needs to be in that location.

59. There are number of appeal decisions which demonstrate that Uttlesford Policy S7 continues to apply and that it should be relied upon in relation to inappropriate development of the sort proposed by the Applicant and afforded significant weight.

60. In the January 2020 appeal relating to Ellan Vannin, Sibleys Lane, Thaxted²¹, the Inspector noted that:

“Policy S7 of the LP is only partially consistent with the Framework as it is more restrictive in that it seeks to protect the countryside for its own sake. However, Policy S7 goes onto say that development will not be allowed unless it would protect or enhance the particular character of the countryside. In this respect the Policy is consistent with paragraph 170 (b) of the National Planning Policy Framework (‘the Framework’) which seeks to recognise the intrinsic character and beauty of the countryside. Therefore, I consider it should be afforded significant weight when considering development proposals in the countryside”.

61. This approach is consistent with the 2020 Appeal relating to Land opposite Monk Street Farmhouse, Monk Street, Thaxted²² in which the Inspector commented that:

“Policy S7 of the LP sets out that the countryside will be protected for its own sake unless special reasons apply. Whilst this is not a requirement contained within the Framework, Policy S7 also states that development will not be allowed unless its appearance would protect or enhance the particular character of the countryside. In this respect the Policy is consistent with paragraph 170 (b) of the Framework which seeks to recognise the intrinsic character and beauty of the countryside. I therefore consider Policy S7 should be afforded significant weight when considering matters of character and appearance in the countryside”.

62. Lastly, the very recent (9 August 2022) decision in relation to a proposed development at Warish Hall, Takeley²³ reemphasised the importance of Local Plan Policy S7 when considering issues relevant to the character and appearance of the countryside. In this case, the Inspector noted that:

“In my judgement, the development would introduce an urban form of development that would not be sympathetic to the local character and landscape setting, and notwithstanding the mitigating design measures to create green infrastructure and character areas of varying layouts and densities, in the context of Policy S7 and what I heard, I consider that no special reasons have been demonstrated as to why the development, in the form proposed, needs to be there.

“...I consider that the proposal would have a significant adverse effect on local landscape character. It would change the intrinsic rural character of the area by introducing built development into a rural setting This would be apparent from the Protected Lane and PROWs resulting in a significantly adverse visual impact in conflict with LP Policy S7 and NPPF paragraphs 130 and 174b”

21 PINS Ref: 3241109 Ellan Vannin, Sibleys Lane, Thaxted CM6 2NU – Provided at **Appendix 3**

22 PINS Ref: 3233508 Land opposite Monk Street Farmhouse, Thaxted – Provided at **Appendix 3**

23 Appeal Ref: 3291524 Land at Warish Hall Farm, Smiths Green, Takeley – Provided at **Appendix 3**

C3: Relevant National Planning policies which should be taken into consideration

63. The following policies which form part of the National Planning Policy Framework ('NPPF') are also relevant to this application:

- Paragraph 158 of the of the NPPF which establishes that planning applications for renewable and low carbon development should only be approved if the impacts of the Proposed Development are (or can be made) acceptable;
- Paragraph 174 of the NPPF which states that:

"Planning policies and decisions should contribute to and enhance the natural and local environment by: ... b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland";

- Paragraph 175 of the NPPF which states:

"Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework ⁵⁸".

Footnote 58 – "Where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality".

64. Whilst we do not wish to repeat all of the relevant local and national planning policies, Uttlesford District Council's Guidance on applications for solar farms²⁴ states that the Local Planning Authority will have regard to the requirements summarised in Planning Practice Guidance on Renewables and Low Carbon Energy ('PPG') Paragraph: 013 Reference ID: 5-013-20150327²⁵.

65. The particular factors which need to be considered are assessed in the table below:

POLICY CONSIDERATIONS	ASSESSMENT
PPG Para 13: Encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value.	With a site area of 195 acres the proposal clearly constitutes a large scale solar farm on agricultural land and is not located on land which has been previously developed.

24 <https://www.uttlesford.gov.uk/article/7282/Solar-farms>

25 <https://www.gov.uk/guidance/renewable-and-low-carbon-energy>

POLICY CONSIDERATIONS	ASSESSMENT
<p>PPG Para 13:</p> <p>Where a proposal involves greenfield land, whether (i) the proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land; and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays.</p>	<p>As outlined in Section D of this statement, the Development Proposal has not been justified by the most compelling evidence that the use of agricultural land in this location is (i) necessary and (ii) that poorer quality land has been used in preference. This should weigh substantially against the proposal.</p>
<p>PPG Para 13:</p> <p>Great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. As the significance of a heritage asset derives not only from its physical presence, but also from its setting, careful consideration should be given to the impact of large scale solar farms on such assets. Depending on their scale, design and prominence, a large scale solar farm within the setting of a heritage asset may cause substantial harm to the significance of the asset.</p>	<p>As outlined in Section F below, the Proposed Development will negatively impact the setting of nearby heritage assets and this should be a reason for refusal.</p>
<p>PPG Para 13:</p> <p>The potential to mitigate landscape and visual impacts through, for example, screening with native hedges.</p>	<p>The proposed mitigation planting will not be sufficient to mitigate the significant landscape and visual impact as detailed in Section E.</p>
<p>PPG Para 13:</p> <p>The proposal's visual impact, the effect on landscape of glint and glare (see guidance on landscape assessment) and on neighbouring uses and aircraft safety.</p>	<p>As outlined in Section E, the visual and landscape impact of the Proposed Development should be a reason for refusal.</p>

POLICY CONSIDERATIONS	ASSESSMENT
<p>PPG Para 13:</p> <p>That solar farms are normally temporary structures and planning conditions can be used to ensure that the installations are removed when no longer in use and the land is restored to its previous use.</p>	<p>The Proposed Development includes 10 containerised inverter units (the size of standard shipping containers) and a substation which will require built foundations. These are therefore permanent structures.</p> <p>As noted above, there are several decisions confirming that the “temporary” nature of a solar farm should be given no weight. These decisions include a more recent Secretary of State decision in relation to a proposed solar farm, where it was determined that the proposed 25 years is a considerable period of time and the reversibility of the proposal should be given no material weight as the harmful effect would prevail for too long²⁶. The Proposed Development at Pelham Spring would be for even longer as the Applicant has requested 40 years.</p>
<p>PPG Para 13:</p> <p>The need for, and impact of, security measures such as lights and fencing.</p>	<p>The Proposed Development includes perimeter fencing and pole-mounted CCTV which contribute to the landscape and visual impact.</p>
<p>PPG Para 13:</p> <p>The energy generating potential, which can vary for a number of reasons including, latitude and aspect.</p>	<p>The Applicant contends that the solar farm will have a peak generating capacity of 49.9MW and the need is discussed in Section D.</p>
<p>A written ministerial statement on solar energy: protecting the local and global environment made on 25 March 2015 in which the Minister states that:</p> <p>“ any proposal for a solar farm involving the best and most versatile agricultural land would need to be justified by the most compelling evidence”</p>	<p>As outlined in Section D of this statement, The Development Proposal has not been justified by the most compelling evidence that the use of agricultural land in this location is (i) necessary and that (ii) that poorer quality land has been used in preference. This should weigh substantially against the proposal</p>

A speech by the Minister for Energy and Climate Change, the Rt Hon Gregory Barker MP, to the solar PV industry on 25 April 2013 in which the Minister makes the following comments:

“But not at any cost... not in any place... not if it rides roughshod over the views of local communities.

As we take solar to the next level, we must be thoughtful, sensitive to public opinion, and mindful of the wider environmental and visual impacts.”

As noted in **Section H** of this statement, there is significant local opposition to the Proposed Development.

66. When assessing the Proposed Development with the relevant considerations outlined above, it is evident there are several key issues which significantly weigh against the scheme. The use of Best & Most Versatile agricultural land, the impact on heritage assets and the landscape & visual impact are explored in further detail in the following sections of these representations.

C4: The purported use by the Applicant of the “Rochdale Envelope” is incorrect and should not be permitted

67. The Inspector is referred to an article by Dr Catherine Caine (Senior Lecturer in Law at the University of Exeter) entitled “*The place of the Rochdale envelope approach in offshore renewable energy*”. In her article, Dr Caine makes the following observations:

- The development of the Rochdale envelope mechanism began with the judicial review (“JR”) hearing of R v Rochdale Metropolitan Borough Council ex parte Tew and Others (Rochdale No. 1) which challenged the decision of Rochdale Metropolitan Borough Council to grant outline planning permissions for the Kingsway Business Park, and for a spine road to service it. The developer's application for outline planning permission did not contain any information relating to the design, size or scale of the proposed development.
- The second ground of appeal argued that the information provided by the developer to describe the development failed to meet the requirements of the Town and Country Planning (Assessment of Environmental Effects) Regulations (the TCP (EIA) Regulations).
- In considering the JR application, Justice Sullivan reflected on the problems in relation to the types of development which **remain uncertain for long periods of time**, because it is **not known from the outset** which companies will lease the land, and what they will request to build upon it when they do. He noted the challenge of describing a **development that will still be evolving in ten years' time**.
- In the course of a second JR of R v Rochdale Metropolitan Borough Council ex parte Milne (Rochdale No. 2) Justice Sullivan revisited the concept of developing projects which are not fixed at the outset, noting that 'if a particular kind of project ... is expected to evolve over a number of years depending on market demand, there is no

reason why “a description of the project” for the purposes of the directive should not recognise that reality’.

- The Rochdale envelope has subsequently emerged, and has been described by the Infrastructure Planning Commission (IPC) as 'an acknowledged way of dealing with an application comprising EIA development where details of a project have not been resolved at the time when the application is submitted'.
- The approach flexibly allows developers to describe their proposed development by using parameters for aspects that are not certain at the time of application. One commonly used method of outlining development parameters is to use maximum and minimum descriptions –for example, for a wind turbine – a maximum and minimum blade tip height may fall within the Rochdale envelope for that development.
- This flexibility makes sense in the context of offshore wind farms given that, as the turbines continue to increase in size...the methods concerning how turbines are fixed to the seabed will also need to develop. ... Deciding on which turbine size and foundation method to use some four to eight years ahead of the deployment date is a near-impossible task for developers.
- This approach is essential to ensure that the **lengthy process** from data gathering through to obtaining development consent does not prevent developers from using the most efficient and up-to-date technology in their developments.

68. The current application is for full planning permission (not outline permission) but on the basis that all detail including specifications, massing, access, and the location of the different elements of the scheme within the site could be dealt with at a later date. The application could not be more different from an application to construct an off-shore wind turbine for the following reasons:

- The construction period is relatively short;
- The technology (solar panels) is reasonably stable and the construction methods are well established;
- Other developers of solar “farms” appear to be able to provide precise details of all components of their development (including a detailed layout of the site rather than defining “development zones”), indicating that the flexibility being sought by the application is a matter of convenience, not necessity.

69. Residents affected by the proposed development are entitled to have full details of:

- the precise number and location of the PV panels;
- the precise positioning of inverters and batteries; and
- the specification of inverters and batteries given the potential issues of noise and safety.

D SITE SELECTION, NEED AND USE OF BEST & MOST VERSATILE AGRICULTURAL LAND

D1: Material considerations for use of best and most versatile land

70. The proposed use of greenfield land and particularly BMV agricultural land, needs to be shown to be **necessary** and that poorer quality land has been used in preference to higher quality land. These requirements are set out in the following documents:

- Paragraph 174 of the NPPF states that:

*Planning policies and decisions should contribute to and **enhance the natural and local environment by: ...b) recognising the intrinsic character and beauty of the countryside, and the wider benefits from natural capital and ecosystem services – including the economic and other **benefits of the best and most versatile agricultural land, and of trees and woodland;*****

- Paragraph 175 of the NPPF states that:

“Plans should: distinguish between the hierarchy of international, national and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies in this Framework” (footnote 58).

- Footnote 58 notes that:

*“Where significant development of agricultural land is demonstrated to be necessary, **areas of poorer quality land should be preferred to those of a higher quality**”.*

- Paragraph 13 of the Planning Practice Guidance (Renewable and low carbon energy) (“PPG”) notes that “particular factors a local planning authority will need to consider include:

“encouraging the effective use of land by focussing large scale solar farms on previously developed and non-agricultural land, provided that it is not of high environmental value;

*where a proposal involves greenfield land, whether (i) the **proposed use of any agricultural land has been shown to be necessary and poorer quality land has been used in preference to higher quality land;** and (ii) the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays”.*

- Written Ministerial Statement made on 25 March 2015 – The material weight that this issue carries remains unchanged as is evident from the letter received from the Secretary of State in August 2021 (see **Appendix 4**).

“In light of these concerns we want it to be clear 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”^{27}*

27 <https://questions-statements.parliament.uk/written-statements/detail/2015-03-25/HCWS488>

- Uttlesford Local Plan Policy ENV5 'Protection of Agricultural Land'

"Development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise"

D2: Senior Counsel has advised that a Sequential Test is required to identify the poorest quality land

70. In response to the Applicant's Original Application to construct Pelham Spring Solar Farm, a legal opinion was obtained from Meyrick Lewis by a local residents group called "Stop Battles Solar Farm". Stop Battles Solar Farm has since merged with Protect the Pelhams (PtP). Mr Lewis is a leading barrister from one of the most highly regarded planning law Chambers (39 Essex Street). Mr Lewis has considerable expertise in the field of planning law. In December 2022, it was announced that Mr Lewis would be appointed as King's Counsel. Mr Lewis's credentials appear as **Appendix 5**.

71. Mr Lewis's written advice is attached as **Appendix 6**. This is a confidential document which has been provided to assist the Inspector. It may be shared with the Applicant on request but it is NOT to be published or supplied to a third party except with the prior written consent of PtP. PtP is, however, happy to summarise the conclusions of Mr Lewis regarding the requirement for a Sequential Test which are as follows:

The most recent decision by the Secretary of State in relation to a solar farm proposal relates to a site at Cleve Hill in Kent. The development constituted a Nationally Significant Infrastructure Project by virtue of its size (350 MW). Whilst the chosen site was determined to be Grade 3b land (and therefore not BMV), the approach taken to site selection and the sequential test is of interest and relevance. The applicant's "Sequential Test Analysis" dated November 2018 is set out in Technical Appendix A4.1 to the Environmental Statement which accompanied the DCO application. In this document, the developer comments (at paragraph 25):

"The term "sequential test" has been used as this reflects the terminology used by the Planning Inspector in the appeal decision relating to the application for a 38.43 hectare solar PV array at Valley Farm, Wherstead, Ipswich, Suffolk (appeal reference APP/D3505/A/13/2204826)".

