SECTION 62A OF THE TOWN AND COUNTRY PLANNING ACT 1990

SITE ADDRESS: LAND AT BERDEN HALL FARM, GINNS ROAD, BERDEN

APPLICANT: BERDEN SOLAR LIMITED

APPLICATION REFERENCE: S62A/22/0006

REPRESENTATIONS FOR RE-DETERMINATION ON BEHALF OF THE APPLICANT

15 NOVEMBER 2023

1. INTRODUCTION

1.1 On 7 July 2022, the Applicant submitted an application ("**the Application**") under section 62A of the Town and Country Planning Act 1990 ("**the Act**") for planning permission described as a ground mounted solar farm with a generation capacity of up to 49.99MW, together with associated infrastructure and landscaping ("**the Development**") on land at Berden Hall Farm, Ginns Road, Berden ("**the Site**"). The Site falls within the local planning authority area of Uttlesford District Council. In a decision letter dated 9 May 2023, planning permission was granted by M Shrigley, an Inspector appointed by the Secretary of State ("**the Decision**").

1.2 Following the Decision being issued, a claim ("**the Claim**") for Planning Statutory Review pursuant to section 288 of the Act was issued in the High Court by Protect the Pelhams Limited ("**PTP**"), a company limited by guarantee consisting of local residents who objected to the Development. In a Claim Form issued on 13 June 2023, it was argued that the Inspector had erred in making the Decision on the basis of:

1.2.1 the treatment of heritage assets;

1.2.2 the treatment of Best and Most Versatile Agricultural Land; and

1.2.3 the inconsistency of decision making.

1.3 In a Consent Order dated 14 September 2023 (the **Consent Order**) it was agreed that the Decision should be quashed and the Application be re-determined. The Consent Order contains a statement of reasons which sets out the basis for the Decision being quashed. The Secretary of State agreed that the decision should be quashed on the basis of the treatment of heritage assets, however no concession was agreed in relation to the other grounds. Indeed the Consent Order states:

"11. The parties do not agree regarding Grounds 2 and 3. The Defendants would have resisted those grounds, in particular for the reasons set out by the Third Defendant in its Summary Grounds of Resistance. The Claimant would have maintained that the Decision Notice should have been quashed on those grounds also.

12. Given that all parties agree that the Decision Notice should be quashed on Ground 1. However, they also agree that this renders Grounds 2 and 3 academic such that it is not necessary for the Court to decide those grounds.

13. The Claimant maintains Grounds 2 and 3."

1.4 Whilst the Decision was not quashed on the basis of the other grounds, as the Claimant maintained those grounds, they remain important issues for consideration in the re-determination process. The Applicant will set out its detailed submissions for each of the grounds raised in the Claim.

1.5 Since the period for representations in respect of the original Application expired, there have been a number of changes in national policy which amount to material changes in circumstances which will need to be considered as part of the re-determination process. The Applicant will set out detailed submissions for each of the changes in policy that require consideration. The Applicant will also set out its submissions on the impacts of appeal decisions made since the submission of the Application as these provide important context on the decision-making framework.

1.6 Following its assessment of the material changes in circumstance arising since the Decision, and the issues arising out of the quashing, the Applicant does not consider that the changes would lead to any harm arising from the Development outweighing the overall benefits. Therefore, planning permission for the Development should be granted in the form sought.

2. LEGAL REPRESENTATIONS IN RESPECT OF REDETERMINATION

2.1 A quashed decision is capable in law of being a material consideration (this was confirmed in R. (Davison) v Elmbridge BC [2019] EWHC 1409 (Admin) (the **Davison Case**).

2.2 In the Davison Case, the local planning authority acted unlawfully in failing to take into account its previous decision that the development could have an adverse impact on Green Belt openness. Thornton J rejected the notion that because the first decision had been quashed it left the field open for a totally different conclusion on impact. She held that the principle of consistency applies not just to the formal decision but also to the underlying reasoning.

