

## APPENDIX 1

### RECENT PINS DECISIONS WHERE PERMISSION TO CONSTRUCT A SOLAR "FARM" HAS BEEN REFUSED

<b>Appeal No</b>	<b>Date</b>	<b>Local Authority</b>	<b>Site details</b>
<b>3317818</b>	14th November 2023	Dacorum Borough Council	Little Heath Lane, Little Heath, Berkhamstead
<b>3300777</b>	22 September 2023	South Cambridgeshire District	Land to the South East of Burton End, West Wickham
<b>3313316</b>	21 July 2023	South Derbyshire District Council.	Land North of Lullington, Swadlincote, Derbyshire
<b>S62A/2022/0011*</b>	11 May 2023	Uttlesford District Council	Land East of Pelham Substation, Maggots End, Manuden
<b>3293079</b>	5 January 2023	Cornwall Council	Land at Tregorrick Farm, Tregorrick, St Austell, Cornwall
<b>3299953</b>	5 December 2022	Amber Valley Borough Council	Land north west of Hall Farm, Church Street, Alfreton
<b>3266505</b>	4 May 2021	Hinckley and Bosworth Borough Council	Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney, Nuneaton,
<b>3241953</b>	23 July 2020	Dorset Council	Land at Higher Farm, Fifehead Magdalen, Dorset

*\* This was not an appeal but an application made directly to PINS pursuant to Section 62A of the Town and Country Planning Act 1990 following the refusal of an initial application made to Uttlesford District Council in respect of the same site (ref UTT/21/3356/FUL)*

**3317818**

14th November 2023

Dacorum Borough Council

Little Heath Lane, Little Heath, Berkhamstead



## Appeal Decision

Inquiry held on 1, 2, 3, 15, 16 August and 25, 26, 28 October 2023

Site visit made on 17 August 2023

**by P J G Ware BSc(Hons) DipTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 14<sup>th</sup> November 2023**

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### **Appeal Ref: APP/A1910/W/23/3317818**

### **Little Heath Lane, Little Heath, Berkhamstead**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Energi Generation against the decision of Dacorum Borough Council.
  - The application Ref 22/01106/MFA, dated 31 March 2022, was refused by notice dated 8 September 2022.
  - The development proposed is the erection of a 25 MW Solar PV Array, comprising ground-mounted solar PV panels, vehicular access including internal access track, landscaping and associated infrastructure including security fencing, CCTV cameras, and grid connection infrastructure including transformers, substation compound buildings and cabling route to the point of connection.
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### **Decision**

1. The appeal is dismissed.

### **Procedural matters**

2. The Council confirmed (9 December 2021) that an Environmental Impact Assessment was not required. There is no reason to disagree.
3. Little Heath Lane Solar Array Objectors were granted Rule 6 (R6) status and took a full part in the inquiry.
4. One of the reasons for refusal related to highway safety and the effect of construction traffic on a canal bridge. However following discussions the Highway Authority indicated that it was satisfied with the further information submitted by the appellant. The Council did not contest that reason for refusal.

### **Main issues**

5. The parties are agreed that the proposal is inappropriate development in the Green Belt in terms of local and national policy.
6. With that background the main issues are:
  - The effect of the development on the openness of the Green Belt, and the purposes of including land within it.
  - The effect of the development on the landscape character of the area.

- Whether the harm to the Green Belt by reason of inappropriateness, and any other harm, is clearly outweighed by other considerations so as to amount to the very special circumstances necessary to justify the development.

## **Reasons**

### *The site, the surrounding area and the proposal*

7. The appeal site is 32 ha in size and is broadly triangular in shape. It is surrounded by agricultural fields to the north, east and west. A main line railway is at the southern boundary and Little Heath Lane runs along the western side. The appeal site is undulating and slopes upwards from the railway line northwards. There are no Public Rights of Way across the site.
8. The site is adjacent the village of Bourne End which lies beyond the railway line in the valley bottom. The valley also includes the Grand Union canal and a main road. There are some dwellings in the immediate vicinity of the site along Little Heath Lane. Hemel Hempstead lies about 600 m to the east and Berkhamsted is about 1 km to the west along the valley floor.
9. The site is within the Metropolitan Green Belt. Beyond Little Heath Lane to the west is the Chilterns Area of Outstanding Natural Beauty (AONB).
10. The proposal includes ground-mounted solar PV panels across the majority of the red line site, along with internal access tracks, 70 pole-mounted CCTV cameras, security fencing, transformers and ancillary buildings.

### *Development plan policy context*

11. The development plan comprises the saved policies of the Dacorum Borough Local Plan (2004)(BLP), the Dacorum Core Strategy (2013)(CS) and the Site Allocations Development Plan Document (2016).
12. The reasons for refusal (leaving aside the highways issue) referenced policy CS5, which deals with inappropriate development in the Green Belt. Landscape effect is dealt with by policies CS24 (dealing with the AONB) and CS25 (dealing with landscape character).
13. Saved BLP policy 97 was cited in the reasons for refusal, but not listed in the Statement of Common Ground as a relevant policy. It deals with the AONB and appears to have been effectively superseded by CS24.
14. It is common ground that the adopted development plan does not contain an up to date policy on renewable energy. It is also clear that, especially under these circumstances, national policy in the National Planning Policy Framework (the Framework) and national guidance is a very important material consideration.

### *Green Belt openness*

15. There is no dispute between the parties that Green Belt is a spatial planning designation and not a landscape policy. That said, it is clear that the openness of the Green Belt has a spatial as well as a visual aspect, so assessment of openness is not just a matter of comparing the current nature of the land – in this case undeveloped pasture - with the proposal. The reason for refusal only alleges harm to the visual component of openness but, in line with national and

- local policy, I will consider both aspects. This approach was also adopted at the inquiry.
16. From a spatial perspective, the proposal would introduce a substantial amount of development into an open area. This would particularly result from the ground coverage of the arrays, along with the access tracks, fencing and other taller features. The appellant's position is that the development would be relatively modest in mass and footprint. In terms of three dimensional mass I agree with that position to an extent, as the panels themselves would be relatively limited in height – although some other elements of the scheme would be taller. I will return to that below in terms of the effect on the landscape. I do not agree that the footprint of the development would be modest as, dealing with that area which would become the solar farm (as opposed to the blue line area), the footprint would be very considerable. The proposal would cause moderate harm to the openness of the Green Belt in spatial terms.
  17. I will deal with the visual effect of the proposal in more detail below but, in summary, I consider that the development would be visually prominent from a number of locations and would appear as an uncharacteristic form of development. It would cause moderate harm to the openness of the Green Belt.
  18. The appellant's position is that the grass beneath the panels would still be seen. To a limited extent this is correct and this would reduce the visual impact of the scheme. However from a distance the panels and associated structures would blend together, as illustrated by a number of photomontages and plans, and the grass beneath the panels would be visible to only a very limited extent. Conversely as one approached the site, the grass would become much more visible, but the presence of the panels, fencing and other elements would be all the more prominent and harmful to the perception of openness.
  19. I acknowledge the appellant's argument that the proposal is temporary in nature (40 years) and that the development would be removed and the land restored to its former condition – in essence openness would be restored at that point. Leaving aside the discussion as to what may happen at the end of the 40 year period – which can only be speculation - I do not find this argument to be persuasive in terms of reducing the effect on Green Belt openness. Although the proposal is for a limited period, the length of that period is very substantial. But even more importantly, the fundamental aim of national Green Belt policy is to prevent urban sprawl by keeping land permanently open. With that well established policy background it cannot be right that the fact that approval is sought for a 40 year period is accorded more than very limited weight in favour of the scheme in relation to the loss of openness. To do so would go against the concept of permanence.
  20. Consequently, both visually and spatially, the proposed development would result in moderate harm to the openness of the Green Belt. This adds to the harm caused by reason of inappropriateness.

*Green Belt purposes*

21. In terms of the purposes of the Green Belt designation, the Council's position is that the land currently performs well against four of the five purposes as set

- out in national policy, and that the proposal would harm the purposes of designation. (It is agreed that the fourth purpose, relating to historic towns, is not relevant in this instance).
22. I will deal with the first two purposes of designation together, as they are very closely linked in this case.
23. The gap along the valley between Hemel Hempstead to the east and Berkhamsted to the west is relatively narrow. It comprises sloping land running down to the transport links between the two settlements at the foot of the slope, and is interspersed by roads such as Little Heath Lane running up the valley side. To the east, the Council has released a large parcel of land for development (the LA3 site) which makes the remaining gap all the more important.
24. The site currently performs well in relation to the Green Belt purposes related to the unrestricted sprawl of large built-up areas and preventing neighbouring towns merging into one another. The appellant has stressed the distance between the towns and the limited intervisibility. However the LA3 development combined with the proposal would significantly reduce the gap and the effect of this would be clearly visible from the opposite side of the valley, amongst other locations.
25. However one describes the nature of the proposal – and various terms were used at the inquiry – to my mind it would result in a significant reduction in these first two Green Belt purposes.
26. In relation to safeguarding the countryside from encroachment, the site currently performs a useful function. This is almost self-evident as the site is currently an open field and forms part of a number of such fields which are representative of the countryside in the area. The proposal, however it might be described, would not appear as countryside. Despite the maintenance of some space between and around the panels, the arrays and associated structures would fundamentally alter the countryside appearance of the fields. This would result in encroachment, in contradiction of the third Green Belt purpose.
27. The final purpose of the Green Belt is to assist in urban regeneration, by encouraging the recycling of derelict and other urban land. The Council stated that the site performs well against this purpose. However there is no suggestion that derelict or other urban land is available or suitable for the proposal. Under these circumstances I do not consider that the location of the site in the Green Belt assists in deflecting development towards urban areas. Accordingly, the proposal would not be in conflict with this purpose of the Green Belt.

*Green Belt conclusion*

28. The parties agree that the proposal is inappropriate development in the Green Belt. This is, by definition, harmful to the Green Belt. In addition the proposal would result in moderate harm to the openness of the designated area and conflict with three of the purposes of Green Belts. The harm to the Green Belt arising from these matters attracts substantial weight against the proposal. The proposal would conflict with policy CS5 and national policy.

*The effect on landscape character, including the Chilterns AONB*

29. The Dacorum Landscape Sensitivity Study and the Stage 2 Green Belt Review both noted that the site had a high or very high sensitivity to change. I do not take these documents as highly material, and I am fully aware that they deal with potential housing development as opposed to a solar farm. However they do serve as a useful background to considering the baseline landscape.
30. The national approach relating to the effect of solar development is set out in Planning for Renewable and Low Carbon Energy. Amongst other matters this states that "The deployment of large-scale solar farms can have a negative impact on the rural environment, *particularly in undulating landscapes*. However, the visual impact of a well-planned and well-screened solar farm can be properly addressed within the landscape if planned sensitively." (My emphasis). This approach is reflected in the industry's own guidance which notes that flat sites are best for PV projects.
31. Whilst I agree with the appellant that solar farms do not have to be completely hidden to be acceptable, the extent of any slope has a direct and obvious correlation with the degree of effect and any potential harm caused by a proposal. In this case the significant slope down to the valley floor brings most of the proposal above the height of buildings, movement corridors and viewpoints in the valley below. In addition the presence of the slope on the other side of the valley increases the visibility of the appeal site from that direction.
32. Before turning to the effect on landscape character at various locations, it is useful to identify the location of viewpoints from which the development would be visible. There was some disagreement between the parties on this matter – at least in written evidence - where the appellant implied that there were no views of the site from the north and west.
33. At close range there are gaps – two in particular - in the hedgerow along Little Heath Lane from which clear views of the site can be gained. These would be most relevant to walkers or horse riders, as drivers' attention would be predominantly focussed on the narrow road. Views across the site can be clearly obtained from Little Heath House and Rosamaria, also on Little Heath Lane. On the opposite side of the site, some much more limited views can be obtained from Pouchen End Lane.
34. From the valley floor there are a number of views up the slope of the site. These can be obtained from the railway line, from the Canal Walk (and of course the canal itself) and from properties on either side of the canal. To some extent these views are filtered by buildings and trees, and to a variable extent these limit the effect on the landscape. However the appeal site is clearly visible rising up from the valley from a range of viewpoints.
35. Crossing to the other side of what is a relatively steep and narrow valley, the site is clearly visible from a number of public viewpoints on Boxmoor Trust land (as representative of other locations) and the golf course, along with some parts of eastern Berkhamsted as it rises up the southern slope of the valley.
36. The parties differed as to the effect of the proposal from some viewpoints. It was suggested that this was because of shortcomings in the appellant's Zone of Theoretical Visibility (ZTV) exercise. It is certainly true that the ZTV was based

on panel heights of 2.4m whereas the panels can reach 2.8m, and some other elements of the infrastructure would be substantially taller. However I have no reason to consider that this significantly influenced the landscape professionals in reaching their conclusions. Nor do I accept that the criticism of the appellant's photographs and montages is well founded. I, and I am sure others, have reached my conclusions largely based on my site visit and the submitted plans.

37. The parties are agreed that there would be a large adverse impact on landscape character within 500m of the site. This is an important matter as this distance would include views from Bourne End, Little Heath Lane and the dwellings located along it, Pouchen End, the Grand Union canal and walk, and the railway line. From all those locations the effect on the landscape character would be moderately adverse. (This radius also includes part of the AONB, which I will deal with below.)
38. As one moves further from the site the parties agree that the impact would decrease from large to moderate – at a point somewhere between 500m and 2kms. Precisely where this transition – not a fixed point - would occur depends on the exact viewpoint and the exercise of professional judgement. Within this wider radius I am especially concerned with the landscape effect as viewed from the Boxmoor Trust land and the golf course on the southern side of the valley. From this area the appeal site rising up the far side of the valley is very visible in largely uninterrupted views.
39. From those locations, although I appreciate that there would be gaps between the panels and spaces elsewhere on the site, the proposal would read as a largely uninterrupted mass. Whether one describes this as an industrial development or something which is increasingly to be expected in the countryside, what matters is the effect on the landscape in these panoramic views, where one can appreciate both Hemel Hempstead, Berkhamstead and the gap between. The proposal would have a moderate (at best) effect on the landscape.
40. One matter which might add to the effect of the proposal on the landscape is the question of glint and glare. At the inquiry it was stated for the appellant that an anti-reflective coating would be used, although this matter was not covered in evidence. I am not in a position to determine the effectiveness of any coating and any consequent effect on the landscape.

*Conclusion on the effect on general landscape character*

41. Much of the landscape effect of this proposal relates directly to the sloping nature of the site, which has the consequence of increasing visibility and potentially increasing the effect of the scheme. This consideration is in the light of the national and industry approach to the best siting of solar developments.
42. It was said at the inquiry that the appellant had considered the specific consequences of the slope. Whilst I do not have any reason to doubt this, there is little or no evidence of this in the written evidence or the initial appraisals.
43. The appellant posited two highly relevant questions. Firstly "Whether the panels would be visible from a number of vantage points in the surrounding



area, and the weight to be attached to that visibility." From what I have already said it will be clear that my response is the panels would be visible from a number of vantage points and that the effect on the landscape would be at best moderate. The second question, which to an extent feeds back into the first, is "Whether the undulating form of the site and its clear downward slope to the south would increase the visibility and impact of the development compared with flat and, if so, whether this matters." To those questions, for the reasons set out above, I would answer in the affirmative.

44. For the above reasons, the proposal would cause at least moderate harm to the landscape character of the area. It would conflict with policy CS25. That the harm would persist for 40 years weighs in the balance against the development.

*The effect on the setting of the Area of Outstanding Natural Beauty*

45. I will now turn to the potential effect of the proposal on the AONB. There was some discussion at the inquiry as to precisely where the AONB boundary runs – to the west of Little Heath Lane, down the centre line of the road or even on the east side adjoining the appeal site. To me this is tantamount to considering angels dancing on a pinhead. What matters is that the appeal site is not in the AONB, but is very close to it.
46. National policy confirms the existence of the concept of the 'setting' of an AONB where it requires "*..that development within their setting [i.e. of an AONB] should be sensitively located and designed to avoid or minimise adverse impacts on AONBs.*" [My insertion]
47. There is no definition of the setting of the AONB in the development plan. The Chilterns Conservation Board (CCB), to whom the Council deferred in this respect, clearly considered that the appeal site forms part of the setting of the AONB. Indeed given the fact that the AONB and the appeal site are contiguous or virtually contiguous, it would be surprising were that not the case. In support of this position, I am aware that the 2km radius from the site (referenced above) includes part of the AONB.
48. The appellant's position is that the effect on setting would be limited and highly localised. To an extent I agree as, although there are few views of the site from within the designated area, the main consequence of the proposal would be in taking views towards the AONB from the south. In this case, I am especially concerned with the views of the site and the AONB from the higher land on the far side of the valley. In those views one can appreciate the site set against the AONB and, as the appellant accepted, the site forms part of the same landscape. The views towards the AONB from the far side of the valley would be adversely affected – there was reference to the appeal site forming part of the 'gateway' to the designated area, which is an approach I recognise.
49. The CCB, whilst acknowledging the views into the AONB, also dealt with the perceptual qualities for people inside the area. In my view there would be a very limited effect on those qualities.
50. Overall, the proposal would harm the landscape setting of the AONB, and would conflict with policy CS24 and national policy. This adds additional weight to the landscape factors weighing against the proposal. Although the viewpoints and the appearance of the proposal are the same as considered in

general landscape terms, this is not double counting, as the policy context is quite different.

*Valued landscape*

51. The term 'valued landscape' is found at paragraph 174(a) of the Framework. If an area is classified as a valued landscape this policy bites. In the Council's landscape evidence to the inquiry it was explained in some detail that the area was considered to be a valued landscape – a contention refuted by the appellant's landscape witness.
52. In the officer's report on the application (written by the Council's planning witness who appeared at the inquiry giving planning evidence) there was no suggestion that this was a valued landscape. Not was there any reference to this in the decision notice. The agreed Statement of Common Ground specifically stated that the site was not in a valued landscape. Although I do not doubt the professional opinion of the Council's landscape witness, it is far from clear if this is a position held by the Council itself.
53. For an area to qualify as a valued landscape it has to have sufficient qualities to elevate it above more everyday areas. As will be seen above, I am concerned with the effect of the proposal on the landscape qualities of the area, but this does not mean that I automatically consider that it has valued landscape status or that Framework paragraph 174(a) applies. In conclusion I do not consider that the site is part of a valued landscape as referenced in the Framework.

*Overall conclusion on landscape*

54. The proposal would cause at least moderate harm to the landscape character of the area and, to that, I add the further harm related to the setting of the AONB. I do not consider that the site falls within a valued landscape in Framework terms.

*Renewable energy benefits*

55. A material consideration in the determination of this and other proposals for renewable energy are the various elements of national policy and guidance setting out the importance of providing renewable energy infrastructure. A brief summary of some key policy documents is set out below, but there is no need to rehearse these in detail, as the importance of renewable energy is (subject to the point below about part of the Councils' evidence) not in dispute. What is in dispute is the weight which should be accorded to this matter, and subsequently whether this and other benefits outweigh the harm.
56. Dealing first with the Framework, the policy is clear that even small scale projects can help reduce greenhouse gas emissions, and that such schemes should be approved if any impacts are, or can be made, acceptable. Planning Practice Guidance on renewable and low carbon energy also encourages the identification of suitable areas for renewable energy. Draft and emerging National Policy Statements support the need for the delivery of major energy infrastructure.
57. The Energy White Paper (December 2020) and the Net Zero Strategy (October 2021) both emphasise the measures required to transition to low carbon energy generation by 2035. This is in the light of the fact that the government has declared a climate emergency and set a statutory target of achieving net

- zero emissions by 2050. This is also a material consideration. The importance of urgent action has been emphasised in a number of documents, for example the Sixth Assessment Report of the Intergovernmental Panel on Climate Change which indicates that delay in global action to address climate change will miss a rapidly narrowing window of opportunity to secure a liveable and sustainable future.
58. At the local level, it is common ground that the development plan does not contain an up to date policy on renewable energy. The Council has not allocated any sites for renewable energy schemes and policy CS28 sets out only a general ambition to secure emissions reductions and energy efficiency. The Council itself has declared a Climate Emergency, but the approach – as explained at the Inquiry - is to focus on energy efficiency and rooftop solar schemes. The development plan is silent on the approach to be adopted towards larger renewable proposals.
59. Turning away from the clear national support, in principle, for renewable energy projects, a further element of national policy is that developers should not be required to demonstrate a need for such projects. Given this approach to need, it seemed surprising that much inquiry time was taken up with the question of the appellant's search for a site.
60. It is clear that, with the extent of Green Belt and AONB in the area, any potential sites are likely to be within some type of designated area. However the appeal site benefits from an available connection to the grid which is an obvious asset in terms of speedy delivery. Criticism that the search could have been more extensive does not take the matter much further, as the nature of electricity generating proposals could theoretically mean that a development could be located anywhere in the country, or even abroad. A line has to be drawn somewhere and it is concluded that the appellants undertook an extensive and reasonable site search.
61. Equally the discussion at the inquiry as to whether the appellant company could economically build a smaller solar farm takes the consideration of the merits of the appeal scheme very little further. It was stated for the appellant, but not supported by evidence, that smaller solar farms are no longer viable. Conversely the appellant's own website appears to be promoting smaller schemes. But in any event I have to deal with the proposal before me, and there was nothing to suggest that a smaller development would be viable or that there was a suitable location for it.
62. Before concluding on renewable energy, it is necessary to address one substantial element of the Council's evidence. The planning officer who was the case officer and appeared for the Council at the inquiry clearly and specifically questioned the legitimacy and direction of renewable energy policy in a substantial part of his evidence. In particular he stated that the reports of the Intergovernmental Panel on Climate Change should be treated with a fair degree of scepticism, and that there is a clear dichotomy between science and policy. It was, to say the very least, most unusual to hear and read those views being put forward on behalf of an authority which has itself declared a Climate Emergency.
63. In response to a question from me related to the materiality and weight of these views, the response was that the weight to be accorded to them was a matter for the decision maker. That was not helpful as it did not indicate the

weight which the witness considered should be attached to his evidence. However, for the avoidance of doubt I have taken no account of those views – partly because criticism of government policy is far removed from the scope of the inquiry, partly because the criticism was largely unsupported by evidence, and partly because I remain in genuine doubt as to whether the views put forward represented those of an individual officer or of the Council.

64. In conclusion on renewable energy, it is clear that national policy as a whole supports and encourages the development of renewable energy sources, including solar developments. There is a significant national need to reduce carbon emissions and increase renewable energy generation to achieve Net Zero by 2050 and a Net Zero electricity system by 2035. These matters carry significant weight in support of the appeal proposal.

*Other material considerations*

65. The Council does not allege any amenity effect on the occupiers of residential properties, although the proposal would be visible from a number of dwellings. This has been raised in representations by others opposed to the proposal. However, having viewed the site from a number of affected properties, although the view would undoubtedly change, I do not consider that the residential amenity of the occupiers would be harmed.
66. In terms of the loss of agricultural land, the proposed development would not result in a significant loss of Best and Most Versatile Agricultural Land. In addition there is the potential that the land could be used for grazing between and under the panels if the development goes ahead. I do not consider that this matter weighs against the proposal.
67. There is a suggestion that the proposed security fencing, which I have assessed as part of the proposal, would be inadequate and would need to be replaced with something more sturdy and visually intrusive. However, even if this were to be the case, that would be the subject of separate consideration, and is not before me.
68. The effect of the proposal on ecological interest was not raised by the Council or by any nature-focussed organisation, but was the subject of detailed evidence in opposition to the proposal by an expert local resident. However the balance of the evidence is that the site is of limited ecological value, and that this is largely confined to the boundaries - which will largely be retained. There would be an agreed Biodiversity Net Gain of at least 77% in area units and 34% in linear units. A condition could deliver a skylark mitigation plan. For all these reasons, the effect of the proposal on ecology is not a matter weighing against the proposal.
69. I appreciate that, during the construction period, there would be an employment benefit, reducing very substantially when the development is operational. I have noted the appellant's statement that the landowner would reinvest the monies into the area (who wrote in to that effect), but there can be no guarantee of this. I give these matters very limited weight.
70. The appellant criticised the way in which the Council dealt with the application, and in particular whether the submitted reports had not been read, and the fact that there was no professionally qualified landscape input. However I do

not consider that there is persuasive evidence that the Council's decision making process was flawed.

*Planning balance and conclusion*

71. The parties agree that the proposal is inappropriate development in the Green Belt. This is, by definition, harmful to the Green Belt. In addition, the proposal would result in moderate harm to the openness of the designated area and conflict with three of the purposes of including land in the Green Belt. The harm to the Green Belt arising from these matters attracts substantial weight against the proposal.
72. In addition, particularly given the slope of the site and its visibility, the proposal would cause at least moderate harm to the landscape character of the area. To that, I add the further harm related to the setting of the AONB.
73. 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. To this I add the very limited weight related to the economic benefit of the proposal.
74. In this case, the harm to the Green Belt and that caused by the landscape/AONB issues would not be clearly outweighed by the other considerations identified and therefore the very special circumstances necessary to justify the development do not exist.
75. For the reasons given above I conclude that the appeal should be dismissed.