Whilst neither the NPPF nor the NPPG use the term "sequential test", the logic of the WMS and the general law on consideration of alternatives is that a "worst first" approach as reflected in footnote 58 of the NPPF means that alternatives should of necessity be addressed on a sequential basis. This seems to me to be an appropriate reflection of the general principle of planning law that proposals which have the potential to cause environmental damage should be approached on a "worst first" or "sequential" basis, having regard to the availability of alternative sites, see e.g. Trusthouse Forte Hotels Ltd v. Secretary of State (1987) 53 P & CR 293 at 299 per Simon Brown J:

"Where... there are clear planning objections to development upon a particular site then it may well be relevant and indeed necessary to consider whether there is a more appropriate alternative site elsewhere. This is particularly so when the development

is bound to have significant adverse effects and where the major argument advanced in support of the application is that the need for the development outweighs the planning disadvantages inherent in it”.

D3: The approach outlined in the Valley Farm Appeal remains the starting point for Alternative Site Selection

72. The Valley Farm appeal establishes that the key aspects of a Sequential test in the context of solar developments are as follows:

- The first question to ask is whether the use of agricultural land is necessary. This exercise should demonstrate that no suitable brownfield land or non-agricultural land is available within a reasonable search area.
- Whilst the plan area may in some circumstances be an appropriate search area, there is no policy guidance which advocates restricting searches to within a local authority’s administrative area.
- There is no need to site renewable energy development in a particular local authority in order to meet a local green energy quota.
- There is no Government guidance on what is a reasonable search area and each case should be considered on its own facts taking account of planning and operational constraints.
- Industrial areas (within the district), including distribution and warehousing buildings, and former airfields should be considered.
- Although the Agricultural Land Classification may need to be treated with some caution, it is a good starting point and a basis from which to carry out further investigation.
- The sequential test must be proportionate. However, simply surveying one site (the appeal site) is wholly inadequate.
- A cursory desk top study of four areas of Grade 3 land in the district within a reasonable distance of 33kV overhead lines is insufficient.
- Proper investigation (including auger testing) is needed to better understand the quality of the land identified in a desktop study.

73. It is therefore submitted that the requirements of the NPPF, PPG and Written Ministerial Statement cannot be satisfied unless a sequential assessment is undertaken.

74. The very recent (June 2022) appeal regarding a proposed solar farm on land north of The Street, Cawston, Norfolk²⁸ also confirms the importance of ensuring that BMV land remains available for food production.

28 PINS ref 3278065 dated 7 June 2022 - Provided at **Appendix 1**

D4: The use of agricultural land must be shown to be necessary (i.e., there is no possibility of development on a brownfield site or lower quality land)

75. There is a very high bar for using BMV land. This conclusion is supported by the following comments of the Inspector in the appeal in relation to the site at Bunkers Hill, Fraddam, Cornwall²⁹:

“It seems to me that if any proposal for a solar farm involving the best and most versatile agricultural land needs to be justified by the most compelling evidence, then there is an onus on the developer to show that alternative options, on previously-developed land, or land of lesser quality, for example, are not available”.

76. In the appeals relating to Land North of Dales Manor Business Park, West Way, Sawston, Cambridgeshire³⁰, the Secretary of State and PINS Inspector were not persuaded that there is the most compelling evidence that BMV land should be used. The use of BMV land (in this case 52 acres of agricultural land classified as Grade 3a) weighed significantly against the proposals.

D5: A search must be undertaken within a wide area of the proposed site (including in adjoining administrative areas)

77. The following Appeal cases all provide support for the arguments that (i) the search area should be substantial and (ii) the search should not be confined to a single administrative area. This is particularly relevant in this case given that the Site sits on the border of Uttlesford and East Hertfordshire and is in close proximity to North Hertfordshire:

- As noted above, the appeal at Valley Farm, Wherstead, Ipswich, Suffolk³¹ confirms there is no policy guidance which advocates restricting alternative site searches to within a local authority’s administrative area;
- In relation to Land at Park Farm, Claverdon, Warwickshire³², the applicants undertook a search of sites within the administrative areas of both Stratford-on-Avon District Council and Warwick District Council;
- In the appeal to the Secretary of State in relation to land at Tawdside Far, 32 Deans Lane, Latham, Ormskirk, Lancashire³³ the search area was the wider Lancashire/ North West England region. However, it was concluded that insufficient information was provided to assess if alternative, non-agricultural sites were suitable for a development;
- In the appeal relating to Land at Walnut Cottages, Oil Mill Lane, Clyst St Mary³⁴, the alternative sites study focused on sites within a **30-mile search area**, which the

29 PINS ref: 3140774 dated 6 July 2017 - Provided at **Appendix 1**

30 PINS refs: 3012014 & 3013863 dated 15 June 2016 - Provided at **Appendix 1**

31 PINS ref: 2204846 - Provided at **Appendix 1**

32 PINS ref: 3029788 dated 20 April 2016 - Provided at **Appendix 1**

33 PINS ref: 3011997 dated 21 January 2016 - Provided at **Appendix 1**

34 PINS ref: 3007994 dated 24 July 2015 – Provided at **Appendix 1**

Planning Inspector considered to be “a substantial geographical area” and “not an unreasonably constrained starting point”.

D6: A substantial number of sites must be considered and discounted before selecting the proposed site

78. The appeal in relation to Land off Cold Harbour Lane, Bobbing, Sittingbourne³⁵ indicates that a large number of alternative sites must be considered in order to justify the selection of a site on BMV land. In this case the Sequential Analysis Study submitted with the appeal demonstrates that 40 possible alternative sites were reviewed (including one airfield) within the administrative areas of both Swale Borough Council and neighbouring Medway Council. As discussed below, the Applicant is well aware of the requirements for an extensive site selection exercise and has, in fact, conducted such an exercise in relation to other sites which is it currently promoting for development.

D7: The review of alternative sites must demonstrate that no site has been found with a lower percentage of BMV land

79. A number of appeals show that the developers are required to demonstrate that they have chosen **the poorest quality land within the search area:**

- In an appeal at Barn Farm, Stanford on Soar³⁶ the Inspector commented that **even if all the identified alternative sites were assumed to be 100% Grade 3a land, they would still consist poorer agricultural land than the appeal site** which was 34% Grade 2 land and 66% Grade 3a land.
- In an appeal to the Secretary of State in relation to Havering Grove Farm, 552a Rayleigh Road, Hutton, Essex, CM13 1SH³⁷, the Secretary of State concluded that **compelling evidence had NOT been produced to demonstrate that there are no suitable poorer quality (grade 3b) sites in the study area** that could accommodate the development (In this case the appeal site comprised 43 acres of agricultural land comprising 85% Grade 3a land and 15% Grade 3b land);
- An appeal which the Secretary of State called in relating to Land South of Three Houses Lane, Codicote, Hertfordshire, SG4 8SU³⁸ related to an Appeal site comprised of 21 acres of agricultural land which consisted of 45.2% grade 3a and 54.8% grade 3b land. The Secretary of State agreed with the Planning Inspector that the likely loss of productivity from using Best and Most Versatile agricultural land weighed significantly against the proposal.

80. Lastly, the Applicant has attempted to argue that because there is a high proportion of Grade 2 Land in Uttlesford, “the normal rules” regarding the use of BMV land do not apply. This is clearly incorrect - as is illustrated by the Appeal in relation to Land south of Braintree Road, Felsted³⁹, in which the Inspector commented as follows:

35 PINS ref: 3017938 dated 07 December 2015 – Provided at **Appendix 1**

36 PINS ref: 3005788 dated 20 April 2016 – Provided at **Appendix 1**

37 PINS ref: 3134301 dated 23 May 2016 – Provided at **Appendix 1**

38 PINS ref: 3131943 dated 31 October 2016 - Provided at **Appendix 1**

39 PINS Ref: 3156864 dated 11 July 2017 – Provided at **Appendix 3**

“I therefore conclude that in light of both the absence of an assessment of land of poorer quality and the scale and quantum of development proposed representing a significant development of agricultural land, the proposal fails to comply with Policy ENV5 of the ULP and Paragraph 112 of the Framework.....”.

D8: The Applicant has attempted to justify the choice of site AFTER it has been selected!

81. The Proposed Development will be situated on 79.3 hectares (195 acres) of agricultural land. The Agricultural Land Classification document prepared by the Applicant concludes that of the 79.3 acres, the majority of the site (42.7 acres) is Grade 2 land with a further 21.8 acres comprising Grade 3a land. In total, therefore **81.34% of the site is BMV Land**.
82. The application currently under consideration follows an earlier application to UDC (made by the Applicant in November 2021 - no. UTT/21/3356/FUL) for permission to construct a substantially similar scheme. Permission was refused by UDC in January 2022. A large number of documents was submitted in connection with the earlier application (a number of which have been resubmitted as part of the current application). These are set out in **Appendix 7**. However, **no site selection document formed part of the earlier application**. Instead, the Applicant included the following text in its Planning Statement:

“In identifying the site, the applicant has undertaken a detailed methodical site selection exercise. This exercise has involved the careful consideration of several important design criteria, including technical feasibility, environmental and planning constraints, and land availability. The criteria were determined with reference to relevant planning policy.

The site selection process was broadly split into the following sequence of activities: (i) definition of a search area based on grid capacity; (ii) analysis of any previously developed land; (iii) analysis of any lower grade agricultural land; (iv) analysis of planning constraints; and (v) establishment and assessment of a short-list;

In undertaking their site selection process, the applicant has a number of essential technical requirements, including Suitable site area to accommodate the solar PV arrays; and a location in close proximity to an existing grid connection point.

83. This is the same text that appears word for word in the Planning Statement submitted by the Applicant in connection with another solar farm application to made to UDC (Cutlers End) and the text is also strikingly similar to the text of yet another application made to UDC in relation to “Long Meadow Solar Farm”. Extracts from the relevant Planning Statements appear as **Appendix 8**.
84. The document now submitted by the Applicant is **dated 26 September 2022** (and is stated to be version 1). This indicates that it has been produced some 10 months after the Original Application in relation to the site was submitted (and more than 18 months after the applicant first wrote to residents informing them of the proposed scheme).

D9: The Applicant’s approach to site selection is, in any event, inadequate - no alternative sites have been given meaningful consideration - it should therefore be given no weight

85. Even if the Alternative Site Selection report had been produced before the site was selected, which is clearly NOT the case, both the approach and its conclusions lack credibility and should be given no weight.

86. The Applicant states that it has carried out a selection process by reference to a “qualitative” sequential methodology involving 3 stages:

- Stage 1: Developing appropriate site selection criteria reflecting National and Local planning policy and guidance together with operational and developer considerations guiding the locational needs and requirements of the development proposal.
- Stage 2: Identify the broad area of search based on the methodology established during stage 1 and identify potential sites for review.
- Stage 3: Identification of alternatives sites and, if necessary, measure these against criteria in order to assess if the application site is the most appropriate location for the development.

87. Further comments on the assessment which has been undertaken are set out below. However, the fundamental point (in addition to the fact that this site selection exercise has been undertaken **AFTER** the selection of the site) is that **the Applicant has NOT provided “the most compelling evidence”** to justify the selection of the Site. As noted above, the appeal in relation to Land off Cold Harbour Lane, Bobbing, Sittingbourne⁴⁰ demonstrates that a large number of alternative sites must be considered in order to justify the selection of a site on BMV land. Moreover, the **Applicant itself is well aware of the inadequacies of the “site selection” document submitted in connection with the current application.** Attached as **Appendix 9** is a site selection document submitted by the Applicant in connection with an application to Colchester Borough Council to build “Birch Solar Farm”. The proposed site for Birch Solar Farm comprises mostly Grade 3a land and is of a similar size to the “Pelham Spring” site. Whilst it is not accepted that the geographical scope of the search is adequate, a **long list of well over 100 sites was identified** as a potential location for Birch Solar Farm of which 66 sites were selected following the analysis of lower grade agricultural land resulting in a **short list of 33 sites.** Each of the 33 sites was then assessed against the following 9 criteria:

- Is the land likely to be available, e.g., on the market or proposed for another use?
- Is the topography favourable?
- Distance from the potential point of connection?
- Are there obstacles between the site and point of connection?
- Shape of the site, is it regular/irregular?
- Is the land clear and developable?
- Are there any PRowS crossing the site?
- Flood risk areas - Flood Zone 1 favoured
- Any other relevant considerations?