2.3 In the Davison Case, Thornton J summarised the relevant legal principles (at [56]):

*"**56** Accordingly, from the cases above, I draw the following principles which seem to me to be relevant to the present case:*

i) The principle of consistency is not limited to the formal decision but extends to the reasoning underlying the decision (North Wilts v Secretary of State; Dunster; Baroness Cumberlege; Fox Strategic and Vallis).

ii) Of itself, a decision quashed by the Courts is incapable of having any legal effect on the rights and duties of the parties. In the planning context, the subsequent decision maker is not bound by the quashed decision and starts afresh taking into account the development plan and other material considerations (Hoffman La Roche; and Kingswood).

iii) However, the previously quashed decision is capable in law of being a material consideration. Whether, and to what extent, the decision maker is required to take the previously quashed decision into account is a matter for the judgment of the decision maker reviewable on public law

grounds. A failure to take into account a previously quashed decision will be unlawful if no reasonable authority could have failed to take it into account (DLA Delivery Ltd v Baroness Cumberledge of Newark)

iv) The decision maker may need to analyse the basis on which the previous decision was quashed and take into account the parts of the decision unaffected by the quashing (Fox and Vallis). Difficulties with identifying what has been quashed and what has been left could be a reason not to take the previous decision into account (as with the cases of Arun and West Lancashire).

v) The greater the apparent inconsistency between the decisions the more the need for an explanation of the position (JJ Gallagher)."

2.4 The key principles are:

2.4.1 Where the Court quashes a planning permission, the decision maker must start the decision making again, with a clean sheet, having regard to the development plan and other material considerations, including material considerations which have emerged since the matter was originally considered (see *Kingswood District Council v Secretary of State for the Environment (1989) 57 P&CR 153*).

2.4.2 A quashed decision is incapable of having any legal effect on the rights and duties of the parties.

2.4.3 A decision maker is entitled to change its mind in any fresh decision making. Any differences in judgments may require explanation.

2.4.4 Whether a previously quashed decision is a material consideration for the purposes of the second decision is a fact specific assessment.

2.4.5 It is unlawful for the subsequent decision maker to ignore the implications of a previously quashed decision, without further analysis.

2.5 This provides the legal context for the redetermination and the consideration of the Decision in the redetermination.

3. MATERIAL CHANGES IN CIRCUMSTANCE

3.1 The below section addresses the request for submissions in respect of material changes on circumstances. These are addressed on a topic by topic basis.

Energy National Policy Statements

3.1.1 The latest suite of draft Energy National Policy Statements (**NPSs**) were issued for consultation in March 2023, following the close of the period for representations in respect of the Application.

3.1.2 The Draft NPSs are material considerations in the determination of the Application.

3.1.3 Draft EN-3 recognises that the Government expects a five-fold increase in solar deployment by 2035 (up to 70GW). This is a significant policy shift from the draft NPSs which had been published in September 2021 and which were material considerations when previous representations were submitted.

3.1.4 Draft EN-3 also recognises that solar is a key part of the Government's strategy for low-cost decarbonisation of the energy sector.

3.1.5 This represents a material change in circumstance in planning policy, as there was previously less certainty as to Governmental support for solar development.

3.1.6 The Draft NPSs, in particular Draft EN-1 and Draft EN-3, demonstrate a strengthening in national planning policy support for the Development since the close of the period for representations in respect of the Application.

3.1.7 The Draft NPSs are an additional material consideration which should be afforded weight in the decision-making process for the Application, and which attract weight in favour of the grant of planning permission pursuant to the Application.

National Energy Policy – The Powering Up Britain Strategy

3.1.8 The Governments most recent approach to energy is contained within the Powering Up Britain Strategy published on 30 March 2023 (the **Powering Up Strategy**).

3.1.9 The Powering Up Strategy recognises that: "*solar has huge potential to help us decarbonise the power sector. We [The Government] have ambitions for a fivefold increase in solar by 2035, up to 70GW, enough to power around 20 million homes. We need to maximise deployment of both ground and rooftop solar to achieve our overall target.*"

3.1.10 The Powering Up Strategy also contained confirmation that: "*The Government will therefore not be making changes to categories of agricultural land in ways that might constrain solar deployment*".

