Representations for the redetermination of the application to construct a solar development on land at Berden Hall Farm

Application Reference: S62A/22/0011

7 January 2024

View of Berden Hall and Church of St Nicholas looking NorthEast from the Proposed Site

Protect the Pelhams Limited
Company number: 14902443
Registered office:
White Gate House
Stocking Pelham
Buntingford
Herts
SG9 0JX

APPENDICES	
1	Recent Planning Appeals which are material to the application
2	Land Registry extracts and accompanying maps
3	Acoustic Appraisal of Stocking Pelham Energy Development Sites produced by RBA Acoustics

REPRESENTATIONS FOR THE RE-DETERMINATION BY PROTECT THE PELHAMS

A: SUMMARY

The changes which would result from the construction of Berden Hall Solar Farm (the "Proposed Development") would lead to significant harm which would outweigh the overall benefits

The Proposed Development would cover 177 acres of productive farm land in an alien, industrial built form. 72% of this land is assessed by the Applicant as being best of most versatile (BMV) land.

There is no development in the local area of equivalent size, scale, or nature.

Given the importance of consistency in planning decisions, and the close proximity of the proposed site for the Proposed Development and the site proposed for Pelham Spring Solar Farm, the refusal by PINS to grant permission for the construction of Pelham Spring Solar Farm (the "Manuden Decision") is clearly a material consideration which must carry great weight.

Many of the factors which led to the refusal of permission to construct Pelham Spring Solar Farm are also relevant to this application. It follows that the decision to refuse permission to construct Pelham Spring Solar Farm is highly relevant.

Whilst the Applicant appears to suggest in its 15 November 2023 submission (the "November Submission") that all recent appeals in relation to solar "farm" developments have resulted in approval, this is simply not the case. There are an equal number of appeals which have resulted in refusal of the proposed developments (See **Section E1 below**). The very recent (November 2023) Little Heath appeal exemplifies the approach that has been taken by multiple inspectors who have identified significant harm associated with proposed developments which outweigh the stated benefits:

> *"The policy and guidance related to renewable energy carries significant weight in favour of the proposal. However **this does not confer an automatic approval of such schemes**.*

Moreover, the decisions referred to by the Applicant in its November Submission relate to sites which are **materially different from the site of the Proposed Development**. In most cases, these sites are adjacent to developed (or urbanised) areas and do not comprise a significant portion of BMV land.

There are also a number of <u>recent</u> appeals where the Inspector has determined that less than substantial harm to heritage assets carries greater weight that the assumed benefits of the development. See, for example, the appeal in relation to Land at Higher Farm, Fifehead Magdalen, Dorset (referred to **in Section F5 below**) where the Inspector concluded that:

> *"I find that the benefits of the proposal, including the production of energy from a renewable resource and the wider environmental benefits, are insufficient to outweigh the totality of **the harmful impacts to the character and appearance of the area and to the significance of various designated and non-designated heritage assets**".*

There have also been recent changes in Planning Policy (including the December 2023 Update to the NPPF and the changes to permitted development rights in relation to rooftop solar on commercial buildings) which make it clear that Government Policy now places an increased emphasis on:

- the importance of using BMV land for food production; and
- ensuring that renewable energy is located at the point of consumption (i.e. on rooftops).

The failure by the Applicant to produce any evidence (let alone compelling evidence) to support the selection of the site for the Proposed Development justifies the refusal of its application. It is for the Applicant to demonstrate that (i) the use of agricultural land is necessary and (ii) that there is no poorer quality land (i.e. Grade 3b and below) available for the proposed development. Even if the use of agricultural land is shown to be necessary, given that the owner of the site for the Proposed Development owns at least 700 acres of land in the immediate vicinity of Berden, the Applicant could be expected (as a bare minimum) to consider whether any of this land is of lower quality.

There is no requirement for a solar "farm" to connect directly to a sub-station. In fact, the majority of ground mounted solar developments (including two solar "farms" in Uttlesford – at Cole End and Cutlers Green near Thaxted) will be connected to the 132kv overhead power network. As is evident from the map included in **Section G3** below there are significant areas of Grade 3 land within a short distance of the 132kv overhead power network which connects to Stocking Pelham substation.

Multiple harms will be caused if permission for the construction of Berden Hall Solar Farm (the "**Proposed Development**") is granted. These harms are explored more fully below and include (but are not limited to):

- Less than substantial harm to a the Crump, which is a scheduled monument (List Entry Number 1009308) being a ringwork in respect of which by Historic England comments[1]:

  "They are rare nationally with only 200 recorded examples and, as one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, ringworks are of particular significance to our understanding of the period".

  Historic England also comments (in its letter dated 18 January 2023[2]) 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".

[1] https://assets.publishing.service.gov.uk/media/6405e11b8fa8f527f668029b/Historic_England.pdf

[2] https://assets.publishing.service.gov.uk/media/63c81787e90e076854d87b08/Historic_England_Advice_Redacted.pdf

- Less than substantial harm to Grade I Listed Berden Church (being a heritage asset of the highest designation and of national significance) in respect of which Dr Richard Hoggett comments[3]:

  "The Proposed Development would result in 'less than substantial' harm to the Grade I-listed church due to changes to its setting and the severance of the long views from the west, and consider that this harm lies towards the middle of the scale".

- Less than substantial harm to the Grade II* Listed Berden Hall (being a heritage asset of the second-highest designation and of national significance) due to changes to its setting and the severance of the views to and from the west. Dr Hoggett concludes[4] that this harm lies towards the lower end of the scale.

- Negative landscape and visual effects which arise from the intrinsic scale of the development and the sensitivity of the site, particularly in relation to its openness, its representativeness of the character type, and its relationship to ProWs. See the report of Peter Radmall [5];

- The unnecessary loss for at least 40 years of 113 acres of best and most versatile land which should be used for food production.

For the reasons summarised above - and set out more fully below - as well as the many reasons highlighted by Protect the Pelhams ("PtP") in our submissions of 1 September 2022 and 14 February 2023, the application to construct the Proposed Development should be refused.

3 https://assets.publishing.service.gov.uk/media/631b44a98fa8f5020c40159a/Protect_the_Pelhams_6_Redacted.pdf

4 https://assets.publishing.service.gov.uk/media/631b44a98fa8f5020c40159a/Protect_the_Pelhams_6_Redacted.pdf

5 https://assets.publishing.service.gov.uk/media/631b44a9e90e077db75dbe66/Protect_the_Pelhams_5_Redacted.pdf

B: INTRODUCTION:

B1: The importance of the Manuden Decision

Only 3 days after Mr Shrigley had granted permission for the construction of the Proposed Development, Callum Parker (an experience town Planner who has been a Planning Inspector for over 10 years, is a Fellow Royal Geographical Society and holds a Post Graduate Certificate in Architectural History - Heritage from the University of Oxford) determined that Low Carbon should be refused permission for the construction of Pelham Spring Solar Farm.

The site of the Proposed Development is extremely close to the proposed site of Pelham Spring Solar Farm. The Crump (Listed Building and Scheduled Monument) is located at the junction of Brick House End and Park Green - close to the most Northerly point of the Pelham Spring Site and due East of the Berden Hall Site. Both sites can be seen from the junction of Park Green and Brick House End.