40 PINS ref: 3017938 dated 07 December 2015 – Provided at **Appendix 1**

88. Note that some of the following reasons for **rejecting** particular sites which appeared on the shortlist for Birch Solar Farm are highly relevant to the current application:

“RSW10 includes and is adjacent to areas of Ancient Woodland. A large portion of the site, particularly to its north, is designated as a Scheduled Ancient Monument. Furthermore, there is a Grade II Listed Building within Colchester Zoo and groupings of Grade II Listed Buildings adjacent to the sites east and west. According to the nationally available Provisional ALC survey the land is largely Grade 2 (Very Good Quality) agricultural land, with a section of Grade 3”*

“ALS09 complies with much of the main criteria. However, it is heavily constrained by heritage assets including Conservation Areas, Grade I Listed Buildings and an on-site Grade II Listed Building while its development potential is limited by the large number of ponds and areas of woodland”

“ALS22 complies with much of the main criteria. However, it is directly adjacent to an existing solar farm which opens up the potential for serious cumulative impacts”

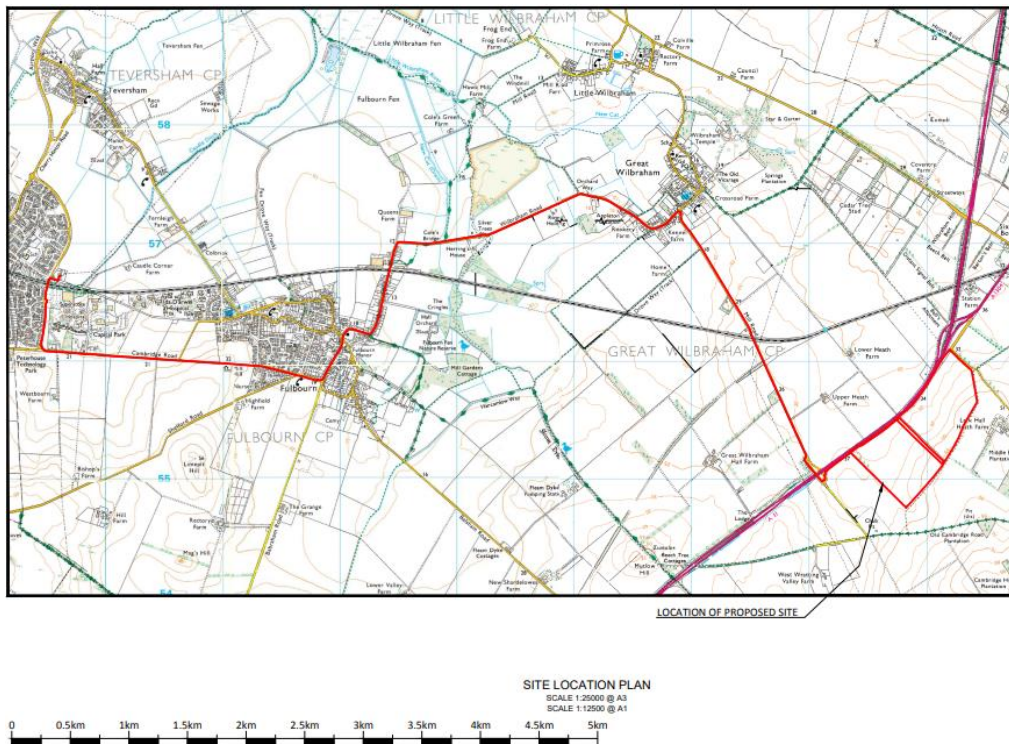
“ALS29 complies with the main criteria. However, it is located directly adjacent to a number of Grade II Listed Buildings, including one that it wraps around, and residential properties in Peldon”

“ALS33 is located directly adjacent to the approved Layer Solar Farm. According to the nationally available Provisional ALC survey the land is Grade 3. ALS33 is located directly adjacent to a number of residential properties and in close proximity to a number of Grade II Listed Buildings to its west”.

“ALS35 complies with much of the main criteria. However, it is located relatively close to the approved Layer Solar Farm, opening the potential for cumulative impacts due to the scale of both solar farms”

“ALS59 was found to be mixture of Grades 2, 3a and 3b, with 3a predominating. ALS59 is located directly adjacent to residential properties in the village of Birch Green, many of which it wraps around, and in close proximity to a number of Grade II Listed Buildings and Conservation Area in Birch”

89. The Applicant states that “typically, large scale ground mounted solar schemes must be located within circa 4km in order for the scheme to be financially viable”. This is used to justify a search area set at 4km from the point of grid connection. However, the choice of a radius of 4km is wholly arbitrary and – importantly – fails to reflect the fact that other schemes proposed or indeed constructed by the Applicant are located further away from the point of connection. By way of example, in 2015, the Applicant constructed a 30MW Solar “Farm” at Great Wilbraham in Cambridgeshire. The site is connected to a substation in Cherry Hinton in Cambridge via a **10 km** cable in the highway. The cable route is illustrated below:



90. Note also, the Planning Statement in the appeal relating to a 30 MW solar farm on Land at Rose and Crown Farm, Mill Road, Walpole St Andrew⁴¹ (attached as **Appendix 10**) in which the applicant stated as follows:

*The viability of running a connection to a cable with capacity is dependent on the estimated output of a proposal/site size. Grid connections are a significant infrastructure cost such projects have to finance and the length of the grid connection is determined by the size of the project — **the larger the facility in terms of energy production, the longer the grid connection can be.** In regards to this, the **maximum distance which a 30MW solar PV facility could viably be from the cable /connection point is 15 kilometres along roads.** This effectively equates to a radius from the cable of approximately 13 kilometres. However for purposes of the Sequential Test a 15 kilometre radius of the cable has been used and assessment undertaken to review the suitability of all land within it.*

91. In its Alternative Site Selection report, the Applicant sets out 14 criteria which, it suggests, can be used to consider the suitability of alternative sites. However, it then **fails to apply those criteria to any site.** This decision is justified by the following statement:

It has therefore been demonstrated that there is no lower quality agricultural land available in the search area. For this reason, there are no alternative agricultural sites of non Best and Most Versatile land to test against the application site, in terms of the scoring matrix referred to in section 4.

41 PINS ref. 3001281 dated 3001281

92. Moreover, the Applicant has failed to assess the suitability of the Pelham Spring site against its own selection criteria. Had it done so, it would have revealed that the chosen site is **NOT SUITABLE** given that it fails at least 8 of the 14 “suitability” criteria. This is illustrated below:

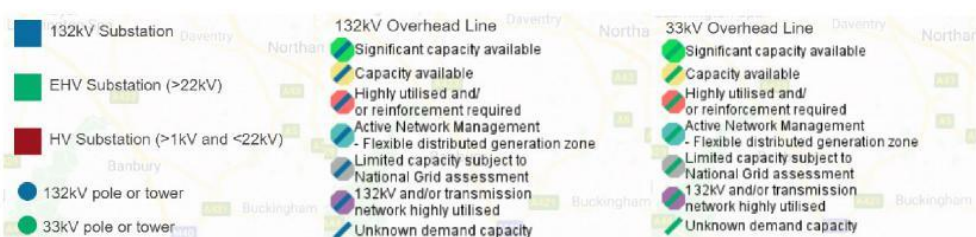
	Applicant’s Selection Criteria	Analysis
1	Sites should <u>be flat or with a south facing slope</u> and free from structures and trees that could cause shading.	The portion of the Proposed Site which runs parallel to Brick House End (and below Battles Wood) is on a slope which runs East to West – it is NOT South facing
2	A site with <u>suitable grid connectivity</u> - Typically, large scale ground mounted solar schemes must be located within circa 4km in order for the scheme to be financially viable.	See above. This is an arbitrary condition and it can be demonstrated that site up to 10 km away from the point of connection is commercially viable. There is significant capacity along the whole of the local network
3	A site of <u>a suitable shape, orientation and size</u> that can accommodate the development proposal - the fragmentation of the development site would have an adverse effect towards a scheme’s viability and deliverability. Furthermore, it would significantly increase the size of the development footprint. Two or three separate sites cumulatively delivering 40MW at this location would be unviable	The orientation of the site is not suitable. The site is formed of two distinct parcels of land
4	Topography - <u>the preference is for a site with a southerly aspect</u>	See above – the site slopes East to West
5	<u>Previously developed land and non-agricultural land</u> - the Planning Practice Guidance on Renewable and low carbon energy encourages the effective use of land by sequentially focussing large scale solar farms on previously developed and non-agricultural land, then agricultural land (lower quality then higher quality).	The site is currently undeveloped agricultural land

6	<p><u>Agricultural land classification - preference is given to the use of poorer agricultural land quality (grades 3b and 4) before higher land quality agricultural land (grades 1, 2 and 3a). Sites entirely within Best and Most Versatile Land (BMV) should only come forward and be considered when there are no other sites available which either entirely or proportionately comprise 'poorer land quality'.</u></p>	<p>The majority of the site (over 81%) is BMV land. Poorer quality agricultural land exists in proximity to the grid and should be preferred</p>
7	<p>The NPPF and Development Plan seek to <u>steer development away from the sensitive environmental sites</u> (as defined by the EIA regulations). The EIA regulations define sensitive areas as including Scheduled Monuments within the meaning of the Ancient Monuments and Archaeological Areas Act 1979;</p>	<p>The site is in close proximity to two scheduled monuments (at the Crump and at Battles Farm)</p>
8	<p><u>A suitable location which is served by appropriate highway infrastructure - appropriate highway infrastructure is a material consideration due to the (HGV) Heavy Goods Vehicles traffic trips generated during the construction period.</u></p>	<p>Access to the site will be via small country lanes which are not suited to large volumes of HGVs – see the separate section on Transport</p>
9	<p><u>A suitable site which is available for the duration of the development proposal - The site must be available for the duration of energy generation requirement of 40 years and preference is for a site within single ownership.</u></p>	<p>The site is formed of two parcels owned by separate land owners</p>
10	<p><u>Site specific allocation</u> – Consideration should be given to the planning vision for the site as presented within the extant and emerging development plan.</p>	<p>N/A</p>
11	<p><u>Flood risk - inappropriate development in areas at risk of flooding should be avoided by directing development away from areas at highest risk</u></p>	<p>Parts of the site are at high risk for surface water flooding</p>

12	Sensitive human receptors - this criterion requires an assessment of how the proposed development would relate to potentially sensitive human receptors on the site <u>and in relation to neighbouring land uses including proximity to populated areas and or local villages.</u>	The site is located between residential areas at Brick House End and Maggots End. The lanes at Brick House End and East End are well used by walkers, cyclists and horse riders
13	Landscape and visual considerations -the landscape and visual effects of energy projects will vary on a case by case basis according to the type of development, its location and the landscape setting of the proposed development.	As explained elsewhere in this document, the visual impact of this proposed development is significant given the choice of sloping site
14	Heritage considerations - Proposals should demonstrate that no substantial harm is caused to heritage assets; where there is an impact on heritage assets relevant mitigation measures should be considered to lessen impact.	Less than substantial harm will be caused to a number of heritage assets adjacent to the Proposed Site. This should be given great weight.

D10: There is capacity to connect a solar farm in the local area - the availability of a grid connection does not justify the failure to consider other sites

93. The UK Power Networks Heat Map below, demonstrates that the existing distribution grid has a number of lines where there is available capacity such that a grid connection can be possible. There is no logical basis for constraining the search to Uttlesford.



94. Whilst it may be true that the main driver for locating the solar farm at this location is “its proximity to the existing Pelham Substation”, it is misleading to suggest that there is a requirement to connect a solar farm directly to a substation. In fact, a large number of solar farms are connected to the grid via the high voltage overhead cable network. By way of example, another (30 MW) solar farm recently approved by Uttlesford District Council (on Grade 3b Land near Cole End in Saffron Walden) is connected directly into the overhead network. The Planning Statement⁴² which accompanies this application notes that:

“The point of connection to the local distribution network will be via an existing OH cable route that runs to the south west of the southern site parcel”.

95. There is also no barrier (either technical or economic) to making a connection from a site which is some distance from a substation. Uttlesford District Council is currently considering another application to construct a 40MW solar farm on land at Cutlers Green near Thaxted. The Planning Statement⁴³ which accompanies this application notes that:

“the project is proposed to connect to the local network (UK Power Networks) via underground cables into the grid at the 132/33kV Substation, east of Thaxted, which is approximately 4km from the site”.

96. It is also important to note that the availability of a grid connection is not a matter which carries weight from a planning perspective. This is clear from the decision relating to two appeals regarding a proposed solar “farm” on Land North of Dales Manor Business Sawston⁴⁴ where the Secretary of State agreed with the comments of the Planning Inspector to the effect that:

“A connection to the national grid is an essential site requirement and the availability of a connection in a part of the network with capacity to accept the output is of assistance to the appellant but it does not bring a public benefit and adds no weight to the planning case for the proposals”.

97. There is therefore no technical barrier to constructing a solar “farm” at any number of locations within a reasonable distance of Stocking Pelham Substation or, indeed, within a reasonable distance of the high voltage cable network which runs to the East, West and South of Stocking Pelham substation.

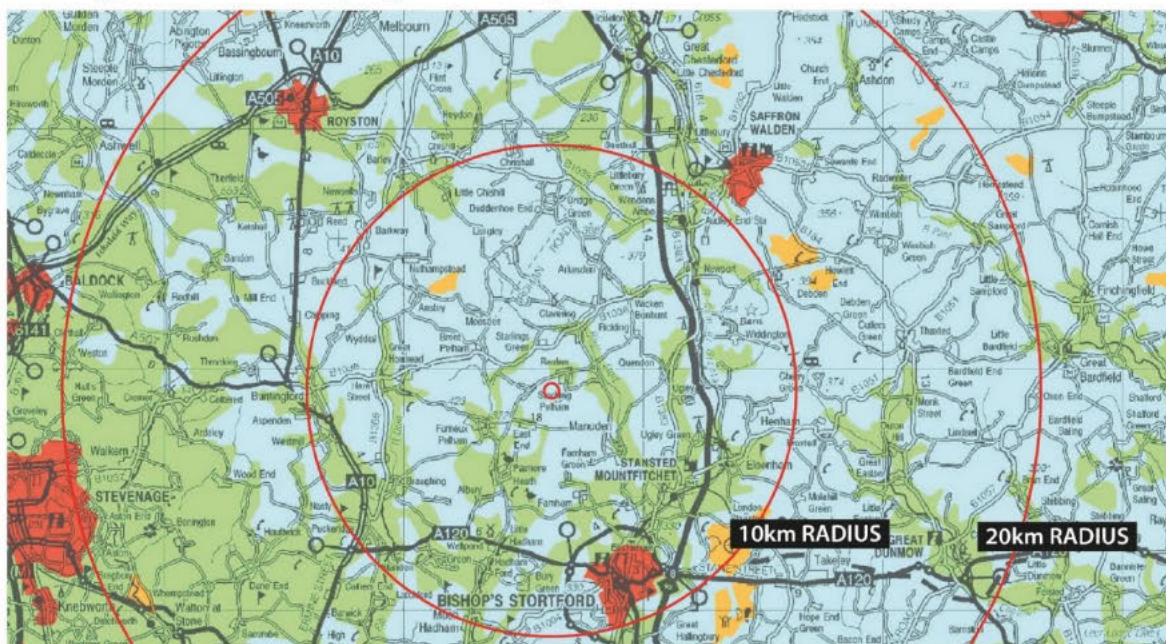
42 https://publicaccess.uttlesford.gov.uk/online-applications/files/05E52EA08CA7A018A90DF4AABDC54E4A/pdf/UTT_21_0688_FUL-PLANNING_STATEMENT-3571280.pdf

43 https://publicaccess.uttlesford.gov.uk/online-applications/files/706655E1D47139B9CC113248C6408817/pdf/UTT_21_1833_FUL-DESIGN_AND_ACCESS_STATEMENT-3633840.pdf

44 PINS Ref 3012014 & 3013863 dated 15 June 2016 – Provided in **Appendix 1**

D11: There are more suitable sites in close proximity

98. There is no need to find a site which is classed as grade 4 ALC. A review of Natural England's ALC map reveals that there are significant areas of Grade 3 land to the West of the Proposed Site in close proximity to the distribution network (for example, adjacent to the A507 near Cottered and Rushden or adjacent to the A1 near Graveley). The land to the South of Puckeridge (adjacent to the A10) should also be considered.
99. Any credible search undertaken within a reasonable distance of the proposed site would also have identified, among other sites, the existence of Nuthampstead Aerodrome (shown in orange to the North West of the proposed site). Not only is this a suitable brownfield site; it was, in fact, the subject of a screening application for a solar farm submitted to North Hertfordshire District Council in 2013 (although it is not known why the application did not progress further).