*P. J. G. Ware*  
Inspector

## APPEARANCES

### ENERGI GENERATION LTD

David Hardy. Partner CMS Cameron McKenna Nabarro Olswang LLP	
He called:	
Daniel Haigh BSc(Hons) GradDip PgDip CMLI	Associate Director RSK ADAS Ltd
Ian Wickett FCIHT	Senior Associate Director RSK
Emma Mundy BSc(Hons) MSc CEcol CEnv MCIEEM	RSK ADAS Ltd
Kenny Dhillon BSc(Hons) PgCert TP MRTPI	Director, Planning and Landscape, RSK ADAS Ltd

### DACORUM BOROUGH COUNCIL

Sam Fowles of Counsel, instructed by Head of Legal Services	
He called:	
Carly Tinkler BA CMLI FRSA MIALE	Independent landscape architect
Andrew Parrish BA(Hons) MA MRTPI	Lead planning officer

### LITTLE HEATH LANE SOLAR ARRAY OBJECTORS (RULE 6 PARTY)

Michael Vallence (who also gave evidence) and Ms Dina Westenholz-Smith
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### INTERESTED PERSONS/ORGANISATIONS

Michael Stubbs	Chiltern Conservation Board
Christopher Berry	CPRE Herts
Elizabeth Hamilton	Local resident
Michael Pritchard	Bourne End Village Association
Mr Mawe	Local resident

## **INQUIRY DOCUMENTS**

Doc 1	Appellant opening
Doc 2	LPA opening
Doc 3	Rule 6 opening
Doc 4	Table comparing levels of L & V effects
Doc 5	Statement by Bourne End Village Association
Doc 6	Energi Generation photograph of solar farm
Doc 7	Statement by Mrs Hamilton and 10 appendices
Doc 8	Designing out crime officer letter
Doc 9	PPG Natural environment
Doc 10	NE Guide to assessing development proposals on agricultural land
Doc 11	Hansard extract 1/5/2019
Doc 12	Conditions agreed between the parties (and note of disputes over conditions related to date of first export and Saturday working, and condition 10)
Doc 13	Agreed accompanied and site visit routes
Doc 14	Crays Hill appeal decision (3318171)
Doc 15	Amendment to SOCG
Doc 16	Tables of comparison of landscape and visual effects ADAS and DBC
Doc 17	Sherbourne appeal decision (3317247)
Doc 18	Closing statement by Rule 6 party
Doc 19	Closing statement by the Council and authorities
Doc 20	Closing statement by the appellant

## **CORE DOCUMENTS**

Can be accessed using the following link:

[Public inquiries \(dacorum.gov.uk\)](https://www.gov.uk/public-inquiries)

**3300777**

22 September 2023

South Cambridgeshire District

Land to the South East of Burton End, West Wickham





# Appeal Decision

Site visit made on 12 July 2023

**by H Wilkinson BSc (Hons) MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 22 September 2023**

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**Appeal Ref: APP/W0530/W/22/3300777**

**Land to the South East of Burton End, West Wickham, CB21 4SD**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Lodge against the decision of South Cambridgeshire District Council.
  - The application Ref 20/01564/FUL, dated 2 March 2020, was refused by notice dated 10 December 2021.
  - The development proposed is described as the 'installation of a solar farm and associated infrastructure including access'.
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## Decision

1. The appeal is dismissed.

## Main Issues

2. Having regard to the Council's reasons for refusal, the main issues are the effect of the proposed development on:
  - the character and appearance of the area including the landscape;
  - the use of best and most versatile agricultural land, and whether the sustainability considerations and need for the development are sufficient to override the need to protect the agricultural value of the land.

## Reasons

### *Character and appearance*

3. For the purpose of the Greater Cambridge Landscape Character Assessment 2021, the appeal site lies within the West Wickham Wooded Claylands landscape character area, which is characterised by undulating boulder clay landform, dissected by small stream valleys. There are a scattering of farmsteads and small linear settlements interspersed with medium blocks of woodlands and trees. An irregular patchwork of medium to large arable fields are united by the gently rolling landform and woodland which together create a distinctive landscape and afford open, panoramic views towards a wooded skyline. According to the character assessment, the landscape area is regarded as having a good landscape condition and a strong character.
4. The appeal site extends to 1.8 hectares and comprises a mix of scrubland and grassland, the topography of which is generally flat. The site occupies a prominent location adjacent to the road and within close distance of the junction of Burton End, The Common, Skippers Lane and Common Road. Large, open arable fields with limited boundary features, surround the appeal site. The site and its surroundings embody the typical landscape characteristics of the

character area, which positively contributes to the rural character of the locality.

5. A Landscape and Visual Appraisal<sup>1</sup> conducted in accordance with industry standard methodologies and guidelines accompanied the planning application whilst the appeal is also supported by a Supplementary Landscape and Visual Impact Appraisal<sup>2</sup>, planting plan and landscape specification. The findings of these appraisals suggest that the landscape character has a low sensitivity to development and a high capacity to accommodate the proposal. Having regard to the evidence before, in my view the relevant landscape including the appeal site has a medium landscape value and medium sensitivity to change.
6. The appeal development relates to the installation of 4580 solar panels which would be arranged in 22 rows, around 5 metres apart and would be orientated in an east to west direction across the appeal site. The installation would reach a maximum height of some 3 metres above ground and would have a dark grey/dark blue/black finish. In addition, a substation and switch room would be provided either side of the proposed access whilst an inverter would be in the centre of the site. The substation, being the tallest of the proposed structures would reach a height of around 3.5 metres.
7. The attractive, unspoilt open qualities of the appeal site would be replaced by regimented rows of uniform solar panels mounted on metal frames together with ancillary buildings. The homogenous and typically geometric form of the proposal together with its industrial appearance and dark finish would erode the rural character of the appeal site and diminish its contribution to the key landscape characteristics of the West Wickham Wooded Claylands area. Within this context, I find that the proposal would read as a highly obtrusive and discordant form of development. As such, it would have a harmful effect on the landscape.
8. Due to the exposed and plateaued nature of the surrounding landscape there are long, open views across the area in which the appeal development would be appreciated. Consequently, whilst I recognise that the landscape change and visual effects would be relatively localised, the appeal proposal would nonetheless be readily perceived by passers-by. The proposal would be particularly apparent to road users when approaching the site from both directions due to the level of the site relative to the road and the lack of field boundaries. In addition, and notwithstanding the intervening distance, there would be sight of the solar array and ancillary buildings from the surrounding rights of way network. Instead of viewing pleasant, open fields and panoramic views of the countryside from these locations, the visual receptors would experience row upon row of solar panels and utilitarian structures which would be at odds with their rural surroundings.
9. It has been put to me by the appellant that the provision of brushwood screening would offer mitigation in the short term whilst the proposed new hedgerow planting would reduce the adverse impacts and provide an overall enhancement in the long term. I acknowledge that the additional planting together with the undulating topography of the surrounding land would to some extent soften the visual effects. However, the subdivision of the field would result in a fragmented field pattern which would be uncharacteristic of the site

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<sup>1</sup> Landscape and Visual Appraisal (11 November 2020)

<sup>2</sup> Supplementary Landscape and Visual Impact Appraisal (May 2022)

as it is today. In doing so, this would highlight the conspicuous form of the appeal scheme and compound its harmful effect on the character of the landscape. Overall, I find against all this background that the scheme would have a moderate harmful visual impact.

10. In coming to this view, I recognise that the site's immediate surroundings are not completely devoid of built form. Indeed, I observed at my site visit that there are two former aircraft hangers located in proximity of the appeal site which have been modernised for commercial use. Both buildings are of a substantial scale, particularly when compared to the ancillary buildings proposed under the appeal scheme and are prominent within the landscape. However, these buildings are indicative of the area's history and their general form and appearance resembles their original design. Moreover, their appearance is not dissimilar of more modern agricultural units which are commonplace in the countryside. As such, they do not appear discordant in the context of their surroundings or detract from the character and appearance of the area.
11. I also acknowledge that the proposed development would be largely reversible, and that the impacts could be limited by condition to a period of 25 years. This however is a relatively long period of time during which the adverse impacts would be experienced. Therefore, I am not persuaded that the development would be justified on this basis.
12. For the above reasons, I find that the proposed development would adversely affect the character and appearance of the area including the landscape. The proposal is therefore contrary to Policies S/7, CC/2, NH/2 and HQ/1 of the South Cambridgeshire Local Plan 2018 (Local Plan). Amongst other aspects, these policies seek to ensure that development respects and retains or enhances the local character and distinctiveness of the host landscape.

#### *Best and most versatile agricultural land*

13. Annex 2: Glossary of the National Planning Policy Framework (the Framework) sets out that best and most versatile agricultural land (BMV) includes land in grades 1, 2 and 3a of the Agricultural Land Classification. For the purposes of Natural England's Provisional Agricultural Land Classification Maps, the appeal site is recorded as grade 2 land. This however is contested by the appellant who submits that in accordance with the site-specific assessment<sup>3</sup> (ALC) submitted as part of the appeal, the site is grade 3b – moderate quality agricultural land.
14. The Planning Practice Guidance (PPG) indicates 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<sup>4</sup>.
15. Policy CC/2 of the Local Plan indicates that planning permission for proposals to generate energy from renewable and low carbon sources will be permitted where they do not have unacceptable adverse impacts on high quality agricultural land. Policy NH/3 deals specifically with the protection of

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<sup>3</sup> Agricultural Land Classification Assessment prepared by Wilson Wraight dated May 2022

<sup>4</sup> Paragraph: 013 Reference ID: 5-013-20150327 Revision date: 27 March 2015

agricultural land and states, amongst other criteria that permission will not be granted where it would lead to the irreversible loss of grades 1, 2 or 3a agricultural land unless the land is allocated within the Local Plan or sustainability considerations and need for the development are sufficient to override the need to protect the agricultural value of the land.

16. The Council's delegated report indicates that there are large swathes of high-quality agricultural land within the district. The appeal site area extends to some 1.8 hectares and is an isolated parcel of land in so far as it was severed from the main farming enterprise some decades years ago. I am advised by the appellant that the appeal site has been left fallow for many years and is not currently in a state that could be farmed without considerable input and improvement. The evidence also suggests that owing to the lack of underground drainage and the restricted site area, the agricultural potential of the appeal site is limited.
17. The proposed solar farm would occupy the appeal site for a period of 25 years, after which the land would be returned to wholly agricultural use. For the period that the development would be in situ there would be grazing opportunities between and under the arrays and therefore the land would remain partly in agricultural use.
18. Although there is no local policy requirement to undertake a sequential test, it is clear from the provisions of the PPG and the Written Ministerial Statement (WMS) dated March 2015 that preference should be given to development on land of lower agricultural quality and that there must be the most compelling evidence to justify solar farms on BMV land. In this regard, the appellant has provided details of the site search exercise which fixed the study area to within 6km of the National Grid Substations with capacity to connect a solar PV array. The appeal site is located approximately 320 metres from a grid connection.
19. The search exercise considered the availability/suitability of alternative sites on previously developed land within the defined radius, having regard to the Council's brownfield land register. When taking account of the required site area, housing allocations and grid connection, the appellant submits that there are no sites suitable to accommodate the proposed development. Although the Council is critical of the assessment, no suitable alternative brownfield sites have been identified which would challenge the appellant's assessment and, whilst an area of grade 3 agricultural land has been referenced, this is not within the control of the appellant and its availability is unclear.
20. The Government has repeatedly emphasised its commitment to increasing the supply of renewable energy within the UK. Whilst the 2020 target of 15% of all energy consumed to be from renewable energy sources has passed, in light of the 2050 net zero target there remains strong Government support for the provision of renewable energy technologies. Indeed, the Framework sets out clear support for the delivery of renewable and low carbon energy and associated infrastructure to mitigate climate change. The appellant identifies that nationally, energy demands are increasing which will need to be met by low carbon and carbon negative sources if we are to achieve the 2050 target and enhance energy reliability and security.
21. Solar PV installations can provide a significant contribution to meeting the legally binding target and increase the renewable energy capacity currently installed in the UK. In this regard, the proposal would provide 1 megawatt of

energy which would power approximately 650 local homes and contribute towards carbon neutrality. Further, paragraph 158 of the Framework indicates that projects of all scales provide a valuable contribution to reducing greenhouse gas emissions. Consequently, the renewable energy benefit of the appeal proposal must be accorded substantial weight.

22. Taking the above into account, it is my overall view that the sustainability considerations and the need for the development override the need to protect the agricultural value of the land. Furthermore, given that the site accounts for a very small proportion of the total BMV land in the region together with the site-specific factors set out above, I do not consider that the loss of the land for the period that the arrays would be in situ would harm the agricultural industry. Notwithstanding the conclusions of the appellants ALC, I have found that the proposal is acceptable even on the higher grade land and thus need not consider this any further.
23. Therefore, I conclude that the appeal proposal would accord with Policies CC/2 and NH/3 of the Local Plan where they seek to protect the agricultural value of the land and avoid the irreversible loss of grades 1, 2 or 3a agricultural land.

### **Other Matters**

24. The Council's delegated report indicates that West Wickham Conservation Area and West Wratting Conservation Area are located 1.7km and 2.8km from the appeal site respectively. There are several listed buildings located within some 800 metres of the appeal site including Nos 27 and 29 and The Vicarage, Burton End. Brook Farmhouse and No 57, The Common are located approximately 900 metres away. The setting of the above heritage assets is informed by the open countryside which immediately surrounds them. Although the proposed development would introduce new development onto land which is currently free of built form, given the intervening distances and landform, I do not consider that the proposed development would compromise the setting of the identified conservation areas or the setting of Nos 27 and 29 and The Vicarage. With regards to the other listed buildings identified, as their separation from the site is even greater, their setting would also be unaffected by the proposal.

### **Planning Balance and Conclusion**

25. I have concluded that substantial weight should be given to the renewable energy benefits of the scheme, which in this instance would amount to the compelling evidence required to justify a solar farm on the BMV land.
26. There would also be a biodiversity net gain through the implementation of the proposal with onsite enhancement and mitigation measures including planting of wildflowers underneath the arrays and additional hedgerow planting. The use of the site for agricultural grazing would support 1.5 FTE jobs for the duration of the solar farm operation whilst business rates would contribute to local economy. In addition, there would be short term economic benefits during the construction of the scheme. These factors are attributed moderate weight.
27. However, 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.

28. Accordingly, the appeal proposal conflicts with the development plan read as a whole and no material considerations, including the Framework have been shown to indicate that a decision should be taken otherwise than in accordance with it. Therefore, the appeal is dismissed.

*H Wilkinson*

INSPECTOR

**3313316**

21 July 2023

South Derbyshire District Council.

Land North of Lullington, Swadlincote, Derbyshire



## Appeal Decision

Hearing held on 18 April 2023

Site visit made on 19 April 2023

**by Gareth W Thomas BSc(Hons) MSc(Dist) DMS MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 21 July 2023**

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**Appeal Ref: APP/F1040/W/22/3313316**

**Land North of Lullington, Swadlincote, Derbyshire, DE12 8EW**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Lullington Solar Park Ltd against the decision of South Derbyshire District Council.
  - The application Ref DMPA/2021/1014, dated 22 June 2021, was refused by notice dated 8 August 2022.
  - The development proposed is for the installation of ground mounted solar photovoltaic panels with associated infrastructure and works, including substations, converters, inverters, access tracks, security fencing, boundary treatment and CCTV on land to the north of Lullington, Swadlincote DE12 8EW.
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### Decision

1. The appeal is dismissed.

### Main Issues

2. The main issues in this appeal are:
  - the effect of the proposed development on the use of best and most versatile agricultural land, including consideration of site selection processes;
  - the landscape and visual impacts arising from the appeal scheme; and
  - whether there would be unacceptable impacts on the significance of identified heritage assets.

### Reasons

#### Policy Background

3. A material consideration in the determination of planning proposals for renewable energy are the National Policy Statements (NPS) for the delivery of major energy infrastructure. The NPSs recognise that large scale energy generating projects will inevitably have impacts, particularly if sited in rural areas. In September 2021, draft updates to the Overarching National Policy Statement for Energy (EN-1) and the National Policy Statement for Renewable Energy Infrastructure (EN-3) were published. Both the existing and proposed NPSs state that the NPSs can be a material consideration in decision making on applications that both exceed or sit under the thresholds for nationally significant projects.



4. The UK Government has set a statutory target of achieving net zero emissions by 2050, and this is a significant material consideration. It has also declared a climate emergency. Since the declaration, the Sixth Assessment Report of the Intergovernmental Panel on Climate Change has indicated that it is more likely than not that global temperature increases will exceed 1.5 degrees Celsius above pre-industrial levels. The report indicated that delay in global action to address climate change will miss a brief and rapidly closing window to secure a liveable future. The UK Energy White Paper, Powering our Net Zero Future (2020), describes the costs of inaction as follows:

*"We can expect to see severe impacts under 3°C of warming. Globally, the chances of there being a major heatwave in any given year would increase to about 79 per cent, compared to a five per cent chance now. Many regions of the world would see what is now considered a 1-in-100-year drought happening every two to five years.*

*At 3°C of global warming, the UK is expected to be significantly affected, seeing sea level rise of up to 0.83 m. River flooding would cause twice as much economic damage and affect twice as many people, compared to today, while by 2050, up to 7,000 people could die every year due to heat, compared to approximately 2,000 today. And, without action now, we cannot rule out 4°C of warming by the end of the century, with real risks of higher warming than that. A warming of 4°C would increase the risk of passing thresholds that would result in large scale and irreversible changes to the global climate, including large-scale methane release from thawing permafrost and the collapse of the Atlantic Meridional Overturning Circulation. The loss of ice sheets could result in multi-metre rises in sea level on time scales of a century to millennia."*

5. The draft NSPs recognise that to meet the Government's objectives and targets for net zero by 2050, significant large and small scale energy infrastructure is required. This includes the need to 'dramatically increase the volume of energy supplied from low carbon sources' to ensure a reduction in the reliance of fossil fuels (which accounted for 79% of energy supply in 2019). Solar (together with wind) is recognised specifically in Draft EN-1 (para 3.3.21) as being the lowest cost way of generating electricity and that by 2050, secure, reliable, affordable, net zero energy systems are 'likely to be composed predominantly of wind and solar'.
6. At a national level, in combination with the drive to reinforce provision of renewable energy sources, the Government also acknowledges the need to ensure that projects come forward in appropriate locations. PPG guidance on renewable and low carbon energy states that 'there are no hard and fast rules about how suitable areas for renewable energy should be identified, but in considering locations, local planning authorities will need to ensure they take into account the requirements of the technology and critically, the potential impacts on the local environment, including from cumulative impacts.' (Paragraph: 005 Reference ID: 5-005-20150618).
7. Paragraph 152 of the National Planning Policy Framework (the Framework) confirms that the planning system 'should support the transition to a low carbon future in a changing climate', should 'contribute to radical reductions in greenhouse gas emissions' and 'support renewable and low carbon energy and associated infrastructure'. This recognises the responsibility placed on all communities to contribute towards renewable energy production. Therefore,

there is a strong strategic policy framework which supports renewable and low carbon development proposals. The Framework also confirms that applicants are not required 'to demonstrate the overall need for renewable or low carbon energy' (para 158).

*Best and Most Versatile Agricultural 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<sup>1</sup> (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)<sup>2</sup> 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.
10. Policy BNE4 of the South Derbyshire Local Plan Part 2 (SDLP) states that the local planning authority will seek to protect soils that are 'Best and Most Versatile', (Grades 1, 2 and 3a in the Agricultural Land Classification) and wherever possible direct development to areas with lower quality soils while Policy BNE5 of the SDLP states that otherwise acceptable development outside of settlement boundaries in rural areas will be granted where it will not unduly impact on BMV agricultural land.
11. Paragraph 174(b) of the Framework states that planning decisions should recognise the intrinsic character and beauty of the countryside, and the wider benefits from natural and ecosystem services – including the economic and other benefits of the best and most versatile agricultural land, and of trees and woodland.
12. The Glossary to the Framework explains that BMV comprises land that falls within grades 1, 2 and 3a of the Agricultural Land Classification. It is not disputed that the appeal proposal 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), which would lead to a temporary loss of 49% of BMV land at the appeal site.
13. The appellant's Site Selection Assessment (SSA) fixed the study area for the appeal proposal by a requirement to connect to a viable local electricity network that was agreed with the local distribution network operator at the application stage. The agreed point of connection would be into the 132kv network that crosses the western end of the appeal site and which connects into the major substation at Drakelow, some 6km from the connection point. A 2km offset around the 132kv line was therefore drawn at a distance of no more

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<sup>1</sup> Paragraph 013, Reference ID: 5-013-20150327, Revision date: 27 March 2015

<sup>2</sup> Paragraph 175 Footnote

- than 8km from the Drakelow facility, which coincides with the maximum cabling connection that would be economically viable.
14. The SSA found that there were no suitable brownfield sites within the study area whilst there are only very few areas of lower grade agricultural land. These areas were grade 4 land but considered unsuitable for the siting of solar arrays due either to their being either too small or had physical or environmental constraints that limited their inclusion. The SSA was also informed by a number of other constraints, including levels of irradiance, sensitive landscape, ecological or heritage designations, sensitive human receptors and access/highway considerations, amongst others. The Council offered no evidence that would contradict these findings. The SSA confirmed that there were no sites of suitable size for a 50MW solar farm within a suitable distance from the grid connection point that lie wholly outside BMV land although on grounds of costs and practical feasibility, no soil survey work was completed other than within the appeal site. This factor is a significant omission.
  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<sup>3</sup> 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.
  17. My attention was also drawn to the Oaklands Farm Solar Limited (BayWa r.e. UK Ltd) Preliminary Environmental Information Report<sup>4</sup> submission to the National Infrastructure Planning Unit of the Planning Inspectorate for the purposes of a Development Consent Order for a 163MW solar farm and onsite storage facility at a site also within the appellant's study area to the north-west of the present appeal site and within South Derbyshire District. From the appellant's evidence, it is clear that this site would also include extensive areas of Grade 3 land, which has not been assessed. It must be assumed that lower quality grade 3 agricultural land might well be available as an alternative to the appeal site.
  18. To complete the assessment, the appellant considered the availability of previously developed land (PDL) and the possibility of utilising commercial

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<sup>3</sup> Explanatory note for Likelihood of Best and Most Versatile (BMV) Agricultural Land – Strategic scale maps – ALC021 (naturalengland.org.uk)

<sup>4</sup> Oaklands Solar Farm About the Project BayWa r.e. <https://www.baywa-re.co.uk/en/solar/oaklands-solar-farm#about-solar-energy> viewed 12/5/23

rooftop sites. Data from the Council's brownfield land register together with the adjoining Lichfield and East Staffordshire District Councils were used to assess PDL sites. The most recent databases held by the three local authorities contain 8 PDL sites all of which are very considerably smaller than the 70.18 Ha. These sites would not be capable of generating a comparable megawatt output and would therefore not be economically viable in terms of factors such as the cost of connecting into the electricity distribution network. Moreover, they are either allocated for housing or have planning permission for such purposes. In terms of utilising rooftops, there is only one suitable building within the study area in nearby Burton-on-Trent. However, this site is allocated for residential development with a pending outline application to be determined and can be discounted. I am satisfied that the identified sites are either allocated for alternative uses or are more constrained than the appeal site in terms of their suitability for solar development.

19. The appellant explained that the appeal site land will remain available for agricultural use with the land below the solar arrays possibly utilised for sheep grazing purposes. It was explained at the hearing that the 40 years of fallow would enable the quality of the soils to be repaired. Moreover, biodiversity improvements proposed include new planting of trees and hedgerows with wildlife friendly species and enhancement of existing habitat corridors throughout the site. New planting and landscaping would leave a lasting environmental legacy beyond the lifetime of the solar farm.
20. While recognising that it may not be reasonable to expect developers to fully investigate every possible location for a solar farm within a wide study area and neither is it incumbent on appellants to demonstrate that there is no possible alternatives to an application site, nevertheless, the wider study area is expansive and sufficiently so that it is being earmarked as a potential national infrastructure project. In acknowledging that the main issues for food security as identified by DEFRA<sup>5</sup> are climate change and soil degradation, this only serves to emphasise the importance of maintaining higher quality agricultural land where this is found in food production.
21. The hearing heard that the land hereabouts is a valued resource with tenant farmers under contract to a national potato crisps manufacturer who demand the highest quality of outputs. It was pointed out that there are only 80 such farms in the country producing the required grade of potato crop. Moreover, no calculation had been made of the existing bioenergy plant that is being generated each year and which contribute to renewable energy targets that may also close should the proposed solar farm goes ahead. The evidence presented at the hearing on this was scant however and has not featured highly in my consideration.
22. There is no definition of what might constitute 'compelling evidence' but I accept the Council's arguments that the evidence fails to demonstrate that there are no suitable poorer quality areas of land in the study area that could be used or accommodate the appeal development save for a broad brush map-based review. In this regard, the appeal proposal contravenes relevant provisions of BNE4 of the SDLP, the NPPG and the WMS. The loss of just under 50% of BMV is a significant negative aspect of the appeal proposal which weighs heavily against the development.