3.1.11 This represents a material change in circumstance in energy policy, as there was previously less certainty as to Governmental support for solar development.

Grid Connection Reform

3.1.12 National Grid Electricity System Operator (**NGESO**) has commenced a reform programme in relation to the connection of electricity projects on the basis that the current system is hindering Government objectives.

3.1.13 In its GB Connections Reform consultation dated June 2023[1], NGESO identified the consequence of the current delays caused by the grid connection programme as follows: "*Over 280GW of generation projects are currently seeking to connect to the transmission network and an increasing number of those projects have connection dates into the mid to late 2030s. Renewable project developers are waiting too long to connect to the network and this is hindering our progress to deliver Net Zero*."

[1] [redacted]

3.1.14 This is reflected by the introduction of new rules to speed up electricity grid connections which were introduced by Ofgem, the industry regulator, to address this issue on 13 November 2023[2]. This demonstrates the seriousness of the issue and the need for regulatory change to allow for electricity grid connections to be sped up.

3.1.15 This is material to the Project, as it can connect to the grid within the next three years. This means that the Project can connect to the network and aid the progress to deliver Net Zero.

NPPF Update

3.1.16 The NPPF was updated in September 2023, following the close of the period for representations in respect of the Application.

3.1.17 The NPPF update included an amendment to Paragraph 155 of the NPPF, to make clear that the policy to ensure that adverse impacts of renewable energy sources should be addressed "appropriately" as opposed to "satisfactorily". This applies to development plans as opposed to planning decisions.

The Energy Act 2023

3.1.18 The Energy Act 2023 received royal assent on 26 October 2023.

3.1.19 The Energy Act 2023 does not give rise to any material changes in circumstance which are relevant to the Application.

The Levelling-up and Regeneration Act 2023

3.1.20 The Levelling-up and Regeneration Act 2023 received royal assent on 26 October 2023.

3.1.21 The Levelling-up and Regeneration Act 2023 does not give rise to any material changes in circumstance which are relevant to the Application.

Recent Decisions

3.1.22 Whilst not material in the context of the Site, it is important to note that there have been a number of decisions in respect of solar farms since the close of the hearing in respect of the Application. These are material as they have been determined in the context of updates to policy and demonstrate the Secretary of State's approach to decision making. This includes the following decisions:

(a) Longfield Solar Farm dated 26 June 2023 (the **Longfield Decision**), a development consent order (**DCO**) decision of the Secretary of State which prescribed "*significant positive weight*" to that projects contribution to the UK's transition to low carbon energy generation[3];

(b) Marsh Green (ref: APP/U1105/W/23/3320714) dated 30 October 2023 (the **Marsh Green Appeal**), where "*substantial weight*" was attributed to the clean and secure energy benefits of a solar scheme[4];

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[2] https://www.ofgem.gov.uk/publications/ofgem-announces-tough-new-policy-clear-zombie-projects-and-cut-waiting-time-energy-grid-connection#:~:text=The%20rule%20change%20will%20give,happen%20as%20early%20as%202024.

[3] See section 7.5 of the Secretary of State's decision letter.

[4] See Section 49 of the Decision Letter

(c) Wisbech (ref: APP/A2525/W/22/3295140 and APP/V2635/W/22/3295141 and dated 29 September 2023) (the **Wisbech Appeals**), planning appeal decisions of an Inspector which prescribed "*significant weight*" to the contribution to those projects' contribution to the UK's transition to low carbon energy generation[5];

(d) Ledwyche (ref: APP/L3245/W/23/3314982) dated 7 July 2023 (the **Ledwyche Appeal**), where the benefits of renewable energy and contribution to climate change mitigation attracted "*substantial weight*[6]";

(e) Scruton (ref: APP/G2713/W/23/3315877) dated 27 June 2023 (the **Scruton Appeal**), where the renewable energy benefit of the proposal was afforded "*substantial weight*[7]";

(f) New Works (ref: APP/C3240/W/22/3293667) dated 27 March 2023 (the **New Works Appeal**), a decision of the Secretary of State where the Secretary of State determined that "*significant weight*[8]" should be given to the production of electricity.