100. Moreover, the Applicant is currently progressing another application in the Uttlesford district in relation to a site at Cole End Farm Lane, Wimbish Essex. The ALC survey submitted by the Applicant in connection with this application⁴⁵ concludes that the whole of the site is comprised of Grade 3b land.
101. In addition, a recently approved application in connection with yet another solar farm in the Uttlesford District (at Felsted) consisted of site classified as 91% subgrade 3b (moderate) agricultural land.

45 https://publicaccess.uttlesford.gov.uk/online-applications/files/023CF991C081DC5F08CDC058A51ACBC1/pdf/UTT_21_0688_FUL-AGRICULTURAL_LAND_CLASSIFICATION-3571285.pdf

102. It should also be noted that the proposed site of Berden Hall Solar Farm (which is the subject of another application to PINS), whilst comprising a large percentage (72%) of BMV land is actually poorer quality land than the current site. The Applicant has also failed to explain why it has not considered other land in the ownership of the two landowners who have offered their land to the Applicant for development. A search of their respective land holdings reveals that they own a total of 860 acres of agricultural land. The Applicant should consider whether poorer quality land exists within these landholdings.

103. The Inspector is referred to the recent (2022) appeal decision in relation to Appeal Decision relating to Land north of The Street, Cawston, Norfolk NR11 7QR⁴⁶ where the Inspector considered the relative merits of two schemes put forward by the developer. The principal difference between the “approved” and “appeal” schemes related to the extent of BMV land to be used for the proposal. Here the appeal site comprised three large agricultural fields covering an area of 35.67ha, of which 71.1 percent was BMV (including a hectare of Grade 2 land), whereas the “approved” scheme would not use any Grade 2 land and would comprise around half the amount of BMV land identified in the appeal scheme.

104. In setting out the relevant planning law considerations, the Inspector noted as follows:

“The Written Ministerial Statement (WMS) of 25 March 2015 relates to the unjustified use of agricultural land and expects any proposal for a solar farm involving the best and most versatile agricultural land (BMV) to be justified by the most compelling evidence. The WMS was linked to updated National Planning Practice Guidance (NPPG), which explains that where a proposal involves greenfield land, consideration should be given to whether the proposed use of any agricultural land has been shown to be necessary, whether poorer quality land has been used in preference to higher quality land and to whether the proposal allows for continued agricultural use where applicable and/or encourages biodiversity improvements around arrays. This approach is also reflected in the Framework, which suggests that where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality”.

105. Rejecting the Appeal, the Inspector noted that:

“... the smaller amount of land required through the approved scheme would ensure a greater extent of BMV land would be available for food production, throughout the lifetime of that development. Moreover, the approved scheme demonstrates that arrays can be configured within the appeal site and an adjoining area of land within the holding, with a significantly lesser extent of BMV taken out of arable production”.

46 Appeal Ref 3278065 dated 7 June 2022 – included in **Appendix 1**

D12: The Benefits of the Proposed Development should be given limited weight

106. It is accepted that, paragraph 158 of the NPPF establishes that when determining planning applications for renewable and low carbon development, local planning authorities should not require applicants to demonstrate the overall need for renewable or low carbon energy. However, the benefits of the Proposed Development at this rural location require further consideration.

107. The Applicant states that:

“It is estimated that the Proposed Development would generate up to 49.9 MW of renewable energy, which could provide approximately enough energy to power over 16,500 homes”

108. The electricity regulator Ofgem publishes annual data which records average household consumption. In its 2019 publication⁴⁷ Ofgem states that average household electricity consumption in the East England is 3,198 Kw per annum. The Applicant’s calculations in relation to the Proposed Development appears to assume that average household consumption is around 3,024 Kw per annum (based on its claim that the development is capable of providing sufficient energy to power over 16,500 homes). To aid analysis, it has been assumed that average annual domestic electricity consumption is 3,200 kw per annum and that 1MW of installed solar capacity is capable of generating sufficient power to meet the needs of 313 homes.

109. The Essex Design Guide published by Essex County Council includes guidance entitled “Solar Farm Guiding Principles⁴⁸ published in June 2022. In this document, Essex County Council notes the establishment of the Essex Climate Action Commission (ECAC) in response to national requirements to reduce carbon emissions, and states that the EACA has recommended that:

‘Essex produces enough renewable energy within the county to meet its own needs by 2040’.

The logical extension of this policy position is that each local authority should generate enough renewable energy to meet the needs of its own constituents.

110. The data below (and detailed in **Appendix 11**) demonstrates that:

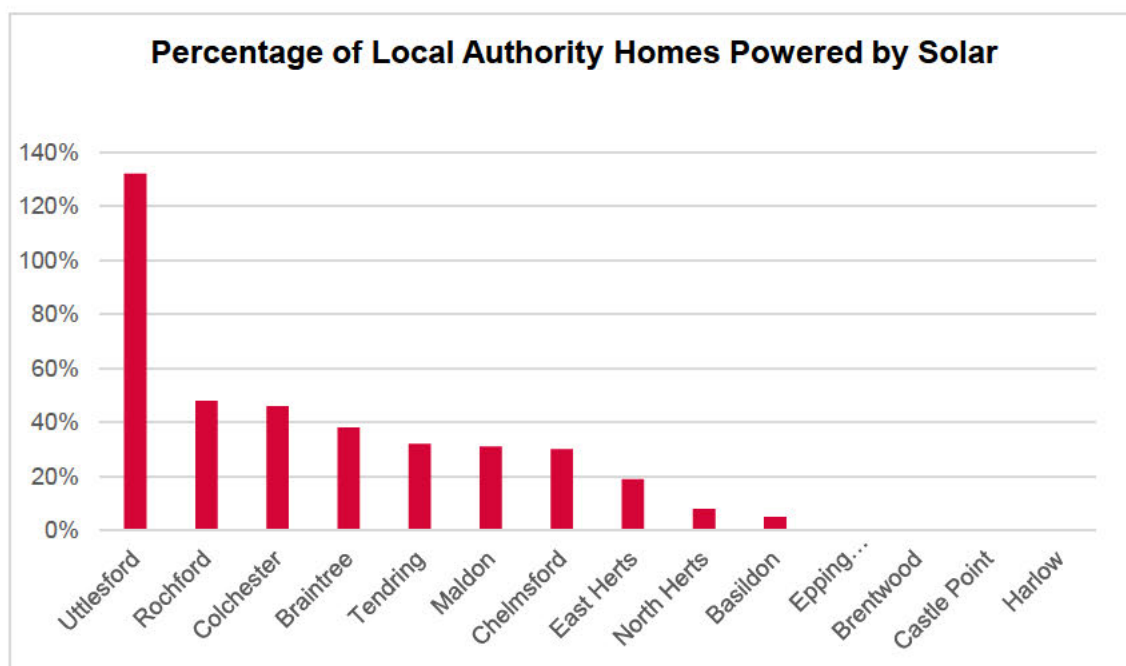
- Uttlesford already has **more ground-mounted solar capacity** installed or approved for installation **than any other Local Authority in Essex**;
- The adjacent counties of East Herts (40MW peak of capacity) and North Herts (15.3 MW peak of capacity) **lag significantly behind Uttlesford** in terms of solar capacity.

47 <https://www.ofgem.gov.uk/publications/decision-typical-domestic-consumption-values-2020>

48 <https://www.essexdesignguide.co.uk>

Solar generation data by Local Authority as at 30 January 2023						
Local Authority	Ranking (most solar generation capacity)	Population (2019 ONS)	Households (per FOI request 2021)	Ground mounted Solar Capacity approved or operational (MW peak)	Number of households served @3,200 per Kw pa	% of households served by current solar capacity
Uttlesford	1	91,300	38,669	162.90	50,988	132%
Colchester	2	194,700	84,572	124.70	39,031	46%
Braintree	3	152,600	66,459	82.57	25,844	38%
Chelmsford	4	178,400	77,239	74.80	23,412	30%
Tendring	5	146,600	72,945	73.70	23,068	32%
Rochford	6	87,400	37,078	57.49	17,994	48%
East Herts	7	149,700	64,790	40	12,520	19%
Maldon	8	64,900	29,313	30	9,390	31%
North Herts	9	133,600	58,368	15.3	4,851	8%
Basildon	10	187,200	79,425	12	3,756	5%
Epping Forrest	11=	131,700	56,935	NIL	NIL	NIL
Brentwood	11=	77,000	36,000*	NIL	NIL	NIL
Castle Point	11=	90,400	40,000*	NIL	NIL	NIL
Harlow	11=	87,100	38,000*	NIL	NIL	NIL

* estimated based on 2019 data



111. The chart above demonstrates that there is sufficient solar energy generation capacity either installed or approved for installation to **power ALL homes in Uttlesford AND there is sufficient capacity to provide for a 32% increase** in housing in the Uttlesford area.

112. In considering the weight to be given to the benefit of the Proposed Development at this location Uttlesford should therefore take into account that it has the strongest track record in Essex in terms of solar generation capacity, as well as significantly more than the two nearby authorities of East Hertfordshire District Council and North Hertfordshire District Council. Given that Uttlesford's current aspiration is to build 13,000 new homes⁴⁹ by 2040, it is anticipated that Uttlesford will soon have enough solar generated capacity to power a further 11,700 homes in addition to those planned. Note that these figures do not take into account the solar development recently proposed by Manchester Airport group on land adjacent to Stansted Airport (which has recently been approved by PINS). These figures also assume that there is no solar on newly developed houses (which would be contrary to current government policy as set out in the Energy Security Strategy referred to earlier).

113. Lastly, whilst the Applicant comments that "the grass sward will allow sheep grazing within the solar farm if appropriate/practical", there is no commitment to ensure that the agricultural use of the site will continue. In any event, previous Secretary of State decisions consider that the use of BMV land for sheep grazing must be seen in the context of other, potentially more productive, uses and has been afforded very little weight as a benefit⁵⁰.

114. For the reasons set out above, lower weight should therefore be afforded to the benefits in the overall planning balance.

D13: Conclusions re the use of site selection, need and use of Best & Most Versatile agricultural land

115. It is submitted that "the most compelling evidence" required to justify the use of agricultural land in this instance would comprise a study of a reasonable search area of Uttlesford District, East Hertfordshire District, Epping Forest District and North Hertfordshire District.

116. Even if it demonstrated that no suitable brownfield sites are available and that the use of agricultural land is **necessary**, **any site with a higher proportion of Grade 3b site would be preferable**.

117. In light of National Planning Policy and Guidance (referred to above), Uttlesford's Policy ENV5, the Written Ministerial Statement and appeal decisions which discuss this matter, it is clear that the Applicant has not produced the most compelling evidence that the use of agricultural land in this location is necessary and that poorer quality land has been used in preference. It follows that the selection of the Site has not been justified.

49 <https://www.uttlesford.gov.uk/article/7268/Local-Plan-Council-receives-many-more-sites-than-required-in-Call-for-Sites>

50 Limolands Farm, Vaggs Lane, Lymington – PINS ref: 3006387 dated 30 March 2016 - Provided at **Appendix 2**

118. For the reasons set out above, the Proposed Development should be refused on the following grounds:

The Proposed Development is unacceptable due to its location on Best and Most Versatile agricultural land. It has not been demonstrated that there are no suitable sites of lower agricultural quality within the wider area. The proposal is therefore contrary to National Planning Policy Framework, Policy ENV5 of the Uttlesford Local Plan, Planning Practice Guidance and Government Guidance contained within the Ministerial Statement of March 2015.

E LANDSCAPE AND VISUAL IMPACT

E1: Material planning considerations in relation to landscape

119. The relevant planning considerations are set out in the following documents:

- Paragraph 174 of the NPPF states that:

*Planning policies and decisions should contribute to and **enhance the natural and local environment by: ...b) recognising the intrinsic character and beauty of the countryside**, and the wider benefits from natural capital and ecosystem services – including the economic and other **benefits of the best and most versatile agricultural land**, and of trees and woodland;*

- The PPG in relation to large-scale solar farms notes that they can:

'have a negative impact on the rural environment, particularly in undulating landscapes.....'

- Uttlesford Plan Policy GEN2 states that:

'Development will not be permitted unless its design meets all the following criteria and has regard to adopted Supplementary Design Guidance and Supplementary Planning Documents.

It is compatible with the scale, form, layout, appearance and materials of surrounding buildings;

It safeguards important environmental features in its setting, enabling their retention and helping to reduce the visual impact of new buildings or structures where appropriate;.....

It minimises the environmental impact on neighbouring properties by appropriate mitigation measures;

- Uttlesford Plan Policy S7 (considered in detail in Section D above) which relates to the countryside states that:

'The countryside to which this policy applies is defined as all those parts of the Plan area beyond the Green Belt that are not within the settlement or other site boundaries. In the countryside, which will be protected for its own sake, planning permission will only be given for development that needs to take place there, or is appropriate to a rural area. Development will only be permitted if its appearance protects or enhances the particular character of the part of the countryside within which it is set or there are special reasons why the development in the form proposed needs to be there.'

- Uttlesford Plan Policy ENV 15 – Renewable Energy states as follows:

'small scale renewable energy development schemes to meet local needs will be permitted if they do not adversely affect the character of sensitive landscapes, nature conservation interests or residential and recreational amenity'.

- Lastly, the supporting text for “The Quality of the Countryside” in the Local Plan notes that:

‘Pastureland is not extensive but it does exist in the river valleys where drainage problems, in part, have resulted in Grade 3b designation. Although not the best and most versatile farmland, pasture land is important to the character and biodiversity of the district.’