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<sup>5</sup> United Kingdom Food Security Assessment 2009 – Department of Environment, Food and Rural Affairs

### *Landscape and Visual Impact*

23. There is little question that the nature and scale of large-scale solar farms may result in landscape harm. Both national and development plan policy adopts a positive approach towards this form of renewable energy development where harms are outweighed by the benefits of solar schemes. There is a distinction to be made between impact on landscape, which should be treated as a resource, and impact on visual amenity, which is the effect on people observing the development in places where the development can be viewed, such as villages, roads, public rights of way and individual dwellings and I have assessed the appeal development on this basis.

### Landscape character

24. Paragraph 174 of the Framework indicates that the intrinsic character and beauty of the countryside should be recognised. It does not seek to protect, for its own sake, all countryside from development; but rather, places emphasis on protecting 'valued landscapes'. The concept of a valued landscape is not defined in the Framework, but the principal parties agreed that the landscape of the appeal site and immediately beyond should not be described as such. The site does not form part of any designated landscape but from the perspective of some interested parties, the value of a given area within a particular landscape may depend on the value attributed to it by an individual or groups of people.

25. Given that landscapes will be valued by someone at some time, the term valued landscape must mean that they are valued for their demonstrable physical attributes, which elevate them above just open countryside but below those areas that are formally designated, such as National Parks, AONBs etc. There was consensus at the hearing that impacts on the wider landscape was not of significant concern and that it is the likely effects on the more local landscape where opinions differed. From my comprehensive accompanied site visit, there is nothing that I saw and nothing that I have read that would elevate the appeal site or its surroundings to that of a Framework valued landscape. The heavily ploughed or grazed nature of the site and its comparatively slight undulating form, despite being crossed by public rights of way that help give it a degree of popularity by virtue of it being accessible, does not to my mind elevate it above an area of modestly attractive countryside. In other words, there are no attributes that take it out of the ordinary to a level below that associated with designated landscapes.

26. In terms of landscape studies, both parties have relied on the Derbyshire County Council's 'The Landscape Character of Derbyshire' (published in 2003 and updated in 2014) (The LCD), which identifies the site as falling within the National Character Area 72 (Mease/Sence Lowlands) as defined by Natural England and of the 'Village Estate Farmlands type, which broadly constitutes a gently rolling agricultural landscape, intensively farmed with scattered villages, including Lullington and Cotton-in-the-Elms with prominent tall church spires that punctuate the agricultural landscape along with plantation woods and well-maintained low shaped hedgerows. The LCD describes the area as a well-ordered landscape of open views and quiet rural character. Beyond, woodland is becoming more visually prominent due to the National Forest initiative.

27. The appeal site itself comprises a series of agricultural field parcels that form an elongated shape running east to west and contain the occasional isolated



sparse woodland remnants following intensification by arable agriculture and hedgerows on field boundaries with few trees. A backcloth of woodland copses and woodland belts frame the wider landscape to the north. These features contribute to the appeal site generally having a contained character despite being dissected in half by Lullington Road. The LCD's Planting and Management Guidelines seeks amongst other things to promote linked extensions to ancient woodland by natural regeneration and planting while re-establishing and enhancing the physical links between isolated woodland and hedgerows. I agree with the appellant's assessment that with the presence of so few incongruous elements (other than the existing pylons within the western section of the site), the site makes a positive contribution to the local landscape on the basis that it contains many of the attributes associated with the 'Village Estate Farmlands' character type identified in the LCD.

28. From my extensive site visit, I would concur with the findings of the appellant's Zone of Theoretical Visibility (ZTV) study in relation to the likely impacts within close proximity (1km) of the site and the potential visibility of the solar arrays, particularly from higher ground within the search area of 2km from the site. Due to the presence of existing vegetation, including woodland belts and hedgerows, existing undulations, there would be limited relationship and little intervisibility from Lullington itself and, at the very worst, there would only be glimpsed views of the development from the norther section of the village.
29. I would also concur that, notwithstanding paragraph 174 of the Framework, the site and its immediate surroundings have a medium landscape value and a medium susceptibility or sensitivity to change. This means that despite the nature of the appeal development, the landscape hereabouts has the ability to absorb the proposed development without loss of key characteristics or features or specific aesthetic or overall landscape character. I find that the proposed development would have a moderate adverse effect on the landscape character of the site leading to minor adverse impact on the wider landscape. That is not to say that the initial magnitude of impact, particularly on the public right of way that leads through the site from the north towards Lullington and from public highways would indeed be substantial adverse upon first commissioning but given the standoff, the reinforcement of hedgerows and new planting that is intended to also link the existing isolated woodland areas, I do not consider that the development would be unduly harmful in landscape terms.
30. Overall, despite the impacts arising from the initial commissioning phase, which will undoubtedly lead to substantial adverse impacts, as the planting matures, the proposed landscaping scheme will cause the development to become less prominent in the landscape and lessen the degree of impact when viewed from outside. It is concluded that by Year 15 as envisaged by the appellant, I would agree that the appeal proposal would have a moderate adverse effect on landscape character from within the site leading to a minor adverse effect on the landscape character of the wider area. These are within acceptable tolerances.

#### Visual effects

31. Visual amenity relates to the direct visual impacts on receptors (people) rather than on the landscape. The appellant's assessment of visual effects is based upon an assessment of views from 26 representative viewpoints, including

- views from residential properties, footpaths and public highways in the immediate vicinity of the site and from the wider landscape with an assessment of likely effects upon receptors at construction, year 1 and year 15.
32. The hearing spent some time exploring the likely impacts on the 'Coffin Trail' (Lullington FP1/Coton-in-the-Elms), a much valued and well-used local rights of way; I was able to walk this route and appreciate the significance of its association with Lullington Church and acknowledged the strong emotional and historical ties felt by the local community. Direct views of the appeal development would be seen along this route and users will experience an immediate landscape that is dominated by the solar farm, its paraphernalia and associated infrastructure. Planting would be unlikely to diminish this impact and the effects on receptors will be significant. It is difficult to envisage that users of the footpath will have the same sense of enjoyment of the wider landscape for much of its length as they do now. Furthermore, hedgerows designed to reach a height of 4m although providing good screening would appear discordant by comparison with the existing style and shape of existing hedges in the area.
33. That said, the appellant's landscaping scheme has sought to respect the need to offset the arrays along much of the route such that the impression of a once slow procession towards Lullington with its historic church spire always acting as a focal point drawing the eye ever closer would be retained. Given that the users of this footpath not only enjoy the vista of the church spire for much of its length, which would be adequately mitigated by the offsetting of the arrays, but also the wider rolling landscape, I would agree with the Council's assessment that the effect at year 1 would be major adverse leading to moderate adverse by year 15; I find this would not be significant.
34. During my extensive site visit, I was able to take in most of the selected viewpoints either at the specified locations or as close to those locations that was possible without encroaching on private properties and land. In each case I found that the assessment undertaken by the appellant to underscore to a limited extent the effects on some receptors, most notably, the review viewpoints (2, 3, 4 and 5) along Lullington FP1 and Coton-in-the-Elms FP7 at year 15. The change from the existing views of a wide expanse of gently rolling landscape to that of high hedgerow screening would have a moderate adverse effect. The effects would not however be significant.
35. Similarly, the landscaping proposals incorporate provision to strengthen existing isolated woodland as noted above while the introduction of new grass mix below the array together with substantial tree, hedgerow and new woodland planting in accordance with recommendations of the National Forest would provide adequate screening for the appeal proposal and lead to landscape and biodiversity enhancement. It would nevertheless change the nature of views from other footpaths and transport routes. I do not agree with the Council that the effects would be moderate adverse. Rather, the landscape change as a consequence of the landscaping proposals would amount to slight adverse effect at year 15, which would be acceptable.
36. There would be no appreciable views from residential properties within Lullington, particularly given the nature and extent of proposed planting. I find that the appellant's assessment is generally accurate, which is a view supported by officers during consideration of the planning application and

supported by the Council's landscape consultant who surprisingly was not present at the hearing. During my site visit, I was able to assess the likely effects on Lady Lees, Home Farm and Grafton House, which were the properties identified for greatest scrutiny at the hearing. There is little difference in the conclusions drawn by the parties with respect to these properties although I accept that due to the proximity of Grafton House and the elevated nature of Lady Lees and thus both being of high sensitivity, the Council's assessment of the development having a moderate adverse effect at year 15 is more accurate. That said, although at an acceptable level in planning terms, the effects would be keenly felt by occupiers of these properties.

37. Bringing all the above together, I would acknowledge that a large-scale solar farm located in an otherwise largely unspoilt countryside would have an adverse effect on landscape character and lead to visual impact. The appeal site is accessible by the public from the local public footpath network and includes a historic route which is still used extensively and enjoyed as a recreational resource. It is accepted that the landscape is not a valued landscape in terms of the Framework and no prominent landmarks would be affected. Due to the combination of factors, including the gentle rolling nature of the landscape, existing field patterns, the heavy arable practices and the opportunity to strengthen existing woodland tracts and hedgerows through mitigation, the long-term moderate adverse effects that have been identified would be within acceptable tolerances. There would be no residual impacts following decommissioning. There would also be benefits from better management of hedgerows and woodland blocks, in line with National Forest management objectives.
38. Consequently, I would conclude that the proposed development would comply with South Derbyshire District Council Local Plan Part 1 (LP Part 1) Policies SD6 and BNE4 and Local Plan Part 2 Policy BNE5 (LP Part 2). Collectively, these policies amongst other things, seek to encourage renewable energy developments provided they do not give rise to unacceptable landscape and visual impacts, are well-designed and lead to protection, enhancement, management and restoration of biodiversity and the landscape with particular reference to the objectives of the National Forest and where adequate mitigation to overcome adverse impact to the character of the receiving landscape would be provided.

#### *Heritage Impacts*

39. The Statement of Common Ground identified two areas of concern for the Council in relation to the impacts of the development on the settings of The Church of All Saints Grade II\* Listed Building and the Lullington Conservation Area (the CA). These assets are some distance from the southern edge of the appeal site. During the course of the application, officers believed that there would be some harm to the settings of Lady Leys Farm and Grafton House both Grade II Listed Buildings; however, following consideration by the Council's Planning Committee, members resolved to oppose the development but altered its position to that contained in the officer report to Committee.
40. The parish church dates from the 14<sup>th</sup> century and contains an impressive three-stage spire. Its significance is derived from its architectural and historic interest together with its association with prominent local families and its role



and function in the religious and community life of the village. Along with its associated churchyard, churchyard walling and graves and monuments, the church has a close physical relationships with village roads, the former village school, village green and buildings fronting Main Street. Its spire moreover by virtue of its height and position within the landscape forms a distinctive and discernible point of reference although this diminishes over distance. The importance of the spire as a landmark cannot be understated; however, the remainder of the church is closely associated with the main body of the village and cannot readily be viewed from outwith.

41. Discussions relating to heritage assets at the hearing focussed primarily on the alleged harm to the setting of the church arising from the potential degradation of how it is appreciated by users of the 'Coffin Trail' Lullington FP1. However, from this distance, the spire continues to pierce the skyline above existing trees and continues to act as a landmark when approaching the village from the north. It is quite inconceivable that the appeal proposal would harm this feature, which only forms an element of the overall architectural and historic significance of the church itself. The church spire will not be directly and physically affected by the solar arrays. Due to the topographical nature of the development and the land, there will be no severance of views of the spire and certainly no interrelationship with the church itself.
42. For these reasons, I find that no harm to the setting of the church would arise as a consequence of the development. The setting of the church would be unaffected. For the purposes of section 66 of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act), the appeal scheme would preserve the listed building along with its features of special architectural or historic interest, which would remain wholly unchanged.
43. I would agree with the Council's assessment that due to the distance from the proposed development, the landscape topography and existing and proposed tree and hedgerow cover, the proposal would not be harmful to the special interest or setting of Grade II Listed Buildings, namely Lady Leys Farmhouse, Woodfields Farm, Raddle Farm, Manor Farm and the Old School House or the locally listed Grafton House, which were identified in the officer's report.
44. With the exception of the church spire, I am satisfied that the proposed development would not be visible in views from or towards any part of the CA. The proposed development would not have any meaningful effect on the setting and therefore the significance of the CA and thus both the character and appearance would be preserved in line with s72(1) of the 1990 Act.
45. In my assessment, the proposal would not cause any harm to historic assets and this matter would not weigh against the appeal development. Consequently, there would be no conflict with LP Part 1 Policies SD6 and BNE2 or LP Part 2 Policy BNE5, which together seek to support renewable energy developments provided there are no unacceptable impacts on the historic environment and that proposals for development protect, conserve and enhance heritage assets.

### **Planning balance and conclusion**

46. There is little doubt that we are close to a point where climate change is a reality and that if left unchecked will have very serious consequences for large parts of our planet. The development would clearly make a significant

contribution to providing energy from a renewable source. The proposal would produce 53,627 MWh/year which the appellant states is the equivalent to the electricity demand from approximately 17,300 homes or 17% of the population of the South Derbyshire District Council area. UK electricity demand is expected to double by 2050 and the decommissioning of existing carbon generating assets will require new low-carbon generation facilities as well as wider transitions outside of the power sector in order to meet national and international targets to reduce carbon emissions and mitigate the effects of climate change.

47. The Framework at paragraphs 153, 155 and 158 encourage the development of renewable and low carbon developments whilst Government wants to accelerate the development of renewable and low carbon technologies through the deployment of wind, nuclear, solar and hydrogen. The ambition for solar is to increase capacity by 14GW and by 5 times by 2035. Whilst national policy is to encourage large scale projects to be located on previously developed, or lower quality value land where possible and to avoid, mitigate and compensate for impacts of using greenfield sites, there is no question that energy from solar will form a critical element of the plan to decarbonise the UK electricity sector. These factors coupled by the timeliness of delivery and relatively easy connection to the national grid in this instance weighs significantly in favour of the appeal proposal.
48. I recognise the time limited nature of the appeal scheme and that agriculture may well continue during the scheme's lifetime although no guarantees were offered at the hearing. Whilst the 40-year period may allow for the restoration of the soil structure and reduce the problems associated with nitrates usage, it appears to me, as it has done to other Inspectors at appeals cited by the Council, that 40 years would indeed constitute a generational change. I accept the appellant's arguments that where sites are made up of a patchwork of agricultural gradings, it is not feasible or practical to separate small areas of BMV land from development, particularly as this would result in that land having little commercial agricultural utility. However, this proposal would harm the BMV resource, which amounts to just under half the total available hectareage 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.
49. There was little dissension that the appeal scheme would provide substantial ecological enhancements with the landscaping proposals providing a 270% gain in habitat units and 46% net gain in hedgerow units as detailed in the appellant's Biodiversity Net Gain Assessment, which is well above policy requirements. The appellant's Landscaping Strategy Plan is well thought through and would in time provide a mature landscaped setting to the appeal scheme, as well as improving ecological connectivity in support of the National Forest objectives. The impact on biodiversity arising from the proposed development would be positive and moderate with no unacceptable adverse impact on internationally or nationally designated sites, habitats or species. This carries positive weight in favour of the appeal proposal.
50. The early implementation of a substantial renewable energy scheme that would provide clean electricity for some 17,300 homes should rightly carry significant positive weight. The biodiversity net gain and long-term landscape benefit

would also carry moderate weight. The parties agreed that the job creation would similarly carry moderate weight.

51. 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 hectareage over a period of 40 years would be of greater significance.
52. Taking all this into account, the appeal proposal would be conflict with the development plan and the Framework and would not constitute sustainable development.
53. Accordingly, for the reasons stated I conclude that the appeal be dismissed.

*Gareth W Thomas*

INSPECTOR

**Appearances:**

**For the Appellant:**

Gareth Phillips	Partner, Pinsent Masons
Graham Robinson	Associate Director, Hodges Land Pro
Christopher Jackson	Regional Director, Land Pro
Andrew Rudge	Fuller Long
Matthew Carpenter	Senior Associate, Pinsent Masons
Lesley Giles	Project Manager, Island Green Power
David Elvin	Head of Projects, Island Green Power
Daniel Baird	Daniel Baird Consultancy

**For the Council:**

Bob Woollard	Director, Planning & Design Group
Stuart Hammond,	Planning Officer, South Derbyshire District Council

**Interested Parties:**

Cllr Amy Wheelton	South Derbyshire District Councillor
Cllr Helen Bailey	Chair of Lullington Parish Council
Jason Bailey	Local tenant farmer
Denise Walsh	Local resident
Valerie Shaw	Local resident, Chair of Lullington Village Hall Committee
Steven Mills	Local resident
Emma Hooper-Smith	Local resident
Stuart Whitby	Local resident

**Documents presented to the Hearing:**

Document 1:	Core Documents List
Document 2:	Appeal decisions not included in evidence
Document 3:	Suggested site visit route map
Document 4:	Liz Lake Associates Photo Location Plan

# **S62A/2022/0011**

11 May 2023

Uttlesford District Council

Land East of Pelham Substation, Maggots End, Manuden



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## Decision Notice & Statement of Reasons

Site visits made on:

Tuesday 20 September 2022 & Monday 27 March 2023

**By Mr Cullum Parker BA(Hons) PGCert MA FRGS MRTPI IHBC**

**a person appointed by the Secretary of State**

**Decision date: 11 May 2023**

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**Application Reference: s62A/2022/0011**

**Land East of Pelham Substation, Maggots End, Manuden  
(Easting 547257, Northing 228104)**

- The application was made under Section 62A of the Town and Country Planning Act 1990 (TCPA) by Low Carbon Solar Park 6 Limited.
  - The site is located within the local planning authority area of Uttlesford District Council.
  - The application was dated 15 September 2022, with a valid date of 10 February 2023.
  - Consultation took place between 10 February and 20 March 2023.
  - An Environmental Statement was submitted, dated December 2022.
  - The development proposed is described as '*Construction and operation of a solar farm comprising ground mounted solar voltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping.*'
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### Decision

1. Planning permission is **refused** for '*Construction and operation of a solar farm comprising ground mounted solar voltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping*' at Land East of Pelham Substation, Maggots End, Manuden, for the reasons set out in this notice.

### Procedural Matters

2. The application was submitted under s62A of the *Town and Country Planning Act 1990*, as amended (TCPA). This allows for applications to be made directly to the Secretary of State (SoS), where a local authority has been designated. Uttlesford District Council (UDC) have been designated for major applications since February 2022. The SoS has appointed a person under section 76D of the TCPA 1990 to determine the application instead of the SoS.
3. The application was screened under *The Town and Country Planning (Environmental Impact Assessment) (England and Wales) Regulations 2017*, (as amended) by UDC and by the SoS<sup>1</sup>. The SoS screening direction found that: '*On the basis of the information provided, the Secretary of State considers that the Proposed Development has the potential to give rise to significant visual effects and significant cumulative effects including those on the local landscape through an increase in the amount of electrical*

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<sup>1</sup> Dated 5 October 2022, viewable in Appendix 2.2 of the *Environmental Statement, Technical Appendices* dated December 2022.

*infrastructure within the locality'* and an Environmental Impact Assessment was required. An Environmental Statement (ES) has been submitted. The Applicant publicised the ES in line with the requirements of Regulation 20 of the EIA Regulations 2017. This, together with comments from statutory consultation bodies and any representations duly made by any particular person or organisation about the ES, has been taken fully into account in determining this application.

4. Following the closure of the representation period, Article 22 of *The Town and Country Planning (Section 62A Applications) (Procedure and Consequential Amendments) Order 2013* requires the SoS (or appointed person) to consider the application either by hearing or on the basis of representations in writing.
5. Taking into account Section 319A of the TCPA and the *Procedural guidance for Section 62A Authorities in Special Measures*<sup>2</sup> published by the SoS (including Paragraph 5.1.1), the appointed person considered that the issues raised in this case could be clearly understood from the written submissions.
6. In accordance with Article 4 of *The Town and Country Planning (Section 62A Applications) (Written Representations and Miscellaneous Provisions) Regulations 2013*, on 24 March 2023, the Inspectorate wrote to the applicant to confirm the procedure.
7. Unaccompanied site visits were carried out on Tuesday 20 September 2023 at the validation stage and on Monday 27 March 2023; after the consultation period had ended. The inspection included viewing the site and the surrounding area. I, as the appointed person, have taken account of all written representations in reaching my decision.

### **Background and recent planning history**

8. The application seeks permission for a solar farm to generate up to 49.9 MW of electricity to power approximately 16'500 homes and displace 11'000 tonnes of Carbon Dioxide (CO<sup>2</sup>) per annum. The application site is located on agricultural land to the south of Berden, northwest of Manuden and around 6km to the north of Bishops Stortford. Further particulars are described and provided in the voluminous documents provided by the Applicant, designated authority and other interested parties, which have been taken into account in determining the application. Accordingly, it has not been re-produced here. However, where appropriate, references are provided to the source text.
9. Planning application UTT/21/3356/FUL sought full planning permission for the 'Construction and operation of a solar farm comprising ground mounted solar photovoltaic (PV) arrays and battery storage together with associated development, including inverter cabins, DNO substation, customer switchgear, access, fencing, CCTV cameras and landscaping'. This application was submitted to Uttlesford District Council in November 2021 and subsequently refused on 24 January 2022 under delegated powers with eight reasons for refusal.
10. The Council acknowledged that this revised application has been submitted to the Secretary of State in which further information and revisions have been made in the attempt to address and overcome the reasons for refusal as imposed on the decision notice ref: UTT/21/3356/FUL.

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<sup>2</sup> [Procedural guidance for Section 62A Authorities in Special Measures - GOV.UK \(www.gov.uk\)](https://www.gov.uk/guidance/procedural-guidance-for-section-62a-authorities-in-special-measures)

11. The Council has also recognised that the Applicant held pre-application discussions with the officers of both Essex County Council and Uttlesford District Council prior to the submission of this application to the Secretary of State.<sup>3</sup>

## Reasons

### *Need and potential benefits*

12. The proposal would generate electricity to power around 16'500 homes and displace around 11'000 tonnes of CO<sup>2</sup> per annum. On the basis of these figures, over the 40-year lifespan of the proposal, it would potentially displace around 440'000 tonnes of CO<sup>2</sup>. This would make a moderate contribution to the local and national aspirations and legal requirements to transition to a low carbon future.
13. Indeed, there is a large amount of national legislation, guidance, and policy which supports the transition to a low carbon future<sup>4</sup>. Renewable energy creation; including schemes such as the proposal here, will play an important part in delivering this. Locally, UDC declared a climate change emergency in 2019, and seeks to reduce its own emissions to net zero by 2030.
14. It is clear, therefore, that there is a pressing need for renewable energy sources to provide part of the future energy mix as England moves towards a low carbon future. This is a factor which I afford significant weight in favour of the proposal. That said, it does not automatically follow that any scheme for renewable energy creation has a *carte blanche*: as with most planning matters the need for renewable energy creation needs to be weighed against the potential adverse effects or harm arising and, if this occurs, whether this harm can be mitigated, so allowing a judgment in favour of the proposal.
15. The proposal would result in socio-economic benefits in the form of the creation of 117 direct/indirect jobs and up to £3.6 million of gross value added over the five-month construction period. During the proposed 40-year operational lifespan, the proposed development would create five net additional jobs in the Uttlesford economy, £6 million of gross value added per annum and business rates of around £3.7 million over 40-years<sup>5</sup> (at present values). However, it has not been clearly indicated how this would compare with the existing socio-economic activity on the application site. This being so, these social-economic benefits are afforded modest weight in favour of the proposal.
16. The development proposes biodiversity enhancements including the provision of ten bat boxes, hedgerow improvements, the provision of three hibernaculum for Great Crested Newts, seeding of native grassland and diverse wildflower seeded areas, 20 bird boxes, and installation of 20 dormouse boxes in Battles Wood. Given that many of these enhancements could be instigated regardless of whether permission was forthcoming, and that some of them are mitigation measures intended to ameliorate adverse impacts on protected species arising from the proposal, these benefits are accordingly afforded only modest weight in favour of the proposal.