(g) Fern Brook (ref: APP/D1265/W/22/3300299) dated 13 February 2023 (the **Fern Brook Appeal**), where the Inspector found that the benefits of the importance of the provision of renewable energy and the need to tackle climate change were "*exceptionally weighty*"[9];

(h) Minchens Lane appeal (APP/H1705/W/22/3304561) dated 12 February 2023 (the **Minchens Lane Appeal**), where "*substantial weight*"[10] was given to the generation of renewable energy and contribution to a low carbon economy and significant weight to the provision of low cost and secure energy; and

(i) Manuden decision (ref: s62A/2022/0011) dated 11 May 2023 (the **Manuden Decision**), where "*significant weight*" was given to the pressing need for renewable energy sources to provide part of the future energy mix as England moves towards a low carbon future.

3.1.23 These decisions demonstrate the significant weight that should be prescribed to solar generation projects. The New Works Appeal demonstrates the balancing exercise applied by the Secretary of State and the significant weight afforded to renewable energy schemes in outweighing a number of harms.

3.1.24 These decisions are consistent with the Secretary of State's decision on the Parsonage Road (ref: S62A/22/0000004) dated 24 August 2022 (the **Parsonage Road Decision**), another solar farm granted permission in the district.

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[5] See section 31 of the Decision Letter.
[6] See section 47 of the Decision Letter.
[7] See section 36 of the Decision Letter.
[8] See section 23 of the Decision Letter.
[9] See section 95 of the Decision Letter.
[10] See section 77 of the Decision Letter.

3.1.25 In respect of the Manuden Decision, it is important to note that this is subject to legal challenge.

Conclusion

3.2 There are material changes in circumstance which add further weight to the grant of planning permission for the Development.

3.3 There are no material changes in circumstance which weigh against the grant of planning permission for the Development.

4. SPECIFIC ISSUES ON QUASHING

4.1 This section addresses the specific issues which were subject to the Claim. It does so on a topic by topic basis, addressing each ground of challenge in the Claim.

HERITAGE

4.2 The Claim included grounds that there had been errors of law in the Decision in relation to the consideration of the impact of the Development on two designated heritage assets: first, Berden Hall; and secondly, the Church of St Nicholas. These heritage assets are both considered below.

4.3 In terms of heritage generally, it is important to note that the relevant statutory consultees (Historic England and Essex County Council) did not object to the Development in respect of heritage matters generally or the impact of the Development on these two designated heritage assets specifically.

4.4 All parties who made submissions in respect of the Application recognised that there is an historic relationship between the Site and Berden Hall. This remains the Applicant's position. However, the Inspector failed to recognise this historic relationship in the Decision.

4.5 All parties who made submissions in respect of the impact of the Development on Berden Hall did so on the basis that there was a historic relationship between the Site and Berden Hall. This is the basis for the Applicant's assessment for the impact of the Development on Berden Hall.

4.6 In terms of the impact of the Development on Berden Hall:

4.6.1 the Applicant's environmental statement concluded that there would be negligible impacts, which were classified as minor adverse impacts and not significant;

4.6.2 Historic England, in reaching their position that they did not object to the Development, stated that the impact of the Development on Berden Hall had been adequately assessed. Historic England did not identify whether they considered there was any harm, unlike in respect of other heritage assets like The Crump;

4.6.3 Essex County Council's Historic Environment Team (which had been instructed to provide a response on behalf of Uttlesford District Council on conservation) concluded that there would be a level of less than substantial harm in respect of Berden Hall and that "*that this harm is towards the lowest end of the scale*";

4.6.4 PTP's expert evidence is that there would be less than substantial harm in respect of Berden Hall and that this would be towards the lower end of the scale.