E2: Planning decisions relevant to this application

120. In May 2021, an appeal was decided in relation to a proposed development at “The Stables, Clavering Road, Manuden, Bishops Stortford CM23 1BQ”⁵¹. This location is immediately adjacent to the proposed site of and within a few meters of the proposed site entrance. Rejecting the appeal, the Inspector noted that:

“The appeal proposals would therefore be harmful to the character and appearance of the area. They would conflict with Policies S7, H6 and GEN2 of the Uttlesford Local Plan 2005 (the LP). Taken together these policies require that development protects or enhances the particular character of the part of the countryside within which it is set ..”

121. The Inspector will also be aware that the Original Application to construct Pelham Spring Solar Farm was **REJECTED** by Uttlesford District Council in January 2022 on the grounds (inter alia) that:

“The proposal would introduce a sizeable new development to an area of open countryside and would result in an unnatural extension of built form in the locality. The proposals by reason of its sitting, size and scale would have a harmful impact upon the rural character and appearance of the area.

The proposal would significantly harm the intrinsic character and beauty of the countryside resulting in landscape and visual effects from a number of publicly accessible viewpoints and failing to perform the environmental role of sustainability, contrary to policy S7 of the Adopted Local Plan and the National Planning Policy Framework”.

122. There are also many appeal decisions which conclude that the effect on the character and appearance of the countryside justifies refusing the application. These include appeals to the Secretary of State in relation to Butteriss Farm, Edgcumbe, Penryn⁵² and land at New Fen Dike, Sutton St James, Spalding, Lincolnshire⁵³ in which the Secretary of State agreed 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

51 Appeal Ref 3264028 date: 18 May 2021

52 PINS ref: 2229290 dated 28 January 2016 – Provided at **Appendix 2**

53 PINS ref: 3138266 dated 28 January 2016 – Provided at **Appendix 2**

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”.*

*(*an UNLISTED building)*

E3: The Review of the LVIA conducted by the Applicant is deficient

123. Protect the Pelhams has commissioned Alison Farmer (a consultant landscape planner experienced in landscape and visual impact assessment including renewable energy projects) to undertake an assessment of the visual impacts of the Proposed Development and to comment upon the adequacy of the LVIA submitted by the Applicant. Ms Farmer has also reviewed Chapter 6 of the Environmental Statement prepared by the Applicant. Ms Farmer’s report is attached as **Appendix 12** and her key observations are summarised below:

E4: The Mitigation proposed by the Applicant is ineffective

124. Ms Farmer concludes as follows in relation to the mitigation proposed by the Applicant:

- Whilst the modest changes made by the Applicant following the rejection of its Original Application, the additional measures only seek to reduce effects on certain receptors, e.g., users of Maggots End Road, Battles Farm, and on certain public rights of way. They DO NOT address the effects on other lanes such as Brick House End Lane nor on the settlement of Brick House End.
- The reduction in extent of the proposed development in the north around Blaking’s Lane would not mitigate effects from the southwest due to the angle of the views (e.g., there would be no reduction in effects from Viewpoint 7).
- Pulling development back in the south again would not reduce the impacts on the views from properties at Brick House End, nor the access lane or Viewpoint 7 – perceptions of the extent of development from these locations will not alter.
- The screening of the development does not take account of the difficulty of screening development on rising land nor of the likely landscape effects mitigation planting will have in terms of foreshortening views and altering perceptions of landscape character.
- Mitigation planting comprising hedgerows with trees in the fore/mid ground is unlikely to fully mitigate views of solar panels in Zone 5 which extend onto higher land. This would have implications for residential amenity of properties that look southwest, e.g., Highfields and Southfields.
- The LVIA assumes growth rates of new planting to be 0.5m per annum (para 6.2.70). However, this growth rate is considered to be optimistic given the substantial deer population in the area. Double staggered rows for hedge planting and single lines of trees (as indicated on Figure 6.2) are unlikely to result in thick hedgerows within 5 years. Hedgerows would need to achieve sufficient lateral growth as well as height.
- The effectiveness of mitigation is reduced due to the sloping topography.

- Paragraph 6.3.17 states that hedgerows could be managed at 3m in height. However, hedgerows on mid slopes would be sandwiched between solar panels which are themselves 3m in height or adjacent to inverters which are at least 3m in height, not to mention security fencing and CCTV poles. They are therefore unlikely to form effective 'screens' to development. From many locations solar panels will remain visible extending across open slopes.

E5: The Applicant has an inadequate understanding of the qualities and value of the landscape and makes no reference to Historic Landscape Characterisation

125. Ms Farmer concludes as follows in relation to the assessment of the landscape undertaken by the Applicant:

- The Applicant has not considered the historic components of the landscape and makes no reference to Historic Landscape Characterisation (HLC). No consideration is given to historic features such as the hamlet of Brick House End and associated historic enclosure patterns comprising pre 18th Century Irregular Enclosure, linear common associated with Park Green, ancient woodland and historic routeways/tracks such as Blaking's Lane. All of these historic elements remain legible and contribute to present day landscape character. This is considered to be an omission resulting in an inadequate understanding of the qualities and value of the landscape.
- Para 6.3.36 does not clearly distinguish the small scale semi-improved pastures (as noted in the Ecological Impact Assessment by Clarkson and Woods), south of Brick House, and more open arable slopes to the west and northeast. Furthermore, it does not distinguish the effect of the pylons and substation on the local landscape, the western part of the development (Zone 5) and south-eastern part of the development (Zone 4) being affected by a double line of pylons, whereas land to the northeast and within the more enclosed small-scale pastures to the south of Brick House much less so. Such variations in character influence the value attributed to landscape and susceptibility to particular forms of development. They are therefore a relevant consideration. A lack of finer grained analysis relating to these issues is considered an omission.
- The LVIA does not adequately take account of the positive attributes of the receiving landscape and takes no account of the contours of the site. Para 6.3.45 states that the value of the landscape is medium. However, it is regarded as higher in the enclosed landscape of the central part of the site (Zones 1 and 6) and in the northeast away from the pylon lines (Zones 2 and 3).
- The susceptibility assessment (paras 6.3.46-6.3.48) lacks an understanding of the receiving landscape which is described as comprising 'large scale arable fields'. It does not account for the small-scale, semi-improved pastures, and pre 18th century irregular enclosures to the south of Brick House associated with the springs of the Bourne Brook and hamlet of Brick House End.
- The susceptibility assessment does not adequately describe the area as comprising the upper reaches of the Bourne Brook, the slopes of which form a distinct 'bowl' or 'amphitheatre' of land around the historic hamlet of Brick House End. The open

agricultural slopes surrounding the upper reaches of the Bourne Stream comprises a broad inward looking and settled landscape which is a perceived landscape unit, and that the proposed development will extend across a significant proportion of it.

- The amphitheatre nature of the topography means this landscape is susceptible to south facing solar panel development where **lines of panels inevitably run against, rather than along the contours**, and where mitigation through planting is harder to achieve due to rising landform.
- More intimate, inward focused character can increase sensitivity to large scale development which has a substantial footprint. The rural character of the area and historic patterns including settlement pattern and pre 18th century enclosures are also not assessed adequately. Tranquillity and condition of the landscape is higher in the northeast of the local landscape and in the smaller enclosed pastures to the south of Brick House End. The lack of consideration of these factors means that the sensitivity of the landscape to the proposed development is underestimated.

E6: The Applicant has given inadequate consideration to the discrete landscape elements and understates the effects of the proposed development

126. Ms Farmer concludes as follows in relation to the assessment of the impacts of the development undertaken by the Applicant:

- The proposed development will result in the loss of semi-improved grassland to the south of Brick House to allow for the introduction of solar panels (Zone1), substation (Zone 6) and access road. Disturbance to these small-scale pastures (which reflect pre-18th century enclosure and are likely to have never been ploughed) and their associated soils, would be adverse. These reflect an important and irreplaceable environmental resource, and this has not been adequately taken into account in the LVIA.
- It is not correct to conclude that the proposed change in landcover will be beneficial to landscape character. This is because the solar panels will rest above much of the grassland, and will be the predominant visual land use when viewed from the surrounding area, as illustrated in the photomontages.
- In terms of effects on topography, the LVIA considers the site to have a sloping landform which is 'uncomplicated' and 'low value' (para 6.4.14). However, the very fact that **the site comprises valley slopes** which drop in height from c. 122m AOD to 108 AOD in the western part of the site and c. 118m AOD to 106m AOD in the east of the site indicates a susceptibility greater than low.
- The visual prominence of the solar panel rows and associated development, coupled with extent, will give rise to characterising effects, visually masking the underlying topography as illustrated on the photomontage from Viewpoint 8.
- The infilling of the open fields with solar panels would result in the masking of the current field pattern across the slopes within this 'bowl' of landscape, especially on the eastern side (zones 2, 3 and 4). This would be particularly felt in views from Brick House End looking east. However, there is no photomontage from Viewpoint 7 to demonstrate this.

E7: The Applicant has failed properly to assess the topography of the site and the receiving landscape

127. Ms Farmer concludes as follows in relation to the topography of the site and the receiving landscape undertaken by the Applicant:

- The assessment fails to recognise the role of topography in creating an inward ‘amphitheatre’ at the centre of which is Brick House End and from which the proposed development would be visible extending up the surrounding slopes especially to the east.
- In relation to views within the local landscape, the scale and extent of development would be extensive. The current aesthetic, perceptual and experiential qualities of the receiving landscape would be substantially altered.
- The panels would extend across slopes which increase in elevation by 12-14m and the strong geometric lines would run contrary to contours. They would not ‘respond to the topography of the surrounding area’ (para 6.4.15) and **from some locations the panels are likely to be seen on the skyline** (see Viewpoint 7 north of Battles Wood). The prominence of the panels is illustrated in the photomontage below.



- The NCA 86 and Uttlesford LCA describe the area as rural despite the presence of pylons. Zones 4 and 5 are the only parts of the proposed development directly affected by these pylons.
- In views of zones 2, 3 and 4 from the west the pylons only affect a small part of the view to the south; the remaining areas of agricultural land are unaffected (refer to Viewpoint 7). Large areas of panels and associated infrastructure would increase the perceived human influence on the landscape in this area and erode its intrinsic rural character
- Chapter 6 does not consider the impact of the substation and Zone 1 on the small-scale pastoral character of the fields in the central part of the development. This development would be located within this smaller scale wooded landscape causing fragmentation of the pattern and significantly altering its rural and more intimate qualities, especially experienced from footpath 15/5 and 34/39.

E8: The viewpoints selected in the LVIA do not adequately illustrate the visual effects of the proposed development

128. Ms Farmer concludes as follows in relation to the assessment of the viewpoints and photomontages produced by the Applicant:

- The sixteen viewpoints selected in the LVIA do not adequately reflect the nature of the visual effects of the proposed development. There is insufficient analysis of views from Brick House End Lane, properties in Brick House End and from the PRoW 15/5 and 34/39 which runs close to Zone 1 and the Substation. The photomontages do not illustrate the nature of the effects as seen from Rose Garth and Brick House End Cottages 1 and 2, and fail to illustrate the visual effects of lines of solar panels extending up rising slopes.
- Photomontages should be used to demonstrate the worst-case effects of the proposed development. Photomontages are provided for viewpoints 5, 8 and 11 but no explanation is provided as to why these viewpoints were selected. Some of the greatest effects will be from viewpoints associated with Brick House End looking east.
- It can be seen from Viewpoint 7, which is representative of views from the west, associated with access to and the settlement of Brick House End, that the solar panels would be seen end on along the rows which would rise up the valley slopes. In some places, such as to the north of Battles Wood, panels would be seen on the skyline.
- The elevation of Viewpoint 7 is c. 109m AOD. Gappy hedgerow on the edge of Zone 2 is located at c. 107m AOD, as the land drops slightly before rising again to 118m on the skyline left of Battles Wood. Overall, the assessment is considered to be inadequate and downplays the scale of effects. The effects would not reduce to low magnitude over time. At best they may reduce to moderate adverse but nevertheless remain significant.
- No photomontage has been provided from Viewpoint 7 which is regarded as an omission.
- Similarly, Viewpoint 6 underestimates the effects of the proposed development – primarily focusing on views east. In these views Hedgerow 4 (3m in height) does not screen the land rising beyond, illustrating the inadequacy of 3m high hedgerows and single lines of trees in mitigating effects.
- The analysis associated with Viewpoint 6 does not describe the nature of change which will result from the proposed development, i.e., views along the lines of the solar panels end on. It concludes that development in Zone 6 and 1 would be screened, and makes no reference to filtered views through to Zone 5 in the west. Overall, the effects of the proposed development on views from this location are again considered to be underestimated.
- Given the extent of the proposed development surrounding Brick House End and the close proximity of some views, it is not possible to capture the full extent of the development within a single frame. This is addressed though two views from some locations, e.g., 4A and 4B. However, this approach does not reflect the full panorama of views of the development from some locations such as footpath 15-5 (Viewpoint 6). In reality, a much wider area of development would be visible from each location - this is a significant limitation of the presented visualisations.

E9: The footpaths impacted by the proposed development are well used and the impact on walkers would be adverse

129. The footpaths which run alongside and through the development link the villages of Berden and Manuden. The photograph below shows walkers on footpath Manuden 4 (just after the junction with footpath Berden 14 and footpath Manuden 34).



130. Ms Farmer concludes that:

- All footpaths extending out of Brick House End would be adversely affected by the proposed development for much of their length. The current visual amenity afforded by these footpaths is of open views across the slopes to the rim of higher land and distinctive woodland blocks such as Battles Wood and Pump Spring Wood.
- For footpath 15-5, filtered views of the development would be visible in three directions to the west, south and east, affecting a c. 270 degree angle of view. The visual amenity afforded by these footpaths would be substantially altered for the duration of the development and in many instances would be difficult to mitigate to any meaningful degree.
- At best, proposed mitigation vegetation will filter views of the development but would not reduce the scale and extent of the proposed development which would be perceived from adjacent footpaths as rising up and extending across visible slopes.
- Para 6.3.64 classifies all receptors from Public Rights of Way (PRoW) as high sensitivity but from roads as medium sensitivity. However, receptors use quiet rural lanes for recreation in the vicinity of the site. The quiet lane leading to Brick House End is used by walkers as part of the footpath network and should also be classed as high sensitivity.
- The sequential experience and views from PRoW in the vicinity of the site will result in a perception of the proposed development continuing over a considerable distance and surrounding the hamlet of Brick House End. This would not amount to a low magnitude of change in landscape character, as concluded in para 6.4.67.