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<sup>3</sup> Letter from UDC dated 15 March 2023 from Principal Planning Officer following Planning Committee meeting on 8 March 2023

<sup>4</sup> See for example, *Planning Statement, Pelham Spring Solar Farm, P20-1300, Appendix 4, Dated August 2022*

<sup>5</sup> *Environmental Statement, Non-Technical Summary, January 2023* Page 15



### *Character and appearance of the area*

17. The application site is currently used as a mix of nine agricultural fields. These are used as a mixture of mainly arable farmland with two pastoral fields. The proposal would see a large part of the nearly 80-hectare site area covered by solar arrays and associated infrastructure in six 'development zones'. The effect would be that the currently open, rural and agrarian character and appearance of the area would be drastically and noticeably altered with the introduction of an overtly utilitarian industrial infrastructure into the open countryside.
18. 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. Whilst there is the potential to use planting to mitigate some of the impact, this would take time to establish and would not completely screen the site from public vantage points.
19. Accordingly, 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. As such 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.
20. The proposal is also contrary to Paragraph 174 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*

21. Chapter 6 of the *Environmental Statement* (ES) identifies in the summary of Significant effects, that during the five months construction period there would be High magnitude of effect and Major significance of effect which would have major adverse significant residual effects from a number of viewpoints, public footpaths/bridleways, and for receptors (occupiers) at residential properties Brick House End Cottages and Rose Garth.
22. Longer term, during the 40-year operational phase, the magnitude of effect would be High in most cases, with a few reductions to Medium. The magnitude of effects would be High to the sensitivity of receptors, with significance of effects Major, with the residual effects considered to be 'Moderate'.<sup>6</sup>
23. 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. The proposal would detract from the currently pleasant rural scene

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<sup>6</sup> *Environmental Statement, Chapter 6, Table 6.5 Summary of Significant Effects, Mitigation and Residual Effects*

and erode the qualities of the lower rolling farmed and settled undulating slopes.

24. Moreover, with the solar panels potentially up to three metres high, it would not be possible to completely mitigate the effects of the development. The regimented arrays of dark coloured panels would contrast sharply with the harmonious organic pattern of open fields and appear odd amongst the typical patchwork of green- and yellow-coloured fields found in the location generally. This drastic change would become especially acute for users of various Public Rights of Way and Bridleways both in and near to the site, and also users of nearby public highways such as that between East End and Maggots End, who would no longer be able to enjoy the rural landscape through its extended and prolonged use as a large utilitarian development.
25. Accordingly, the proposal conflicts with Paragraph 174 of the Framework which sets out that the planning system should contribute to and enhance the natural and local environment by protecting and enhancing valued landscapes.

#### *Heritage assets – setting*

26. The Framework explains in the Glossary that:

***'Setting of a heritage asset: The surroundings in which a heritage asset is experienced. Its extent is not fixed and may change as the asset and its surroundings evolve. Elements of a setting may make a positive or negative contribution to the significance of an asset, may affect the ability to appreciate that significance or may be neutral.'***

27. In terms of Scheduled Monuments, the Applicant's Heritage Statement concludes that there is considered to be no harm to the heritage significance of the Scheduled The Crump with regards to setting<sup>7</sup>. It provides no similar conclusion in respect of the Scheduled Monument of Battles Manor.
28. The Crump is a well-preserved earthwork. Historic England, the government's statutory adviser on the historic environment, identify that these 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 identify that the proposal would result in less than substantial harm to The Crump. Similarly, the 'Moated site at Battles Manor' are the remains of a medieval moated enclosure<sup>8</sup>. Historic England suggest that there is the potential for less than substantial harm to this latter Scheduled Monument.
29. These Scheduled Monuments are located within a strongly defined rural context, and this contributes positively to their surroundings and significance. Visitors are currently able to appreciate the agricultural and societal history of this part of Essex and its connection with the wider landscape. The introduction of rows of solar panels and associated infrastructure would drastically alter this relationship and the experience of those seeking to appreciate it. Instead of open agricultural fields the proposal would form an expansive industrial 'techscape', severing the monuments from the rural context in which they are currently experienced.

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<sup>7</sup> Applicant's *Heritage Statement* dated September 2022, Page 47, paragraph 7.11

<sup>8</sup> Historic England representation dated 23 February 2023

30. 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, and to a lesser degree, that of Battles Manor.
31. With regard to listed buildings, Section 66(1) of the *Planning (Listed Buildings and Conservation Areas) Act 1990*, as amended, (PLBCA) requires that the SoS shall have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest it possesses.
32. The Crump (buildings rather than the ringworks) and Battles Hall are both Grade II listed buildings. The latter is also associated with the Grade II listed Cart Lodge, and Dovecote. Brick House, Rose Garth and Peyton Hall and Barn are all Listed Grade II buildings and located no more than 500 metres from the site. Similar to the Scheduled Monuments, the settings of these listed buildings would be dramatically altered. Rather than read and experienced within a rural landscape and associated historical connections with it, the listed buildings would instead be experienced in an utilitarian setting defined by solar arrays, fencing, CCTV cameras on poles, a DNO substation and other infrastructure. Accordingly, the proposal would fail to preserve the setting of the listed buildings.
33. Great weight should be given to the asset's conservation and the more important the asset, the greater the weight should be. In this case, the harm arising to the settings of the Scheduled Monuments and listed buildings identified would be no greater than less than substantial<sup>9</sup> and therefore Paragraph 202 of the Framework applies.
34. The public benefits of the proposal are set out in the 'Need and potential benefits' section of this decision. Whilst these benefits weigh significantly to moderately in favour of the proposal, they would not outweigh the significant harm to the settings of the Scheduled Monuments the conservation of which is afforded great weight in the Framework. For similar reasons, they 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.
35. Accordingly, 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.
36. 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

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<sup>9</sup> This is, to varying degrees and applicability, in line with the advice provided by the Applicant's Heritage Consultant, Historic England, and the designated authority's heritage advisers who all identified 'less than substantial' to at least some of the heritage assets in this section.

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.

#### *Heritage assets – Archaeology*

37. Paragraph 194 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. Footnote 68 of the Framework sets out that *'Non-designated heritage assets of archaeological interest, which are demonstrably of equivalent significance to scheduled monuments, should be considered subject to the policies for designated heritage assets.'*
38. Significant archaeological remains from Iron Age to Roman dates and a moated enclosure and ditch-like anomalies from geographical survey are identified on the site. These are located in the northern and western parts of the application site. The applicant's heritage expert indicates that *'The majority of moated sites served as prestigious aristocratic and noble residences with the provision of a moat was intended as a status symbol. They commonly consist of wide ditches which are often water-filled, which partly or completely enclose an 'island' of dry ground<sup>10</sup>.'*
39. A metal detector survey was undertaken in the mid-2000s, but only on part of the northern end of the site, and there have been finds of coins from the early first millennium. On this basis, the Applicant considers that the potential for significant archaeological remains of Iron Age to Roman date within the site is moderate to high. They go on to consider that there are around 6'000 moated sites known within England, and the two potential enclosures identified within the application site, and contained within areas earmarked for development, are not scheduled like others found nearby with the visible remains are barely perceptible above ground. They should, therefore, be considered as non-designated heritage assets rather than as commensurate with Scheduled Monuments.
40. Place Services, Essex County Council -Specialist Archaeological Advice dated 20 February 2022<sup>11</sup> set out that significance of the remains of the moated enclosure have not yet been ascertained. They recommend that trial trenching evaluation is undertaken in advance of a planning decisions. Historic England note the above comments and indicate that it is best practice in terms of the assessment of archaeological remains to identify whether any important remains are present that could preclude or modify the proposed development.
41. With a lack of trial trenching at the application site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, the decision-maker is unable to undertake the balancing exercise set out at Paragraph 202 of the Framework (or Paragraph 201 if substantial harm).
42. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of Romano-British enclosed structures; yet it is unclear whether there is any discernible evidence as to what these are and what other archaeology remains. Whilst there has been some metal

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<sup>10</sup> Applicant's *Heritage Statement* dated September 2022, Page 18, Paragraph 5.28

<sup>11</sup> I consider this to be a typo of 202, as it is clearly referenced as a response to the application here.

detector surveying these were limited to the northern part of the site and took place some time ago. My role is to consider what is reasonable and proportionate based upon the available evidence before me. Despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.

43. An understanding of the significance of any heritage asset is the starting point for determining any mitigation, and therefore I am unable to assess whether the mitigation proposed would be appropriate. Similarly, I cannot be certain of the potential harm that may result to the archaeological interest from the proposal, for example through the siting of solar arrays and the groundworks required.
44. The heritage asset might have archaeological interest which could be unlocked through further field evaluation which would enable a greater understanding of any remains and their wider context. On this basis, and given that the significance of the potential remains could be of local and potentially regional importance (or greater if associated with the nearby Scheduled Monuments), I find that the approach suggested by Place Services and endorsed by Historic England is proportionate to the potential asset's importance and no more than is sufficient to understand the potential impact of the proposal. This approach is consistent with Paragraph 194 of the Framework.
45. Furthermore, I do not consider that the imposition of a planning condition would provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, given the affected land is in close proximity to land that has known above ground archaeological remains which are afforded the highest levels of protection as Scheduled Monuments.
46. After careful consideration of the archaeological matters arising in this instance the evidence remains incomplete. I therefore conclude that the application fails to provide sufficient evidence regarding potential archaeological remains or features of interest, such that I cannot be assured that material harm to archaeological remains would not result.
47. Accordingly, the application would fail to accord with Policy ENV4 of the LP, which, amongst other aims, seeks to ensure that in situations where there are grounds for believing that sites, monuments or their settings would be affected developers will be required to arrange for an archaeological field assessment to be carried out before the planning application can be determined thus enabling an informed and reasonable planning decision to be made. In circumstances where preservation is not possible or feasible, then development will not be permitted until satisfactory provision has been made for a programme of archaeological investigation and recording prior to commencement of the development. This policy requires an approach to the conservation of archaeological remains that is consistent with the *Overarching National Policy Statement for Energy (EN-1)* July 2011.
48. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework and in particular Paragraphs 194 and 200 (and footnote 68) which, amongst other aims, set out that any harm to, or loss of, the significance of a designated heritage asset (from its alteration or destruction, or from development within its setting), should require clear and convincing justification. Substantial harm to assets of the highest significance, notably scheduled monuments should be wholly exceptional.



### *Best and Most Versatile Agricultural Land*

49. The Applicant's survey and report on Agricultural Land Classification identifies that around 54% of the site is evaluated to be within the Grade 2 (very good) category, roughly 28% as 3a (good) and the remaining 19% as 3b (moderate) or other land/non-agricultural<sup>12</sup>. The *Framework* defines the Best and Most Versatile Agricultural Land (BMVAL) as being in Grades 1, 2 and 3a. Accordingly, around 82% of the site is within the BMVAL classification. The Report suggests that the Uttlesford district benefits from a high proportion of agricultural land in Grade 2 (approximately 80%, compared to 14% in England and 29% in the Eastern Region)<sup>13</sup>.
50. 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.
51. Whilst the Applicant refers to the temporary nature of the proposal, 40 years is a considerable length of time for the solar arrays, DNO substation, fencing, CCTV towers and other associated structures to be present on site. Given this duration the proposed development would be seen as permanent features rather than as temporary.
52. Whilst an *Alternative Sites Assessment* (dated September 2022) has been submitted, this is limited by the reliance on an unsubstantiated distance of 4km point of connection with the electricity grid. Moreover, the search area was mainly limited to the Uttlesford District (for example the brownfield land search) even though the East Herts District is located immediately to the west of the site. Whilst such assessment cannot be exhaustive *ad infinitum* it is, nonetheless, reasonable to assume that it would detail reasoning as to why 4km is the maximum range for a connection point and take into account the geographical scope of the site – rather than local authority boundaries. It has also not been demonstrated that the significant development of this BMVAL is necessary in this instance – even taking into account net zero aspirations.
53. Accordingly, 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.
54. 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

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<sup>12</sup> *Agricultural Land Classification: Pelham Spring Solar Farm, Essex* dated September 2021, Page 12, Paragraph 3.6.1

<sup>13</sup> *Ibid*, page 13, Paragraph 4.2.1

development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality.

### *Highway safety*

55. Principally, construction traffic (of around 922 vehicles/trips) would access the site to the east of Manuden Road, with the vehicles having lengths of no more than 16.5 metres. These vehicles would use the M11, with access to and from along the B1383 (aka London Road to the south of Newport), turning to the west at Newport along the B1038, to Clavering when turning to leave/enter the site down Manuden Road. It is envisaged that construction traffic will only access the site from this north route and not through Manuden. Nonetheless, these are roads which, when leaving the motorway, tend to become narrower and winding without many places for larger vehicles to easily pass each other the closer to the site one is.
56. The proposed route for construction traffic is included in the submitted *Construction Transport Management Plan Sept 22 Issue (2)* (CTMP). However, since that work was undertaken further planning applications for similar development proposals have been submitted<sup>14</sup>. The CTMP does not take into account the potential cumulative impact arising from the number of proposed developments in this locality. In particular, it requires further investigation on traffic movements on Stortford Road and in specific around Clavering Primary School. The cumulative impact of construction traffic should be assessed in order to inform any plans for mitigation and co-ordination of traffic movements between sites during the construction phases.
57. Moreover, the main site access requires an updated Stage 1 Road Safety Audit and additional information to determine if the existing vehicular access at Maggots End is safe and suitable for operational vehicles. This should include a speed survey with visibility splays provided in accordance with the 85<sup>th</sup> percentile recorded. A road safety audit should accompany the current proposals.
58. In the absence of the above information and assessments, the proposal is contrary to Policy GEN1 of the LP which sets out that certain criteria should be met in order for development to be permitted. This includes that access to the main road network must be capable of carrying traffic generated safely and accommodated within the surrounding road network.
59. For the same reasons, in the absence of the above information, surveys and assessments the proposal would have an unacceptable impact on highway safety. It is therefore contrary to Paragraph 111 of the Framework which sets out that development should only be prevented or refused on highways grounds if there would be an unacceptable impact on highway safety, or the residual cumulative impacts on the road network would be severe.

### *Biodiversity*

60. The Applicant's *Ecological Impact Assessment* (September 2021) identifies that the application site contains breeding territories, sites, or foraging areas for farmland bird species including Skylarks, Yellow Wagtails, and Yellowhammers. These are all 'Red Species of Conservation Concern' and as 'Species of Principal

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<sup>14</sup> See consultation response from Essex County Council Highways and Transportation Services, dated 20 March 2023



Importance' under Section 41 of the *Natural Environment and Rural Communities Act 2006*, as amended (NERC). In particular, Skylarks were found to show 'a persistent association with the site'.<sup>15</sup>

61. The *Ecological Impact Assessment* identifies that at the time of the surveying, around seventeen breeding territories for Skylarks were identified across the site<sup>16</sup> and in particular on the areas identified as development zones. The main loss of habitat is almost entirely attributed to loss of arable vegetation; habitat which is used by at least three Species of Principal Importance. Ground-nesting species such as Skylark will be especially affected by the loss of the arable farmland and its conversion to pastoral land for sheep-grazing and solar farming.
62. Consequently, it is necessary to adopt a precautionary principle and so it is reasonable to assume that the application site will support a considerably reduced number of birds than it currently supports. As such, a negative impact on breeding birds of open ground (particularly skylarks) is anticipated as a result of loss of nesting habitat as well as unmitigated direct impacts of construction associated with the proposal.
63. Mitigation for the loss of the Skylark territory has been suggested in arable fields in the local area through the provision of two 'bird foraging plots' per territory lost and that there is an abundance of open, arable farmland within the surrounding 5km of the site. However, it is unclear as to how such mitigation would be provided given that, as the *Ecological Impact Assessment* identifies: 'any off-site mitigation would need to be secured via a Section 106 agreement' but no such legal agreement is before me. Nor is there any indication where within the application site itself such areas could be provided. Lastly, it is unclear as to how such provision would also be made for other Species of Principal Importance identified such as Yellowhammer and Yellow Wagtail.
64. The potential biodiversity improvements arising from the proposal are noted. These include improvements in foraging areas, in soil qualities, and in hedgerows. However, the proposal would result in significant harm to Species of Principal Importance and their habitats. This is harm that cannot be avoided, adequately mitigated, and there is no mechanism to secure compensation for. Paragraph 180 of the Framework indicates that planning permission should be refused in such circumstances.
65. The proposal in this case would fail to conserve and enhance biodiversity, the Duty of which falls on public bodies in England under Section 40 of NERC. It is contrary to Policy GEN7 of the LP which sets out that development that would have a harmful effect on wildlife will not be permitted unless the need for the development outweighs the importance of the feature to nature conservation and where the site includes protected species or habitats for protected species measures to mitigate and/or compensate for the potential impacts of the development, secured by planning condition or condition, will be required.
66. The proposal is also contrary to Paragraph 180 of the Framework which sets out that when determining planning applications, local planning authorities should apply the following principles: (a) if significant harm to biodiversity

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<sup>15</sup> Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.127

<sup>16</sup> Applicant's Ecological Impact Assessment Sept 2021, Paragraph 2.6.105

resulting from a development cannot be avoided (through locating on an alternative site with less harmful impacts), adequately mitigated, or, as a last resort, compensated for, then planning permission should be refused.

67. The information concerning European Protected Species on or near to the site, including Bats and Great Crested Newts (GCN), has been fully considered. The information concerning badgers, which are protected under the *Countryside and Wildlife Act 1981*, as amended, and also the *Badger Protection Act 1992*, as amended, has been taken into account.
68. The impact of the proposal on these species could potentially be adequately mitigated through the biodiversity improvements suggested and secured through the use of appropriately worded planning conditions. Nonetheless, this does not overcome the significant harm identified to bird species on or visiting the application site arising from the proposal.

### Noise

69. The submitted *Acoustics Report A1784 R01b* dated September 2021 identifies that the noise climate during set up of monitoring equipment was relatively tranquil. Besides some noise from larger passenger aircraft, most sources of noise included birdsong, grasshoppers, other natural sounds and low-level wind noise in trees at monitoring station M01 and M02. The application would result in operational noise from the facility and associated infrastructure. The report does not consider impact arising from noise to users of the nearby Public Rights of Way/ Public Bridleway.
70. The UDC Environmental Health comments of 17 March 2023 identify a number of concerns with the submitted report, including what British Standards have been applied. It concludes that it is not possible to apply a robust post construction condition to ensure that noise from the site will not be detrimental to residential amenity or increase background and ambient noise levels in the area. It also raises concerns that the low frequency noise levels at noise sensitive receptors will increase because of the proposed development and may result in significant adverse impact when considered individually and cumulatively with the existing facilities.
71. Whilst there are some 'modern' noise intrusions – such as that from the overhead power lines and commercial aircraft – in the main the application site currently benefits from a relatively tranquil noise environment. This includes users of Public Rights of Way close to and near to the site. As evidenced in the comments from interested parties, this is an area that is prized for its recreational and amenity value because of its tranquillity.
72. Accordingly, the proposal would be at odds with Paragraph 185 of the Framework which sets out that planning decisions should ensure that new development is appropriate for its location taking into account the likely effects of pollution on health, living conditions and the natural environment, as well as the potential sensitivity of the site or wider area to impacts that could arise from the development. In doing so they should (a) mitigate and reduce to a minimum potential adverse impact resulting from noise from new development – and avoid noise giving rise to significant adverse impacts on health and the quality of life and (b) identify and protect tranquil areas which have remained relatively undisturbed by noise and are prized for their recreational and amenity value for this reason.

73. Accordingly, the proposal conflicts with Policies GEN2, GEN4, and ENV11 of the LP which, amongst other aims seek to not permit developments where noise generated would cause material disturbance or nuisance to occupiers of surrounding properties.

### **Other Matters**

#### *Planning obligation*

74. The designated planning authority indicate that they expect the submission of a s106 agreement (or planning obligation) to address a decommissioning plan and secure a bond or deposit to cover decommissioning works if required. No such obligation was submitted by the applicant. Nonetheless, as the proposal is refused, I have not considered this matter further.

#### *Conditions*

75. I note that conditions have been suggested by the designated planning authority and other parties. Whilst my considerations of the planning merits indicate that permission should be refused, I am satisfied that the use of planning conditions would not mitigate or address the harms arising in this case in order to make the proposal otherwise acceptable.

### **Planning balance and Conclusions**

76. 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.

77. 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.

78. Accordingly, 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.

79. Accordingly, planning permission is refused for the aforesaid reasons.

*C Parker*

INSPECTOR (appointed person for the purposes of s62A and 76D TCPA)

## **Informatives**

- (i) *In determining this application, the Planning Inspectorate, on behalf of the Secretary of State, has worked with the applicant in a positive and proactive manner. In doing so, the Planning Inspectorate worked with the applicant to seek solutions to ensure an efficient and effective determination of the application.*
- (ii) *The Planning Inspectorate, on behalf of the Secretary of State, has taken the environmental information provided - comprising the Environmental Statement and technical appendices - into account during the determination of this application by the appointed person.*
- (iii) *The decision of the appointed person (acting on behalf of the Secretary of State) on an application under section 62A of the Town and Country Planning Act 1990 is final. This means there is no right to appeal. An application to the High Court under s288(1) of the Town and Country Planning Act 1990 is the only way in which the decision made on an application under Section 62A can be challenged. An application must be made within 6 weeks of the date of the decision.*
- (iv) *These notes are provided for guidance only. A person who thinks they may have grounds for challenging this decision is advised to seek legal advice before taking any action. If you require advice on the process for making any challenge you should contact the Administrative Court Office at the Royal Courts of Justice, Strand, London, WC2A 2LL (0207 947 6655) or follow this link: <https://www.gov.uk/courts-tribunals/planning-court>*

**3293079**

5 January 2023

Cornwall Council

Land at Tregorrick Farm, Tregorrick, St Austell, Cornwall



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# Appeal Decision

Site visit made on 2 January 2023

**by Neil Pope BA(HONS) MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 05 January 2023**

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**Appeal Ref: APP/D0840/W/22/3293079**

**Land at Tregorrick Farm, Tregorrick, St Austell, Cornwall, PL26 7AG.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr M Hilditch of E H Energy Ltd against the decision of Cornwall Council (the LPA).
  - The application ref. PA20/11504, dated 23/12/20, was refused by notice dated 7/9/21.
  - The development proposed is a ground mounted solar PV farm with battery storage and associated infrastructure.
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## Decision

1. The appeal is dismissed.

## Preliminary Matters

2. Amended plans, including alterations to the proposed landscaping layout, were considered by the LPA when it determined the application. I have taken these amended plans into account in determining the appeal.
3. In submitting the appeal, and in attempt to overcome the LPA's concerns regarding the impact upon archaeological interests, the appellant has submitted a further amended layout plan<sup>1</sup>. In essence, this plan shows the proposed compound, including the battery storage element and part of the proposed access track, sited further south<sup>2</sup> to that shown on the layout plan to which the LPA's decision notice relates. Amongst other things, the amended site layout plan also shows a reduction in the number of solar modules<sup>3</sup>.
4. The LPA has been able to consider some elements of the proposed amended site layout and, on its own, the reduction in the number of proposed solar modules<sup>4</sup> would amount to a minor amendment that would be unlikely to prejudice the interests of any interested party. However, interested parties to this appeal, including the Parish Council and local residents, have not been afforded an opportunity of commenting upon the proposed repositioning of the compound and access track. This is not an insignificant change to the layout of the proposed development. In all likelihood, this is a matter upon which some interested parties would expect/wish to be consulted upon.
5. I am mindful of the Wheatcroft Principles<sup>5</sup> and guidance issued by the Planning Inspectorate<sup>6</sup>. If an appellant believes that amending its proposals would

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<sup>1</sup> The latest version is drawing ref. SHF.378.002.PLD.002 D.

<sup>2</sup> Under plan ref. SHF.378.002.PLD.002.D, the proposed compound would be about 20 metres further south.

<sup>3</sup> Approximately 322 fewer modules, equating to about a 0.15 MW reduction in capacity.

<sup>4</sup> Less than 3% of the total number of modules in the layout plan to which the LPA's decision notice relates.

<sup>5</sup> *Bernard Wheatcroft Ltd v SSE* [JPL, 1982, P37].

<sup>6</sup> Annex M of the 'Procedural Guide: Planning appeals – England (updated 21 December 2022)'.

overcome the LPA's reasons for refusal it should normally make a fresh application. The appeal process should not be used to evolve a scheme.

6. If I was to determine the appeal on the basis of the details shown on the amended layout plans that were submitted after the appeal was lodged it would be tantamount to 'sidestepping' the rights of interested parties. To avoid such procedural unfairness, I have determined the appeal on the basis of the plans that were considered by the LPA when it determined the application.
7. The appeal site lies outside, but forms part of the extensive setting to the Cornwall Area of Outstanding Natural Beauty (AONB)<sup>7</sup>.

### **Main Issue**

8. The main issue is whether any adverse effects of the proposed development, with particular regard to the likely impact upon: the character and appearance of the area, including the setting of the AONB; the agricultural industry and the need to protect the best and most versatile (BMV) agricultural land; and archaeological interests, would outweigh the benefits of the proposal, including the production of energy from a renewable resource.