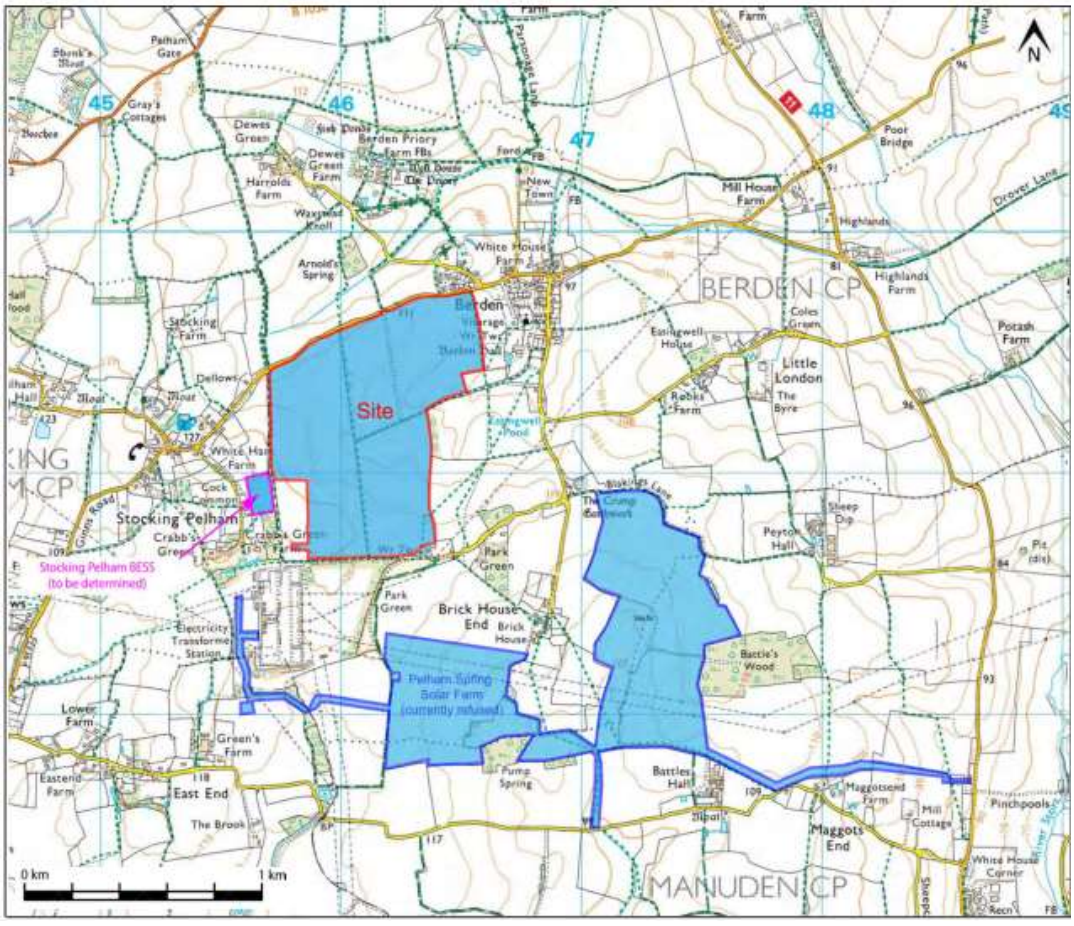

Fig 1: Map showing the outline of the Development Site and Pelham Spring Solar Farm

In his Decision Notice relating to Pelham Spring Solar Farm (the "**Manuden Decision"**), Mr Parker makes the following points which are directly relevant to the current application:

Character and appearance of the area

- *The proposal would have a significantly harmful effect on the rural character and appearance of the area through adversely eroding the agricultural landscape and the intrinsic beauty of the countryside.*

- *This would be highly contrasting industrial infrastructure that would be present for an extended period of around 40 years.*

- *This extended chronological span, together with the scale and size of the proposal, would be perceived as permanent rather than temporary features within the landscape.*

- *The proposal is contrary to Policy S7 of the Uttlesford Local Plan 2005 (LP) which sets out that 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 and that 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.*

- *The proposal is also contrary to Paragraph 174 [now para 180] of the National Planning Policy Framework (the Framework) which sets out that planning policies and decisions should contribute and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside*

Landscape and Visual

- *In landscape terms, the proposal would introduce long rows of solar panels and associated infrastructure which would have a starkly more utilitarian appearance when compared to the currently unspoilt and open rural qualities of the site.*

Heritage

- *The scheme would fail to preserve the setting of the listed buildings, in being contrary to the clear expectations of s66(1) of the PLBCA, which anticipates special regard being had to that preservation. The dual conflict of the proposal with national policy and statute, and the cumulative harm that would arise from them, are matters of very significant weight that militate against them succeeding.*

- *The proposal conflicts with Policies ENV2 and ENV4 of the LP which require that where nationally important archaeological remains and their settings are affected by proposed development there will be a presumption in favour of their physical preservation in situ and development affecting a listed building should be in keeping with its scale, character and surroundings.*

- *It is also at odds with Chapter 16. Conserving and enhancing the historic environment of the Framework, which include in determining applications, local planning authorities should take account of the desirability of sustained and enhancing the significance of heritage assets and that great weight should be given to the asset's conservation. This is irrespective of whether any potential*

harm amounts to substantial harm, total loss or less than substantial harm to its significance.

Best and Most Versatile Agricultural Land

- *Whilst the currently arable land around the solar arrays and associated infrastructure could potentially be used for sheep grazing, it is likely that over the 40-year life of the proposed development there would be a significant reduction in agricultural production over the whole development area. This would not be an effective use of BMVAL, as reflected in the planning practice guidance which encourages the siting of large solar farms on previously developed and non-agricultural land.*

- *The proposal would conflict with Policy ENV5 of the LP which sets out that development of BMV land will only be permitted where opportunities have been assessed for accommodating the development on previously developed sites or within existing development limits. It goes on to indicate that where development of agricultural land is required, developers should seek to use areas of poorer quality except where other sustainability considerations suggest otherwise.*

- *It would also conflict with Paragraph 174 of the Framework. This sets out that planning decisions should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside – including the economic and other benefits of the best and most versatile agricultural land.*

- *Footnote 53 indicates 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.*

Planning balance and Conclusions

- *The proposal would clearly result in wider benefits including the moderate contribution to the local and national aspirations to transition to a low carbon future, the significant benefit arising from the renewable energy creation and future energy mix, the modest weight to socio-economic benefits and the modest benefits to ecology and biodiversity. However, these fail to negate the harms 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.*

- ***The benefits in this case are clearly outweighed by the harms identified.***

- *The proposed development would not accord with the adopted development plan when considered as a whole and there are no material considerations which indicate a decision otherwise than in accordance with it. It would also conflict with significant parts of national planning policy identified, including those principally contained within the Framework.*

Whilst it is correct that the Manuden Decision is subject to a challenge, no weight should be given to this fact. As at the closing date for submissions in respect of this redetermination, the Manuden decision remains extant. It is also more likely than not that **the challenge will be unsuccessful** given that the sole ground of challenge relied upon by the developer (Low Carbon) is that the Planning Inspector refused to allow the developer to make additional submissions after the published date for submission of representations had passed. In its Statement of Facts and Grounds, Low Carbon "accept that the Inspector had a discretion under Regulation 6(2)(b) of the S.62A Written Representations Regulations 2013 to disregard representations received after the end of the representation period".