E10: The impact of the Proposed Development on the Visual Amenity Residential Receptors has been significantly underestimated

131. Ms Farmer notes the following in relation to the assessment of the impact of the development in terms of its impact on residents who live close to the Proposed Development:

- Para 2.10 of the RVAA states that in general, magnitude of change decreases with distance. However, this is less likely where development is located on rising land – and no reference has been made to the elevation of the properties relative to the development.
- Where the field of views is wide, and the proposed development extends across the field of view, then the overall extent of development visible is more influential.
- The layout of the site is influential on views – panels seen end on create strong linear lines in the landscape, especially when viewed on rising land.
- On open arable and rising slopes, there is less chance for vegetation to obscure development.
- Many of the views from properties at Brick House End are not affected by the lines of pylons which run from the substation and are located across Zones 4 and 5 only.
- The RVAA considers Rose Garth and Brick House End Cottages No 1 and No 2 as the three closest properties to the development with the least restricted views. Nevertheless, all six properties within Brick House End hamlet are affected by the proposed development to some degree.
- The effect of the Proposed Development on all three properties (Rose Garth and Brick House End Cottages No 1 and No 2) would be major adverse and significant. Views from these properties would not continue to be defined by the rural open arable slopes.
- From Rose Garth the views are from the ground floor level and highly sensitive. These views would be face on to the development which is located on open slopes.
- The presence of the solar panels arranged in rows seen end on would create strong lines which would draw the eye and would obscure topography and field patterns. The extent of development in views would be unavoidable from the main frontage of the property and on ingress and egress from the property.
- The proposed mitigation may restrict and filter views of the development from Rose Garth, but it will not remove views of the development altogether. Given the lateral spread of development across the field of view, the judgement that the effects on the property would be low in Year 5 and negligible in Year 10 is an underestimation.
- The effects of the proposed development on Brick End Cottages 1 and 2 are also underestimated. Views would be possible from ground floor living spaces and the rear garden as well as upper storey windows. Here the development would extend across the entire width of the view, in a landscape where there are no other built

elements (including no pylons) and on rising open slopes. There would be a perception that the extent of development would wrap around the properties.

- The effects of the Proposed Development experienced by Brick House End Cottages would be most significant. Given the proximity of views and their extent it is considered that these properties would widely be regarded as an unattractive place to live where the proposed development would have an unavoidable presence.
- However, all properties at Brick House End would be significantly affected by the proposed development. The people who live at Brick House End would not be able to escape the proposed development in their daily lives, simply because of the scale, location and extent of proposed development relative to the hamlet. The removal of solar panels from the north and southern parts of the eastern side of the development, as part of mitigation, would do nothing to lessen these effects.

E11: Conclusions re Landscape and visual impact

132. Ms Farmer reaches the following conclusions in relation to the Applicant's LVIA:

- Chapter 6 of the ES is not a fair representation of the effects of the Proposed Development.
- By virtue of the scale and extent of development proposed in the upper reaches of the Bourne Brook (which forms a broad but clearly defined 'bowl' or unit of landscape which is readily perceived) the assessment of landscape characterising effects is considered to be underestimated. Combined with an underestimation of sensitivity, the LVIA has downplayed the landscape characterising effects. In reality, the landscape characterising effects within 1km of the site would be **significant and adverse** and would transform the small bowl landscape which surrounds the hamlet of Brick House End.
- The judgements in the LVIA rely on the topography and vegetation of the wider landscape to conclude that the visual effects of the Proposed Development would be limited. This is not the case regarding the significance of effects on views from within the upper reaches of the Bourne Brook, where the topography creates a distinct 'bowl'.
- The visual effects of the Proposed Development are especially evident in the eastern half of the proposed site when viewed from the west. In these views the orientation of solar panels, relative to the valley slopes, and the surrounding nature of the development in relation to the hamlet of Brick House End, would result in **significant adverse effects**.
- The development would not conserve the key characteristics of the landscape, including its openness, historic pastures, open arable slopes, and the reinstatement of hedgerows should not be taken as reinforcing historic landscape patterns when these patterns will not be discernible due to the introduction of the development itself.

- The proposed mitigation planting would not screen development altogether nor reduce visual effects to zero. In fact, the proposed mitigation planting, in association with the proposed development, will foreshorten views, altering landscape perceptions and sense of place.
- Overall, the adverse landscape and visual effects of this scheme would be contrary to the NPPF and Local Plan Policy and should weigh against any benefits of the scheme.

133. The Proposed Development should therefore be refused for the following reason:

The Proposed Development would be harmful to the appearance and character of the locality by reason of the size, scale, incongruous appearance, and inappropriate nature of the proposals; particularly with regards to the disproportionately detrimental effects upon landscape, residential amenity and the experienced of users of the local footpath network. As such, the proposal is contrary to the requirements of Policy S7, Policy ENV15 and Policy GEN2 of the Uttlesford Local Plan and paragraph 174 of the National Planning Policy Framework.

F HERITAGE IMPACTS

134. Protect the Pelhams has commissioned an independent report from a respected Heritage Consultant (Dr Richard Hoggett). Dr Hoggett's Report is attached to this document as **Appendix 13**. The key points arising from Dr Hoggett's Report are summarised below.

F1: Material planning considerations in relation to heritage

135. The relevant planning considerations are set out in the following documents:

- Paragraph 190 of the NPPF directs Local Planning Authorities to set out:

'a positive strategy for the conservation and enjoyment of the historic environment, including heritage assets most at risk through neglect, decay or other threats'

- Paragraph 194 of the NPPF states that:

'In determining applications, local planning authorities should require an Applicant to describe the significance of any heritage assets affected, including any contribution made by their setting. The level of detail should be proportionate to the assets' importance and no more than is sufficient to understand the potential impact of the proposal on their significance'

- Paragraph 195 of the NPPF instructs Local Planning Authorities to:

'identify and assess the particular significance of any heritage asset that may be affected by a proposal (including by development affecting the setting of a heritage asset) taking account of the available evidence and any necessary expertise'

- Paragraph 199 of the NPPF states that:

'when considering the impact of a proposed development on the significance of a designated heritage asset, great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be). This is irrespective of whether any potential harm amounts to substantial harm, total loss or less than substantial harm to its significance'

- Paragraph 200 of the NPPF explains that:

'any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification'

- Paragraph 202 of the NPPF states that:

'Where a development proposal will 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, where appropriate, securing its optimum viable use'

- Paragraph 203 of the NPPF states that:

‘the effect of an application on the significance of a non-designated heritage asset should be taken into account in determining the application. In weighing applications that directly or indirectly affect non-designated heritage assets, a balanced judgement will be required having regard to the scale of any harm or loss and the significance of the heritage asset’.

- A footnote to paragraph 200 (footnote 68) of the NPPF makes it clear that:

‘non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets’

- Uttlesford Plan Policy ENV1 states that:

‘Development will be permitted where it preserves or enhances the character and appearance of the essential features of a Conservation Area, including plan form, relationship between buildings, the arrangement of open areas and their enclosure, grain or significant natural or heritage features. Outline applications will not be considered. Development involving the demolition of a structure which positively contributes to the character and appearance of the area will not be permitted.’

- Uttlesford Plan Policy ENV2 concerns development affecting Listed Buildings and states that:

‘Development affecting a listed building should be in keeping with its scale, character and surroundings. Demolition of a listed building, or development proposals that adversely affect the setting, and alterations that impair the special characteristics of a listed building will not be permitted. In cases where planning permission might not normally be granted for the conversion of listed buildings to alternative uses, favourable consideration may be accorded to schemes which incorporate works that represent the most practical way of preserving the building and its architectural and historic characteristics and its setting.’

- Uttlesford Plan Policy ENV4 concerns Ancient Monuments and Sites of Archaeological Importance and states that:

‘Where nationally important archaeological remains, whether scheduled or not, and their settings, are affected by proposed development there will be a presumption in favour of their physical preservation in situ. The preservation in situ of locally important archaeological remains will be sought unless the need for the development outweighs the importance of the archaeology. In situations where there are grounds for believing that sites, monuments or their settings would be affected developers will be required to arrange for an archaeological field assessment to be carried out before the planning application can be determined thus enabling an informed and reasonable planning decision to be made. In circumstances where preservation is not possible or feasible, then development will not be permitted until satisfactory provision has been made for a programme of archaeological investigation and recording prior to commencement of the development’.

- Uttlesford Plan Policy ENV9 concerns Historic Landscapes and states that:

'Development proposals likely to harm significant local historic landscapes, historic parks and gardens and protected lanes as defined on the proposals map will not be permitted unless the need for the development outweighs the historic significance of the site.'

136. Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the "Act") states that "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".

137. In the 2014 Court of Appeal judgement in relation to the Barnwell Manor Wind Energy Ltd v East Northants DC, English Heritage, National Trust and SSCLG54, Lord Justice Sullivan held that:

"in enacting section 66(1) Parliament intended that the desirability of preserving the settings of listed buildings should not simply be given careful consideration by the decision maker for the purpose of deciding whether there would be some harm, but should be given "considerable importance and weight" when the decision-maker carries out the balancing exercise".

138. The comments of Her Honour Judge Belcher in the case of R (oao James Hall and Company Limited) v City of Bradford Metropolitan District Council and Co-Operative Group Limited⁵⁵ are useful for the purposes of considering the harm to the heritage assets in this instance. Firstly, the Judge held that there are only three gradations of harm in heritage terms:

"34. In my judgment the three categories of harm recognised in the NPPF are clear. There is substantial harm, less than substantial harm and no harm. There are no other grades or categories of harm, and it is inevitable that each of the categories of substantial harm, and less than substantial harm will cover a broad range of harm ..."

139. Secondly, the Judge went on to say that even limited or negligible harm was enough to fall within the bracket of 'less than substantial harm':

"34.... It will be a matter of planning judgement as to the point at which a particular degree of harm moves from substantial to less than substantial, but it is equally the case that there will be a number of types of harm that will fall into less than substantial, including harm which might otherwise be described as very much less than substantial. There is no intermediate bracket at the bottom end of the less than substantial category of harm for something which is limited, or even negligible, but nevertheless has a harmful impact. The fact that the harm may be limited or negligible will plainly go to the weight to be given to it as recognised in Paragraph 193 NPPF.

54 [2014] EWCA Civ 137, Para. 24

55 [2019] EWHC 2899 (Admin)

However, in my judgment, minimal harm must fail to be considered within the category of less than substantial harm.”

140. There are a number of Appeal decisions relating to solar “farms” which consider the approach to the balancing exercise that must be undertaken to determine whether the suggested benefits of the proposed solar scheme are outweighed by likely harm to the setting of heritage assets. These include, by way of example, the appeal in relation Land at Woodhall Farm, Wichenford, Worcestershire⁵⁶ where the Inspector made the following comments:

“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.

“On balance I conclude that the Proposed Development would fail to preserve the setting of heritage assets, contrary tothe guidance given within the Framework and NPPG which seeks to conserve heritage assets in a manner appropriate to their significance”.

“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”.

141. It should also be noted that one of the grounds for the rejection of the Applicant’s Original Application to construct “Pelham Spring” solar “farm” was on the basis of the impact of the proposed development on the adjacent heritage assets. Those assets include both The Crump (Scheduled Monument) and The Crump (Grade 2 Listed Building) which are relevant to this application and are considered further below. The “Pelham Spring” decision notes:

“There are several heritage assets in close proximity of the site including a number of grade two listed buildings and 2 ancient monuments. The existing site positively contributes to the identified heritage assets setting and significance through being open land with views through to the wider agrarian landscape which preserves their sense of tranquillity. The setting of the heritage assets will inevitably be affected by the proposals which would result in an industrialising effect, contrary to the verdant and rural landscape setting and would result in an erosion of the rural character of the designated heritage assets. The proposals would thereby result in ‘less than substantial’ through change in their setting”.

56 PINS Ref: 3142020 dated 23 February 2017 – Provided in **Appendix 2**

“Having regard to the guidance in paragraph 202 of the National Planning Policy Framework, the Local Planning Authority has considered the public benefits associated with the development but concludes that these would not outweigh the harm caused to the significance and setting of the designated heritage asset. The proposals are thereby contrary to policy ENV2 and ENV4 of the Adopted Local Plan and the National Planning Policy Framework.”

‘The Heritage Statement highlights late prehistoric finds and features, including ring-ditches, within the vicinity of the site along with the probable sites of two medieval moats within the proposed development area. The proposed development also lies in close proximity to two scheduled sites, The Crump, and Battles Hall. Furthermore, there statement identifies that there is the potential for the medieval remains of a possible moated enclosure within the site. Following the guidance within the NPPF at present the application has not provided appropriate consideration of the impact of the development such as a geophysical assessment and photographic evidence of the area to allow for the LPA to assess the historic environment as required by paragraph 194 and policy ENV4 of the adopted local plan.’

F2: The Crump (Scheduled Monument) – ‘less than substantial harm’ – the Applicant understates the degree of harm

142. In relation to the likely impact of the Proposed Development upon the significance of this Scheduled Monument (being a medieval ringwork) Dr Hoggett concludes that:

- As a Scheduled Monument, this feature is of the highest designation and is of national significance. Under paragraph 199 of the NPPF (2021) ‘great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)’ and, under paragraph 202 of the NPPF (2021), ‘this harm should be weighed against the public benefits of the proposal’;
- His conclusion accords with that of Dr Jess Tipper (Inspector of Ancient Monuments at Historic England) who has also concluded that the development would result in ‘less than substantial harm’ to the scheduled monument;
- There is a strong likelihood that earlier medieval sources would demonstrate a functional association between the land within the site and The Crump’, given the close proximity of The Crump to the proposed development area;
- The Applicant’s conclusion that “the development would result in no harm to the significance of the scheduled monument” is not credible. Dr Hoggett considers that the change of landscape character which would be brought about by the proposed development would have a much greater impact than is stated by the Applicant.
- The proposed development area encompasses much of the agricultural land to the south-east of the monument and would result in ‘less than substantial harm’ to the scheduled monument.

F3: The setting of Battles Hall Scheduled Monument - less than substantial harm to its significance - the Applicant understates the degree of harm

143. In relation to the likely impact of the Proposed Development upon the significance of the Battles Hall Scheduled Monument, Dr Hoggett concludes that:

- As a Scheduled Monument, this feature is of the highest designation and is of national significance. Under paragraph 199 of the NPPF ‘great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)’ and, under paragraph 202 of the NPPF ‘this harm should be weighed against the public benefits of the proposal’.
- The development would result in ‘less than substantial harm’ to the setting of Battles Hall Scheduled Monument. The Applicant’s conclusion understates the detrimental impact which the change of landscape character brought about by the development would have, and concludes that this harm would lie further up the scale.
- His conclusion again accords with that of Historic England, which concluded in their consultation response that there was the potential for ‘less than substantial harm’ to be caused to the scheduled moated site.