### **Policy Context**

9. The development plan includes the Cornwall Local Plan Strategic Policies 2010-2030 (LP). My attention has been drawn to numerous policies. The most important ones to the determination of this appeal are LP policies 14 (renewable and low carbon energy), 21 (best use of land), 23 (natural environment) and 24 (historic environment).
10. The LPA has produced its Climate Emergency Development Plan Document (DPD). Hearings were held in June 2022, as part of the Examination into the soundness of this DPD. Consultation in respect of the proposed modifications to the DPD has taken place and the Examiner's 'Fact Check' Report has recently been issued to the LPA. This document has reached a very advanced stage and can be given considerable weight. This includes policy RE1 (proposals for renewable and low carbon energy).
11. My attention has also been drawn to the Cornwall Renewable Energy Planning Advice Supplementary Planning Document (SPD), published by the LPA in 2016. Amongst other things, this incorporates 'An Assessment of the Landscape Sensitivity to On Shore Wind Energy and Large Scale Photovoltaic Development' (ALS) that was published in 2011. This Assessment was updated as part of the evidence base to the above noted DPD. I have determined the appeal on the basis of the most up-to-date version of the ALS.
12. I have also taken into account the provisions of the National Planning Policy Framework (the Framework). Amongst other things, this aims to increase the use and supply of renewable energy whilst ensuring that adverse impacts are addressed satisfactorily. The Framework also provides that development within the setting of an AONB should be sensitively located and designed to avoid or minimise adverse impacts on such designated areas.

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<sup>7</sup> I am mindful of the duty under section 85(1) of the Countryside and Rights of Way Act 2000.



13. The Written Ministerial Statements relating to renewable energy and solar development dated 24 April 2013, and 25 March 2015, have also been taken into account.
14. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. The target for carbon emissions was initially set at 80% of the 1990 baseline figure by 2050. This was amended to 100% 'net zero' by section 2 of the Climate Change Act 2008 (2050 Target Amendment) Order SI 1056 in July 2019. This constitutes a legally binding commitment to end the UK's contribution to climate change.
15. The UK Solar PV Strategy sets out guiding principles for the deployment of solar energy development in the UK. Amongst other things, this recognises that solar PV assists in delivering carbon reductions, energy security and affordability for customers. It acknowledges that large scale developments can have a negative impact on the rural environment and on local communities. This Strategy was published a number of years ago and has moderate weight.
16. In determining the appeal, I have also taken into account relevant provisions of the Cornwall Area of Outstanding Natural Beauty Management Plan 2022-2027 (MP). These include policies PD-P11 (development within the setting of the AONB) and PD-P14 (renewable energy). I note from the MP that the appeal site is adjacent to the South Coast Central part of the AONB. The special qualities of this part of the AONB are described as including, an extremely tranquil and well-managed farmed landscape with a globally renowned, stunning coastline that extends east across Mevagissey Bay and on to St. Austell Bay. The MP can be given moderate weight.

## **Reasons**

### *Character and Appearance*

17. This 9.3 ha appeal site includes four regular shaped fields with hedgerow boundaries. These fields form part of the upper section of a steeply sloping valley side. Vehicular access is from Tregorrick Road. This also affords access to an overspill car park<sup>8</sup> for the adjacent St. Austell Rugby Football Club.
18. The appeal site is approximately 0.7 km from the A390, which runs along the southern edge of St. Austell. The village of Tregorrick is about 0.35 km to the west and Menagwins Sewage Treatment Works (STW) is 0.9 km to the south west. The boundary of the AONB is about 0.25 km to the south of the site.
19. As I saw during my site visit, the appeal site forms part of the open countryside along the southern fringes of St. Austell. I walked many sections of the network of public rights of way that bisect the surrounding landscape, including sections of paths within the AONB. Amongst other things, I noted that the area around the appeal site is popular for outdoor recreational activities/pursuits. These include walking, cycling, horse riding and golf<sup>9</sup>.
20. During my visit, I also noted the elevated and prominent position of the appeal site within the local landscape. This was especially apparent when viewed from the south and west. Its green, unspoilt, open qualities form an integral part of the attractive rural surrounds to St. Austell. Notwithstanding some lighting

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<sup>8</sup> This car park was in use during my visit, with children playing on an adjacent sports pitch.

<sup>9</sup> Porthpean golf course lies to the east and west of the appeal site and St. Austell golf course lies further west.

columns at the rugby club and a nearby telecommunications mast which appear on the skyline above the site, the above noted attributes of the appeal site provide a pleasing contrast to the built environment of the town and to the mining landscape that exists to the north of St. Austell. The site makes an important contribution to the character and appearance of the local area.

21. The appeal site lies within the Gerrans, Veryan and Mevagissey Bays Landscape Character Type (LCT), as defined within the Cornwall and Isles of Scilly Landscape Character Assessment 2007. This LCT includes a high farmland plateau that is intersected by stream valleys that give rise to an undulating landform. The undulating high plateau of a mixture of arable and pastoral farmland is one of its key characteristics. The visual sensitivities of this LCT include a very peaceful, rural landscape which has a relatively unspoilt character and few obvious build structures in the countryside. Its attractive balance of arable and pasture land, and even woodland distribution is noted as giving this LCT a special quality.
22. The above noted ALS identifies this LCT, overall, as being of medium sensitivity to solar PV developments between 5-10 ha in size. Strategic landscape guidance, set out in the ALS for this LCT, aims to avoid locating solar developments on the steep upper slopes of the stream valleys where they would be particularly visible.
23. The proposed development would result in much of the appeal site being covered with arrays of photovoltaic panels. The maximum height of the solar panels would be 2.75 metres from ground level. The proposed substation, transformer/invertor units, battery stores, CCTV poles and compound and perimeter fencing would, in the main, also be of limited heights. In addition, some new landscape planting is proposed, including a new Cornish hedge.
24. Overall, the development would not be unduly high and the new planting would help to strengthen the pattern of fields/hedgerows within the local landscape. Nevertheless, the proposal would markedly change both the character of the site and the south west facing slope of the hillside of which it forms part.
25. The large number of proposed arrays and the ancillary works would considerably erode the green, unspoilt, open qualities of the appeal site. This sizeable and overtly man-made addition to the local landscape, with its regimented lines of solar panels, utilitarian substation, units and stores, would have an urban/industrial character. In effect, the proposed development would denude the naturalistic attributes and countryside character of the site and contrast awkwardly with the unspoilt character of the fields on the lower slopes of the valley side.
26. The proposal would upset the balance of arable and pasture land within this part of the LCT and seriously detract from the pleasing contribution the site makes to the countryside to the south of St. Austell. Whilst this change in character would be limited to a period of 30 years and would be largely reversible, the harmful effects that I have identified would endure for a significant period of time.
27. The proposed development would be seen from numerous parts of the public realm, including some land within the AONB. Seeing a development does not in itself amount to a harmful impact and there is no planning policy preclusion on solar farms within the countryside. Some landscape and visual harm is an

- almost inevitable consequence of accommodating this type of development within rural areas.
28. In this instance, due to the elevated and prominent nature of the appeal site, the proposed development would be very conspicuous within the local landscape. In particular, when seen from sections of the popular public rights of way to the south and west<sup>10</sup>, as well as from parts of the St. Austell Golf Club<sup>11</sup> on the western side of the B3271, the rows of solar panels would appear as a striking and very discordant addition to this part of the countryside.
  29. The proposed arrays would dominate the upper south/south west facing slope of the hillside and would have a serious adverse impact upon the appearance and visual amenities of the area. In all likelihood, most high sensitivity receptors would deem the impact to be major, adverse with lesser harm experienced by those using St. Austell golf course. Given the topography of the appeal site, the proposed landscape planting would have a negligible effect in mitigating the visual harm that I have identified.
  30. In some instances, and when viewed from a distance, solar arrays can be akin in appearance to water within a landscape and may be considered less intrusive within the countryside<sup>12</sup>. However, that is very unlikely to be the case in the appeal before me. Here, the proposed arrays would 'cling' to the steep upper slope of the valley side and would appear as a very conspicuous and incongruous addition in the countryside to the south of St. Austell.
  31. The harm that I have identified above to the character and appearance of the area weighs very heavily against granting planning permission.
  32. The proposed development would be seen from some parts of the South Coast Central section of the AONB and could not reasonably be described as very small scale as provided for in LP policy 14(4). Whilst it would be a very detracting addition to the character and visual qualities of the local landscape there is nothing to demonstrate that it would harm the tranquillity<sup>13</sup> of this section of the AONB, or an appreciation of the coastline. I note that the Cornwall AONB Unit advised the LPA that the effects would be such so as not to require comment "*in the context of the primary purpose of the designation.*"
  33. Nevertheless, when seen by high sensitivity receptors within the AONB, the proposal would, in effect, bring urban/industrial development very much closer to a section of this nationally designated landscape. In so doing, it would erode the quality of views from the northern edge of the AONB and, in all likelihood, detract from the enjoyment/experience of some public rights of way in this section of this nationally important landscape. There would be some limited harm to the setting of the South Coast Central section of the AONB.
  34. The proposed development would conflict with the provisions of LP policy 23, the objectives of the LPA's SPD (including the strategic landscape guidance) and the thrust of MP policies PD-P11 and PD-P14.

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<sup>10</sup> From these parts of the public realm the proposal would be seen by 'high sensitivity' visual receptors. This includes the section of footpath that runs between Managwins Farm and Roseweek. For whatever reason, this was not selected as a viewpoint within the appellant's Landscape and Visual Impact Assessment.

<sup>11</sup> The main purpose of those using the golf course would be to play golf, but many users would appreciate the pleasing attributes of the landscape. Such people could reasonably be termed 'moderate sensitivity' receptors.

<sup>12</sup> During my visit, I noted the arrays along the valley floor adjacent to the STW.

<sup>13</sup> Some short-term erosion of tranquillity could be expected in part of the AONB during the construction phase.

### *Agriculture/BMV*

35. The appellant's Agricultural Land Classification Report identifies the vast majority of the appeal site (94.8%) as grade 3b and 4 agricultural land. The remainder of the site 0.48 ha (5.2%), which is the area nearest to the access track, has been identified as grade 3a agricultural land. This smaller part of the site comprises BMV, as provided for within the glossary to the Framework.
36. To ensure the best use of land, national and local planning policies, in essence, seek to avoid development on BMV. In particular, account needs to be taken of the economic and other benefits (including food production) of BMV. In this regard, I understand that part, or all, of the appeal site has previously been used to grow crops/potatoes.
37. The proposed development would only involve the use of a very small quantity of BMV<sup>14</sup>. Whilst the cumulative impact of the incremental use of BMV for development unrelated to agriculture could be significant, the appellant has informed me that sheep would be allowed to graze the land after the proposed development was completed<sup>15</sup>. Agriculture, albeit in a much less intensive manner, would therefore continue in association with this proposed scheme for renewable energy. As already noted above, the development would also be reversible and for a limited period of time. If deemed appropriate, more intensive agricultural use could resume upon cessation of the development.
38. There is no cogent evidence before me to demonstrate that the proposal would entail the harmful loss of BMV or result in any significant adverse impact upon the agricultural industry or food production. There would be no conflict with the provisions of LP policy 21. The appellant has also informed me that, having reviewed the LPA's brownfield land register, there are no suitably sized brownfield/previously-developed sites available or viable<sup>16</sup> as an alternative to the appeal site.

### *Archaeology*

39. The LPA's Archaeologist has advised that the proposed development lies within an area characterised<sup>17</sup> as Medieval Farmland with a probability for the survival of buried archaeological remains. There are also a number of known buried heritage assets located nearby. These include a Bronze Age barrow, a Prehistoric enclosure, Medieval ridge-and-furrow and post-Medieval mining remains. This suggests that the appeal site could contain important archaeological interests that could be harmed by the proposed development.
40. The application was accompanied by a number of supporting documents. This included a Historic Environment Assessment. However, there was no geophysical survey results necessary to ascertain the likely impact upon archaeology. I concur with the LPA's Archaeologist that, given the site context, it would have been inappropriate to require the submission of a geophysical survey as a condition of any approval.
41. The appeal was accompanied by a report that sets out the findings of a geophysical survey and a separate Written Scheme of Investigation for a

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<sup>14</sup> During my visit, I noted that some agricultural machinery was being stored on part of the BMV.

<sup>15</sup> I have witnessed sheep grazing on land around solar arrays elsewhere within South West England.

<sup>16</sup> Including having a suitable point of access/connection to the grid.

<sup>17</sup> Cornwall & Isles of Scilly Historic Environment Record.

Programme of Archaeological Work. Amongst other things, the survey identifies archaeological interest/activity within the site. This includes a combination of former field systems and three discontinuous sub-circular features, possibly representing later Prehistoric ring ditches or stock enclosures. At a late stage in the appeal, the appellant submitted a separate report (dated November 2022) detailing the results of an archaeological trench evaluation within the site<sup>18</sup>. This confirms the presence of important archaeological interests<sup>19</sup> in part of the appeal site.

42. As already noted, the receipt of this latest archaeological report prompted the appellant to submit an amended site layout plan. I have set out above why I am unable to take this into account. On the basis of the plans to which the LPA's decision notice relates, the proposed compound and access track would be likely to result in harmful disturbance to important archaeology. This would amount to moderate harm. The Framework requires a balanced judgement to be undertaken and to weigh this harm against the benefits of the proposal.

### *Benefits*

43. The proposed development would have a generating capacity of up to 6MW with battery storage facility. It is intended that 1.4MW would be supplied directly to Menagwins Sewage Treatment Works (STW) by a dedicated private wire connection<sup>20</sup>. On behalf of the appellant, it has been calculated that the remainder (4.6MW) would be sufficient to generate electricity for about 1,600 homes and could save approximately 2,400 tonnes of CO<sub>2</sub>. I have also been informed that some of the electricity generated could be supplied to the rugby club. If this were to occur, there would be a direct community benefit.
44. The proposal would allow South West Water Limited who operate the STW to reduce its carbon emissions and, at the same time, reduce the pressure on the local electricity system. I understand that local electricity substations are at or over capacity and that reinforcement works are required to the local grid network to avoid stress and to accommodate the likely increase in pressure with future planned growth in/around St. Austell area. This includes electric vehicle charging points. The STW is a critical piece of local infrastructure and I note the support for the appeal scheme from the water company.
45. The proposed development would increase energy generation from a renewable source, as well as increasing local capacity. The supply of electricity to the STW would remove a significant local user of electricity from the grid and, in so doing, create 'headroom' for growth elsewhere within this part of Cornwall. The proposal would assist in helping to meet the UK target of net zero carbon emissions by 2050 and the reduction of carbon emissions by 78% of 1990 levels by 2035. It would also help increase the security of supply. I attach considerable weight to these benefits.
46. The development would result in ecological benefits, such as enhanced wildlife corridors/habitat connectivity, the planting of species rich grasses and wildflowers. There would be an expected 10% biodiversity net gain. A biodiversity management plan would also be formulated for the site, some new

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<sup>18</sup> Amongst other things, this found archaeological features within eight of the twelve trenches that were dug.

<sup>19</sup> There is no indication that these remains amount to anything other than non-designated heritage assets.

<sup>20</sup> I have been informed that this grid connection was secured in July 2020 and was designed specifically for the operators of the sewage treatment works.



hedgerow and meadow planting undertaken and the provision of bird and bat boxes. I afford such ecological benefits moderate weight.

47. During the construction phase, there would be benefits to local economy with the likelihood of some construction workers using local accommodation, shops, restaurants etc... There would also be the potential to source local materials where possible. I attach limited weight to these economic benefits.
48. The development could also result in some educational benefits. This could include school and college visits being undertaken, so as to better understand how a solar farm operates and its role in helping to address climate change and support biodiversity. I afford such benefits some limited weight.

#### *Other Matters*

49. The appeal site lies within the extended settings of a number of listed buildings<sup>21</sup>. The LPA has informed me that the proposed development would not affect the setting of any listed building. I concur with the finding in the appellant's Historic Environment Assessment that the proposal would not affect the significance of any designated heritage asset. There is nothing of substance to refute this finding. The proposal would preserve the settings of designated heritage assets that can be found within the local landscape.
50. The application was supported by the LPA's officers. However I note that a finely balanced recommendation was made. I also note the findings of some other Inspectors in appeal decisions for solar farms elsewhere. Each case must be determined on its own merits and no two sites are exactly the same. The topography of the site in the appeal before me and its landscape context are very different to the other cases that have been drawn to my attention. These other decisions are not on all fours with the case before me and do not set a precedent that I am bound to follow.

#### **Conclusion**

51. I do not set aside lightly the benefits of the proposal, especially at a time when there is added pressure on the security of energy supplies. The benefits would be sufficient to outweigh the harm to archaeological interests that I have identified. As a consequence, there would be no conflict with the provisions of the Framework that are aimed at conserving the historic environment or LP policy 24. 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.
52. In this instance, the adverse effects of the proposed development upon the character and appearance of the area, including the setting of the AONB would, on balance, outweigh the benefits of the proposal. The proposed development would conflict with the provisions of LP policy 14, DPD policy RE1 and the provisions of the Framework when read as a whole.
53. Given all of the above, I conclude that appeal should not succeed.

*Neil Pope*  
Inspector

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<sup>21</sup> The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

**3299953**

5 December 2022

Amber Valley Borough Council

Land north west of Hall Farm, Church Street, Alfreton





## Appeal Decision

Inquiry opened on 18 October 2022

Site visit made on 2 November 2022

**by Paul Jackson B Arch (Hons) RIBA**

an Inspector appointed by the Secretary of State

**Decision date: 5 December 2022**

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**Appeal Ref: APP/M1005/W/22/3299953**

**Land north west of Hall Farm, Church Street, Alfreton DE55 7AH**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by KS SPV 61 Ltd against the decision of Amber Valley Borough Council.
  - The application Ref AVA/2020/1224, dated 10 December 2020, was refused by notice dated 7 December 2021.
  - The development proposed is a photovoltaic solar park and associated infrastructure.
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### Preliminary matters

1. The Inquiry sat for 6 days. Costs applications were submitted in writing on the last sitting day and following written responses, the Inquiry was closed in writing on 8 November 2022.
2. I carried out unaccompanied site visits to the appeal site and surrounding viewpoints and heritage assets on 17 October and 31 October. An accompanied site visit to various viewpoints and the tower at Wingfield Manor was carried out on 2 November.
3. Applications for costs were made against KS SPV 61 Ltd and the holding company Kronos Solar Projects GmbH by the Council and the Save Alfreton Countryside Rule 6 party. These applications are the subject of separate Decisions.
4. Prior to the Inquiry, the Council advised that it would not be defending reason for refusal no. 2 insofar as it refers to the proposed development not contributing to the preservation or enhancement of the setting of the Amber Mill and Toad Hole Conservation Area. I have considered the appeal accordingly.

### Decision

5. The appeal is dismissed.

### Main Issues

6. The main issues are as follows:
  - The effect of the proposed solar farm on the landscape quality and character and appearance of the area;

- The effect on the setting of St Martins Church, listed at Grade II\* and Alfreton Hall at Grade II; and
- The effect on other heritage assets including Wingfield Manor House (Grade I), Alfreton Park and conservation areas at Alfreton and South Wingfield.

### **The site and surroundings**

7. The site comprises 75 hectares (ha) of agricultural fields and woodland north west of the town of Alfreton. According to the Agricultural Land Classification (ALC) for England<sup>1</sup> the land is mostly Grade 4 (poor) with some areas at Grade 3 (good). It is used primarily for pasture and silage. Alfreton lies on a distinct ridge and most of the site slopes down towards the Alfreton Brook to the north. The western edge of the site slopes to the north west. The site is crossed by several public footpaths and there are long ranging views from these towards Crich and Wessington<sup>2</sup>.
8. A group of farm buildings (Ufton Fields farm) including dwelling conversions lies on the western edge of the area proposed for solar panels. During the course of the application, a number of fields and parts of fields around the perimeter and around the farm buildings and on the eastern edge of the scheme between Wren Wood and Pond Wood were removed from the proposal, without affecting the potential output. The Council considered the development on the basis of the reduced area.
9. Hall Farm itself comprises a collection of buildings on the western edge of the town next to St Martins Church. The church lies at the highest point in the settlement and its square tower is conspicuous in the landscape. The farm and church are within the Alfreton Conservation Area though the adjacent associated Alfreton Hall is not.
10. The site is divided between 2 parishes, Alfreton to the east and South Wingfield to the west. The parish boundary also follows the historical western boundary of Alfreton Park, land associated with the Morewood family that lived at Alfreton Hall. The evolving pattern of footpaths, pleasure grounds and woodland associated with the 1724 Alfreton Hall and its subsequent extension can be seen on surviving maps from the Alfreton Park Enclosure map of 1812 through to Ordnance Survey maps in the 20<sup>th</sup> century<sup>3</sup>.
11. Extensive opencast coal operations took place in the 1950s on much of the parkland but areas of woodland were preserved. It appears that the land was restored to something very similar to its previous shape and form, sympathetic to the large and dominant extended Hall at the highest point next to the farm and church. Changes to hedge and fence boundaries do not now diminish understanding of its historical use as parkland. Demolition of the original 1724 hall in the 1960s due to subsidence has left the 19<sup>th</sup> century extension standing alone. It remains a substantial building on the ridge.

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<sup>1</sup> Detailed analysis of 6 samples has been provided by Liz Scott (see ID19 below). Parts of the site indicate an ALC level of 3b. Local detailed analysis can often vary and this is not inconsistent with the broader regional classification by Natural England. Level 3b would indicate that the land would not be considered 'best and most versatile'

<sup>2</sup> With reference to the Zone of Theoretical Visibility (ZTV) Fig 5 of the Landscape and Visual Impact Assessment (LVIA)

<sup>3</sup> See Mr Cox's and Ms Morris's appendices

## Policy background

12. The development plan for the area consists of saved policies of the Amber Valley Borough Local Plan (LP) adopted on 12 April 2006 and policies of the South Wingfield Parish Neighbourhood Plan 2020-2035 (NP), made on 20 January 2022. With respect to the latter, it was found that the version of the NP subject to referendum had omitted in error the text of policy NPP 11 'Renewable Energy and Low Carbon Construction Method'. A modification proposal has been made under Regulation 14 (a) (v) to modify the plan to rectify the omission. The weight that can be attributed to this policy was subject to debate at the Inquiry. Consultation is taking place for a period of 6 weeks from 13 October 2022.
13. The second reason for refusal refers to NPP 11 *Renewable Energy and Low Carbon Construction Methods* paragraphs 4 a) b) and c), however proposed policy NP 11 5 is supportive of suitably located and designed development proposals for the supply of renewable energy where it is demonstrated that adverse impacts have been addressed satisfactorily in respect of a) amenity of residents and visitors; b) natural environment designated sites and protected species; c) the significance of Wingfield Manor and other heritage assets; and d) loss of best and most versatile agricultural land. The policy was examined by the Inspector and its provisions are uncontroversial. It had been subject to consultation. I regard the omission as a procedural error that is likely to be rectified without objection. However the fact that the policy wording is not included in the NP lessens the weight that can be given to it.
14. The replacement Amber Valley Local Plan 2021 – 2038 is at an early stage of consultation and attracts very little weight.

## Reasons

### *Landscape character*

15. The majority of the site lies on the western edge of National Character Area (NCA) 38 *Nottinghamshire, Derbyshire and Yorkshire Coalfield* within which the effects of widespread industrialisation have influenced the landscape. Whilst identifying the potential for solar farms in the south of the area, Natural England identifies opportunities such as raising the overall quality of design and location of new developments, by amongst other things, ensuring that parklands are under management that maintains their historical value while enhancing the biodiversity and recreational benefits that they offer, and their settings.
16. A small part of the site lies in the neighbouring NCA 50, *Derbyshire Peak Fringe and Lower Derwent*. The NCA is described as a picturesque transitional area between the natural beauty of the Peak District National Park to the west and the largely urban, formerly mined Derbyshire Coal Measures to the east. Natural England advises that the area is often referred to as the 'Gateway to the Peaks' and is rich in semi-natural habitats, intimate and dramatic landscapes, views and vistas and as such, it is an important area for recreation.
17. The site lies within Derbyshire County Landscape Character Type (LCT) Coalfield Estatelands, which surround Alfreton. This is described as a heavily industrialised and urbanised landscape characterised by settlements, parkland, woodland and dairy farming. The most relevant key characteristics include a

gentle undulating landform, dairy farming dominated by pasture, plantation woodlands, tree belts and coverts, fields of medium size defined by hedgerows, extensive areas of existing and relict parkland, and occasional country houses with associated parkland trees. Extensive areas of amenity parkland at Shipley and Alfreton are referred to, that at Alfreton being the non-designated parkland associated with Alfreton Hall. The change in character between small fields used for grazing around Ufton Fields Farm and the expansive parkland, or estate, character on the east side of the site including significant woodland (Pond Wood, Wren Wood, Long Plantation, Beech's Plantation and Highfield Plantation) is quite apparent.