C: LEGAL REPRESENTATIONS IN RESPECT OF REDETERMINATION

C1: Comments on R. (Davison) v Elmbridge BC [2019] EWHC 1409 (Admin) (the Davison Case)

PtP agrees with the Applicant that the key points arising from the Davidson case are that:

- the quashed decision of Mr Shrigley in relation to Berden Hall Solar Farm is incapable of having any legal effect on the rights and duties of the parties; and

- PINS is not bound by the quashed decision and starts afresh taking into account the development plan and other material considerations.

C2: The importance of the DLA Delivery Case: DLA Delivery v Baroness Cumberledge of Newick [2018] EWCA Civ 1305

There is no logical basis for reaching a decision in relation to the Proposed Development which differs from the Manuden Decision (as to which see Middlebrook Mushrooms Ltd v Agricultural Wages Board of England and Wales [2004] EWHC 459 per Stanley Burnton J at para. 74[6]). PINS is under a duty to take reasonable steps to acquaint itself with the issues common to both decisions, so as to ensure that the Secretary of State either reaches a consistent decisions in relation to both sites, or explains why the decisions are inconsistent. This is a facet of the duty of investigation arising in accordance with the decision in Secretary of State for Education and Science v Thameside MBC [1977] AC 1014.

The Applicant **understates the importance of consistency in decision making**. Failure to take an obviously material decision of the Secretary of State into account is an error of law which vitiates a decision to grant planning permission. In the DLA Delivery Case Lindblom LJ comments (at para 29):

> *"29. That previous decisions of the Secretary of State or his inspectors on planning appeals are capable of being material considerations is also well established….The classic statement of principle here is to be found in the judgment of Mann L.J. in North Wiltshire District Council (at p.145):*
>
> *"… It was not disputed in argument that a previous appeal decision is capable of being a material consideration. The proposition is in my judgment indisputable. One important reason why previous decisions are capable of being material is that **like cases should be decided in a like***

[6] Per Stanley Burnton J: "It is a cardinal principle of public administration that all persons in a similar position should be treated similarly."

> ***manner*** *so that there is consistency in the appellate process. Consistency is self-evidently important to both developers and development control authorities. But it is also important for the purpose of securing public confidence in the operation of the development control system….."*

Because of the **obvious desirability in consistency of planning decision making**, where a planning decision maker differs from an earlier decision-maker on a crucial planning issue, (s)he is required to "acknowledge that the approach now being adopted [is] materially different from that taken in the previous decision", and "to provide some explanation, brief as that might be, for the inconsistency (see Dunster Properties Limited v First Secretary of State (2007) 2 P&CR 26 per Lloyd LJ at para. 23 and Tate v Northumberland CC [2018] EWCA Civ 1519 at para. 42).

See also the case of Christopher James Holder v Gedling Borough Council and Ors [2014] EWCA Civ 599 Maurice Kay LJ (paras 8 and 15);

> *"It is not disputed that, in principle, a grant of planning permission may set a precedent for further developments of the same character: Collis Radio Ltd v Secretary of State for the Environment (1975) 73 LGR 211, (1975) 29 P & CR 390"*
>
> *"Whilst, of course, no two planning applications are exactly the same, a grant of planning permission in the present case would undoubtedly be advanced as a precedent in relation to a similar application in the same area and, unless other matters such as greater visual impact rendered it distinguishable, it would have real precedent value".*

The Holder case is also relevant in the current circumstances – where a decision to refuse an application in the same area should serve as a precedent to refuse a substantially similar application.

D. MATERIAL CHANGES IN CIRCUMSTANCES: POLICY DEVELOPMENTS

The Applicant refers to a number of Policy Statements and policy developments which – it asserts – amount to material changes in circumstances. PtP does not accept that the various policy developments referred to by the Applicant have any bearing on the redetermination for the reasons set out below.

D1: Comments on the DRAFT Energy National Policy Statements

As the Applicant itself notes, the Energy National Policy Statements are in **DRAFT** and cannot have the status of policy which binds the Planning Inspector in the context of the current application. In any event, in the context of solar developments, Nationally Significant Infrastructure projects are those which are above 50MW. The current application is below this threshold.

Therefore, the **Draft** NPSs are not material considerations in the determination of the Application and do not represent a material change in circumstance in terms of planning policy.

Even if the Draft NPSs are considered to have some bearing on the current application (which is not accepted), they do not assist the Applicant. The following paragraphs of draft EN3 are brought to the attention of PINS:

- 2.10.11: The Powering Up Britain: Energy Security Plan states that government seeks large scale ground-mount solar deployment across the UK, looking for development mainly on **brownfield, industrial and low and medium grade agricultural land;**

- 2.10.29: While land type should not be a predominating factor in determining the suitability of the site location applicants should, where possible, utilise suitable previously developed land, brownfield land, contaminated land and industrial land. Where the proposed use of any agricultural land has been shown to be necessary, **poorer quality land should be preferred to higher quality land avoiding the use of "Best and Most Versatile" agricultural land where possible**. 'Best and Most Versatile agricultural land is defined as land in grades 1, 2 and 3a of the Agricultural Land Classification';

- 2.10.118: 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 which depending on their scale, design and prominence, may cause substantial harm to the significance of the asset;**

- 2.10.157: The Secretary of State will consider the landscape and visual impact of any proposed solar PV farm, taking account of any sensitive visual receptors, and the effect of the development on landscape character, together with the possible cumulative effect with any existing or proposed development

Lastly, it is wholly misleading to suggest that support for an increase in in solar deployment by 2035 equates to a planning policy statement which effectively gives solar farm developers "carte blanche" to locate solar "farms" in unsuitable locations. The Applicant also ignores the impact of the recent changes in permitted development rights (highlighted below) which demonstrate that there is a preference for locating solar generation at the point of use.

D2: Comments on Grid Connection Reform

The Grid Connection reform programme is <u>not</u> material considerations in the determination of the Application and does <u>not</u> represent a material change in circumstance in terms of planning policy.

D3: Comments on the "Powering Up Britain" Strategy

The Powering Up Britain Strategy is described as a "manifesto for the future". It is <u>not</u> policy or legislation. Note that, in the final section of the Strategy document, the Secretary of State sets out a series of next steps which must be implemented. These include changes the Planning policy and guidance.