4.7 In terms of the impact of the Development on the Church of St Nicholas:

4.7.1 the Applicant's environmental statement concluded that there would be negligible impacts, which were classified as minor adverse impacts and not significant;

4.7.2 Historic England, in reaching their position that they did not object to the Development, stated that impact of the Development on the Church of St Nicholas had been adequately assessed. Historic England did not identify whether they considered there was any harm, unlike in respect of other heritage assets like The Crump;

4.7.3 Essex County Council's Historic Environment Team (which had been instructed to provide a response on behalf of Uttlesford District Council on conservation) concluded that there would be a level of less than substantial harm in respect of the Church of St Nicholas and that "that this harm is towards the lowest end of the scale";

4.7.4 PTP's expert evidence is that there would be less than substantial harm in respect of the Church of St Nicholas and that this would be towards the middle of the scale.

4.8 The Applicant's position is that the Development would:

4.8.1 cause less than substantial harm to Berden Hall, and that this harm would be at the lowest end of the scale and classified as negligible harm; and

4.8.2 cause less than substantial harm to the Church of St Nicholas, and that this harm would be at the lowest end of the scale and classified as negligible harm.

4.9 Having established the position in respect of harm to the designated heritage assets, the correct application of the heritage tests in the NPPF is as follows:

4.9.1 great weight should be afforded to each of the designated heritage assets conservation (Para 199 of the NPPF); and

4.9.2 as the Development will lead to less than substantial harm to the significance of these designated heritage assets, this harm should be weighed against the public benefits of the Development including, where appropriate, securing its optimum viable use (Para 202 of the NPPF).

Applying the Para 202 Test

4.10 In applying the test under Para 202 of the NPPF, the Applicant's position is that:

4.10.1 the benefits of the Development outweigh the negligible harm caused to Berden Hall. This is due to the significant positive weight attributable to the Development's contribution to the UK's transition to low carbon energy generation; and

4.10.2 the benefits of the Development outweigh the negligible harm caused to the Church of St Nicholas. This is due to the significant positive weight attributable to the Development's contribution to the UK's transition to low carbon energy generation.

4.11 The overarching public benefits of providing a large-scale renewable energy scheme in line with climate change interests and supporting national energy policy and planning policy must carry significant positive weight. The Development offers renewable energy production to the National Grid.

4.12 In addition, the near dated grid connection of the Development scheme (i.e., within the next three years) means that the Development is deliverable in a short timescale to meet the UK Government targets for solar generation. This is a critical benefit which attracts weight.

4.13 The Applicant's position is that these benefits outweigh the negligible harm caused to heritage assets by the Development.

4.14 Tellingly, the Claim did not identify any legal error in the previous Inspector's approach in determining that the benefits of the Development outweighed the less than substantial harm to another designated heritage asset in Paragraph 129 of the Decision Letter.

4.15 The Applicant's position is consistent with previous recent decisions, such as that in:

4.15.1 the Marsh Green Appeal, where there was found to be less than substantial harm to six designated heritage assets but where this was outweighed by the benefits of the scheme including the clean and secure energy production which was identified as "*a substantial standalone overarching public benefit*[11]".

4.15.2 the Fern Brook Appeal, where there was found to be less than substantial harm at the lower end of the scale in respect of a number of designated (and non-designated) heritage assets but that this harm was outweighed by the benefits which were described as "*exceptionally weighty*[12]". The Inspector found that: "*the importance of the provision of renewable energy and the need to tackle climate change, are exceptionally weighty*[13]";

4.15.3 the Minchens Lane Appeal, where there was found to be less than substantial harm to a number of designated heritage assets but that this harm was outweighed by the "*very significant*[14]" benefits of the proposal;

4.15.4 the appeal decision (ref: APP/N2739/W/22/3300623) dated 1 December 2022 at Monk Fryston (the **Monk Fryston Appeal**) where the ability to connect a project to the grid in the short term was recognised as a significant benefit. In the Monk Fryston Appeal, the Inspector concluded as follows: "*Therefore, projects that have secured connection are fundamental to achieving Net Zero targets given the increased requirement for storage capacity. This proposal has an agreed connection to the grid in 2024 which significantly adds to the overall benefit of the scheme*[15]". The same benefit applies to the Development.