18. LCTs in the surrounding setting of the site include Wooded Farmlands to the west (described as a mixed farming landscape on undulating ground with a strong wooded character) and Wooded Slopes and Valleys (described as a landscape of small pastoral fields on undulating rising ground with woodlands on steeper slopes), and Coalfield Village Farmlands to the north (characterised by pastoral farming and localised arable cropping). However the site is better characterised as transitional between these neighbouring types. This is best understood on the high ground near the centre of the site looking west and north.
19. The proposed development would occupy a large part of the sloping fields on the west side of Alfreton. Many of the panels would be mounted to face the sun on slopes descending in the opposite northerly direction. This would accentuate the appearance of the rear of the panels which would present as a starkly industrial mass of metal ascending the hill. En masse, they would be a prominent feature seen from as far away as 4-5 km away to the west and north. From higher ground about 3 km away at Wessington, the large Ferrero (Thorntons) factory is visible south of Alfreton. The panels would extend the area of industrial development into an area close to the town that is currently open countryside. This would be even more apparent from further west at the Crich Memorial, where more extensive industrial development to the south of Alfreton is also visible. From here, the fields that characterise the countryside on high ground immediately west of Alfreton would be largely subsumed. Whilst it is proposed that new hedging would be planted, that would not succeed in hiding the extent of the solar farm, especially seen from higher ground. Moreover, hedges of sufficient height to mitigate for the height of the panels (up to 3m) would be out of character with the area, where traditional hedges are typically much lower. They would also tend to obscure the perception of the smaller fields that characterise the Coalfield Estate lands and Coalfield Village Farmlands LCTs.
20. However, the effect on character within 2 km of the development would be more significant. The site forms a large part of the southern slope of the small scale valley of the Alfreton Brook between the A61 and the B6013. The waste water treatment works is not a defining feature. The scale of the fields and woodland is almost intimate with a distinct sense of tranquillity. The ground also rises to the west towards South Wingfield across the valley of the River Amber. The consistent undulating valley sides carpeted with mainly small fields and groups of trees does not lend itself to introduction of the proposed large scale industrial installation that would rise well above the low hedges and dominate the topography.

21. Turning to whether the landscape is valued (in the terms set out in the National Planning Policy Framework (NPPF) at paragraph 174, the site does not form part of a designated landscape. The appellant's assessment concludes that the site is of overall 'moderate' value. I consider<sup>4</sup> that in terms of rarity, heritage, and perceptual factors, that assessment undervalues the site and its landscape setting. Rarity is the presence of rare elements or features in the landscape or the presence of a rare LCT. In Landscape Institute guidance it is combined with 'representativeness' into a newly-named factor 'distinctiveness'. The relic Alfreton Hall parkland and literary associations with D H Lawrence mentioned by many local people indicate to me that this factor should be higher than the 'low' considered by the appellant<sup>5</sup>, if only because these ingredients do imbue a strong 'sense of place' notwithstanding its acknowledged natural beauty and views of Crich Memorial and to a lesser extent Wingfield Manor in addition. Heritage value in terms of landscape essentially derives from the association with Alfreton Hall and the Palmer-Morewood family, whose influence on Alfreton and its surroundings is well known and recorded, not least in the current brochure for the Hall as a wedding venue. The remaining protected woodland, field boundaries, remnant estate fencing, relationship to the farm and church and non-designated heritage asset status all indicate to me a higher value assessment than 'moderate'. In perceptual terms, the contrast with the immediately adjacent urban environment of Alfreton and apparent isolation from industry and busy main roads, indeed tranquillity, combined with the far-reaching prospect towards the Peak District, suggest a strong sense of detachment. This in combination with the evident wildlife, in particular birds such as skylark, means that the perceptual factor should be higher than 'moderate'. Overall, there is strong evidence to conclude that the appellant has underestimated the landscape value of the appeal site and its setting. Moreover, there is a large body of evidence testifying to the enhanced value placed on the parkland and the appeal site by local people.
22. With regard to impact, the appellant acknowledges a major adverse effect, even after mitigation, on the Coalfield Estatelands LCT and on NCA 38, due to the scale of development proposed. Although only 2 fields of the scheme are within the 'boundary line' of NCA 50 *Derbyshire Peak Fringe and Lower Derwent*, the appellant's assessment of a 'minor adverse' impact here gives insufficient emphasis to the transitional nature of the landscape in the Amber valley and the visibility of the solar farm from the west and north. That impact level should be substantially raised. In considering this point I note that cross-referencing the Table 6 and the assessment of NCA 50 as 'medium-high' landscape value in the appellant's own LVIA indicates a higher level of harm than 'minor'. The ability to appreciate the landscape value of NCA 50 as inextricably linked with that of NCA 38 arises from longer views of the scheme, and also because of the dip where the Alfreton brook meets the Amber river, clearly seen from, for instance, the Matlock Road.
23. None of the evidence leads to a conclusion that the landform or vegetation in the former parkland or neighbouring fields have been significantly altered by open cast working in the 1950s. I give this matter very little weight in assessing the landscape value of the site and its surroundings.

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<sup>4</sup> Having regard to the Guidelines for Landscape and Visual Impact Assessment 3<sup>rd</sup> edition (GLVIA) which provides a list of factors at Box 5.1, and the Landscape Institute's Technical Guidance Note TGN 02-21 *Assessing landscape value outside national designations*

<sup>5</sup> Acknowledged by the appellant in cross-examination

24. The proposed development would have a major adverse effect on the Coalfield Estatelands LCT and a localised major adverse effect on NCAs 38 and 50.

*Visual amenity*

25. Industrial development lies on the north side of Alfreton, including a large sewage treatment works and activity associated with the explosives industry. It will include a recently approved solar farm at Meadow Lane. On the south side, beyond the A38, there is an extensive area of warehousing and industrial manufacturing visible from high ground at Crich. A countryside gap of about half a kilometre (km) between Alfreton and South Normanton to the east is separated from the town by a railway line, is relatively featureless and has very few public footpaths. Alfreton Park and the surrounding fields comprise the only area of attractive open countryside easily accessible from the town. This adds to its value for local residents.
26. Local occupiers and users of public footpaths are regarded as being of 'high sensitivity' when considering the impact on visual amenity. The site is criss-crossed by several public rights of way of historic and distinctly rural character. FP18 and FP19 lead directly from the Alfreton Conservation Area, St Martins church and Hall farm towards Oakerthorpe and South Wingfield, Toadhole Furnace and Shirland respectively via footpaths 47, 48, 49 and 50.
27. Immediately on leaving the churchyard, users of both footpaths would notice the extent of the solar farm to the west and to the north west of Wren Wood due to its height of up to a maximum of 3m. Although its utilitarian industrial appearance would be mitigated over time by new screening hedging, this would be in stark contrast to the prevailing field boundary hedges which are much lower. The new vegetation would seriously restrict views beyond the former parkland towards Crich and NCA 50, which currently unfold for the walker on the popular FP18. Elements such as equipment storage containers and transformer stations would be visible, sometimes above the hedges. Metal deer fencing would be apparent as a new and discordant feature, the effect lessened by mitigation in time but remaining highly visible looking at the scheme from the north. The hedging would not be effective mitigation from this direction<sup>6</sup>. The CCTV cameras would project above on poles and would be seriously inharmonious and intrusive in this relatively unspoilt undulating rural environment.
28. Moreover, there would be inverters positioned throughout the scheme which would produce a humming noise when in operation. At several locations, these are close to public footpaths<sup>7</sup> where the noise, especially when the inverters are under load for instance in sunny weather<sup>8</sup>, would add to the visual impact of the panels in the visitor's experience.
29. Occupiers of dwellings at Fourlane Ends would notice panels on the ascending slope opposite but there would be intervening pasture and the solar farm would not seriously impact on their experience of the surrounding landscape, unless they wanted to walk into the area of panels. On the other hand, occupiers of dwellings at Ufton Fields farm would experience a significant change in the character and appearance of the area from tranquil open small scale grazing

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<sup>6</sup> Most clearly indicated on the photomontages ID5, (year 10)

<sup>7</sup> Using Ms Miller's plan at page 19 of her proof

<sup>8</sup> 62 dB at 10m distance



land to a dominant industrial installation with associated noise from inverters. This is despite the appellant withdrawing parts of fields nearest to these dwellings. It has been demonstrated that in the worst case, inverter noise (32dB) heard at Ufton Fields could exceed background noise levels from traffic on the B6013, A615 and other sources (30dB). The difference would be less than 3dB and unlikely to be noticed often, but 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 49 and 50 and this would reinforce their impression of a significant and detrimental change in the character and appearance of the area.

30. In many ways the most serious visual impact would be experienced from Lower Delves farm on the south facing slope below Shirland. Occupiers of dwellings and users of footpaths and the golf course here would have a direct view of the rear of an extensive area of solar panels facing up the slope. The suggested mitigation planting would do little here to conceal the extent of new deer fencing, CCTV and inverters. The magnitude of change to visual amenity in this small valley would be major, with major adverse significance of effect.
31. In conclusion on this issue, the proposed development would be significantly out of scale with the landscape of undulating small fields and would completely dominate an attractive valley landform. It would effectively prevent many locally important views towards the Peak District from a dense network of well used public footpaths on the edge of a settlement, occupiers of which greatly value the landscape and views into and from it. The proposed mitigation might reduce the impact on the upper contours where the ground is reasonably flat but would achieve little on the extensive west and north facing slopes. The new hedges would at the same time significantly change the character of the landscape and diminish the experience of the area for local occupiers and recreational users.
32. As such, the scheme would seriously conflict with the landscape and visual amenity protection aims of LP policies LS3 (a) and (b), EN7 (a)(b) and (e), EN35 (d) and SWPNP policies NPP3 1 (a) and NPP11 5 (a). The development would also conflict with the guidance in NPPF paragraphs 174 (a) and (b) and 158.

#### *The settings of listed buildings*

##### *St Martins church and Alfreton Hall*

33. The heritage significance of St Martins derives mainly from its architectural, communal and historic interest as an important building at the centre of the community. As the parish church of Alfreton it is prominent on the highest ground in the town with far reaching views to the north and west across parkland. The church is understood as part of a historic group of buildings and the surrounding landscape which includes Alfreton Hall, its park and the farm buildings between them. Mature trees have grown around the churchyard but these do not obscure the top of the large stone square tower and flagpole which can be discerned from some distance. The parkland forms an important part of the setting of the group and extends as far as Beeches Plantation to the west.
34. The solar farm would be more than 300m from the church at its nearest point on footpath 18 and considerably further on footpath 19 and would not be



especially distracting in views from the church, certainly after mitigation planting has matured. However people approaching the church and town from the west and north on footpaths 18 and 19 would pass through and alongside the solar farm at close quarters and this would initially remove the ability to properly appreciate the parkland origins of the landscape. New high hedging around these paths would dramatically change the experience, emphasised by new deer fencing, inverters and cameras.

35. It is almost certain that FP19 has ancient origins, leading to and from Alfreton, the church and Park Mill on the Alfreton brook. Approaching Alfreton, once past Wren Wood and Pond Wood, the church tower, set within and above trees, becomes much more clearly visible. This would be at a point where the Hall would also gradually become apparent, albeit including more modern buildings and trees in its curtilage. The harm to setting would result from the industrialisation of a large part of two approaches to the church and related assets and the effect on perception of the full extent of the Alfreton Hall parkland setting until this point is reached. The historic rural estate setting of the church and hall would be significantly diminished. With reference to the scale of effects on the significance of the church in the appellant's appendix 10, the degree of change in setting of this asset of high sensitivity would be minor/moderate and the level of harm to significance would be less than substantial, at the lower end of the scale.
36. Similar considerations apply to Alfreton Hall, except that there is a more obvious historic and long-standing relationship between the Hall and the surrounding non-designated parkland and this remains plain and evident because of the deliberate planting of woodland belts and the remnants of estate fencing around the remaining large fields. The ha-ha on the north side of the house remains, as does the extensive pleasure-ground to the south of the Hall with some exceptional specimen trees. This area is very popular with local residents who would clearly see the solar farm at the edge of the wooded section from the many interconnecting paths. The panels and supporting structure would effectively obscure the views through to the open fields and the historic landscape beyond. The 18<sup>th</sup> century hall was demolished in the 1960s leaving the 19<sup>th</sup> century extension, still a substantial building and a popular wedding venue that relies on its history for publicity and as an attractive location. Modern development within its curtilage to the east has detracted from its setting and the woodland to the west is one of the few areas where something of the original parkland and the history of the hall and Park can still be experienced. For this reason, I consider the intrusion of the solar arrays into the hall's setting would have a minor/moderate impact, again leading to a degree of less than substantial harm to heritage significance at a slightly higher level than that to the church.

#### *Alfreton Park*

37. There is substantial and credible evidence of the park's extent and changes in woodland and field boundaries since at least 1610 and records of changes in ownership since the 13<sup>th</sup> century. Estate surveys by the Palmer-Morewood family and later by Ordnance Survey reveal the evolution of field boundaries and footpaths since the early 19<sup>th</sup> century. The Historic Environment Record (HER) identifies the whole of Alfreton Park which includes the area north of the Hall including much of the appeal site. There is no evidence that open casting and subsequent restoration here has resulted in any perceptible change apart

from additional field boundaries. The Park is different in character from adjacent farmland by virtue of stands of broad mixed plantations, designed vistas, large, open fields and specific tree planting on the northern boundary.

38. The eastern part of the solar farm beyond the South Wingfield parish boundary would lie entirely within the western part of the area designated as Alfreton Park in the HER. I accept that the larger part of the park still remains as one cohesive design and that this is readily perceptible and enjoyed by visitors. The panels and associated containers and inverters would prevent any appreciation of the original extent of the park and its evolution over time, as well as completely obstruct many of the views out between woodland towards countryside around Shirland, South Wingfield and Crich. The intended mitigation planting would do no more than hide the panels and installations from immediate view whilst further removing any ability to perceive the historical extent of the park, unlike the existing hedges and fencing which is low and permeable in nature.
39. Deer, fencing, access tracks and cameras will add to the entirely incongruous impact of the solar farm which overall will largely vitiate the cultural identity of the park and its association with Alfreton Hall. The park should be assessed as a heritage asset of medium significance and the erasure of a large proportion of the open part of the park amounts to a substantial level of harm to this non-designated asset.

#### *Wingfield Manor House*

40. Wingfield Manor House is a ruined 15<sup>th</sup> century palatial structure on a conspicuous rocky outcrop. It lies about 900m south of the centre of South Wingfield with extensive views in all directions. It is arranged round a pair of courtyards with a 22m high tower. Originally the home of Ralph, Lord Cromwell, Treasurer of the Exchequer, it was subsequently prison accommodation for Mary, Queen of Scots, three times and the site of English Civil War sieges twice. The Manor derives significance from its archaeological, architectural and historic interest and is an exceptional survivor. Its prominent setting in largely open rural surroundings once included extensive deer parks. As far as can be ascertained, these did not extend eastwards as far as Alfreton or the appeal site. The site does not fall within any of the key views towards Wingfield Manor identified in the NP, although solar panels would be visible from footpaths around the Manor in the context of the deer parks.
41. The centre of the solar farm would be about 3 km from the tower but the nearest panels (on the approach to Ufton Fields farm) would be around 2.25km away. There would be some visibility of the Manor from the site but such views are incidental and not 'designed'. Whilst it is appreciated that panels could obstruct these where they occur, the amount of harm caused in terms of the ability to appreciate the Manor's heritage significance seen from the site would be minor.
42. In views from the tower, and from nearby footpaths (South Wingfield FP11, FP12 and FP14), clusters of fields containing solar panels would be apparent by virtue of the contrasting industrial, metallic glazed appearance on the side of the valley and extending onto the Alfreton ridge. The development would be distracting above the treeline from FP14<sup>9</sup>. However the overall contribution

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<sup>9</sup> Mel Morris Appendix 2 Panoramas 6 and 7

made to the heritage significance of the Manor by the undeveloped site, as part of extensive 360 degree views, is minor. Mitigation planting would reduce the impact in time, but the intrusion into the panoramic view from the tower would be noticeable and distracting. It would be seen as an addition to some other developments such as industrial units and wind turbines, but this is not a reason to justify further incursions. A prominent part of the rural surroundings would become industrial in appearance. Overall, the harm to the setting of this Grade I listed building and Scheduled Monument would be less than substantial but would attract important weight, leading to a moderate degree of harm to significance, and failing to preserve the setting of this remarkable heritage asset.

#### *The effect on conservation areas*

##### *South Wingfield CA*

43. The South Wingfield Conservation Area encompasses the Manor and its immediate surroundings together with the central part of the village, the church and corn mill in the Amber Valley to the east. Its character and appearance derives principally from the existence of the Manor and its high status and the historic dependent relationship between the village and its inhabitants and the occupants of the Manor. The development would be visible from several points on the ridge along which most of the village lies, as part of a generally pleasant rural outlook towards Alfreton generally free of large scale development. This would not prevent appreciation of the character and appreciation of the CA, however, and its character and appearance would be preserved.

##### *Alfreton CA*

44. Alfreton CA comprises the oldest part of Alfreton town centre including Church Street, Market Place, St Martins Church, the churchyard, vicarage, Glebe House and Hall Farm, excluding Alfreton Hall but including the gatehouse to the Hall (listed Grade II). The conservation area boundary extends as far as the point just north of the church where footpaths 18 and 19 meet and where extensive views can be appreciated to the north and west. The proposed construction access A to the proposed development would pass through Hall farm along Church Street which is bounded by vulnerable stone and brick structures and trees protected by virtue of being in the CA.
45. The existing farm access is used by farm traffic including tractors and trailers and for the movement of cattle. Construction of the development would cause additional temporary, but significant, noise and disturbance. However the suggested conditions could include measures to ensure that the access is suitably protected in physical terms and a Transport and Construction Management Statement would need to be approved by the Council, which would include limiting the size of vehicles and restricting timing of deliveries. I conclude on this matter that the character and appearance of the CA would be preserved.

#### *Other heritage assets*

46. The Peacock Hotel (Grade II) lies on the A615 to the west of the proposed development. It is a former coaching inn, dating from the early 17<sup>th</sup> century. Its heritage significance derives from its architectural and historical interest

and its prominent location as an overnight stop on an ancient route. There would be views of some solar panels from the building, more pronounced on the upper floors, separated from the hotel by bungalows and undeveloped fields. The hotel can be seen from the appeal site as part of a group including 20<sup>th</sup> century residential development. Whilst there would be a minor impact on its setting, the solar farm would not prevent full appreciation of its history and architecture.

47. I conclude on heritage matters that there would be harm to the settings of St Martins Church and Wingfield Manor House, leading to a degree of 'less than substantial' harm to the heritage significance of these assets. The heritage significance of the northern part of the non-designated Alfreton Park would be seriously compromised, affecting the ability to appreciate the setting of Alfreton Hall and leading to a degree of 'less than substantial' harm to the heritage significance of the Hall. The scheme would conflict with the heritage protection aims of LP saved policies EN24 c) and policy NPP5 4 of the NP. The harm to heritage significance should be weighed against the public benefits of the proposal.

### **Other matters**

48. The impact of noise was not a reason for refusal but was raised by the Rule 6 party, Save Alfreton Countryside, with particular reference to noise and disturbance during construction and decommissioning and the effect of noise emanating from the completed development on pupils at Alfreton Park Community Special School. There would be solar panels in fields immediately adjacent to the existing school but the panels themselves do not emit any noise. The appellant acknowledges that inverters further away would produce noise. Specialist evidence was heard on the likely 'worst case' noise levels that would be produced by a range of the most likely models of inverters during operation with a 'noise reduction kit' in place. This indicated that it is extremely unlikely that noise pressure levels from the inverters would exceed background noise levels at any time<sup>10</sup>. The nearby A615 and the A38 dual carriageway are responsible for most of the background noise.
49. Pupils at the school are amongst the most vulnerable in society with a range of special needs, where conventional assessment of noise pressure levels may not be sufficient to prevent a harmful effect. I do not doubt that where children have complex audio-sensory processing difficulties perhaps with a hypersensitivity to noise, they may be disturbed by unusual tonal elements or unexpected sounds, and that this can be very difficult to manage. There is no evidence to contradict the experience of school staff that some pupils have enhanced audio-sensory capabilities and susceptibility to sounds which most people cannot hear. Moreover the school may need to expand further towards the northern boundary, nearer the inverter noise source. An additional difficulty is envisaged when children use local footpaths through Alfreton Park for amenity and nature appreciation purposes. Noise from inverters, perhaps behind a hedge, could be difficult for children to process.
50. A planning condition could ensure that operational noise would never exceed background noise pressure levels at the school boundary, but this would not prevent difficulties for those with increased auditory perceptual capacity. Nor

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<sup>10</sup> 14 dB below the typical daytime background sound levels at the school

would it prevent difficulties when children use local footpaths through the scheme- something that would be hard to avoid. Noise during construction of the development in immediately adjacent fields would be temporary and could be mitigated but not entirely eliminated by measures in the Construction Environmental Management Plan, for instance by limiting hours of working. I conclude that there is reasonable evidence to indicate that the development would cause problems for children with audio-sensory processing difficulties during construction (and ultimately, removal) and when using local footpaths. The interests of vulnerable people are an important consideration but one that must be balanced against the public benefits of the proposal in the form of tackling climate change and the supply of renewable electricity. However without further information on who the affected children are, the nature of their disability and how they might be affected, it is difficult to judge whether the inverters proposed would have an unacceptable impact, what the extent of that would be and if so, whether there are means by which any harm could be successfully further mitigated. In this case, steps have been taken to move inverters away and provide noise-reduction kits. That is not to say that a conclusion can be firmly drawn that there would not be any harmful effect, especially when using local footpaths. These considerations weigh against the scheme.

51. As for the whether the impact of the proposed development on the children at the school would constitute an infringement of their rights under the Equality Act 2010 and the public sector equality duty referred to by the SAC, this does not apply to private organisations such as the applicant company. The Council, and the decision maker are required to comply with the duty. The duty is to have due regard to the need to a) eliminate discrimination (direct or indirect), harassment, victimisation; (b) advance equality of opportunity between persons who share a relevant protected characteristic and persons who do not share it; and (c) foster good relations between persons who share a relevant protected characteristic and persons who do not share it. The duty is not a positive or absolute duty to advance equality, eliminate discrimination or foster good relations in every case at the expense of all other considerations; it is a duty to have due regard to the need to take these steps where possible. Essentially, the duty requires consideration of any negative impact the decision may have as regards equality principles and, where the negative impact is significant and mitigation is possible, steps should be taken to mitigate the negative impact and/or advance equality of opportunity. I am dismissing the appeal for other reasons and do not consider this matter further, beyond noting the potential for harm.
52. Many objectors refer to the abundance of wildlife on the site, in particular birds. The development would result in restoration of existing hedgerows and the introduction of new hedgerow planting. Grassland would be improved with the introduction of new meadow species. An area would be set aside for the local population of skylarks. Future management would be controlled by means of grazing or light cutting for the benefit of seed dispersion and wildlife. Bat and bird boxes would be provided across the scheme. Ecological concerns do not weigh against the scheme.
53. I have taken into account the impact of this development bearing in mind cumulative effects that may occur as a result of an approved solar farm at Meadow Lane and another withdrawn application at Alfreton North (Upper Delves Farm). The appellant has confirmed that Alfreton North is unviable



because its area is too small to reach the desired installed capacity. There is no proposal to resubmit any application for a solar farm on this site. Meadow Lane is on the north east side of Alfreton between a waste water processing plant and industrial development. There are very few places where it could be appreciated at the same time as the appeal development. Accordingly I do not find any unacceptable cumulative impacts would occur.

54. A signed and dated S106 Unilateral Undertaking (UU) has been provided with the objective of providing a community benefit fund of £10000 annually for 20 years, index linked, for the parishes of Alfreton and South Wingfield to provide improvements to recreational and leisure facilities 'including improvements to local walking routes and other recreational facilities and enhancements to public awareness information about local heritage assets to help address and compensate for recreational leisure and heritage impacts of the Development'.
55. The benefit fund would not be addressing any specific projects or benefits for which a need has been identified. It is doubtful that even if suitable benefits had been put forward in the UU, they would approach being fairly and reasonably related in scale and kind to this particular scheme, which would have very significant impacts. The UU places obligations on others not party to the UU to form part of a decision-making panel to administrate the fund.
56. It has not been shown that the fund is necessary to make the development acceptable in planning terms. The appellant confirmed that the approach adopted here is standard and similar to that used at other schemes. I do not discount the benefits offered, but bearing in mind the 3 tests set out in Planning Practice Guidance<sup>11</sup>, the UU can only carry very limited weight.

## Conclusion

57. The production of up to 49.9 MW of renewable energy, sufficient for between 11500 and 13360 homes or more than 22% of the Borough's total households<sup>12</sup> is a very significant factor in favour, along with the associated reduction in carbon dioxide emissions and the contribution that would be made to addressing climate change. The development would lead to a significant and useful increase in solar renewable energy in the Amber Valley area, substantially helping the Council in its aim to support and encourage the generation of energy from renewable sources. The return of the land to arable production after 40 years means that it would not be taken out of production in the long term. The intention to continue to use the land for grazing in the meantime, as set out in the appellant's planning appraisal at page 21 and in other places, carries some weight.
58. Planning Practice Guidance advises that local topography is an important factor in assessing whether large scale solar farms could have a damaging effect on landscape: and that great care should be taken to ensure heritage assets are conserved in a manner appropriate to their significance, including the impact of proposals on views important to their setting. Protecting local amenity is also an important consideration which should be given proper weight in planning decisions<sup>13</sup>.