There are only 2 references to "ground mounted" solar in the accompanying 84 page "Powering Up Britain: Energy Security Plan" which stresses the importance of:

> *"development mainly on brownfield, industrial and low and medium grade agricultural land"*

In fact, the focus in the Energy Security Plan is on Rooftop Solar:

> *"Deploying rooftop solar remains a key priority for the Government, and it continues to be one of the most popular and easily deployed renewable*

energy sources; over a million homes now have solar panels installed. Solar can benefit households and businesses by allowing them to reduce electricity bills significantly and receive payment for excess electricity generated. ***Warehouses, distribution centres and industrial buildings with high electricity demand can offer significant potential for solar deployment****, which can rapidly pay for itself by means of energy bill savings. The Government is looking to* ***facilitate and promote extensive deployment of rooftop solar on industrial and commercial property*** *in order to make maximum usage of available surfaces for business as well as environmental and climate benefits".*

"To accelerate further the deployment of rooftop solar, the Government is currently consulting on changes to permitted development rights. Our proposals seek to simplify planning processes for larger commercial rooftop installations and introduce a new permitted development right for solar canopies on non-domestic carparks, enabling more solar installations to benefit from the flexibilities and planning freedoms permitted development rights offer".

D4: NPPF Update: December 2023

An updated version of the NPPF was published on 20 December 2023. This contains a number of changes which are relevant to this application and which represent a material change in circumstance in terms of planning policy. The following changes are therefore material considerations in the re-determination of the Application.

- **There is now increased emphasis in the NPPF on the importance of using BMV land for food production.**

  The recent revisions to the NPPF followed a consultation (the "**Consultation**") which ran from 22 December 2022 to 2 March 2023. The Consultation contained the following section which was included as a direct response to the recommendation 18 of the House of Lords Land Use Strategy report (see section D5 below):

  "Recognising the food production value of farmland

  10. 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 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.***

  11. 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****. This should not prevent the achievement of government's objectives in relation to nature recovery and creation of ecosystem services to enable and offset development elsewhere."*

Footnote 62 to NPPF Para 181 – previously Footnote 58 Para 175) now contains an additional requirement (new text underlined):

62 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. <u>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</u>.

- **There is also increased emphasis in the NPPF on ensuring that renewable energy is located at the point of consumption.**

A new paragraph has been included (Para 164) which requires as follows:

164: In determining planning applications, local planning authorities should give significant weight to the need to support energy efficiency and low carbon heating ***improvements to existing buildings****, both domestic and non-domestic (including through* ***installation of heat pumps and solar panels*** *where these do not already benefit from permitted development rights). Where the proposals would affect conservation areas, listed buildings or other relevant designated heritage assets, local planning authorities should also apply the policies set out in chapter 16 of this Framework.*

D5: Land Use Strategy

If it is accepted that Strategy documents are capable of being "material considerations", equal weight should be given to policy in relation to land use.

In December 2022, the House of Lords Land Use in England Committee published a Report of Session 2022–23 (HL Paper 105) entitled "Making the most out of England's land"[7]. Recommendation 18 of this Report (page 68) 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 large-scale 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*

[7] https://committees.parliament.uk/publications/33168/documents/179645/default/

> *turbines still have a crucial role to play in achieving national energy self-sufficiency".*

The Government responded to this report in April 2023[8]. In its response to recommendation 18, the Government stated that:

> *"21. We are also seeking initial views as part of the NPPF prospectus consultation on **increasing the consideration given to the highest value farmland used for food production in the framework** for both plans and decision making."*

D6: New permitted development rights in relation to rooftop solar on commercial buildings

On 30 November 2023 the government announced changes to permitted development rights to enable more homeowners and businesses to install solar panels on their roofs without going through the planning system. This is a material consideration insofar as it confirms that Government Policy is to support the deployment of solar on already developed land rather than on greenfield sites.

Announcing this change, Energy Security and Net Zero Minister Graham Stuart MP said:

> *"Removing the 1MW restriction for industrial rooftop solar will help us meet our target of 70GW of solar power by 2035 while supporting hundreds of long-term skilled British jobs, bolstering our world-leading renewables sector and reducing bills for consumers with panels.*
>
> *Current rules that require businesses to apply for planning permission if solar panels will generate more than one megawatt of electricity will also be scrapped, meaning organisations will be able to install more solar panels on rooftops without the delay and cost of applying for planning permission.*
>
> ***The Government is clear that where possible already developed land should be used for solar panels**, which is why the changes will make it easier for panels to be installed in canopies above car parks, if they are over ten meters away from people's homes.*
>
> *These measures also support ambitions set out in the British Energy Security Strategy published by government last year – taking the necessary steps to combat climate change and bring greenhouse gas emissions to net zero by 2050".*

D7: The Levelling-up and Regeneration Act 2023 ("LURA")

LURA received royal assent on 26 October 2023. LURA includes a new duty to enhance the setting of heritage assets which is a material planning consideration.

- LURA Section 102 amends the Town and Country Planning Act by inserting new language as follows:

  > *"Duty of regard to certain heritage assets in granting permissions*

[8] https://committees.parliament.uk/publications/34710/documents/191039/default/

(1) In considering whether to grant planning permission or permission in principle for the development of land in England which affects a relevant asset or its setting, the local planning authority or (as the case may be) the Secretary of State must have special regard to the desirability of preserving or enhancing the asset or its setting.

(2) For the purposes of subsection (1), preserving or enhancing a relevant asset or its setting includes preserving or enhancing any feature, quality or characteristic of the asset or setting that contributes to the significance of the asset".

The definition of relevant assets include Scheduled Monuments (the Crump being a Scheduled Monument).

LURA Section 102 also contains a more general expansion to the duty of decision-takers when it comes to heritage assets - the desirability of preserving heritage assets is expanded to the desirability of preserving and enhancing.

E MATERIAL CHANGES IN CIRCUMSTANCES: RECENT PLANNING APPEALS

E1: There are a number of very recent appeal decisions which confirm that the need for renewable energy does not automatically override environmental protections

The Applicant fails to mention a number of recent decisions which support the view that harms can outweigh the benefits of solar "farms". These include the following (copies of which are attached to this document as **Appendix 1**):

- **The Alfreton Appeal** (Ref: APP/M1005/W/22/3299953 - Decision date: 5 December 2022) where the Inspector concluded that:

  *"**The need for renewable or low carbon energy does not automatically override environmental protections**. I have taken into account all the other matters raised including the proximity of a suitable grid connection, but in the overall balance, the harm caused to landscape character and visual amenity is decisive. The adverse impacts cannot be addressed satisfactorily on a site of this size and character, and the suggested planting mitigation measures would be seriously out of keeping and would largely worsen, rather than mitigate for the landscape and visual impact."*

- **The Tregorrick Farm Appeal** (Appeal Ref: APP/D0840/W/22/3293079 – Decision date 5 January 2023) where the Inspector concluded that:

  *"However, national and local planning policies and guidance also require careful consideration of the landscape and visual impacts of solar farms within the countryside. Even under current circumstances, increasing energy supplies from renewable sources **does not override all other considerations**".*

- **The Manuden Decision** (dated 11 May 2023) where Mr Parker concluded that:

  The proposal would clearly result in wider benefits including the moderate contribution to the local and national aspirations to transition to a low carbon future, the significant benefit arising from the renewable energy

creation and future energy mix, the modest weight to socio-economic benefits and the modest benefits to ecology and biodiversity. However, these fail to negate the harms 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. ***The benefits in this case are clearly outweighed by the harms identified.***

- **The Lullington Appeal** (Appeal Ref: APP/F1040/W/22/3313316 - Decision date: 21 July 2023) where the Inspector concluded that:

  "… ***this proposal would harm the BMV resource****, which amounts to just under half the total available hectarage and would make an* ***unacceptable indent on the contribution that a large proportion of the site makes towards food security for a significant period of time"****.*

  *While collectively the benefits arising from the appeal scheme are significant****, the harm that would be caused by allowing the development of just below 50% of the site's hectarage over a period of 40 years would be of greater significance****. Taking all this into account, the appeal proposal would be conflict with the development plan and the Framework and would not constitute sustainable development".*

- The **West Wickham Appeal** (Appeal Ref: APP/W0530/W/22/3300777 - Decision date: 22 September 2023) where the Inspector concluded that:

  "… the policy support given for renewable energy projects in the Framework is caveated by the need for the impacts to be acceptable, or capable of being made so. Notwithstanding the temporary nature of the appeal scheme, I have found that there would be significant harm to the character and appearance of the area, and I am not persuaded for the reasons I have set out that these impacts would be capable of being made acceptable. In my view, over the lifetime of the development, ***the harm to the character and appearance including the landscape outweighs all the benefits that I have identified"****.*

- The **Little Heath Appeal** (Appeal Ref: APP/A1910/W/23/3317818 - Decision date: 14th November 2023) where the Inspector concluded that:

  "The policy and guidance related to renewable energy carries significant weight in favour of the proposal. However ***this does not confer an automatic approval of such schemes****.*

E2: The recent decisions referred to by the Applicant relate to sites which are materially different from the site of the Proposed Development

In its November Submission, the Applicant seeks to rely on a number of other decisions in which Inspectors have permitted solar "farms" and suggests that these represent a "trend" towards permitting developments like the Proposed Development. To take account of a perceived "trend" would be to take account of an immaterial factor.

The decisions referred to by the Applicant relate to sites which are **materially different from the site of the Proposed Development**. In most cases, these sites are adjacent to developed (or urbanised) areas and do not comprise a significant portion of BMV land. The following points are of particular relevance:

In relation to **Longfield Solar Farm appeal**:

- The Longfield site is 400m to the north of the A12 carriageway (which is a major road connecting the towns of Chelmsford and Colchester); and
- only 34% of the Longfield site is BMV agricultural land

In relation to **Marsh Green**, the inspector notes that:

- *"the presence of the A30 is a noticeable built feature that bisects the rural landscape. The presence of commercial buildings near to the airport are also noticeable features….. The presence of the A30; the proximity of the airport which has a nearby commercial landscape associated to it; and pylons within the landscape are all existing factors impacting on countryside tranquillity levels as well as its overall appearance".*

In relation to the **Ledwyche** appeal site

- The site is located 2.5km east of Ludlow town centre, 1.2km east of the A49 Ludlow by-pass and 1km east of the Ludlow Ecopark and park and ride;
- The site only 28.5ha (only 40% of the size of the proposed Berden Hall Solar Farm); and
- No concerns were raised in relation to the impact of the development on the setting of Heritage Assets in the vicinity of Ledwyche.

In relation to the **Scruton** appeal site:

- The site is a short distance from junction 51 of the A1M;
- Due to the considerable intervening vegetation already in existence, it concluded that the proposal would not harm the setting of heritage assets;
- The inspector concluded that the site is not BMV agricultural land.

In relation to the **New Works** appeal site:

- The Site is in a coal mining area and had been subject to opencast coal and fireclay extraction having been used as the Huntington Lane Surface Mine between 2010 to 2013;
- The whole site was classified as Grade 3b land; and
- There were no heritage assets in the proximity of the proposed solar farm – the only material considerations relation to proposals would result in a detrimental change to the quality of the strategic landscape, failing to conserve and enhance the character of the landscape.

In relation to the **Fern Brook** site:

- Outline planning permission was granted in 2021 for a major development on land to the southwest of the appeal site including permission for up to 634 dwellings. The inspector notes that:

  "It is accepted that this major development does not, in itself, justify the appeal scheme. However it would be wrong to ignore the consequences of the allocation and consented scheme on the character of the area".

- The site is classified as Grade 4 (poor quality).

In relation to the **Parsonage Road** site (ref: S62A/22/0000004):

- The Parsonage Road decision relates to an application by Stansted Airport Limited for permission to build a small (14.3MW solar farm) to supply renewable energy to Stanstead Airport. The application site comprises 22.5 Hectares and is situated close to Stansted Airport and the A120;

- The applicant provided an assessment of alternative sites and was able to direct part of the scheme towards lower grade land;

- Only two Heritage assets (both Grade II) were located in close proximity to the Site. The setting of the first of these (Old Farmhouse) included modern industrial/agricultural buildings on the opposite side of the road. In respect of the second listed building (Le Knells Cottage) it was concluded that there would be no material harm to its setting. Historic England declined to comment on these assets.

F. MATERIAL CHANGES IN RELATION TO THE ASSESSMENT OF HARM TO HERITAGE ASSETS ARISING AS A RESULT OF THE CONSENT ORDER

F1: Great weight must be given to the significance of Heritage Assets in the Planning Balance

The NPPF provides as follows:

- *Para 205: 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).*

- *Para 208: 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*

Para 9 Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 imposes a statutory duty to have "*special regard*" to the desirability of preserving the setting of heritage assets. However, less than substantial harm must not be treated as a less than substantial objection to the grant of planning permission. On the contrary, any harm to the significance of a designated heritage asset results in a "strong presumption" against granting permission (see Barnwell Manor Wind Energy Ltd v East Northamptonshire DC [2014] EWCA Civ 137 at paras. 23 and 29).

Under the NPPF, "any harm" to the significance of a designated heritage asset should require clear and convincing justification. The more important the asset, the greater the weight should be. In this regard, Grade I and Grade II* listed buildings and Scheduled Monuments are assets of the highest significance.

F2: The Applicant makes no mention of harm to The Crump which is a Scheduled Monument

In its letter 18 January 2023, Historic England comment as follows:

> *"Our primary consideration is the potential impact on the setting of the scheduled monument known as 'The Crump: a ringwork 600m south of Berden' (List Entry Number 1009308)*
>
> *The Crump, located to the southeast of the proposed development, is a well-preserved example of a ringwork. Ringworks are medieval fortifications built and occupied from the late Anglo-Saxon period to the later 12th century. They comprised a small defended area containing buildings which was surrounded or partly surrounded by a substantial ditch and a bank surmounted by a timber palisade or, rarely, a stone wall. They are rare nationally with only 200 recorded examples and, as one of a limited number and very restricted range of Anglo-Saxon and Norman fortifications, ringworks are of particular significance to our understanding of the period. There is high evidential value in this asset and archaeological remains will be preserved that provide important information relating to the occupation and development of the site. The presence of this scheduled monument in the rural, agricultural landscape is a rare survival. The setting of the scheduled monument contributes to its significance, and the monument draws a considerable amount of significance from how it is experienced in the landscape.*
>
> *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"****.*

This is consistent with reasoning of Mr Parker in the Manuden Decision, where he concludes that:

> *"The Crump in particular is a rare survival, and the monument draws a considerable amount of significance from how it is experienced in the historic landscape setting. A setting which, whilst changing over the centuries, retains a dominantly rural character. Accordingly, this would result in harm to the significance of the scheduled monument The Crump"*

F3: The Applicant accepts that there will be harm to the Grade II* Listed Berden Hall

The Environment Statement submitted by the Applicant revised the conclusions of its Heritage Statement and accepted that there would be harm to the significance of both the Grade I Listed Church of St Nicholas and the Grade II* Berden Hall.