4.16 In respect of the Manuden Decision, the decision in respect of Paragraph 202 of the NPPF is inconsistent with previous decisions and misapplies Paragraph 202 of the NPPF. This is because it treats the less than substantial harm to designated heritage assets as "*significant harm*". Therefore, it is not a good precedent. In addition, the Manuden Decision is subject to legal challenge.

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[11] See Section 73 of the Decision Letter

[12] See Section 95 of the Decision Letter

[13] See Section 95 of the Decision Letter

[14] See Section 84 of the Decision Letter

[15] See Section 36 of the Decision Letter

BEST AND MOST VERSATILE LAND

4.17 In terms of planning policy:

4.17.1 Policy ENV 5 of the local development plan requires that: "*Development of the best and most versatile agricultural land will only be permitted where opportunities have been assessed for accommodating development on previously developed sites or within existing development limits. Where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise*.;"

4.17.2 Paragraph 174(b) of the NPPF requires that planning decisions should recognise… "*the economic and other benefits of the best and most versatile agricultural land*";

4.17.3 Footnote 58 of the NPPF requires 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*"; and

4.17.4 Paragraph: 013 Reference ID: 5-013-20150327 Revision date: 27 03 2015 of the NPPG which provides that factors that the decision maker will need to consider include: "*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*".

4.18 The Application was accompanied by a Report on Agricultural Land Classification (the **ALC Report**) which confirmed that 72% of the site was BMV land.

4.19 The Applicant's position is that the:

4.19.1 Development would not lead to a total loss of agricultural land. The Development is not invasive or permanent, and does not damage the land or lead to the permanent loss of agricultural land;

4.19.2 Development is temporary in nature (with consent sought for 40 years) and so the effect of the Development on agricultural land us temporary and reversible; and

4.19.3 Site will maintain its agricultural designation and can be returned to arable or grazing at the end of the lifetime of the Development.

4.20 This is consistent with recent appeal decision in the Minchens Lane Appeal (see paragraphs 55 to 60), as well as decisions such as the Ledwyche Appeal and the Scruton Appeal.

Consideration of Alternatives

4.21 In respect of alternatives, the Applicant's position is that there are no alternative sites in the Council's area which could accommodate the Development and provide the benefits derived from the Development that the Site can deliver. This is because:

4.21.1 the land within the Council's district is predominantly BMV land; but also

4.21.2 because the Site is in the vicinity of the existing high voltage 132kV connection and energy storage facility. This is an important benefit of the Site, which is too large to connect at lower voltages.

4.22 The Draft NPS EN-1 identifies guiding principles that in deciding the weight to be given to alternatives. For example:

4.22.1 the consideration of alternatives in order to comply with policy requirements should be carried out in a proportionate manner; and

4.22.2 only alternatives that can meet the objectives of the proposed development need to be considered.

4.23 The Applicant's position is that there are no alternatives that can meet the proposed objectives of the Development, and that no parties who responded to the Application identified any alternatives.

Written Ministerial Statement

4.24 The WMS is a material consideration, but it should only be afforded limited weight. The WMS provides 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*".

4.25 The Applicant's position is that the evidence that it has submitted with the Application is the most compelling evidence and demonstrates that there are no alternatives to the Development on this Site.

4.26 The WMS is one material consideration to be taken into account in the decision-making process. The WMS requirements do not add a significant layer of policy to that set out in the local and national planning policy.

Planning Balance and Conclusions

4.27 The Applicant's position is that the temporary loss of best and most versatile agricultural land should be afforded limited weight in the planning balance.