F4: The setting of the Grade II listed Battles Hall, Grade II listed Dovecote and Grade II listed Cartlodge - less than substantial harm to their significance - the Applicant understates the degree of harm.

144. In relation to the likely impact of the Proposed Development upon the setting of Grade II listed Battles Hall, Grade II listed Dovecote and Grade II listed Cartlodge, Dr Hoggett concludes that:

- The Heritage Statement submitted by the Applicant identifies a long-established historical connection between Battles Hall and land within the proposed development area, which continues to this day. The Heritage Statement also concludes that setting contributes to the significance of all three of these listed buildings and includes the views towards the group which are afforded from the nearby public rights of way as well as parts of the surrounding agricultural land which forms the immediate historical setting of the farmstead (para. 6.40).
- The Applicant concludes that, even with the scheme’s in-built mitigation, the proposed development will result in ‘less than substantial harm’ to all three of the listed buildings;
- Dr Hoggett disagrees with the Applicant’s conclusion that the harm falls ‘at the lower end of the spectrum’ - the Applicant understates the detrimental impact which the change of landscape character brought about by the development would have;
- The harm to these three listed buildings lies further up the scale. Under paragraph 199 of the NPPF ‘great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)’ and, under paragraph 202 of the NPPF, ‘this harm should be weighed against the public benefits of the proposal’.

F5: Grade II listed Brick House - less than substantial harm to its significance - the applicant states no harm which is not a credible conclusion given the historical association with the site

145. In relation to the likely impact of the Proposed Development upon the upon the setting of the Grade II listed Brick House, Dr Hoggett concludes that:

- The Applicant fundamentally misunderstands the significance of the Brick House. The Brick House has its origins as the principal dwelling for Brickhouse Farm, which encompassed much of the surrounding land. This is clearly demonstrated by a **1732 map of Brickhouse Farm, which was then owned by Christ's Hospital, London. This map clearly indicates that some of the land to the east of the house, as well as all of the land to the south and the west of the house was formerly part of the farm, including all of the land on which the western part of the solar farm and substation are proposed to be built;**



- The Heritage Statement submitted by the Applicant does not convey the full nature of the relationship between the site and the Brick House. At its closest point the house is only 150m from the western part of the site, and the house and its grounds are effectively enclosed by the development to the east, south and west, with the substation proposed for the land to the south of the house;
- The land to the south of the Brick House makes an important contribution towards the setting of the building and extensive views of the proposed development site can be obtained from the building and its grounds. The visual impact of the development upon Brick House is exacerbated by the fact that it stands at the lowest point of the surrounding area, with the land rising to the east and west, and it is on this rising land that the solar farm will be constructed. The elevated position of these panels will make them particularly visible from the rear of Brick House itself and also from throughout the extensive grounds which constitute its setting.

- The Applicant's conclusion that the proposed development will have no impact on the significance of Brick House is based on the mistaken belief that there is no historical association between Brick House and its surrounding landscape. As is clearly demonstrated by the 1732 map reproduced as Figure 5, **there is a very strong and clearly demonstrable historical relationship between Brick House and much of the proposed development site.**
- Given the nature of this historical association between the Brick House and the site and the extent of the affected views it is concluded that the proposed development will result in 'less than substantial harm' towards the middle of the scale to the significance of the Brick House as a resulting from the fundamental change of landscape character of its historical and present agricultural setting.
- This conclusion accords with the formal Historic Buildings and Conservation Advice submitted by Place Services in a consultation response dated 16th February 2023, in which Thomas Muston (Historic Environment Team) concluded that the proposed development would result in 'less than substantial harm'. Under paragraph 199 of the NPPF (2021) 'great weight should be given to the asset's conservation (and the more important the asset, the greater the weight should be)' and, under paragraph 202 of the NPPF (2021), 'this harm should be weighed against the public benefits of the proposal'

F6: Grade II listed Rose Garth - less than substantial harm towards the middle of the scale to its significance - the Applicant states no harm.

146. In relation to the likely impact of the Proposed Development on Grade II listed Rose Garth, Dr Hoggett concludes that:

- The main façade of Rose Garth looks eastward across the road and has clear views of the eastern part of the proposed development site, which are made all the clearer by the rising topography to the east. The submitted Heritage Statement acknowledges this relationship but states that the trees which stand to the east of the building will screen the site to such a degree that these are reduced to 'glimpsed' views. This is an untenable conclusion as the six trees in question are small and spindly and the area which they cover is not even as long as the building itself - they would not screen much (if any) of the solar farm which would fill much of the hillslope to the east.
- There is a strong intervisibility between Rose Garth and the application site, which is emphasised by the rising ground and which the small trees alluded to by the Applicant will do little to sever - the agricultural surroundings of the site make a strong contribution to its significance. The change in landscape character brought about by the scheme will be exacerbated by the topography, resulting in harm to the significance of the building.
- The long, low, thatched roof of Rose Garth and its eastern façade are clearly visible in long-range views across and from within the proposed development area, especially from the public right of way at the southern edge of the site. In these views the building can clearly be read as a rural vernacular building within an agricultural setting. As a consequence, the agricultural land which surrounds Rose Garth, of which the proposed development site forms a large part, makes a much greater

contribution to the setting and significance of the building than the Applicant allows. These long views will be severed by the construction of the solar farm, which will also harm the setting of the building.

- The proposed development would cause ‘less than substantial harm’ to the setting and significance of Rose Garth resulting from the fundamental change of landscape character of its historical and present agricultural setting and the severance of the long views of the building. This harm lies towards the middle of the ‘less than substantial’ scale.
- This conclusion accords with the formal Historic Buildings and Conservation Advice submitted by Place Services in a consultation response dated 16th February 2023, in which Thomas Muston (Historic Environment Team) concluded that the proposed development would result in ‘less than substantial harm’.
- Under paragraph 199 of the NPPF (2021) ‘great weight should be given to the asset’s conservation (and the more important the asset, the greater the weight should be)’ and, under paragraph 202 of the NPPF (2021), ‘this harm should be weighed against the public benefits of the proposal’

F7 The geophysical survey and previous archaeological discoveries indicate that the archaeological potential of the site is high - a programme of archaeological trial trenching needs to be undertaken before it is possible to determine the Application

147. In relation to the likely archaeological potential of the site, Dr Hoggett concludes that:

- The geophysical survey and previous archaeological discoveries indicate that the archaeological potential of the site is high;
- No invasive fieldwork has been undertaken by the Applicant in order to ground-truth the results of the surveys and provide a better characterisation of the archaeological deposits and features which may lie buried beneath the site;
- The proposed construction of the solar farm will have a direct and irreversible impact upon the archaeological deposits within the site, and this impact needs to be mitigated either via a programme of archaeological fieldwork which will result in the preservation of these features ‘by record’ or by the redesigning of the scheme in such a way as to enable the preservation of archaeological features in situ beyond those areas already marked for exclusion;
- Paragraph 194 of the NPPF requires that ‘where a site on which development is proposed includes, or has the potential to include, heritage assets with archaeological interest, local planning authorities should require developers to submit an appropriate desk-based assessment and, where necessary, a field evaluation.’
- Given the archaeological sensitivity of the site and the demonstrable presence of extensive archaeological features, a programme of archaeological trial trenching should undertaken before the Application is determined.
- This conclusion accords with the Specialist Archaeological Advice given by Place Services in their consultation response dated 20th February 2023, in which Katie Lee-

Smith (Historic Environment Consultant) recommended that a programme of archaeological trial-trenching evaluation should be undertaken in advance of a planning decision. This recommendation was echoed by Historic England in their consultation response dated 23rd February 2023, in which Dr Jess Tipper (Inspector of Ancient Monuments) also stated that the lack of archaeological trial-trenching was a significant omission and that such trenching should be undertaken before the application is determined.

F8: Conclusions re Heritage considerations

148. The Proposed Development should therefore be refused for the following reason:

The Proposed Development would cause harm to the significance of heritage assets which is not clearly outweighed by the benefits of the proposal. As such, the proposal is contrary to the requirements of Policies ENV1, ENV2, ENV4 and ENV9 of the Uttlesford Local Plan, paragraphs 199, 200, 202 and 203 of the National Planning Policy Framework and Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990.

G CUMULATIVE IMPACTS

G1 Material Planning considerations in relation to the cumulative impact of solar “farms”

149. The relevant planning considerations are set out in the following documents:

- Paragraph 155 of the NPPF states that:

*‘To help increase the use and supply of renewable and low carbon energy and heat, plans should: a) provide a positive strategy for energy from these sources, that maximises the potential for suitable development, while ensuring that adverse impacts are addressed satisfactorily (**including cumulative landscape and visual impacts**)’*

- Paragraph 8 of the PPG in relation to Renewable and Low Carbon Energy notes that:

*‘There are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and, critically, the potential impacts on the local environment, **including from cumulative impacts**’*

- Paragraph 15 of the PPG in relation to Renewable and Low Carbon Energy notes that:

‘In shaping local criteria for inclusion in Local Plans and considering planning applications in the meantime, it is important to be clear that:

- *the need for renewable or low carbon energy does not automatically override environmental protections*

- ***cumulative impacts require particular attention**, especially the increasing impact that wind turbines and **large scale solar farms can have on landscape and local amenity as the number of turbines and solar arrays in an area increases**’*

- Paragraph 28 of the PPG in relation to Renewable and Low Carbon Energy notes that:

*‘The **approach to assessing cumulative landscape and visual impact of large scale solar farms is likely to be the same as assessing the impact of wind turbines**’*

- Paragraph 39 of the PPG in relation to Renewable and Low Carbon Energy then notes that:

*‘Cumulative landscape impacts and cumulative visual impacts are best considered separately. The cumulative landscape impacts are the effects of a proposed development on the fabric, character and quality of the landscape; it is concerned with the degree to which **a proposed renewable energy development will become a significant or defining characteristic of the landscape**’.*

- Paragraph 40 of the PPG in relation to Renewable and Low Carbon Energy notes that:

*‘Cumulative visual impacts concern the degree to which proposed renewable energy development will become a **feature in particular views (or sequences of views)**, and the impact this has upon the people experiencing those views. Cumulative visual impacts may arise where two or more of the same type of renewable energy*

development will be visible from the same point, or will be visible shortly after each other along the same journey. Hence, it should not be assumed that, just because no other sites will be visible from the proposed development site, the proposal will not create any cumulative impacts’.

- Paragraph 42 of the PPG in relation to Renewable and Low Carbon Energy notes that:

*‘In identifying impacts on landscape, considerations include: direct and indirect effects, cumulative impacts and temporary and permanent impacts. When assessing the significance of impacts a number of criteria should be considered including the sensitivity of the landscape and visual resource and **the magnitude or size of the predicted change**. Some landscapes may be more sensitive to certain types of change than others and it should not be assumed that a landscape character area deemed sensitive to one type of change cannot accommodate another type of change’.*

- Schedule 4 to The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (Information For Inclusion In Environmental Statements) requires:

*‘A description of the likely significant effects of the development on the environment resulting from, inter alia...**(e) the cumulation of effects with other existing and/or approved projects, taking into account any existing environmental problems relating to areas of particular environmental importance likely to be affected or the use of natural resources’***

G2 Previous appeals demonstrate that cumulative impacts of closely located solar farms justify the refusal of permission

150. Attention is drawn to the decision of the Secretary of State in connection with an appeal made by Little Eau Solar Limited in relation to Land at New Fen Dike, Sutton St James, Spalding, Lincolnshire⁵⁷. In this instance, the applicant applied for permission to construct a 5 MW solar farm (“Little Eau”) in close proximity to another approved solar installation (at Fendyke Farm). The location of these two sites is illustrated below. The following passage in which the Appellant describes the two developments is of particular relevance:

*“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 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.”*

57 Application Ref: 3138266 dated 1 November 2016

151. Rejecting the appeal (and finding substantial harm to the character and appearance of the countryside, both alone and cumulatively with the Fendyke Farm site) the Secretary of State commented that:

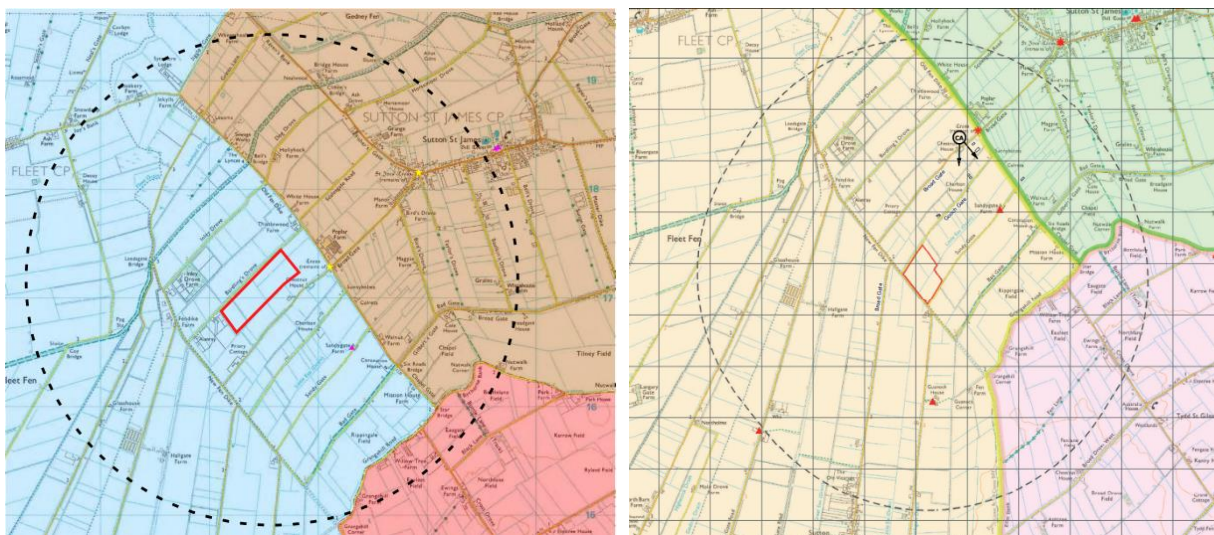
‘He agrees with the Inspector that the two sites in combination would have a substantial adverse effect on the openness of the landscape to the south of Sutton St James, resulting in considerable cumulative landscape harm (IR75). He further agrees, for the reasons given at IR76, that the development in combination to the Fendyke Farm site would also result in additional cumulative visual harm’.