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<sup>11</sup> Paragraph: 002 Reference ID: 23b-002-20190901

<sup>12</sup> 11500 as per officers report. Appellant advises this is equivalent to 13360 homes (E Robinson proof 8.2.7)

<sup>13</sup> Paragraphs 007 Reference ID: 5-007-20140306 & 013 Reference ID: 5-013-20150327

59. In this case, the solar farm would be mounted largely on sloping land with a very significant zone of visual influence extending for several km across attractive and locally valued countryside in a transitional character area with long reaching views. Whilst I have found that the character and appearance of the Alfreton and South Wingfield Conservation Areas would be preserved, there would be a substantial level of harm to Alfreton Park, a non-designated asset, and a degree of 'less than substantial harm' caused to the settings of Wingfield Manor, St Martins Church and Alfreton Hall.
60. 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. 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.
61. For all the above reasons, the appeal must be dismissed.

*Paul Jackson*

INSPECTOR



## APPEARANCES

### FOR THE LOCAL PLANNING AUTHORITY:

Ned Westaway	Of Counsel
He called:	
Melanie Lloyd Morris BA (Hons) DipArch Cons IHBC MRTPI	Mel Morris Conservation
Deborah Evans MA CMLI IHBC	DE Landscape and Heritage Ltd
Michael Bamford BA(Hons) MPLAN MRTPI	Planning & Design Practice Ltd

### FOR THE APPELLANT:

Celina Colquhoun	Of Counsel
She called:	
Peter Cox MCIFA	AC Archaeology
Ivor Matthew CMLI	Laurence Associates
Frank Bohne MBA	Kronos Solar Projects GmbH
Jo Miller BSc MSc MBA MCIEH MIA	Miller Goodall
Emily Robinson	Laurence Associates

### FOR SAVE ALFRETON COUNTRYSIDE:

John Campbell	Of Counsel
He called:	
Richard Marsden	Alfreton and District Footpaths Society
John Ydlibi	CPRE The Countryside Charity
Josie O'Donnell	Headteacher, Alfreton Special School
Peter Milner FRICS	

### INTERESTED PERSONS:

Emma Stevenson	Local resident
Caz Moon	Local resident
Julia Williams	GEW2 Ltd
Dr Clare Price-Dowd	Local resident
Paul Gibbons	Local resident
Laura Brown	Local resident
Paul Steven Jackson	Local resident and on behalf of Cllr Valerie Thorpe (deceased)
Liz Scott	Local resident
Martin Harrison	Local resident
Chris Handforth	Local resident
Nigel Mills MP	

Jo Utting	Local resident
Cllr Barry Lewis	Derbyshire County Councillor
Amanda Stalker	Parkside Stables
Jamie Selby	Local resident
John Glasby	Alfreton Park Community Special School
Pam Crofts	Local resident
Debbie Horabin	Local resident
Diane Baggaley	Local resident
David Nevins	Alfreton Rambling Club
Andrew Mason	Local resident
Peter Wood	Local resident

## INQUIRY DOCUMENTS

ID1 Appellant Opening

ID2 Respondent Opening

ID3 Photo from resident

ID4 Staunton Harold Hall

ID5A Alfreton South Photomontages A

ID5B Alfreton South Photomontages B

ID5C Alfreton South Photomontages C

ID6 Photo from the tower of Wingfield Manor taken in 2015

ID7 Appeal Decision - Land at Higher Farm, Fifehead Magdalen, Dorset

ID8 Appeal Decision Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney

ID9 R V Thanet District Council v Kentish Projects Limited

ID10 Extract from GLVIA 3rd edition

ID11 Addendum Noise Note 19th October 2022

ID12 Revised Layout Description April 2021

ID13 Revised Layout Description September 2021

ID14 2264.M4.001.0 R Alfreton Module Array Layout South updated

ID15 Land North West of Hall Farm Conditions 28-10-2022

ID16 Unilateral Undertaking updated 27-10-2022

ID17 Clarification on layout

ID18 ABRS+ Inquiry Statement

ID19A Soil Samples Interim Report

ID19B Email regarding Soil Samples

ID19C Location of sample no. G078827.01

ID19D Location of sample no. G078827.02

ID19E Location of sample no. G078827.03

ID19F Location of sample no. G078827.04

ID19G Location of sample no. G078827.05

ID19H Location of sample no. G078827.06

ID19I Soil Samples Full Analysis Report

ID20 Updated Unilateral Undertaking

ID21 Kronos' Note on fence and hedge layout and hedge trimming

ID22 Submission from Amanda Stalker

**3266505**

4 May 2021

Hinckley and Bosworth Borough Council

Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney, Nuneaton,



## Appeal Decision

Virtual Hearing Held on 20 & 22 April 2021

Unaccompanied Site Visits made on 19 April & 21 April 2021

**by Cullum J A Parker BA(Hons) MA MRTPI MCMi IHBC**

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

**Decision date: 4 May 2021**

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**Appeal Ref: APP/K2420/W/21/3266505**

**Hangmans Hall Farm, Twenty Acre Lane, Sutton Cheney,  
Nuneaton, CV13 0AJ**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr David Meehan of Elgin Energy EsCo Limited against the decision of Hinckley and Bosworth Borough Council.
  - The application Ref 19/01256/FUL, dated 6 November 2019, was refused by notice dated 8 July 2020.
  - The development proposed is described as '*Construction of a solar park, to include the installation of solar photovoltaic panels to generate approximately 35 MW of electricity, with DNO and Client substations, inverters, perimeter stock fencing, access tracks and CCTV. Landscaping and other associated works.*'
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### Decision

1. The appeal is dismissed.

### Applications for costs

2. At the Hearing an application for partial costs was made by the Appellant. This is the subject of a separate decision.

### Preliminary Matters

3. I undertook two site visits; one before opening the Hearing and a second one during the Hearing. Prior notice was given to the main parties and this matter was raised during my opening, where no parties sought an accompanied site inspection.
4. During my site inspections I saw that site notices had been placed at various public places, including entrance points for Public Rights of Ways. I have also been provided with copies of notification letters and a newspaper notice. Whilst the Hearing was undertaken as a virtual event, I am content that the appropriate notices have been given in this instance.
5. I note that near to the appeal site lies the Ashby Canal Conservation Area. The main parties agreed at the Hearing that any impact on this designated heritage asset including its setting arising from the proposal does not constitute a reason for the refusal of permission. Nor did they suggest its dismissal on this basis. I see no reason not to concur with that position.

## Main Issues

6. The main issues are:

- The effect of the proposed development on the character of the countryside;
- The effect of the proposal on the significance of nearby heritage assets, with specific regard to the Registered Battlefield 'Battle of Bosworth (Field) 1485' and, if any harm or loss to that significance, whether there is clear and convincing justification for this;
- The effect of the proposed development on buried archaeology interests.

## Reasons

### ***Character of the countryside***

7. The appeal site is located broadly to the west of the Registered Battlefield 'Battle of Bosworth (Field) 1485' and to the south of Sutton Cheney. Permission is sought for the construction of a solar park on a site of approximately 62 hectares. This would consist of ground-mounted solar arrays in rows on an east-to-west alignment together with associated works. Planning permission is sought for a 30-year operational period, following which the solar park would be decommissioned and the appeal site returned to agricultural use.<sup>1</sup>
8. Whilst accepting that the proposal would be 'adverse in nature for both landscape and visual effects' the Appellant's landscape expert concludes that this would be Minor adverse and localised and/or could be mitigated. To the contrary, the Local Planning Authority's (LPA) landscape expert concludes that the impact would be Moderate-Major adverse. In both cases, these are assessments and conclusions undertaken in accordance with GLVIA 3.
9. Whilst this can be a useful tool in determining how to assess impacts on landscape, it is clear that the LPA's reason for refusal refers to 'significant adverse impact' on the undeveloped and rural character of the countryside. In this respect, the proposal would result in a change to the character of the appeal site from roughly ten open fields used for a mixture of pastoral or arable farming to a majority of the site being covered by solar arrays, with the potential for some pastoral farming taking place around these.
10. I acknowledge that the appeal site is not visible in its entirety as one entity. Nonetheless, at the very least, users of the PROW and to a lesser extent surrounding highways, will see rows of industrial human-made solar arrays rather than the natural beauty and open character of the countryside that is currently present. I note the Appellant's point that the site could be partially screened through implementation of the submitted *Environmental Enhancement Strategy* (EES). However, this relies in part, on allowing reinforced stretches of hedges growing to a locally uncharacteristic height of around 4 metres, where the prevailing pattern is of closely clipped hedges of around 2 metres in height.

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<sup>1</sup> As detailed in the Appellant's *Appeal Statement of Case*, pages 4-6, dated January 2021

11. Ms Ahern, for the LPA, explained at the Hearing that the Appellant's LVIA had placed too much emphasis on physical definitions. Instead, she suggested it is important to take into account the natural, cultural and perceptual elements of the landscape and how this results in an experience of ruralness associated with people and history. This approach appears to be both proportionate and logical given that how humans interact with the natural environment extends to more than just visual senses.
12. In the LPA's view, the proposal would result in a large-scale development that would adversely affect its rural and tranquil nature. It would also intrude on perceptions of field patterns, the rural setting of the nearby villages, and that the site directly links into and contributes to the strong historical character of the area.
13. Mr Cook, for the Appellant, directed the Hearing to Paragraph 170)b) of the Framework, which requires that planning decision should contribute to and enhance the natural and local environment by recognising the intrinsic character and beauty of the countryside. In this respect, he put forward that the proposal would be assimilated into the landscape, and that the proposal takes into account the receptor site and how the works fits into this.
14. However, the fact remains that the proposal would introduce numerous rows of solar arrays, deer fencing, and other associated structures that would be at odds with the prevailing rural character of the area – not only in simple visual terms, but also in terms of how the site links into the natural, cultural and perceptual elements of the wider area. This is especially acute in this instance given the proximity of the Registered Battlefield and how the landscape and character of the area has both changed but has also retained features of interest that relate to all three elements Ms Ahern identifies.
15. I note the points made by the Appellant that the site cannot be easily seen in its entirety, and that the EES, which can be secured by means of a planning condition, provides for various enhancements – such as tree and hedge planting. I also note that the EES suggests the provision of a 'heritage trail route' by providing a short stretch of permissive footpath near to the Ashby Canal, utilising a diverted existing PROW T65/2 that would dogleg around the site, and diverting existing PROW T68/3 for a short part to potentially provide an educational facility in the form of a circle of logs and opening up some views towards the Registered Battlefield. There is also the opportunity to provide new information boards and public art as set out in the EES. These are commendable activities which, nonetheless, could potentially take place regardless of whether permission was forthcoming or not.
16. I therefore conclude that the proposal would have a significant adverse effect on the character of the countryside and that the mitigation measures proposed are insufficient to detract from or mitigate this. Accordingly, it would be contrary to Policies DM2, DM4, DM11, and DM12 of the *Sites Allocation and Development Management Policies Development Plan Document (2016)* SADMPD, which amongst other aims seeks to ensure development in the countryside will be sustainable where it does not have a significant adverse effect on the intrinsic value, beauty, open character and landscape character of the countryside. It would also conflict with Paragraph 170 of the Framework as indicated above.



***Impact on the significance of the Battle of Bosworth (Field) 1485***

17. Full details of the historical record are presented in the evidence of the main parties, which I will not rehearse here. However a brief synopsis is useful. The Battle of Bosworth took place on 22 August 1485. Whilst taking place over a few hours and directly concerning only a few thousand men, its importance in English history cannot be understated.
18. It is generally regarded to be the key event signifying the end of the War of the Roses, seeing the dynastic change between the House of York part of the Plantagenet family with the death of Richard III, to the start of the Tudor dynasty under Henry VII, and the era from which history moved from the medieval to the early modern period. The Battle itself is notable for other reasons too, such as the last battle in which an English King died on the battlefield and the first extensive use of artillery in England in such a manner.
19. In terms of significance, as suggested by the Appellant's heritage expert<sup>2</sup>, the significance of the battle site largely lies within the bounds of the Registered Battlefield; as extended following the reinterpretation of the landscape. Nevertheless the appeal site makes a modest contribution to how the Battlefield is experienced and the events of 1485. Historic England identify four key elements including Topographical integrity, which indicates that whilst agricultural land management has changed since the battle, the battlefield remains largely underdeveloped and permits the site of encampments and the course of the battle to be appreciated. It is possible to see this within the wider landscape, which the appeal site forms part of, where there is generally an absence of large-scale developments, structures or buildings of a man-made nature outside of existing settlements.
20. It is important to note that the appeal site itself lies outside of the Registered Battlefield, which was mostly recently extended in 2013 following further study of both the landscape archaeological and documentary evidence. Nonetheless, the Framework indicates that the setting of a heritage asset are the surroundings in which the heritage asset is experienced. This is a logical starting point in assessing any potential impact arising from the proposal.
21. Both main parties agree in their respective written submissions that the proposal would result in less than substantial harm to the significance of the Registered Battlefield 'Battle Bosworth (Field) 1485'. However, they disagree on the magnitude of that harm on a scale within the less than substantial harm threshold. The Appellant considers that it would be to the lower end of any such spectrum whereas the LPA considers it would be to the higher end. Beyond the reference within the national Planning Practice Guidance, which indicates that the within each category of harm, 'the extent of harm may vary and should be clearly articulated'<sup>3</sup>, there is no explicit spectrum.
22. To articulate here, the harm in this case would principally be the impact on views from and to the Battlefield<sup>4</sup>, the erosion of shared landscape characteristics between the appeal site and the Battlefield, and the loss in how an observer would experience the events of August 1485 through tracing the most recent and constantly developing interpretation of the events of the battle

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<sup>2</sup> See G Stoten Heritage Appeal Statement, Page 23, paragraph 6.51

<sup>3</sup> Paragraph: 018 Reference ID: 18a-018-20190723 Revision date: 23 07 2019

<sup>4</sup> As articulated by G Stoten Heritage Appeal Statement, page 25 onwards

through the landscape. The latter two aspects even in light of how the landscape has changed since 1485 through various changes in the rural landscape including with agricultural farming practices and the insertion of the Ashby Canal, for example.

23. As such, and as a matter of planning judgement, I concur with the views of the main parties that the proposal would result in at least less than substantial harm to the significance of the Registered Battlefield through adverse changes in its setting arising from the proposal. This is a view that concurs with those of the Government adviser on the historic environment, Historic England, who consider that the proposal site lies within a highly sensitive location within the setting of the Battlefield which will harm its significance.
24. Considerable importance and weight should be given to the need to conserve such assets in a manner appropriate to their significance. The Framework indicates at Paragraph 196, where less than substantial harm is identified this should be weighed against the public benefits of the proposal. This is echoed in the pre-Framework publication *Overarching National Policy Statement for Energy (EN-1) July 2011*<sup>5</sup> at section 5.8 and in particular paragraphs 5.8.12 to 22.
25. In this case, the Appellant considered the benefits<sup>6</sup> to be (summarised here):
- (i) The generation of renewable energy and the contribution to a low carbon economy; with the proposal generating electricity to power around 10'500 homes and contributing to meeting the UK's commitment to reduce greenhouse gas emissions by 100% or net zero compared to 1990s levels by 2050, and be in accordance with Paragraph 148 of the Framework which sets out that the planning system should support the transition to a low carbon future in a changing climate. It would also be for a time limited period of 30 years;
  - (ii) The provision of a heritage trail and education facility which would enhance public access by including permissive paths to form a circular walk linking with other existing Public Rights of Way and the provision of interpretation boards;
  - (iii) Landscape enhancements which are considered to create a more coherent landscape framework across the appeal site which would enhance landscape character;
  - (iv) Ecological enhancements which include additional planting, re-profiling of existing ponds, and the provision of bat and bird boxes; and,
  - (v) Economic benefits including construction jobs and a capital investment of around £35 million.
26. 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. These changes would deprive future generations of

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<sup>5</sup> As indicated within the document itself, EN-1 is likely to be a material consideration, see paragraph 1.2.1.

<sup>6</sup> Detailed in pages 29 to 32, Planning Appeal Statement of J Walker, January 2021, and confirmed orally at the Hearing by P Burrell.

being able to understand and experience the events leading to and of the battle itself, and appreciating the rural character of the Battlefield and the wider context. Even taking into account the time limited nature of the proposal – for around 30 years after which it would be removed – this would be an extensive period of time where people will be deprived of features within its setting that contribute to its significance.

27. Accordingly, the proposal would be contrary to Policies DM2, DM4, DM11, DM12 of the SADMPD, which, amongst other aims, seek to ensure that the benefits of the proposal will outweigh any harm caused and that proposals that adversely affect the Bosworth Battlefield or its setting should be exceptional and such proposal will be assessed against their public benefits. It would also be contrary to the Policies identified in the Framework and the paragraphs within EN-1; both of which are material considerations.

**Potential impact on buried archaeological remains**

28. Paragraph 189 of the Framework sets out that where there is potential for archaeological interest on sites, an appropriate desk-based assessment and, where necessary, a field evaluation should be undertaken. In this case a desk-based assessment was submitted by the Appellant. At the Hearing the main parties discussed various ways in which a field evaluation can take place; including geophysical/LiDAR surveying and a metal detector survey.
29. Leicestershire County Council (LCC), acting in its capacity as professional advisers to the LPA on archaeology, reaffirmed its position at the Hearing that due to the lack of trial trenching at the appeal site it is not possible to ascertain the significance of buried archaeological remains. In such circumstances, it considers that the decision-maker is then unable to undertake the balancing exercise set out at Paragraph 197 of the Framework.
30. If further field evaluation work was undertaken, such as trial trenching, the hypothesis of LCC is that this might further reveal the precise route of the 'Roman Mancetter Road', and such survey work might demonstrate the existence of a road on the same route during the late-medieval period at around the time of the Battle of Bosworth. If that were the case, then that road might have reasonably been used by Richard III and the Royalist host to travel to the camps from the Leicester direction in the days before the battle.
31. To the contrary, the Appellant points to the study by Foard and Curry in their book *Bosworth 1485: A battlefield Rediscovered* (2013), who concluded that this route was unlikely to be extant at the time of the battle. Instead, it is suggested that a route to the north of the appeal site known as 'Leicester Lane' was the most probable route.<sup>7</sup> However, there is little further evidence before me or that I have been directed to, such as metal detecting or trial trenching surveys, that corroborate this particular theory in depth.
32. I have also been directed to the position generally accepted between the main parties and Historic England that there is evidence of medieval landscape in the form of ridge and furrow within the appeal site. The Appellant contends that the presence of this feature within part of the landscape infers that it is very unlikely the Roman Road or other roadway following its line was still extant at the time of the Battle. At the Hearing, LCC further developed the hypothesis

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<sup>7</sup> See G Stoten Heritage Appeal Statement, page 14, Plate 2, showing Figure 4.14 from Foard and Curry (2013)

- that the geophysical surveys showed the potential line of the roman road in an arc across the northern part of the site which includes the area of ridge and furrow. This interpretation of the survey results was disputed by the Appellant.
33. The metal detector survey report conclusion found that 'a number of finds of Roman date were made, including some of a character unusual for a rural site. The distribution of these finds has some similarity with the line of the Mancetter Road which is postulated to have passed through this area'. The same survey found that 'no finds that could be clearly related to the Battle of Bosworth...were made'<sup>8</sup>.
  34. Clearly there is an incomplete picture in the evidence before me. The geophysical survey has found evidence of ridge and furrow medieval farming practices; yet it is unclear whether there is any discernible evidence to the route of the Roman Road passing through the site and even less clear whether such road was present at the time of the Battle of Bosworth. At the same time, I heard that geophysical surveys can provide limited information in which to ascertain such details. Conversely, there is metal detecting surveying which found a number of finds from the Roman period in roughly the location of where the Roman Mancetter Road may have been located (in the north east edge of the site).
  35. My role is to consider what is reasonable and proportionate based upon the available evidence before me. As identified elsewhere, the Battle of Bosworth was a dynasty changing epochal event in English and British history. Even today, as will future generations, we are still learning about the events that took place in late August 1485. I have no doubt as to the professional expertise of the Appellant's heritage witness. Nevertheless, despite evaluation carried out to date, I cannot be assured of the specific nature or significance of the potential buried archaeological remains.
  36. An understanding of the significance of any heritage asset is the starting point for determining any mitigation, and therefore I am unable to assess whether the mitigation proposed would be appropriate. Similarly, I cannot be certain of the potential harm that may result to the archaeological interest from the appeal proposal, for example through the siting of solar arrays and the groundworks required.
  37. The heritage asset might have archaeological interest which could be unlocked through further field evaluation which would enable a greater understanding of any remains and their wider context. On this basis, and given that the significance of the potential remains could be of local and potentially regional importance (or greater if associated with the adjacent Registered Battlefield), I find that the Council's approach is proportionate to the potential asset's importance and no more than is sufficient to understand the potential impact of the proposal. This approach is consistent with Paragraph 189 of the Framework which sets out that developers should submit an appropriate desk-based assessment and where necessary a field evaluation.
  38. Furthermore, I do not consider that the imposition of a planning condition would provide adequate mitigation for the safeguarding of what amounts to a non-designated heritage asset, given the affected land immediately adjoins

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<sup>8</sup> G Stoten Heritage Appeal Statement, Appendix 4, Metal Detecting Survey Report 2021 (Draft 4), University of Leicester Archaeological services, page 22

land that forms part of the Registered Battlefield. I acknowledge the Appellant's example of an appeal where an Inspector considered a suitably worded planning condition in order to address incomplete archaeology information (ref 3243720). I do not have the full details of that scheme before me. Nonetheless, that was on a different appeal site in Trafford, in a different part of the country and with no relationship with the Registered Battlefield at Bosworth.

39. I have carefully considered the archaeological matters arising in this instance and find that whilst the evidence is not compelling that there was a road present on the appeal site at the time of the Battle, the evidence is incomplete. I therefore conclude that the appeal proposal fails to provide sufficient evidence regarding potential archaeological remains or features of interest, such that I cannot be assured that material harm to archaeological remains would not result.
40. Accordingly, the appeal would fail to accord with Policy DM11, DM12 and DM13 of the SADMPD, which, amongst other aims, seeks to ensure that all proposals which have the potential to affect a heritage asset will be required to demonstrate an understanding of the significance of the heritage asset, and the impact of the proposal on the asset, and that particular regard will be had to maintaining archaeological remains of the Battlefield. Those Policies requires an approach to the conservation of archaeological remains that is consistent with the Guidance, Framework, and other material considerations such as EN-1. The proposal would also conflict with Section 16: Conserving and enhancing the historic environment of the Framework

### **Planning Balance and Conclusion**

41. Section 38(6) of the *Planning and Compulsory Purchase Act 2004*, as amended, requires that if regard is to be had to the development plan, the determination must be made in accordance with the plan unless material considerations indicate otherwise.
42. I have found that the proposed development would not accord with the adopted development plan Policies DM2, DM4, DM11, DM12 and DM13, nor when the SADMPD is considered as a whole. There would also be conflict with Policies of the Framework and the *Overarching National Policy Statement for Energy (EN-1) July 2011*, as aforesaid.
43. Material considerations put forward by the Appellant include a number of benefits in the form of; renewable energy at a time when local and national governments have declared a 'climate emergency' and are seeking to move to a low carbon economy, the provision and/or diversion of permissive and Rights of Way footpaths, landscape and ecological enhancements, and economic benefits. These benefits taken together are afforded significant weight. However, these material considerations are not sufficient to outweigh the conflict with the development plan and the harm identified in the three main issues.
44. Whilst I am not entirely convinced that such a balance is required in this case, the Appellant has suggested that 'any adverse impacts of the proposed development would be significantly and demonstrably outweighed by the benefits, were it to be found that the proposed development did not accord

with the development plan as a whole<sup>9</sup>. This echoes the wording of Paragraph 11 of the Framework and Policy DM1 of the SADMPD.

45. For clarity, I find that the adverse impacts of allowing the proposed development would significantly and demonstrably outweigh the benefits, when assessed against the policies of the Framework and/or development plan when taken as a whole.