4.28 This approach to weight is consistent with recent decisions. In the recent:

4.28.1 Longfield Decision, the Secretary of State prescribed the permanent loss of 6ha and the temporary long-term loss of 150ha: "*a small amount of negative weight*"[16];

4.28.2 Ledwyche Appeal, the loss of BMV was afforded "*moderate weight*[17]";

4.28.3 Wisbech Appeals, the loss of BMV was afforded "*moderate weight*[18]"; and

4.28.4 Parsonage Road Decision, the loss of BMV was afforded "*moderate weight*[19]". Proportionately, there was a greater percentage of BMV land (76%) affected by the Parsonage Road Decision than is affected by the Development.

4.29 The Applicant's position is that this limited weight is outweighed by the very significant benefits of the Development.

PREVIOUS DECISIONS AND THE WMS

4.30 The Claimant referenced a number of previous appeal decisions in relation to the WMS in the Claim.

4.31 The previous appeal decisions referred to by the Claimant:

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[16] See section 7.3 of the Secretary of State's decision letter

[17] See section 46 of the Decision Letter

[18] See section 29 and 38 of the Decision Letter

[19] See section 59 of the Decision Letter

4.31.1 were not recent;

4.31.2 did not relate to the same site;

4.31.3 did not relate to the same or a similar form of development on another site to which the same policy of the development plan relates; and

4.31.4 did not relate to the interpretation or application of a particular policy common to both cases.

4.32 Rather, the previous appeal decisions that the Claimant had identified were examples drawn from different geographic areas of the country and which dealt with the usual range of generic issues facing solar farm development. The previous appeal decisions all date from a period between 2014 and 2016, some 9 to 7 years ago. There has since been a huge shift in policy support for solar development.

4.33 The Applicant has drawn attention to a number of more relevant planning appeals in this submission, which demonstrate the recent approach of the Secretary of State in determining planning applications relating to solar development. To the extent that the Secretary of State has regard to previous decisions, then the Applicant's position is that the suite of recent decisions that the Applicant has drawn attention to are more relevant.

4.34 Of course, each case needs to be decided on its own merits. The WMS confirms this, stating that every application needs to be considered on its individual merits.

CONSISTENCY OF DECISIONS

4.35 Previous decisions by the Secretary of State are material considerations to which regard must be had.

4.36 The Applicant has drawn attention to a string of recent planning decisions from the past 12 months which are important in prescribing the weight to be afforded to the benefits of development in the nature of the Development, the weight to be afforded to both less than substantial harm and the weight to be afforded to the temporary loss of agricultural land.

4.37 PTP has previously drawn attention to a number of historic planning appeal decisions. These decisions are dated between 2014 and 2016 and were made against a different policy background.

The Manuden Decision

4.38 The Manuden Decision is the outlier in this context, and the Manuden Decision is based very much on the specifics of that scheme. The Manuden Decision is also subject to judicial review.

4.39 The Manuden Decision was based on a number of harms, all of which were site specific and a number of which relate to different matters than those that form the principal issues in respect of the Development. This included harm identified to character and appearance, landscape and visual matters, the settings of designated heritage assets, archaeological remains, loss of BMVAL, highway safety, biodiversity and noise.

4.40 For example, on archaeology, impacts can be adequately addressed in respect of the Development but could not be adequately addressed in the Manuden scheme.

5. CONCLUSION

5.1 There are a number of material considerations which have arisen and which provide further weight towards the grant of planning permission pursuant to the Application. This includes updates to national energy and planning policy, consultation on electricity grid reform and a number of recent planning decisions on solar farms.

5.2 The position in respect of the matter on which the Decision was quashed, and on the other matters raised in the Claim, are fully addressed in this response. These matters, when assessed in compliance with the law and policy, support the grant of planning permission pursuant to the Application.

5.3 The Applicant's position is that planning permission for the Development should be granted pursuant to the Application.

5.4 The Applicant reserves its position to respond on any representations submitted by third parties.