

**DATE:**

**2024**

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**UNILATERAL UNDERTAKING PURSUANT TO SECTION 106 TOWN AND COUNTRY  
PLANNING ACT 1990 AND OTHER ENABLING POWERS**

**RELATING TO LAND AT BERDEN HALL FARM, GINNS ROAD, BERDEN**

---

**FRANK TINNEY and JAMES NICHOLAS TINNEY**

and

**BERDEN SOLAR LIMITED**

to

**UTTLESFORD DISTRICT COUNCIL**

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CMS Cameron McKenna Nabarro Olswang LLP  
1-3 Charter Square  
Sheffield  
S1 4HS  
cms.law

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THIS DEED IS MADE THE

DAY OF

2024

**PARTIES**

- (1) **FRANK TINNEY** of [REDACTED] and **JAMES NICHOLAS TINNEY** of [REDACTED] (the “**Owner**”);
- (2) **BERDEN SOLAR LIMITED** company registration number 10915418 whose registered office is 4<sup>th</sup> Floor, 80 Victoria Street, London, SW1E 5JL (the “**Developer**”)

**TO**

- (3) **UTTLESFORD DISTRICT COUNCIL** of Council Offices, London Road, Saffron Walden, CB11 4ER (the “**Council**”).

**RECITALS**

- (A) The Council is the local planning authority for the purposes of the Act for the area in which the Application Site and Compensation Site is situated and as such is the local planning authority entitled to enforce the planning obligations contained in this Deed.
- (B) The Owner is the freehold owner of the Application Site which is registered with title absolute at the Land Registry forming part of title numbers EX839712 and EX840761 and the Compensation Site which is registered with title absolute at the Land Registry forming part of title number EX838316.
- (C) The Council was designated by the Secretary of State pursuant to section 62A of the Act on 8 February 2022
- (D) The Planning Application was submitted by the Developer to the Secretary of State for the Development pursuant to the requirements of section 62A of the Act.
- (E) This Deed is entered into to make provision for regulating the Development and securing the matters hereinafter referred to which are required in order to enable the Development to proceed.

**IT IS AGREED AS FOLLOWS:**

**1. DEFINITIONS**

- 1.1 In this Deed the following expressions shall have the following meanings:

“**Act**” means the Town and Country Planning Act 1990 (as amended);

“**Application Site**” means the land coloured red on the Plan;

“**Commencement of Development**” means the date on which any material operation (as defined in Section 56(4) of the 1990 Act) forming part of the Development begins to be carried out other than (for the purposes of this Deed and for no other purpose):

- (a) the construction of the site access as set out on drawing 375\_MP\_03\_Rev B dated November 2022 submitted with the Planning Application; and/or

- (b) operations consisting of site clearance, demolition work, archaeological investigations for the purpose of assessing ground conditions, remedial work in respect of any contamination or other adverse ground conditions, diversion and lay of services, erection of any temporary means of enclosure, and the temporary display of site notices or advertisements

and the use of the terms “**Commence Development**” and “**Commence the development**” and “**Commenced**” and “**Commencement Date**” shall be construed accordingly;

“**Compensation Site**” means the land coloured green on the Plan;

“**Deed**” means this unilateral undertaking;

“**Development**” means development pursuant to the Planning Permission described as erection of a ground mounted solar farm with a generation capacity of up to 49.99MW, together with associated infrastructure and landscaping;

“**Inspector**” means the inspector appointed on behalf of the Secretary of State to determine the Application;

“**Parties**” means the parties to this Deed;

“**Plan**” means the plan attached to this Deed at Schedule 2;

“**Planning Application**” means the application made by the Developer to the Secretary of State for the Development under reference number S62A/22/0006;

“**Planning Permission**” means the Planning Permission that may be granted by the Inspector or the Secretary of State for the Development pursuant to the Application;

“**Secretary of State**” means the Secretary of State for Levelling Up, Housing and Communities (or any successor secretary of state from time to time);

“**Skylark Mitigation Strategy**” means the Skylark Mitigation Strategy dated 9 November 2022 as amended by the Skylark Nest Sites Field Location Plan and Proposed Skylark Plots Field 1 Plan both with reference 527\_SL\_F1\_Rev A and dated 8 February 2023, and attached to this Deed at Schedule 3 as may be amended from time to time as agreed in writing by the Council at its absolute discretion.