In its Environment Statement Non-Technical Summary the Applicant says:

> *"Berden Hall (NHLE: 1112468) is a Grade II* listed building and therefore of very high sensitivity/value, while its associated granary (NHLE: 1306141) is a Grade II listed building of high sensitivity/value.*
>
> ***The proposed development would have a direct impact on Berden Hall** and its associated granary. The presence of the solar panels within their settings would represent a small change in their settings. This change would have an indirect, negligible adverse magnitude of impact resulting in permanent effects of minor adverse significance."*

In Chapter 8 of its Environment Statement, the Applicant says:

> *"The Site is located west of the hall (which is a Grade II* listed building and therefore of **very high sensitivity/value)**, beyond the grassland meadows which are boarded by mature trees. Due to the extent and maturity of this planting, there is no intervisibility between the Hall, its barn (a Grade II listed building of **high sensitivity/value**), and the Site. Historically, the land that forms the Site was in the same ownership as Berden Hall, resulting in an historic connection between the Site and the listed buildings. However, as described above this relationship is not a visual one, and the Site therefore makes a limited contribution to the significance of the Hall and barn by virtue of the historic connection between the two and the retained open character of the Site."* (original emphasis)

By entering into the Consent Order pursuant to which the decision of Mr Shrigley was quashed the Applicant has acknowledged that "negligible harm" to the setting of Berden Hall constitutes less than substantial harm and accepted that (as required by the NPPF) "great weight" must be given to any harm to significance which must be weighed in the planning balance (per R (James Hall and Co Ltd) v City of Bradford MDC [2019] EWHC 2899 (Admin).

F4: The Applicant also accepts that there will be harm to the Grade I Listed Church of St Nicholas

In its Environment Statement Non-Technical Summary the Applicant says:

> *"The Church of St Nicholas is a Grade I listed building and as such is considered of **very high sensitivity/value.***
>
> *The **proposed development would have a direct impact on the church**. The presence of the solar panels within its setting would represent a small change in the extensive agricultural setting of the church. This change would have an indirect, negligible adverse magnitude of impact resulting in permanent effects of minor adverse significance."*

In Chapter 8 of the Environment Statement, the Applicant says:

> *"The Church of St Nicholas is a Grade I listed building and as such is considered of **very high sensitivity/value**. The Site comprises the arable land which forms part of the extended setting of the church. Views of the church can be obtained from the northern half of the Site, but from the southern half any potential intervisibility is severed by the mature trees along the western edge of the village. Again, views of the church tower from the northern half of the Site show it within (not rising above) the trees, limiting the prominence of the tower in these views. The Site nevertheless makes a moderately positive contribution to the significance of the church by virtue of its openness and rural character."* (original emphasis)

Again, by entering into the Consent Order, the Applicant has accepted the conclusion of the Secretary of State that:

> *"negligible harm" is still harm, albeit harm at the lowest or even very lowest end of the less than substantial scale, which must be weighed in the planning balance (R (James Hall and Co Ltd) v City of Bradford MDC [2019] EWHC 2899 (Admin)".*

F5. There are a number of recent decisions where harm to heritage has tipped the planning balance in favour of refusal

The Manuden Decision is not an "outlier" as the Applicant claims. There are other appeals where heritage concerns have justified the refusal of a solar farm development including the following (copies of which are provided at **Appendix 1**):

In the appeal in relation to **Land at Higher Farm, Fifehead Magdalen, Dorset** (APP/D1265/W/19/3241953 - Decision date: 23 July 2020) the Inspector comments in the final paragraphs of the Decision Notice that:

> *"I find that the benefits of the proposal, including the production of energy from a renewable resource and the wider environmental benefits, are insufficient to outweigh the totality of the harmful impacts to the character and appearance of the area and to the significance of various designated and non-designated heritage assets.*

Equally, the appeal in relation to **Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney, Nuneaton** (Appeal Ref: APP/K2420/W/21/3266505 – Decision Date 4 May 2021) supports the conclusion that it is appropriate to refuse permission for a solar "farm" by reference to heritage considerations. In this case ,the Inspector found that:

> *"Taken together, I do not find that these public benefits outweigh the less than substantial harm to the significance of the designated heritage asset through changes to its setting".*

Lastly, in the Decision Notice relating to the appeal re **Land at Woodhall Farm, Wichenford, Worcestershire** (Appeal Ref: APP/J1860/W/16/3142020 - Decision Date: 23 February 2017[9]) the Inspector concludes as follows:

> *"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".*

G. BEST AND MOST VERSATILE ("BMV") LAND

The second ground on which PtP challenged the decision of Mr Shrigley related to his approach to considering the use of BMV Agricultural Land and the Applicant's failure to assess alternatives. As the Consent Order records PtP remains of the view that that the Decision Notice should have been quashed on this ground also.

G1: Planning policy requires the Applicant to demonstrate both that the use of agricultural is necessary and that it has selected poorer quality land has been used in preference to higher quality (BMV) land

Policy ENV 5 of the Uttlesford 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;"*

The NPPF refers to recognising the economic and other benefits of BMV and, as noted above, includes a footnote which states as follows:

> *"62. 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".*

Paragraph 013 Reference ID: 5-013-20150327 of the NPPG 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".*

[9] A copy of the Decision Notice in relation to the Wichenford appeal was provided in conjunction with PtP's original submission (dated 1 September 2022)

The March 2015 Written Minestrial Statement ("WMS") sets out that:

> *"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. When we published our new planning guidance in support of the Framework, we set out the particular factors relating to large scale ground mounted solar photovoltaic farms that a local council will need to consider. These include making effective use of previously developed land and, where a proposal involves agricultural land, being quite clear this is necessary and that poorer quality land is to be used in preference to land of a higher quality…. 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"*

G2: Recent Planning Appeals confirm that the WMS remains a material consideration in decisions relating to the proposed use of BMV Land

Written Ministerial Statements are statements of government policy. They remain in force unless and until expressly withdrawn or modified (see Save Britain's Heritage v Secretary of State [2018] EWCA Civ 2137 at para. 51).

Policy set out in a WMS is obviously a material considerations for the purposes of section 70 of the 1990 TCPA. It follows that a failure to take a WMS into account is an error of law which vitiates the decision taken (see Oxford Diocesan Board of Finance v Secretary of State [2013] EWHC 802 (Admin)) at para. 30).