152. The comments of the Inspector to which the Secretary of State referred are as follows:

“IR75: The site lies close to the larger approved Fendyke Farm solar farm and would be seen in combination with it. 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”.

IR76 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”.

153. The locations of the two sites is shown below:



G3 The Cumulative Landscape and Visual Effects of the Proposed Development and the Berden Hall Solar Farm scheme are significant

154. Alison Farmer notes as follows in relation to the cumulative Landscape and Visual effects:

- The LVIA concluded that there would be little visual cumulative effect because the Berden Hall scheme coupled with this proposed scheme, would not be visible in the same view. Only Viewpoint 8 is noted as having views to both schemes, but not at the same time as they would be seen in opposite directions. Nevertheless, this **succession of views and sequential cumulative effects is significant**, not just from Viewpoint 8 but also in terms of perceptions of the landscape when **using Brick House End Lane and footpaths in the area**, where one would first experience the solar farm contemplated by this application and then immediately Berden Hall Solar Farm. This would substantially extend the effects of solar farm development in the area and increase perceptions of travelling through a solar farm landscape over 2km in extent. It would further exacerbate the effects on residents of Brick House End hamlet.
- The Applicant acknowledges (at para 6.5.49) that some PRoW have the potential to offer sequential cumulative views but goes on to downplay these effects on the basis that mitigation planting will substantially reduce views and characterising effects. The ability of the proposed mitigation planting to successfully reduce the effects of the scheme has been over estimated.

G4 The Applicant has given NO CONSIDERATION to the Cumulative Heritage Effects of the Proposed Development and the Berden Hall Solar Farm

155. Dr Richard Hogget notes as follows:

- Due consideration also needs to be given to the cumulative heritage impact which may be caused by the proposed development of the neighbouring Berden Hall Solar Farm, which is located to the west of the Pelham Springs solar farm site and is currently the subject of an active planning application being determined by the Planning Inspectorate
- The submitted Heritage Statement fails to consider the possible cumulative impacts of the two schemes, both of which would result in 'less than substantial harm' to the setting of The Crump Scheduled Monument, which lies between the two schemes. The Berden Hall scheme is due to be determined before the current scheme, and its outcome should also be a material consideration in determining the heritage harm of the current proposals.

156. In its response to the Environmental Statement, submitted by Statera in relation to its application for permission to construct Berden Hall Solar Farm, Historic England⁵⁸ made the following comments in its letter dated 18 January 2023:

58https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1130039/Historic_England_Advice_Redacted.pdf

“We consider the cumulative harm to the significance of this scheduled monument would be less than substantial and, at least, moderate in scale. The presence of the scheduled monument in the rural and undeveloped nature of the landscape is a rare survival, and the monument draws a considerable amount of significance from how it is experienced in the wider, surrounding landscape. We disagree, therefore, with the conclusion of the cumulative impact assessment that the overall indirect cumulative effect would be minor (ES Vol. 1, para. 6.61).

“We confirm our view that the proposed development will result in harm to the significance of the adjacent scheduled monument known as The Crump through development within its setting. We consider the harm would be less than substantial and, at least, moderate in scale. We also consider the cumulative impact of the proposed solar farm at Maggots End and the current development would also result in harm to The Crump scheduled monument”

G5 The Applicant has given NO CONSIDERATION to the Cumulative Effects on Highways of the Proposed Development and Berden Hall Solar Farm

157. It is now evident that the construction route proposed by Statera in relation to Berden Hall Solar Farm is identical to the preferred route proposed by the Applicant (which passes along the B1083 through Newport and Clavering).

158. In relation to the potential cumulative effects of construction traffic, Bruce Bamber notes as follows:

- The assessment of cumulative impact is a requirement of the NPPF;
- The Planning Inspectorate has raised the issue of cumulative impact since there are several significant proposed developments in the area that have the potential to come forward in combination with the Pelham Spring development;
- No work has been undertaken by the Applicant to establish whether or not there is the potential for severe residual cumulative impact resulting from the construction activities associated with major developments in the vicinity (including but not limited to Berden Hall Solar Farm);
- The Applicant acknowledges that the local highway network is constrained and that typical road widths are often insufficient to allow two large vehicles to safely pass each other;
- Whilst the Applicant may have some control over the movements of HGVs associated with the Pelham Spring construction site, there will be no ability to manage HGV movements associated with other construction projects using all or part of the route;
- The latest construction route proposed for the Berden Hall Farm development includes the route between Newport and Clavering. Together, the two developments have the potential to lead to **severe cumulative impacts** on the sensitive receptors such as the primary school in Clavering, on the sections of carriageway unable to accommodate two large vehicles such as those within Clavering village or at the highly constrained B1038/B1383 junction in Newport;

- It is possible that one or both of the other proposed developments may seek to use this route, parts of it or combine to use other routes. In all cases there exists a significant risk of sensitive areas being impacted by more than one development over some period of time;
- The failure to undertake an assessment of the potential for cumulative adverse transport environmental impacts is significant and needs to be rectified before any serious consideration is given to Proposed Development.

G6 Conclusions re Cumulative Effects

159. The Proposed Development should also be refused for the following reason:

The cumulative visual and heritage impacts of the Proposed Development when considered in combination with Berden Hall Solar Farm would cause significant harm which is not clearly outweighed by the benefits of the proposal. As such, the proposal is contrary to the requirements of paragraphs 155 of the National Planning Policy Framework.

H OTHER CONSIDERATIONS

H1: The “temporary” nature of the Proposal should be given no weight

160. The Applicant states that:

“Planning permission is being sought to operate for 40 years, at which point the Site would be decommissioned and the land returned to its previous state”.

161. It is common for applications for permission to construct “solar farms” to seek permission for an operational period of between 25 and 40 years. However, there are a number of appeal decisions which demonstrate that a period of this duration cannot reasonably be regarded as temporary and therefore that this is not a matter which should be given any weight. These include the following appeal decisions:

- In the appeal in relation to Badsell Road, Five Oak Green, Tonbridge, Kent⁵⁹ it was noted that:

*“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”*

- In the appeal in relation to Limolands Farm, Vaggs Lane, Lymington⁶⁰ it was also noted that:

*“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”.*

162. The issue of the “permanent” nature was also considered in the appeal relating to a BESS at Land to the east of Larks Lane, Iron Acton, Bristol⁶¹ where the inspector commented that:

“...where the consent is requested for a period of 25 years, there would be a relatively significant degree of ‘permanence’.

The appellant refers to the ‘temporary’ nature of the development which would be for a 25-year period, after which the battery storage facility could be removed and the land returned to its former condition. That could be secured by an appropriate condition. However, although the site could ultimately be

59 PINS reference: 2226557 dated 30 November 2015:

<https://www.gov.uk/government/publications/recovered-appeal-os-plot-8200-badsell-road-five-oak-green-tonbridge-kent-tn12-6qx-ref-2226557-1-december-2015>

60 PINS reference: 3006387 dated 30 March 2016: <https://www.gov.uk/government/publications/recovered-appeal-limolands-farm-vaggs-lane-hordle-lymington-hampshire-ref-3006387-30-march-2016>

61 PINS reference:3204304 dated 25 October 2018 – provided in **Appendix 3**

remediated and returned to its current open field condition, the duration of the development combined with its industrial form and purpose would compromise openness over a significant period of time”.

H2: There are significant concerns regarding the proposed transport route

163. Paragraph 111 of the NPPF provides as follows:

“Development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe”.

164. It is also noted that the permanent access road to the site (once operational) is listed by Uttlesford District Council as a Protected Lane (UTTLANE152). In its 2012 assessment of East End Lane, Uttlesford scores the lane at 15. Importantly, the score in relation to Aesthetic value is “2” which reflects the fact that the lane has a variety of aesthetic features or forms/alignment and / or a significant view. At present, the lane is not heavily trafficked and cycling/walking, riding along it is a peaceful and solitary experience in the middle of the countryside.

165. Protect the Pelhams has commissioned an independent report from an experienced Transport Consultant (Bruce Bamber), who was asked to consider the Applicant’s proposals in relation to transport and highways matters. Mr Bamber’s Report is attached to this document as **Appendix 14**. The key points arising from Bamber’s Report are summarised below:

- The Pelham Spring development comprises one of a number of major energy related proposals in the small area south of Berden. Despite Paragraph 111 of the NPPF requiring an assessment of cumulative impact, the applicant has not undertaken any assessment of how adverse impacts could be exacerbated if construction routes or parts thereof are used by more than one developer. A marshalling lay-by is proposed as a mitigation measure in relation to the Pelham Spring development but this would be ineffective if the route were to be used by another contractor; a possibility that has not been considered.
- The preferred construction access route (Route 1) and the alternative Route 2 pass through Newport and Clavering. They pass the Primary School in Clavering and the Village Hall which hosts a number of daytime activities. No assessment has been made of the potential impact of construction traffic on these sensitive receptors.
- The preferred route includes the Wicken Road/High Street junction in Newport that is highly constrained with narrow footways and high pedestrian flows. Local residents are so concerned about safety in this location that they have made direct approaches to Essex Highway Authority to implement measures to improve safety for pedestrians around the junction.
- No assessment has been made of the ability of large construction vehicles to negotiate this junction safely. An HGV is unable to turn left onto the B1038 if any vehicles are waiting to turn out of the side road.

- The proposed marshalling lay-by will achieve nothing in terms of reducing conflict at the Wicken Road/High Street junction in Newport.
- The other access route option (Route 3) from the A10 via Hare Street, Great Hornead and Brent Pelham is entirely unsuitable for use by HGVs as it is highly constrained with several narrow, winding sections with no verges and very limited forward visibility. The route also passes an infant school. Construction vehicles are likely to have a severe adverse impact on this route.
- The visibility splay to the south at the proposed construction access on Manuden Road has been incorrectly calculated and is not drawn to the edge of the carriageway. Notwithstanding these errors, to achieve even the visibility shown on the preliminary layout plan will require the removal of a significant number of trees and roadside vegetation. This will lead to a significant change in the character of this section of the lane.
- It is expected that the errors in the calculation of safe visibility will be identified as issues in the Stage 1 Road Safety Audit that is said to be being undertaken but is not currently available for scrutiny.
- The proposed operational access on Maggots End Road suffers from very poor visibility to the right for emerging vehicles. The proposed development will lead to a significant intensification of use of the access and will therefore significantly increase the conflict between vehicles and between vehicles and vulnerable highway users since the section of the lane east of the access is extremely narrow with tight bends, steep embankments immediately adjacent to the highway edge, very limited forward visibility in places and limited passing places.
- The CTMP vastly underestimates the number of HGV trips associated with the import of material to construct the construction access and internal roads, the construction of hard surfacing within the site, the removal of roads and compounds after construction is complete and the potential removal of topsoil.
- There has been no assessment of the potential impact of construction vehicles on equestrians despite there already being signs of the presence of horse riders on the proposed access route.
- Overall, it is likely that the proposals will lead to a significant adverse highway safety impact during construction and that this impact is likely to be further exacerbated by cumulative development. No work has been undertaken by the applicant to deal with these concerns as is required by Paragraph 111 of the NPPF.

H3: The Applicant has not to listed to the views of residents and local rejection of the Proposed Development

166. Best practice guidance regarding community consultation is published by BRE⁶². BRE note that the most widely-used method of informing communities about proposed projects are public information drop-in events or exhibitions. BRE also note that:

“These should provide an informal and nonconfrontational environment for sharing views and a platform for a genuine two-way dialogue. As well as conveying information, it is equally important is that developers use these events to listen”.

167. The Applicant states that it has listened to the views expressed by consultees and has made several changes and additions to the proposals.

168. Whilst the Applicant may have taken into account certain views expressed by Consultees, it has entirely ignored the views of local residents who have, from the outset, objected overwhelmingly to the proposed development.

169. The results of the Applicant’s consultation exercise are presented in a way which is misleading. There is no mention, for example, of the large numbers of emails sent directly to the Applicant objecting to the development. Copies of these emails (which have been anonymised) are attached as **Appendix 15**).

170. The residents who live in close proximity to the Proposed Development have also objected strongly to the Proposed Development from its inception. See for example, the following email to the Applicant following the conclusion of its consultation:

The results of your consultation re "Pelham Spring"
1 message

Stop Battles Solar cefoebattlesolarfarm@gmail.com Wed, Aug 11, 2021 at 2:42 PM
To: [REDACTED]
Cc: pelhamspring@pegasusgroup.co.uk

Dear Beverley

Now that the consultation has closed, we assume that Low Carbon will be reflecting upon the responses from the community to your proposed development. Whilst you might not yet have had a chance to read all of the comments we can assure that the vast majority of comments take the form of strong objections to the solar farm in its totality.

You are doubtless familiar with BRE's (2015) Community Engagement Good Practice Guidance for Solar Farms. We refer you to page 5 of that Guidance and to the section headed "Following up on feedback". The Guidance makes the following points:

"It is very important to act on feedback gathered from stakeholder meetings and events and to follow up on engagement work. Developers may gather useful information which could influence the project. Some of the ways in which feedback can be addressed might include:not going ahead with the project".

The only logical response to the feedback received would be to abandon your plans for a solar farm at "Pelham Spring".

We anticipate, however, that you will entirely ignore the community response and decide to proceed with a planning application in any event.

We are also familiar with BRE's "Planning guidance for the development of large scale ground mounted solar PV systems" which advises that "any planning application should detail the exhibitions/presentations, any views/representations received and how any planning application was influenced/amended to accord with such representations".

We have kept copies of all objections (both those posted on the website and sent by email). If, as part of your planning submission, you suggest that there is any level of community support for your development, copies of these documents will be supplied to members of the planning committee.

The objections made in response to your consultation were achieved with relatively little prompting from us. You will be aware that all local Parish Councils (who are now working in a coordinated manner) strongly oppose your development.

You should not underestimate the level of opposition to your scheme, nor the determination of the community to defeat any planning application.

62 https://www.bre.co.uk/filelibrary/pdf/Brochures/BRE-NSC_Good-Practice-Guide.pdf