## **2. INTERPRETATION**

- 2.1 Unless the context otherwise requires, words in the singular shall include the plural and, in the plural, shall include the singular.
- 2.2 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 2.3 References to persons include firms’ companies’ corporations authorities or other bodies and vice versa.
- 2.4 References to Acts of Parliament statutory instruments or Government circulars or sections or paragraphs of such Acts statutory instruments or government circulars include any re-enactments amendments or replacements of them and shall include all instruments, orders, plans regulations, permissions and directions for the time being made, issued or given under that Act or deriving validity from it.

- 2.5 The references to the parties named in this Deed shall, unless the context otherwise requires, include their successors in title and assigns and in the case of any local authority shall also include any successor in function.
- 2.6 The headings in this Deed are for convenience only and shall not be taken into account in the construction and interpretation of this Deed.
- 2.7 References to clauses are to the clauses of this Deed.
- 2.8 References to Application Site or Compensation Site shall include any part of it unless the context otherwise requires.
- 2.9 If any provision of this Deed shall be held to be invalid illegal or unenforceable the validity legality and enforceability of the remaining provisions shall not in any way be deemed thereby to be affected or impaired.
- 2.10 Wherever there is more than one person named as a party and where an obligation falls to be performed by more than one person, the obligations can be enforced against every person so bound jointly and against each individually unless there is an express provision otherwise.
- 2.11 Any covenant on the Owner not to do any act or thing includes a covenant not to permit or allow the doing of that act or thing.

### **3. STATUTORY PROVISIONS**

- 3.1 This Deed constitutes a planning obligation for the purposes of section 106 of the Act, section 111 of the Local Government Act 1972, section 1 Localism Act 2011 and any other enabling powers.
- 3.2 The obligations contained at Schedule 1 to this Deed are planning obligations enforceable by the Council for the purposes of Section 106 of the Act and are entered into by the Owner with the intention that they bind the interests held in the Application Site and the Compensation Site held by the Owner and their respective successors and assigns.
- 3.3 The obligations in this Deed are conditional upon the grant of the Planning Permission by the Inspector or the Secretary of State pursuant to the Application save for the provisions of clauses 7, 8, and 11 which come into effect at the date of this Deed.
- 3.4 In the event that the Inspector concludes in the Decision Notice that any of the planning obligations set out in Schedule 1 to this Deed are not required and/or are incompatible with any one of the tests for planning obligations set out at Regulation 122 of the Community Infrastructure Levy Regulations 2010 (as amended) and accordingly attaches no weight to that obligation in determining the Application then the relevant obligation shall from the date of the Decision Notice cease to have effect as set out in the Decision Notice and the Parties shall be under no obligation to comply with the relevant obligation in this Deed.
- 3.5 Nothing in this Deed shall prohibit or limit the right to develop any part of the Application Site or Compensation Site in accordance with a planning permission (other than the Planning Permission) granted (whether or not on appeal) after the date of this Deed.
- 3.6 No person will be liable for any breach of the terms of this Deed occurring after the date on which they part with their interest in the Application Site or the part of the Application Site in respect of which such breach occurs, or the Compensation Site or the part of the

Compensation Site in respect of which such breach occurs but they will remain liable for any antecedent breaches of this Deed which occurred prior to parting with such interest.

- 3.7 The Owner enters into this Deed with the effect of binding the Application Site and the Compensation Site.

#### **4. FUTURE PLANNING CONSENTS AND APPROVALS**

- 4.1 In the event that any planning permission is granted by the Council or an Inspector or the Secretary of State varying or removing conditions on the Planning Permission pursuant to section 73 of the Act, save and in so far as this Deed has been amended by way of a deed of variation prior to the grant of such planning permission, with effect from the date that any new planning permission is granted pursuant to section 73 of the Act:

- 4.1.1 the obligations in this Deed shall (in addition to continuing to bind the Development) relate to and bind all subsequent planning permissions related to the Planning Permission without the automatic need to enter into any subsequent deed of variation or new agreement pursuant to section 106 of the Act; and
- 4.1.2 the definitions of Planning Permission, Planning Application and Development in this Deed shall be construed to include references to any planning permissions granted under section 73 of the Act and the development permitted by such subsequent planning permission.

#### **5. THE OWNERS COVENANTS**

- 5.1 The Owner covenants with the Council as set out in Schedule 1 to this Deed.

#### **6. DETERMINATION OF DEED**

- 6.1 This Deed shall be determined and have no further effect if the Planning Permission:

- 6.1.1 expires;
- 6.1.2 where the Planning Permission is time limited, the expiry of the Planning Permission;
- 6.1.3 is varied or revoked other than at the request of the Developer; or
- 6.1.4 is quashed following a successful legal challenge.