In the Decision Notice relating to the recent appeal regarding **Land north of The Street, Cawston, Norfolk** (Appeal Ref: APP/K2610/W/21/3278065- Decision Date: 7 June 2022 [10)], 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.

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".*

[10] A copy of the Decision Notice in relation to the Cawston appeal was provided in conjunction with PtP's original submission (dated 1 September 2022)

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".*

The 2023 **Lullington Appeal** referred to above related to a proposal that would result in the loss of almost 34 Ha of BMV land consisting of 15% grade 2, 34% grade 3a and 48% grade 3b with the remaining 3% defined as other land (blocks of woodland or water bodies). The following paragraphs of the Decision Notice illustrate both the importance of the WMS and the importance of giving appropriate weight to the selection of poorer quality land:

> *"8. The parties agreed that the Written Ministerial Statement (WPS) dated 25 March 2015 relating to the unjustified use of agricultural land remains extant. It states therein that any proposal for a solar farm involving the best and most versatile agricultural land (BMV) would require to be justified by the most compelling evidence (my emphasis).*
>
> *9. The WMS is linked to updated National Planning Policy Guidance (NPPG), which explains that where a proposal involves greenfield land, consideration should be given as to whether the proposed use of any agricultural land has shown to be necessary, whether poorer quality land has been used in preference to higher quality land and to whether the proposed development would allow for continued agricultural use where applicable and/or where biodiversity improvements around arrays would be provided. This is reflected in the National Planning Policy Framework (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 higher quality.*
>
> *15. The appellant **provided an assessment of alternative sites** to demonstrate why agricultural land is to be used for the appeal development. This included assessing the opportunities that might be available on previously developed land (PDL)/brownfield land, commercial rooftops and lower grade agricultural land (grades 3b, 4 and 5).*
>
> *16. It is clear that a robust assessment has not been made of the grading of agricultural land within the remainder of the study area, which from the data held by Natural England has significant areas of Grade 3 agricultural land. While I accept the argument that it would not be practicable to undertake extensive investigation of the entire study area, I agree with the Council who pointed out that the explanatory note 3 to the Agricultural Land Classification maps sets out that Grade B reflects 'areas where 20-60% of the land is likely to be 'best and most versatile' agricultural land'. This to my mind adds to the criticism that the evidence has failed to demonstrate that there is no land available for this development within the study area of a lesser agricultural quality, contrary to national and local policy. It also does not stand up to scrutiny as the 'compelling evidence', which is sought in the WMS"*

G3: The Applicant's failure to identify alternative sites is a material consideration – there is no "compelling evidence" to justify the selection of the Site

The Applicant's **ALC Report** confirms that 72% of the site is BMV land. PtP has not undertaken an ALC assessment of the Site and must therefore rely upon the analysis undertaken by the Applicant's consultant.

The Applicant has not undertaken a site selection exercise. As PtP noted in its original (September 2022) submission, the 'FAQ' document published by the Applicant posed the following question "What other locations did you consider?" to which the Applicant responded

> *"**None**. Statera Energy has selected this site on its merits alone and believes it is a good site to promote", comparing this with the approach to considering alternative sites in other cases, and also identified the availability of lower grade land to accommodate the development".*

Policy ENV5, the NPPF, the PPG, and WMS all use words which place an evidential burden on the applicant for planning permission to demonstrate that alternative sites are not available. The clearest example of this is the wording used in the WMS which requires applicants to produce "the most compelling evidence". The effect of this is that it is the applicant who must produce evidence that there are no alternative sites (see by analogy Parkhurst Road Ltd v Secretary of State [2018] EWHC 991 (Admin) at para. 48).

The Applicant now attempts to justify the selection of the site as follows:

- the land within the Council's district is predominantly BMV land;
- the Site is in the vicinity of the existing high voltage 132kV connection and energy storage facility;
- there are no alternatives that can meet the proposed objectives of the Development;
- no parties who responded to the Application identified any alternatives; and
- the evidence submitted with the Application is the most compelling evidence and demonstrates that there are no alternatives to the Development on this Site.

These arguments are NOT compelling.

The Proposed Development has no connection to the locality. The Appellant's proposal is to connect the solar power station to the national grid. The power will be distributed across the country (and potentially internationally). It is possible – even likely - that none of the claimed benefits of the Proposed Development will accrue to Uttlesford. Similarly, the Proposed Development could provide power for Uttlesford's benefit while being located anywhere in the country. The Proposed Development should, for the purpose of site selection, be treated like any other power station and seen in a national context.

In its original submission, PtP referred to a number of Appeal decisions which confirm that there is no requirement to restrict the search area to land within the local authority in which the Site is situated.

At paragraph 52 of the Manuden Decision the Secretary of State's reasoning (through his inspector Mr Parker) is that the area of search for alternative sites should not be limited to Uttlesford District or close proximity to the connection point. Mr Parker found that the necessity of significant development of BMV agricultural land had not been demonstrated.

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 both the North and the South of Puckeridge (adjacent to the A10) should also be considered.

Fig 2 below illustrates that there are significant areas of Grade 3 land (shaded green) in relatively close proximity to the Site.

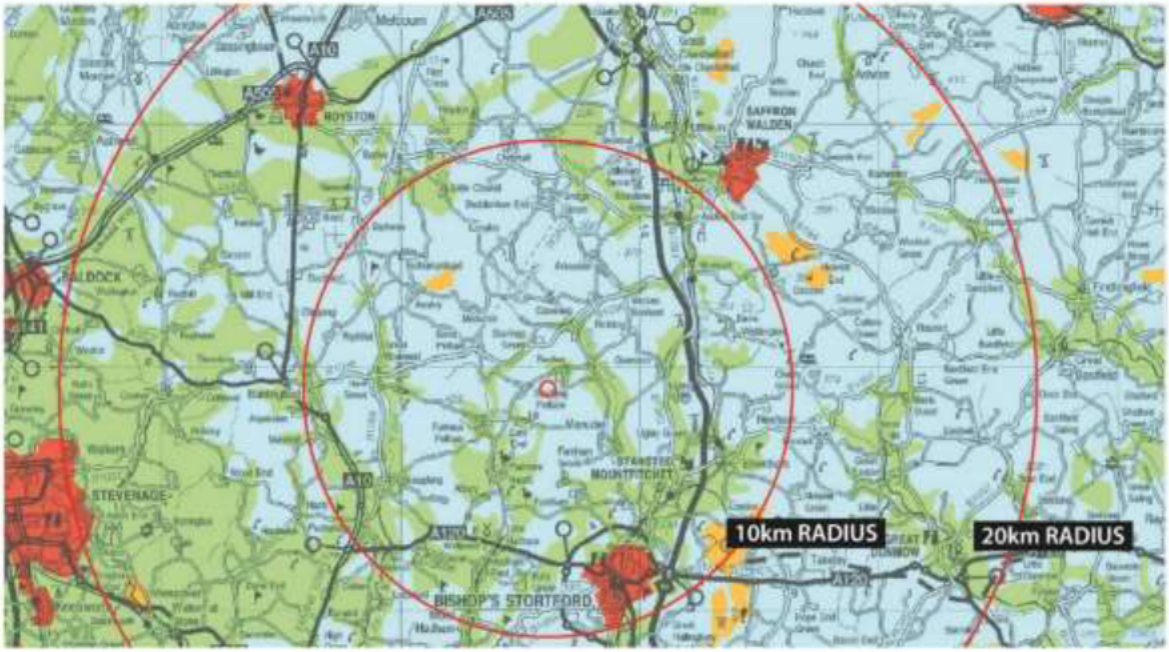

Fig 2 Extract from the ALC map maintained by Natural England

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).