46. For the reasons given above, I conclude that the appeal should be dismissed.

*Cullum J A Parker*

INSPECTOR

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<sup>9</sup> Planning Appeal Statement (author J Walker), Page 34, Para. 9.36 (presented by P Burrell)

## **APPEARANCES**

### *FOR THE APPELLANT:*

Paul Burrell, BSc(Hons), DipUP, MRTPI	Executive Director	Pegasus Group - Planning
Andrew Cook, BA(Hons), MLD, CMLI, MIEMA, CENV	Executive Director	Pegasus Group – Environment
Gail Stoten, BA(Hons), MCIfA, FSA	Executive Director	Pegasus Group – Heritage

### *FOR THE LOCAL PLANNING AUTHORITY:*

Rhiannon Hill, BSc(Hons) MA MRTPI	Team Leader, DM	HBBC
Paul Grundy, BSc(Hons) MA, PgCert	Senior Planning Officer (Conservation and GIS)	HBBC
Richard Clark BA(Hons) MA	Team Manager (Heritage)	Leicestershire CC
Sophie Clarke BA(Hons)	Senior Planning Archaeologist	Leicestershire CC
Kate Ahern BSc MSc CMLI	Director of Landscape Planning	Land Use Consultants Limited

## **DOCUMENTS SUBMITTED AT THE HEARING**

1. Site Location and Land Rights Plan, Drawing Number P18-0089\_31  
Dated 24/04/2021
2. List of suggested conditions (amended) 21.04.2021
3. Template of a Permissive Path Agreement
4. Rebuttal Note Heritage

\*\*\*END\*\*\*



**3241953**

23 July 2020

Dorset Council

Land at Higher Farm, Fifehead Magdalen, Dorset



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## Appeal Decision

Site visit<sup>1</sup> made on 15 July 2020

by **Neil Pope BA (Hons) MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 23 July 2020

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**Appeal Ref: APP/D1265/W/19/3241953**

**Land at Higher Farm, Fifehead Magdalen, Dorset, SP8 5RT.**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Next Power Higher Farm Limited against the decision of Dorset Council (the LPA).
  - The application Ref. 2/2019/0470/FUL, dated 28 March 2019, was refused by notice dated 14 October 2019.
  - The development proposed is the construction of a solar farm and associated development, including perimeter fencing, CCTV cameras and landscaping (amended description).
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### Decision

1. The appeal is dismissed.

### Preliminary Matters

2. The LPA's decision is based upon various revisions to the application as originally submitted. These include a reduction in height of the proposed solar panels to 2.6 metres above ground level, additional hedge planting, a revised Traffic Management Plan, further ecology work, a revised site design and a revised landscape masterplan. I have taken these revisions into account.
3. This 21.4 ha appeal site<sup>2</sup> forms part of the settings of a number of listed buildings<sup>3</sup>. It also forms part of the settings of the Fifehead Magdalen Conservation Area (FMCA), the West Stour Conservation Area (WSCA) and the Stour Provost Conservation Area (SPCA). On behalf of the appellant, it is accepted that the proposal would harm the settings of some<sup>4</sup> heritage assets.

### Main Issue

4. The main issue is whether the benefits of the proposal, including the production of energy from a renewable resource, outweighs any harmful impacts, having particular regard to the effects upon the character and appearance of the area and the significance of various designated and non-designated heritage assets.

### Reasons

#### *Planning Policy and Other Relevant Published Documents*

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<sup>1</sup> As part of my visit, I noted the relationship between the appeal site and properties within the surrounding area. I was able to assess the likely impact of the proposal upon these buildings and the occupants without needing to take up the invitations to enter several of the properties during the COVID-19 pandemic.

<sup>2</sup> The 'footprint' or area inside the proposed perimeter fencing would comprise approximately 16 ha.

<sup>3</sup> The provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 are engaged.

<sup>4</sup> These include the SPCA, Stour Provost Mill, Mill House and The Old Rectory.

5. My attention has been drawn to numerous planning policies, Acts, Statutory Instruments, strategies/statements and other published documents. I briefly refer below to those which are of most relevance to this appeal.
6. The development plan includes the North Dorset Local Plan Part 1 (LP) that was adopted in 2016. The most relevant policies to the determination of this appeal are 3 (climate change), 4 (the natural environment), 5 (the historic environment) and 22 (renewable and low carbon energy).
7. The National Planning Policy Framework (the Framework) is an important material consideration that carries considerable weight. Amongst other things, it states that the purpose of the planning system is to contribute towards the achievement of sustainable development. In meeting the challenge of climate change the planning system should support the transition to a low carbon future and support renewable and low carbon energy. When determining applications for such development local planning authorities should approve applications if its impacts are (or can be made) acceptable.
8. The Climate Change Act 2008 establishes statutory climate change projections and carbon budgets. The target for carbon emissions was initially set at 80% of the 1990 baseline figure by 2050. This was amended to 100% 'net zero' by section 2 of the Climate Change Act 2008 (2050 Target Amendment) Order SI 1056 in July 2019. This constitutes a legally binding commitment to end the UK's contribution to climate change.
9. The UK Solar PV Strategy sets out guiding principles for the deployment of solar energy development in the UK. Amongst other things, this recognises that solar PV assists in delivering carbon reductions, energy security and affordability for customers. It acknowledges that large scale developments can have a negative impact on the rural environment and on local communities. This national Strategy is several years old and has moderate weight.
10. My attention has also been drawn to the Bournemouth, Dorset and Poole Renewable Energy Statement (RES) that was published in 2013 and which, amongst other things, aims to facilitate renewable energy development. This local non-statutory document carries limited weight.
11. Whilst not forming part of the development plan, the North Dorset Landscape Character Area Assessment<sup>5</sup> (LCAS) 2008, the Dorset Landscape Character Assessment 2009<sup>6</sup> and the Landscape Sensitivity to Wind and Solar Development in North Dorset District (LSA) 2014<sup>7</sup> are material considerations. The LCAS and the LSA form part of the evidence base to the LP and can be given considerable weight.
12. The key characteristics of the North Dorset Limestone Ridges LCA include, elevated open plateau areas of undulating farmland landscape with distinctive sloping edges in places, thick dense hedgerows and open views from higher areas. The key characteristics of the Upper Stour Valley LCA include a varied but generally flat, pastoral river valley landscape.

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<sup>5</sup> The appeal site lies within the North Dorset Limestone Ridges landscape character area (LCA) and the eastern boundary abuts the Upper Stour Valley LCA.

<sup>6</sup> I understand that the main body of the appeal site lies within the Limestone Hills landscape character type (LCT) and part of the eastern boundary is within the Valley Pasture LCT. This Assessment has moderate weight.

<sup>7</sup> The North Dorset Limestone Ridges LCA is identified as having 'moderate-high' sensitivity to solar farms of 10 to 30 ha in size and the Upper Stour Valley LCA as 'high' sensitivity to such developments.

13. The key characteristics of the Limestone Hills LCT include varied landform, diverse scenery with mixed farmland and dense hedgerows, expansive generally open landscape, some key parkland landscapes and associated features. Management objectives include conserving the intimate character of incised valleys, replanting new hedgerow trees and conserving parkland landscapes. Key characteristics of the Valley Pasture LCT include flat and open valley floor landscape with meandering river channels which often floods. Management objectives include conserving the strong visual unity of the valley.

#### *Benefits*

14. On behalf of the appellant, I have been informed that the anticipated<sup>8</sup> MWp from the proposed development would be 14.3WMP (circa 13.6GWh), which would be sufficient to power 4,387 homes annually<sup>9</sup>. The proposal would provide a clean, renewable and sustainable form of energy and would accord with the thrust of the UK Solar PV Strategy and RES. It would assist in meeting the Government's commitment to achieving 'net zero' carbon emissions by 2050 and make a valuable contribution towards cutting greenhouse gas emissions. In combination with other renewable and low carbon energy schemes it would assist in tackling climate change. These wider environmental benefits can be given substantial weight in the planning balance.
15. The proposed development would provide some new tree and species rich hedgerow planting, including 'gapping up'/reinforcement of existing hedges. Wide green rough grassland/wildflower corridors would also be provided around the margins of the fenced area. These measures would enhance the landscape qualities of the area and together with proposed bird and bat boxes, would provide new and improved wildlife habitats. The proposal would accord with the duty<sup>10</sup> to conserve biodiversity. These local environmental benefits can be given moderate weight in the planning balance.
16. The proposal would provide some support for the construction industry and could assist in helping to create and sustain employment during the current economic downturn. Some construction workers could also use some local services and the development would generate additional income for the landowners, enhancing farm incomes and possibly diversifying some farm businesses. This would accord with the Government's objective of promoting a strong rural economy. In addition, the proposal would assist in increasing the security and diversity of electricity supply. These economic benefits are important considerations that can also be given moderate weight.
17. These public benefits must be weighed in the balance.

#### *Character and Appearance*

18. The appeal site comprises three adjoining pasture fields<sup>11</sup> with boundary hedgerows and trees. It forms part of an elevated open plateau of undulating farmland and one of the fields (F3) slopes gently downwards in an easterly direction towards the River Stour. Several public rights of way bisect the site

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<sup>8</sup> Dependent upon the final row spacing of the photovoltaic panels.

<sup>9</sup> On behalf of the appellant, it has been calculated that using Ofgem's latest Typical Domestic Consumption Value the proposal could power 4,689 homes annually.

<sup>10</sup> Section 40 of the Natural Environment and Rural Communities Act 2006.

<sup>11</sup> F1, F2 and F3. F3 is the eastern most field and F1 is the western most field.

- and the long-distance Stour Valley Way links the settlements of West Stour (to the north), Stour Provost (to the east) and Fifehead Magdalen (to the north).
19. The appeal site does not form part of a designated landscape and other than the corridor along the River Stour this part of the countryside is not especially tranquil. Nevertheless, from everything that I have seen and read, including the appellant's Landscape and Visual Impact Assessment and the review of this document by those acting on behalf of some interested parties, the appeal site lies within an intimate valley landscape and an attractive rural area.
  20. The LPA and some interested parties have argued that the site forms part of a 'valued landscape' to which paragraph 170(a) of the Framework<sup>12</sup> applies. In support, my attention has been drawn to paragraph 2.9 of the LP which states that the valley of the River Stour is an important landscape feature in North Dorset. However, this does not mean that the appeal site forms part of a 'valued landscape'. All landscapes have some value and are likely to be important to local communities. Whilst the valley of the River Stour is an attractive and popular landscape feature, the site would need to form part of a landscape that exhibits some demonstrable physical attributes.
  21. In this regard, and whilst not planning policy, the LPA in determining the application assessed the site's attributes having regard to widely used guidance<sup>13</sup>. I agree with the assessment within the planning officer's report that the landscape within which the appeal site sits is of medium quality/condition, has medium scenic quality, does not possess rare elements or features, is highly representative of the above noted LCTs, has high conservation interest, high recreational value, medium perceptual qualities and low to medium cultural/artistic associations. Overall, this leads me to find that the site forms part of a landscape that exhibits demonstrable physical attributes so as to amount to a 'valued landscape'. Whilst the Framework requires such landscapes to be protected and enhanced, neither this nor the development plan places an embargo on proposals for renewable energy.
  22. The proposed development would introduce very many rows/arrays of solar panels within the site. In addition, numerous metal clad inverter cabins (approx. 12m x 3m x 3.2m high), a substation, communication buildings, storage/battery containers, a switchgear building, 4m wide access track, 2m high perimeter deer fencing and CCTV cameras would be provided. There would be limited hedgerow removal and the existing field pattern would be maintained. Whilst the new tree and hedgerow planting, 'gapping up' of hedgerows and management regime<sup>14</sup> would reduce the impact, the proposal would markedly change the character and appearance of the site.
  23. The attractive, unspoilt green open qualities and pleasing natural attributes of F1, F2 and F3 would be replaced by regimented rows of uniform solar panels mounted on metal frames, with a scatter of various ancillary buildings and set inside a fenced compound. This overtly utilitarian form of development would considerably erode the rural and pastoral character of these fields and diminish their contribution to the key landscape characteristics of the North Dorset Limestone Ridges LCA and the Limestone Hills LCT. This change in character of

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<sup>12</sup> The Framework does not define what is meant by a 'valued landscape'.

<sup>13</sup> Box 5.1 of the Guidelines for Landscape and Visual Impact Assessment by the Landscape Institute and Institute of Environmental Management & Assessment. This can be helpful in identifying a 'valued landscape'.

<sup>14</sup> This would include maintaining the hedges at 3m high.

F3 would also contrast sharply with the key characteristics of the Upper Stour Valley LCA. Whilst the impact of this landscape change would be localised it would be adverse and weighs against granting planning permission.

24. The proposed development would be seen from many sections of the public rights of way that bisect the site and the surrounding landscape. Whilst I understand that the appellant and the Council's Senior Ranger have discussed diverting some sections of the footpaths that cross the site, the development would be prominent from the existing and any diverted sections. Instead of continuing to experience and enjoy walking across pleasant open fields with views across the rural landscape, in future, 'high sensitivity'<sup>15</sup> receptors would, at close quarter, experience row upon row of solar panels and a significant loss of amenity when using the public rights of way across the site.
25. Given the limited height of the proposed solar panels, intervening vegetation (existing and proposed) and landform/topography, beyond a distance of about 1km from the site it is unlikely that the proposed development would give rise to any significant adverse visual impacts. However, when seen by 'high sensitivity' receptors using the Stour Valley Way to the north and east, the rows of solar panels and some of the ancillary buildings would appear as conspicuous and incongruous additions to this open elevated plateau and considerably detract from the appearance of this part of the countryside. This would be especially so for the development proposed in F3, where the rows of solar panels would cascade down this east facing slope and seriously intrude into the very attractive unspoilt rural scene along the River Stour. This element of the proposals would disrupt the visual unity of this part of the valley. These adverse visual impacts also weigh against granting permission.
26. I am mindful that the proposed development would be largely reversible and the impacts would be limited to a period of 40 years. However, this is a very long period of time, during which the adverse impacts would be experienced by very many people, including those using the popular Stour Valley Way. Limiting the development to a 25 year period would foreshorten these harmful landscape and visual impacts and could have had a bearing in the overall planning balance. However, the appellant's agent has informed me that this would render this 'subsidy free' development unviable<sup>16</sup>.
27. There is nothing of substance to diverge from the appellant's assessment that the proposals would result in any harmful cumulative landscape or visual impacts. However, the harm that I have identified above to the character and appearance of the area leads me to find that the proposed development would conflict with the provisions of LP policy 4, Government objectives for 'valued landscapes' and the management objectives for the Valley Pasture LCT. This harm carries considerable weight in the overall planning balance.

#### *Heritage Assets*

28. The appeal site forms part of the countryside setting to a number of designated heritage assets. One field (F2) also comprises part of the former parkland to Fifehead House (now demolished), a non-designated heritage asset. Whilst elements of the proposal would be seen from and in association with many of

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<sup>15</sup> I disagree with the appellant's assessment that users of these footpaths and the Stour Valley Way are 'medium sensitivity' and 'medium to high sensitivity' receptors. Most, if not all, would be using these rights of way for the purposes of enjoying the amenity of the countryside and/or relaxation.

<sup>16</sup> It reasonably follows that a condition precluding development in F3 would also render the scheme unviable.



these heritage assets, seeing the development would not in itself amount to an adverse impact upon their heritage interest or significance. In many instances, the combination of distance and topography or intervening buildings/structures or vegetation would avoid any adverse impacts arising from the proposals. Having considered all of the evidence/representations and following my site visit, I set out below my findings in respect of the likely significant impacts.

#### The Church of St. Michael at Stour Provost

29. The significance of this Grade I listed coursed rubble and ashlar church, which dates from the 13<sup>th</sup> century, is derived primarily from its architectural qualities, which include its nave (part 14<sup>th</sup> century), south tower (part 15<sup>th</sup> century), north aisle (16<sup>th</sup> century), chancel, porch, fenestration, tie-beam roof and font, as well as its historic interest, including its fabric and as a long-standing place for religious activity and worship within this part of Dorset.
30. As noted within the consultation response of Historic England, this church overlooks the Stour Valley and the appeal site forms part of the gentle, rolling rural landscape setting of this designated heritage asset. The unspoilt, green open qualities of the appeal site assist in affording an appreciation and understanding of the special architectural and historic interest of this listed building. However, there are only glimpsed views of parts of the appeal site from a small section of the churchyard. The site makes a very small contribution to the significance of this designated heritage asset.
31. Some rows of the proposed solar panels (those in F2 and F3) and some inverter buildings would be visible in glimpsed views from part of the churchyard. The utilitarian form and appearance of these would detract from the green open qualities of the appeal site and, to a limited extent, would erode the contribution the site makes to the historic landscape setting and significance of this church. In the context of the Framework, this would amount to less than substantial harm. If there is a sliding scale of harm within this category the proposal would be towards the lower end. Nevertheless, harm to the significance of this high grade designated heritage asset carries considerable weight in the planning balance.

#### The Old Rectory

32. The significance of this two storey, two range 19<sup>th</sup> century Grade II listed house is derived primarily from its architectural qualities, which include its coursed, square rubble walls, hipped slate roof and sash windows, as well as its historic interest, including much of its fabric and association with the church. As I saw during my visit, the west elevation is prominent within the local landscape including views from F2 and F3, as well as some other parts of the surrounding countryside. The unspoilt, green open qualities of parts of the appeal site assist in affording an appreciation and understanding of the special architectural interest of this listed building and its historic landscape setting.
33. Many of the rows of proposed solar panels and some inverter buildings, especially those proposed in F3, would be prominent in some views to and from this designated heritage asset. The utilitarian form and appearance of these elements of the proposal would detract from the green open qualities of the appeal site and, to a limited extent, would erode the contribution the site makes to the historic landscape setting and to an appreciation of the significance of this listed house. In the context of the Framework, this would



amount to less than substantial harm. If there is a sliding scale of harm within this category the proposal would be towards the middle. This harm carries considerable weight.

#### Mill House and Stour Provost Mill

34. The significance of these Grade II listed early 19<sup>th</sup> century buildings are derived primarily from their architectural qualities, which include the stone walls, slate and tiled roofs, windows, as well as their historic interest, including associations with milling in this part of Dorset and the remains of the mill machinery in Stour Provost Mill. The adjacent river and surrounding fields, including F3, form part of the historic countryside and riparian setting of these designated heritage assets and assist in affording an appreciation and understanding of the role of these listed buildings within the local landscape.
35. Many of the rows of proposed solar panels and some inverter buildings, especially those proposed in F3, would be prominent in views to and from these designated heritage assets. The utilitarian form and appearance of these elements of the proposal would detract from the green open qualities of the appeal site. For the development proposed in F3, this would considerably erode the contribution the appeal site makes to the historic landscape/riparian setting of these listed buildings and to an appreciation of their heritage interest/significance. This would amount to less than substantial harm. If there is a sliding scale of harm within this category the proposal would be between the middle and upper end. This harm carries considerable weight.

#### Conservation Areas - The SPCA, FMCA and the WSCA

36. At its nearest, the appeal site is approximately 100m to the north east of the FMCA, approximately 400m to the west of the SPCA and about 500m to the south of the WSCA. The significance of these CAs is derived primarily from their architectural interest, which includes the contribution made by the various listed buildings, as well as their historic interest, which includes the arrangement and layout of buildings and spaces within the streets and the association with their rural surrounds. The appeal site forms part of the extensive countryside and characterful settings to these CAs and assists in affording an appreciation and understanding of their historic rural landscape settings. However, there is nothing of substance before me to substantiate the argument that intervisibility between these CAs adds to their heritage interest.
37. Some elements of the proposed development would be visible from parts of the CAs. However, due to distance, topography, intervening buildings/structures and vegetation there would be no adverse impacts upon the significance of the FMCA or the WSCA and no harm to their extensive rural settings.
38. In contrast, from the western edge of the SPCA, including around The Old Rectory, Mill House and Stour Provost Mill, the development proposed in F3 would markedly intrude into and detract from the characterful and unspoilt rural setting of this CA. The harm that I have identified above to the significance of these three listed buildings would diminish the contribution that they make to the special qualities of the SPCA and, in turn, erode the heritage interest of this CA. This would amount to less than substantial harm. Much of the heritage interest of the SPCA would be unaffected and if there is a sliding scale of harm within this category the proposal would result in a moderate level of harm to CA as a whole. This also carries considerable weight.

### Former Parkland to Fifehead House

39. The proposed rows of solar panels and the inverter/transformer building that are proposed for F2 would amount to a modern, utilitarian form of development that would be ill-fitting within a parkland landscape. However, this parkland appears to be in various ownerships and only fragments of this 'designed' landscape are now discernible, including a few parkland trees and hedgerows.
40. The proposed development would entail the retention of these features and include a management regime for the boundary vegetation. Sheep grazing would also continue. These aspects of the proposal would assist in maintaining important elements of the parkland and the new deer fencing would not be out of place. Overall, the proposal would result in a small adverse impact upon the ability to appreciate the significance of this non-designated heritage asset. This carries some limited weight in the planning balance

### The Heritage Balance

41. When the above harm to designated and non-designated heritage assets is weighed with the public benefits of the proposal I find this matter is finely balanced. Mindful that the development would be reversible and temporary in nature, the heritage balance just tips in favour of granting planning permission. The proposal would accord with the provisions of LP policy 5.

### *Other Matters*

42. The appellant's supporting evidence<sup>17</sup> demonstrates that: there are no reasonably available alternative sites within the area for accommodating the proposed development; the proposals would avoid using the best and most versatile agricultural land with the land continuing to be used for sheep grazing and; there would be no significant increase in the risk of flooding.
43. There have been a large number of objections from many of those living within the surrounding area, including extensive representations made on behalf of a local residents group (No Solar on the Stour). Concerns have also been raised by Fifehead Magdalen Parish Council, The Stours Parish Council and the local Member of Parliament. Whilst I note the strength of local feeling public opposition is not in itself justification for withholding planning permission.
44. In this regard, some of the representations amount to a 'blunderbuss approach' and if I was to address each and every matter raised by interested parties this decision would comprise a weighty tome. Whilst I shall touch on some of these fears and concerns, as required, I have focused on the main issues in dispute between the LPA and the appellant.
45. The proposed development would alter the outlook from some properties in the surrounding area. However, seeing a development does not in itself amount to a harmful impact. No part of the proposals would be so close or too high as to have any serious adverse impact upon those living nearby. The new landscape planting would also reduce the impact of the development. Whilst there would be noise and other disturbance for some residents during the construction phase this would be for a limited period and would not be so great as justify withholding permission.

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<sup>17</sup> This includes details of a site search and selection process, an Agricultural Land Classification Assessment and a Flood Risk Assessment.

46. During the construction phase there is likely to be a considerable increase in traffic along sections of the local highway network, including the junction with the A30 and the 'c' class road (C21) to the north west of the site. As part of my visit I saw the layout of this junction and noted the width and alignment of the C21. However, the Highway Authority has advised that subject to the use of appropriate planning conditions as part of an approval there would be no highway justification for withholding permission. This matter was considered by the LPA when it determined the application and I agree with its assessment that permission should not be withheld on highway grounds.
47. The adverse impacts on the character and appearance of the countryside that I have identified above could deter some visitors. However, the impact would be very localised and there is nothing to substantiate the fears of some interested parties that this would have a significant effect on tourism. There is also nothing to substantiate the fears of the local residents' group that the solar panels would cause glint and glare and pose a hazard to a local aerodrome.
48. There is also no evidence to substantiate the concern of some interested parties that the development would be unable to connect to the electricity grid. The appellant has refuted this allegation and I note from the Planning Design and Access Statement that was submitted with the application that grid availability formed part of the appellant's site search. I also note that the project viability included grid connection costs and the proposals only proceeded to application stage after this had been established.
49. Some interested parties have argued that there is adequate existing provision for renewable energy development within Dorset, including a recently approved solar park near Spetisbury. However, the Framework states that applicants are not required to demonstrate the overall need for renewable energy schemes. Moreover, targets for renewable energy generation are not ceilings that cannot be exceeded and unless climate change is adequately addressed the effects will be experienced everywhere. Certain parts of the country, such as the South West, also have a higher incidence of solar radiation than other areas and a greater theoretical energy potential. As a consequence, areas like Dorset are likely to experience greater pressure for accommodating solar farms/parks.
50. I note the findings in other appeal decisions<sup>18</sup> that have been drawn to my attention and the decision of the Secretary of State for Business, Energy and Industrial Strategy to grant a Development Consent Order (ref. EN010085) for a solar generating station with a gross electrical output of over 50MW and an energy storage facility on the north Kent coast (Cleve Hill Solar Park). Each case must be determined on its own merits and no two sites or schemes are exactly the same. The landscapes to which these other decisions relate are very different to the North Dorset Limestone Ridges and the Upper Stour Valley and the impact upon heritage assets was different. These other decisions do not set a precedent that I must follow.

#### *Overall Planning Balance/Conclusion*

51. When all of the above are weighed together, 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

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<sup>18</sup> APP/K1128/A/13/2206258 and APP/E2530/A/14/2218270.

significance of various designated and non-designated heritage assets. This in turn leads me to find that the development would be an inappropriately sited renewable energy scheme (mainly because of what is proposed in F3) that conflicts with the provisions of LP policies 3 and 22. The adverse impacts of the development could not be made acceptable and the proposal also conflicts with the Government's objectives for renewable and low carbon development.

52. Having regard to all other matters raised, I conclude that the appeal should not succeed.

*Neil Pope*

Inspector