#### **7. LOCAL LAND CHARGE**

This Deed is a local land charge and may be registered as such by the Council.

#### **8. THIRD PARTIES**

No provisions of this Deed shall be enforceable under the Contract (Rights of Third Parties) Act 1999.

#### **9. MORTGAGEE PROTECTION**

No mortgagee or chargee or any receiver (including an administrative receiver) appointed by such mortgagee or chargee or any other person appointed under any security documentation to enable such mortgagee or chargee to realise its security or any administrator (howsoever

appointed) including a housing administrator (each a receiver) shall be liable for any breach of this Deed unless it takes possession of the Application Site or the Compensation Site in which case it too will be bound by the obligations as if it were a person deriving title from the Owner as if it had been executed and registered as a land charge prior to the creation of the mortgagee's interest in the Application Site or the Compensation Site.

## **10. DISPUTE RESOLUTION**

- 10.1 Subject to Clause 10.2 below in the event of any dispute or difference arising between the Parties to this Deed touching or concerning any matter or thing arising out of this Deed such dispute or difference shall be referred to some independent and fit person holding appropriate professional qualifications to be appointed (in the absence of agreement) by the President (or equivalent person) for the time being of the professional body chiefly relevant in England to such qualifications and such person shall act as an expert and shall receive representations from the Parties in dispute and his decision shall be final and binding on the Parties to the dispute or difference (except in the case of manifest error or fraud) and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one party shall bear more than their due proportion they may recover the excess from the other as a debt).
- 10.2 In the absence of agreement between the Parties to the dispute or difference as to the professional qualifications of the person to be appointed pursuant to Clause 10.1 above or as to the appropriate professional body within 14 Working Days after any party has given to the other Parties to the dispute or difference a written request to concur in the professional qualifications of the person to be appointed pursuant to Clause 10.1 above then the question of the appropriate qualifications or professional body shall be referred to a solicitor to be appointed by the President for the time being of the Law Society of England and Wales on the application of any party to the dispute or difference and such solicitor shall act as an expert and his decision as to the professional qualifications of such person or as to the appropriate professional body shall be final and binding on the Parties to the dispute or difference and his costs shall be payable by the Parties to the dispute in such proportion as he shall determine and failing such determination shall be borne by the Parties to the dispute or difference in equal shares (and if one party shall bear more than their due proportion they may recover the excess from the other as a debt).

## **11. GOVERNING LAW**

This Deed and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

## **12. WAIVER**

No waiver (whether express or implied) by the Council of any breach or default in performing or observing any of the covenants terms obligations or conditions of this Deed shall constitute a continuing waiver and no such waiver shall prevent the Council from enforcing any of the relevant terms obligations or conditions or for acting upon any subsequent breach or default.

**13. CHANGE IN OWNERSHIP**

The Owner shall give to the Council as soon as practicably possible written notice of any change in ownership of any of its interests in the Application Site or Compensation Site occurring before all the obligations under this Deed have been discharged such notice to give details of the transferee's full name and registered office (if a company or usual address if not) together with the area of the Application Site or Compensation Site by reference to a plan.