It is also apparent that the high voltage network (see Fig 3 below) extends from Stocking Pelham:

- West (to the North of Buntingford);
- onwards to the South of Gravely;
- then South to Stevenage; and also
- North towards Royston

thereby passing through significant areas of Grade 3 land.

Fig 3: Map published by UK Power Networks showing the location of the 132kv power lines

In April 2023, Uttlesford District Council approved an application to construct a solar farm at Cole End Farm Lane, Wimbish Essex (UTT/21/0688/FUL). The ALC survey submitted by the Applicant in connection with this application[11] concludes that the whole of the site is comprised of **Grade 3b land.**

In addition, in September 2023, Uttlesford District Council approved an application in connection with yet another solar farm in the Uttlesford District (at Felsted – ref: UTT/22/0007/FUL) where the site consisted of land classified as **91% subgrade 3b** (moderate) agricultural land[12].

Lastly, the owner of the Site (who wishes to lease the land to the Applicant to facilitate the construction of the solar farm) owns at least 710 acres of land in or around Berden (including the Site). This land is registered with title numbers EX839712, EX839349, EX838316 (See **Appendix 2**). The Applicant offers no explanation as to which it failed to consider whether other areas of land in the same ownership might comprise lower graded agricultural land.

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

[12] See page 5 of the Design Statement: https://publicaccess.uttlesford.gov.uk/online-applications/files/8DD81EA2C6DFCE122D53E327F6AB9B95/pdf/UTT_22_0007_FUL-DESIGN_STATEMENT-3761348.pdf

G4: The proximity of the Site to the substation does not excuse the Applicant's failure to consider alternative sites

The Applicant contends (in its November Submission) that the selection of the Site can be justified 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".*

It is misleading to suggest that there is a requirement to connect a solar "" 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, the solar "farm" at Cole End in Saffron Walden (referred to above) is connected directly into the overhead network. The Planning Statement[13] 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".*

There is also no barrier (either technical or economic) to making a connection from a site which is some distance from a substation. The Planning Statement[14] which accompanies the application to construct a 40MW solar "farm" on land at Cutlers Green near Thaxted 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".*

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 Sawston[15] 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".*

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.

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

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

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

H: OTHER MATERIAL CONSIDERATIONS

H1: The "temporary" nature of the development should be given no weight

The Applicant's position is that the:

> *"The 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"*

However, the "temporary" nature of the Proposed Development should, in PtP's submission, be given little or no weight for the following reasons:

- Forty years is a substantial period of time. Any harm that flows from the Proposed Development will therefore impact for a substantial period;
- The majority of people currently alive will experience the Proposed Development as permanent as it will remain *in situ* for the rest of their lives; and
- The Proposed Development will establish the principle of development on the Site. This will make it easier, in future, to obtain a further "temporary" permission. Solar farms do not expire (unlike other temporary developments like mineral extraction). There is no reason that, at the expiry of 40 years, the Appellant or another developer won't want to take advantage of the grid connection at the Site again. Granting a "temporary" permission thus will create the conditions to daisy-chain "temporary" solar power station permissions on the Site.

Paragraph 2.10.151 of Draft National Policy Statement EN3 (on which the Applicant seeks to rely) states that:

> *"The Secretary of State should consider the period of time the applicant is seeking to operate the generating station as well as the extent to which the site will return to its original state when assessing impacts such as landscape and visual effects and potential effects on the settings of heritage assets and nationally designated landscapes".*

The extent to which weight should be given to the claimed temporary nature of a "solar farm" has also been considered in a number of recent Appeals.

In the **Alfreton Appeal** (referred to above), the Inspector notes (at Paragraphs 60):

> *"Objectors point out that the panels could simply be replaced after 40 years but it is difficult to predict whether national energy strategy will still require large solar installations in 2062. I consider that 40 years is a very significant period in people's lives during which the development would seriously detract from landscape character and visual amenity".*

At paragraph 40 of the **Manuden Decision** Mr Parker found that

> "*whilst the applicant refers to the temporary nature of the proposal, 40 years is a considerable length of time for [the development] to be present on site. Given this duration the proposed development would be seen as permanent features rather than as temporary.*"

Mr Parker's approach is in line with that taken by the Secretary of State in **Limolands Farm Appeal** [APP/B9506/W/15/3006387], in which the Secretary of State reasoned:

> *"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".*

H2: The cumulative impact of the noise associated with the Proposed Development in combination with other sources of noise in the locality (including the existing Battery Storage Facility constructed by the Applicant) will be unacceptable

PtP and Stocking Pelham Parish Council commissioned RBA Acoustics to undertake a noise assessment in order to determine the impact the impact of noise on local residents in the event that the Proposed Development is approved. The report produced by RBA Acoustics is attached as **Appendix 3**.

In relation to assessment undertaken by the Applicant, RBA Acoustics comment:

- The assessment has failed to include a number of key receptors in Stocking Pelham, located to the north-west of site (see receptors AL02 – AL05 in Figure 3 attached to RBA's report as Appendix C) - these receptors are located closer to the proposed noisy plant items (e.g. inverters/transformers) than some other receptors which were included in the assessment. This is considered to be a significant oversight;

- Noise levels used in this assessment are not specific to the proposed plant items and therefore further analyses should be undertaken with plant-specific noise data to ensure predictions are representative of future proposals; and

- The resulting worst-case night-time rating level (to Crabbs Green Farm) represents a +3dB exceedance over the background level, indicating a low but non-negligible risk of adverse impact.

The issue of noise (particularly low frequency noise) has been highlighted by the COncil's Environmental Health specialists and by nearby residents as being of significant concern. During the planning hearing conducted by Mr Shringley, Uttlesford's Environmental Health Officer ("EHO") argued that the noise resulting from the Proposed Development could well be a real problem for local residents. In particular, Uttlesford's EHO stated during the hearing that the only way in which low frequency noise could be mitigated would be to cover the noise producing equipment with concrete structures. This would undermine the temporary nature of the Proposed Development and also add to its industrial impact. We would encourage you to view the footage of hearing in relation to noise issues.

The negative impact of noise was considered in the 2022 Alfreton appeal where it appears to have been a material consideration. Note, in particular, the following comments of the Inspector:

> *"it remains the case that local occupiers would frequently encounter an inverter, or a pair of inverters on walking into the surrounding solar farm on footpaths ….and this would reinforce their impression of a significant and detrimental change in the character and appearance of the area".*