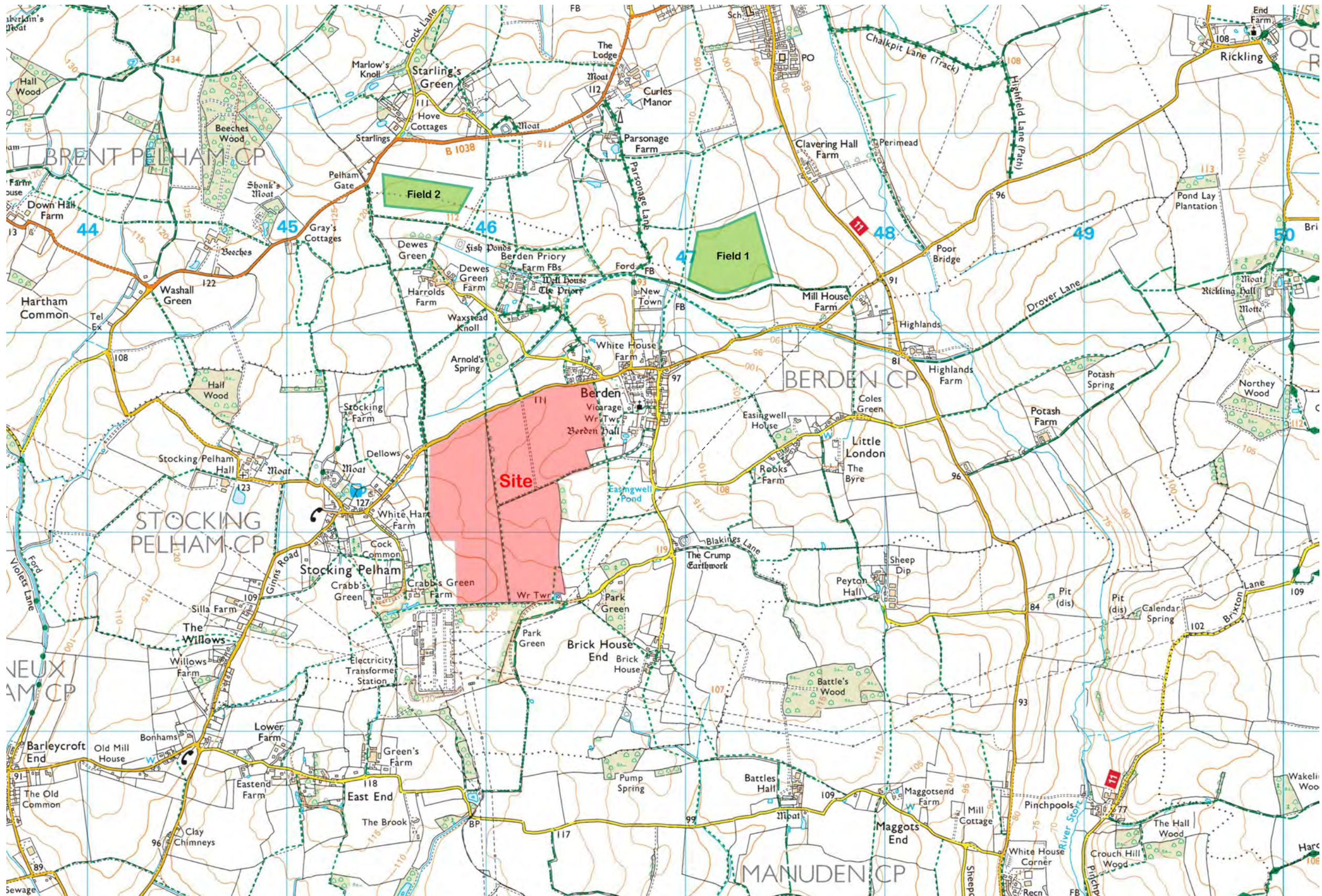
**SCHEDULE 1**  
**OWNERS' COVENANTS**

The Owner covenants with the Council:

1. Prior to Commencement of Development to implement the Skylark Mitigation Strategy;
2. Not to Commence Development unless and until the Skylark Mitigation Strategy has been implemented in full and written confirmation of such implementation has been issued to the Council; and
3. To maintain and comply with the Skylark Mitigation Strategy for the lifetime of the Development.

**SCHEDULE 2**  
**THE PLAN**





Date: 08.02.23

Scale: 1:2000 @ A3

DWG No: 527\_SL\_F1\_Rev A

Revision	Date	Comment
A	03.02.23	Field 1 relocated



Client: Statera Energy

Project: Pelham Solar

Title: Skylark Nest Sites Field Location Plan



**SCHEDULE 3**  
**SKYLARK MITIGATION STRATEGY**

# **BERDEN HALL FARM SOLAR FARM, ESSEX: SKYLARK MITIGATION STRATEGY**

ECO02096-R-03b

Berden Hall Farm Solar Farm  
Skylark Mitigation Strategy

2

09 November 2022



## BERDEN FARM HALL SOLAR FARM: SKYLARK MITIGATION STRATEGY

### Quality Management

Version	Status	Authored by	Reviewed by	Approved by	Review date
1	For review	Matt Fasham	Peter Ireland		08/11/22
2	Final version	Matt Fasham	Peter Ireland	Peter Ireland	08/11/22

### Approval for issue

Peter Ireland

9 November 2022

### File/Model Location

**Document location:** ECO02096-R-03a Berden Farm Solar Skylark Mitigation Strategy

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Prepared by:

**RPS**

**Matt Fasham**

**Technical Director**

Willow Mere House, Compass Point Business Park  
St Ives, Cambridgeshire PE27 5JL

Prepared for:

**Berden Solar Ltd**

1st Floor  
145 Kensington Church Street  
London W8 7LP

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# 1 INTRODUCTION

## Purpose and scope of this report

- 1.1 RPS was commissioned by Berden Solar Limited to produce a Skylark Mitigation Strategy in support of an Environmental Statement (ES) assessing the impacts of a proposed solar farm at Berden Hall Farm, Pelham Stocking, Essex ('the site').
- 1.2 An Ecological Appraisal for the site was undertaken by Cherryfield Ecology (Cherryfield Ecology, 2022), based on surveys undertaken in 2019, 2020 and 2022. The initial survey reported that Skylarks were present on the site, although a full breeding bird survey was not undertaken and therefore an estimate of Skylark territories was not provided.
- 1.3 Although Skylarks may use solar farm sites for foraging, they are less likely to nest within the solar arrays given that they are a species which prefers to nest in open fields.
- 1.4 Therefore, an offsite mitigation strategy for Skylark has been developed.
- 1.5 This report provides:
  - Estimate of breeding skylark territories potentially present on site;
  - Details of proposed offsite mitigation; and
  - Plans showing locations of proposed mitigation.

## Site description

- 1.6 The proposed development site is located on approximately 65.84 hectares of arable land between the villages of Berden and Stocking Pelham, south of Ginns Road in the district of Uttlesford, Essex. The site is centred on national grid reference 100m square TL461291.

## Proposed development

- 1.7 The proposed development is for the development of a ground mounted solar farm with a generation capacity of up to 49.99MW, together with associated infrastructure and landscaping. It would comprise the following elements:
  - Approximately 91,056 photovoltaic solar panels
  - Nine inverter units
  - A small electrical substation
  - A reconfigured field access off Ginns Road to provide access to the site
  - Landscaping and deer fencing.



## 2 ESTIMATE OF SKYLARK TERRITORIES

- 2.1 As a full breeding bird survey of the site was not undertaken, an estimate of potential breeding territories has been made.
- 2.2 RPS undertook a breeding bird survey of a potential solar farm site in Walpole, Norfolk in 2021. This survey was for arable fields and therefore it is considered reasonable to use the recorded density of Skylarks from this survey to estimate density at Berden Hall Farm.
- 2.3 The survey site on which the RPS data was obtained is of comparable habitats (arable fields) in a predominantly arable landscape and therefore is considered to represent an acceptable measure of Skylark densities at Berden Hall Farm.
- 2.4 Estimated average Skylark density for arable fields surveyed in Norfolk was 0.22 territories / hectare.
- 2.5 Measurements of habitats at Berden Hall Farm (RPS, 2022) gives a total area of 63.96 ha of arable fields, arable field margins and temporary grass leys.
- 2.6 Applying 0.22 territories per ha, this results in an estimate of Skylark territory number of 14.07 territories, rounded down to 14 for the purposes of this assessment.

### 3 SKYLARK MITIGATION

- 3.1 Skylark mitigation will be provided in the form of Skylark plots to be created within arable fields owned by the landowner of Berden Hall Farm.
- 3.2 Skylark plots are created in accordance with Countryside Stewardship management practices as set out in AB4: Skylark Plots (<https://www.gov.uk/countryside-stewardship-grants/skylark-plots-ab4>).
- 3.3 The provision of Skylark plots at a ratio of two plots provided for each potential lost territory is an accepted and widely used mitigation strategy for developments that will result in the loss of Skylark territories. Skylark plots also benefit other farmland bird species.
- 3.4 A Skylark plot is a 4m x 4m area of arable field that is created by one of the following methods:
- Turning off the drill during sowing to leave an unsown plot
  - Sowing the crop as normal and spraying with herbicide to create the plot by 31 December
- 3.5 After drilling, the plots can be managed with the same treatments as the remainder of the field.
- 3.6 There is no need to keep the plots weed-free but spot-treating with herbicide in April will help skylarks to access their nesting sites.
- 3.7 Mechanical weeding of crops containing skylark plots will destroy any nests present and is not recommended.
- 3.8 The plots provide Skylarks with suitable access to nesting habitats in winter cereal crops throughout their breeding season.
- 3.9 Recommended plot density is two plots / ha. Larger fields are recommended as this reduces risk of predation by bird species that perch on boundary features such as trees. Fields of > 5 ha are therefore preferred.
- 3.10 Plots should also be located away from tramlines and no closer than 50 m to field margins.
- 3.11 Using the estimate of 14 Skylark territories derived in Section 2, 28 Skylark plots are required in offsite fields, which at 2 plots / ha equates to 14 ha of arable fields within which the plots will be cited.
- 3.12 Figures 1-3 below show locations of fields where plots will be created, and approximate plot locations within those fields. The plot locations in Figures 2 and 3 are not to scale – the size has been increased to make them more visible on the drawings as showing them to scale would make the plots harder to see.
- 3.13 On a precautionary basis, the two fields provide 36 plots in total. This is in excess of the 28 required to mitigate the estimate of 28 plots necessary to mitigate for the estimate of 14 affected territories.
- 3.14 It can therefore be confidently stated that the proposed skylark plots will be adequate to mitigate for estimated losses of Skylark territories on site.
- 3.15 The plots will be maintained on an annual basis for the duration of the operational life of the development.

BERDEN FARM HALL SOLAR FARM: SKYLARK MITIGATION STRATEGY

Figure 1. Location of Skylark mitigation sites

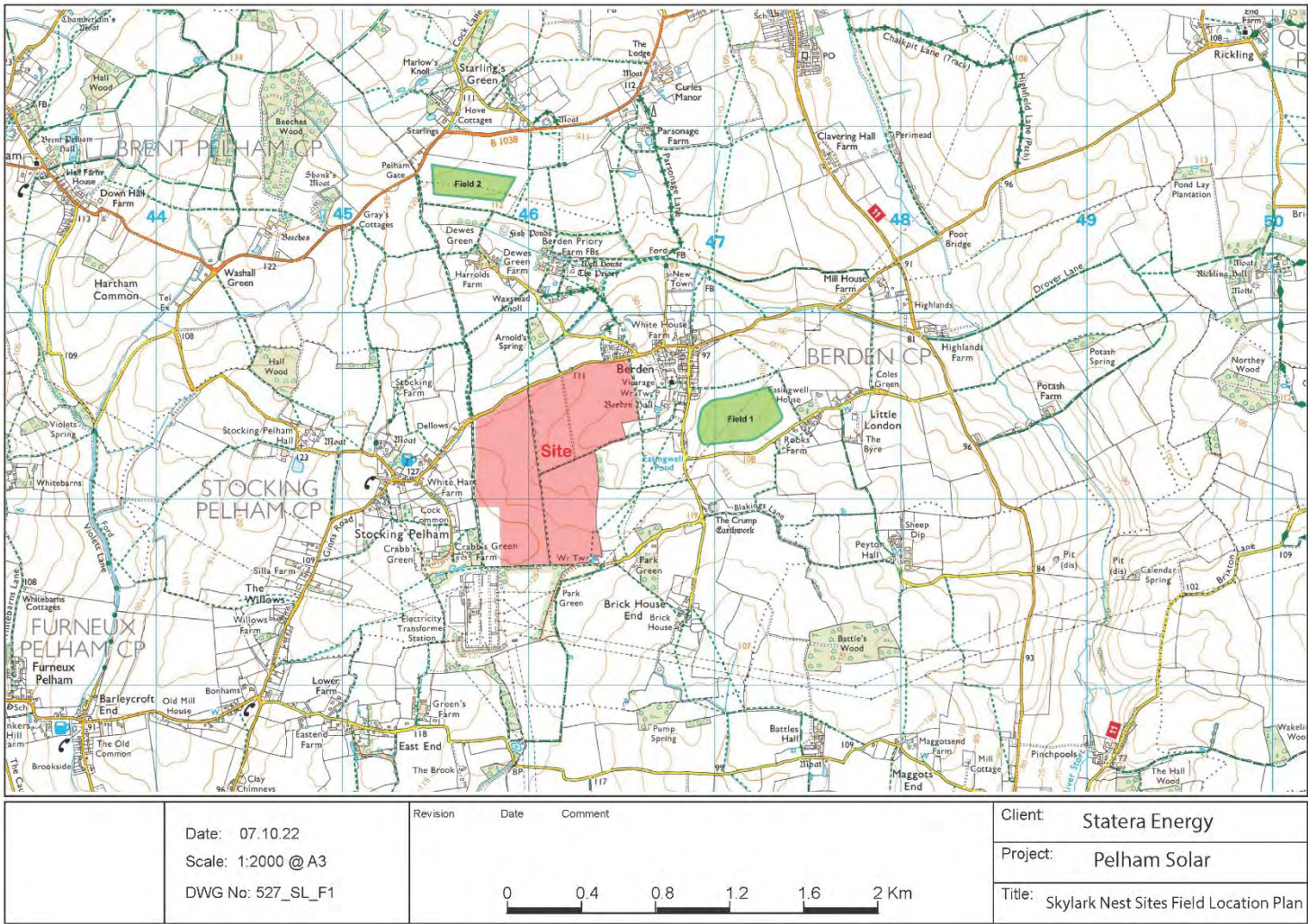


Figure 2. Plot locations in Field 1

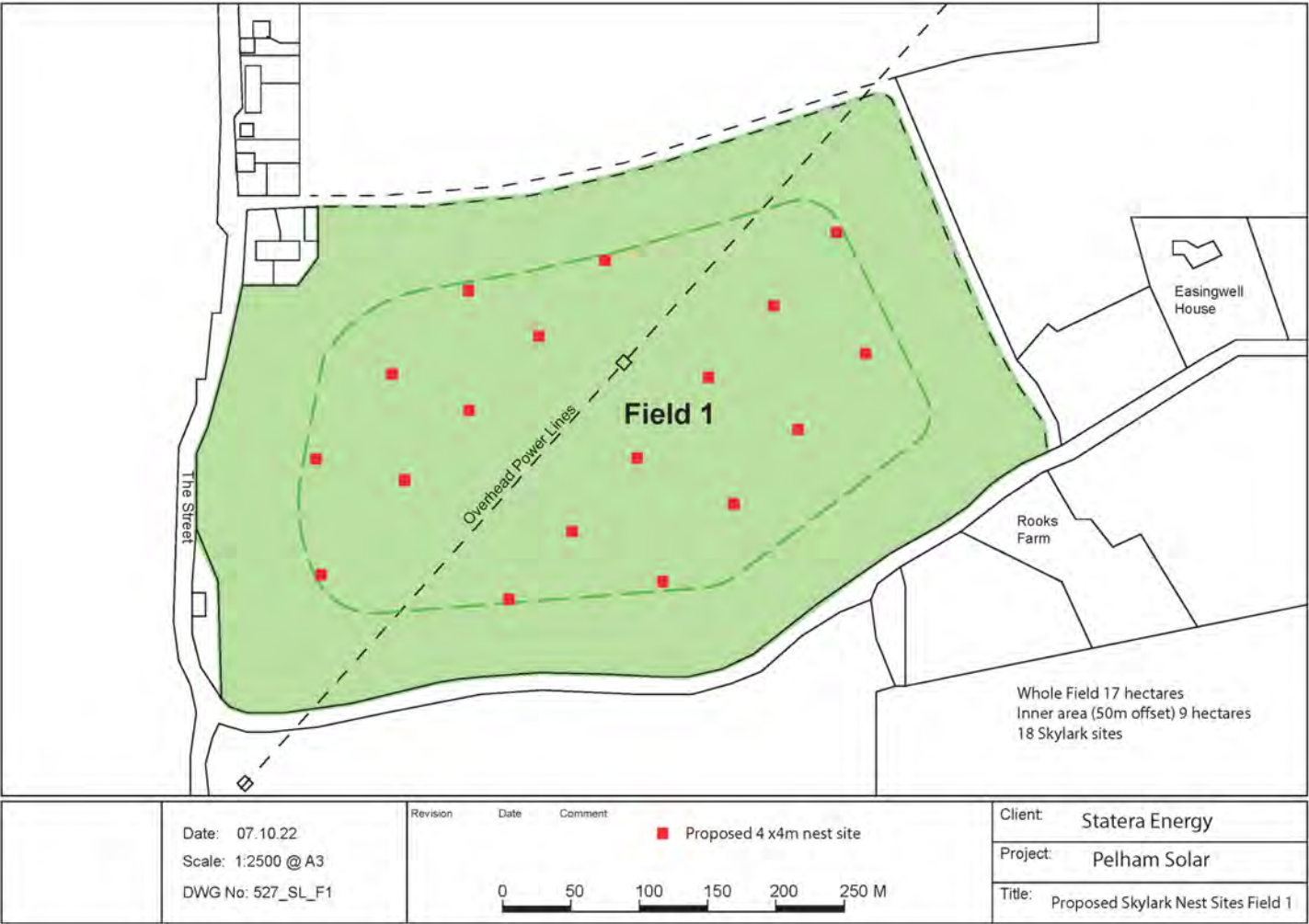




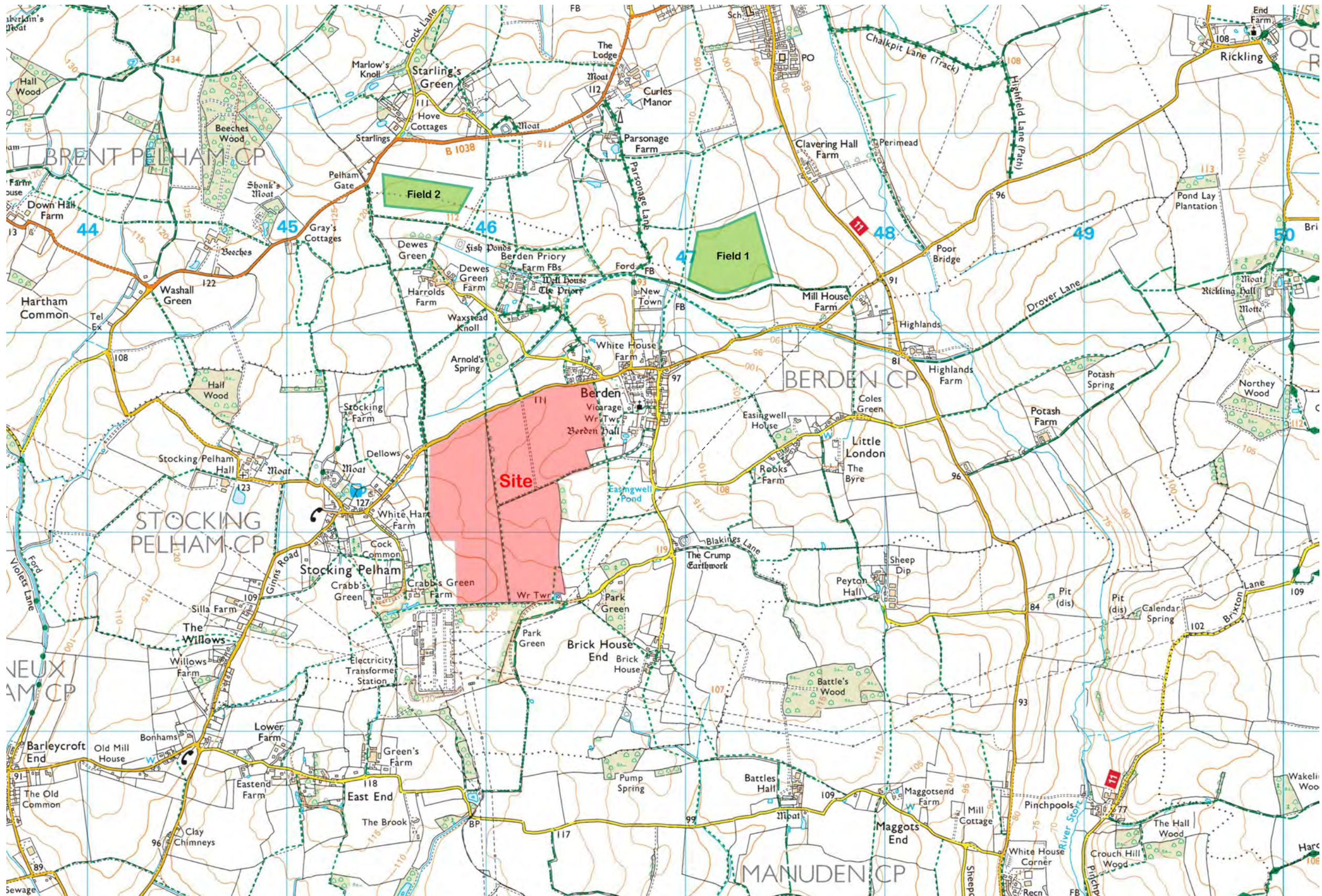
Figure 3. Plot locations in Field 2



## REFERENCES

RPS (2022). *Berden Hall Farm Solar Farm: Desk study and habitat survey*. RPS, St Ives, Cambridgeshire.





Date: 08.02.23

Scale: 1:2000 @ A3

DWG No: 527\_SL\_F1\_Rev A

Revision	Date	Comment
A	03.02.23	Field 1 relocated




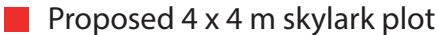

Client: Statera Energy

Project: Pelham Solar

Title: Skylark Nest Sites Field Location Plan





	Date: 29.12.21	Revision A	Date 08.02.23	Comment Alternative field offered	  	Client: Statera Energy Limited
	Scale: 1:2500 @ A3					Project: Pelham Solar
	DWG No: 527_SL_F1_Rev A					Title: Proposed Skylark Plots Field 1



**IN WITNESS** whereof this instrument has been executed as a Deed by the parties to this Deed the day and year first before written

Signed as a deed by )  
**FRANK TINNEY** )  
In the presence of: )

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Signed as a deed by )  
**JAMES NICHOLAS TINNEY** )  
In the presence of: )

Witness

Name (in BLOCK CAPITALS)

Occupation

Address

Executed as a deed by )  
**BERDEN SOLAR LIMITED** )  
acting by a director )  
In the presence of: )

Director

Witness

Name (in BLOCK CAPITALS)

Occupation

Address