



**Response to the
Site Selection Report (“SSR”)
submitted in relation to
Berden Hall Solar Farm**

PINS Reference:

S62A/22/0006

11 April 2024

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	APPENDICES	Notes
1	Applicant's FAQ document March/April 2022	Separate document
2	Plan of Clavering Hall Farm (800 acres)	Separate document
3	Land forming part of alternative site IS 1: registered under title number EX671084	Separate document
4	Site Selection document prepared in connection with Lullington Solar Farm.	Separate document

A: Introduction

1. This submission has been prepared by Protect the Pelhams (“PtP”) in response to the additional information submitted by Berden Solar Limited (the “Applicant”) by way of SSR in connection with its proposal to construct a 49.99 MW solar farm and associated infrastructure (the “Proposed Development”) on 177 acres of agricultural land at Berden Hall Farm (the “Proposed Site”).
2. This representation should be read in conjunction with the earlier documents submitted by PtP which comment on (among other things) the issues of (i) the Applicant’s approach to site selection and (ii) the proposed use of BMV land. See in particular:

Document	Date	URL	Pages
Objection to development at Berden Hall Farm	01/09/2022	https://assets.publishing.service.gov.uk/media/631b44a98fa8f5020ac91012/Protect_the_Pelhams_1_Redacted.pdf	9-20
Response to the Environmental Statement	14/02/2023	https://assets.publishing.service.gov.uk/media/63ee44e88fa8f56131d0ee4e/PtP_Response_to_Berden_Hall_Solar_ES_Redacted.pdf	3-4
Representations for the redetermination of the application to construct a solar development on land at Berden Hall Farm	07/01/2024	https://assets.publishing.service.gov.uk/media/659d48f57e39680013a81a25/Protect_the_Pelhams_1_checked.pdf	20-26

3. The following oral submissions are also relevant to the issue of Site selection:
 - The submission of Claire Russell¹ made on behalf of Berden Parish Council at the hearing before Mr Shrigley which took place on 9 March 2023; and
 - The submission of Rosie Somers made on behalf of Stocking Pelham Parish Council at the hearing before Mr Griffiths which took place on 26 March 2024.

B: There has, in fact, been **NO** site selection exercise

4. The Applicant’s SSR is undated. However, it was not submitted in conjunction with the Applicant’s “Representations for Re-Determination” (dated 15 November 2023) and has clearly been produced very recently. The SSR states that the Applicant has undertaken its assessment “*as part of the back check and review*”. Self evidently, therefore, the SSR was not conducted for the purpose of selecting the site for the Proposed Development.

1

https://assets.publishing.service.gov.uk/media/6411dc6dd3bf7f79d7b78f4c/Berden_PC_1_submission_.pdf

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5. The point of connection to the Proposed Development was accepted by UK Power Networks in March 2019 (such that the application must have been made in 2018). At least five years have therefore passed since the Applicant decided that it wished to construct a solar “farm” at a location which could connect to the National Grid sub-station at Stocking Pelham. Had the Applicant intended to conduct a site selection exercise it would have conducted this exercise prior to making an application for a grid connection.
6. The reason why the Applicant did not consider it necessary to conduct a genuine site selection exercise prior to applying for a grid connection is obvious. As already noted by PtP, the Applicant obtained permission from Uttlesford District Council to construct a Battery Energy Storage (“BESS”) facility on land adjacent to Stocking Pelham substation in October 2017. The BESS is located on land owned by the landowner of the Proposed Site (which is registered under title EX839712 with the address “Land at Berden Hall Farm, Bishop's Stortford”²). The Proprietorship Register of the land registered with title EX839712 records the existence of a Lease dated 26 June 2017 made between the landowners and Pelham Storage Limited. The accounts for Pelham Storage Limited (available from Companies House) confirm that Pelham Storage Limited is a subsidiary of Statera Energy Limited. At the time of making the application to PINS, the Applicant (Berden Solar Ltd) was also a subsidiary of Statera Energy Limited (although a change in control of the company took place in January 2024). It is therefore apparent that, in conjunction with the grant of the lease to Pelham Storage Limited - or shortly thereafter - the Applicant entered into an arrangement with the same landowner to facilitate the construction of the Proposed Development.
7. As has also been pointed out by PtP – and others – on multiple occasions, the Applicant has actually confirmed in writing that **NO ALTERNATIVE SITES WERE CONSIDERED FOR THE PROPOSED DEVELOPMENT**. Following an “exhibition” which took place at Berden Village Hall in March 2022, the Applicant published an FAQ document (attached as **Appendix 1**) which addressed the issue of the selection of the Proposed Site. The FAQ document records the following:

Question: “What other locations did you consider?”

Answer: “None. Statera Energy has selected this site on its merits alone and believes it is a good site to promote.”

8. The Applicant was also given an opportunity to provide additional evidence of a site selection exercise in response to enquiries from PINS. The relevant email correspondence is attached to the SSR. On 17 February 2023, PINS wrote to the Applicant commenting that:

*“It is noted that ‘alternatives’ largely relating to scheme design is already mentioned in the ES. However, for the avoidance of any doubt **the additional information being requested extends to any other sites being considered as alternatives** by the applicant. For example if the applicant has not looked at other sites at all purely for grid connectivity reasons it needs to briefly state that ...”*

² See here for copies of entries from the Land Registry
https://assets.publishing.service.gov.uk/media/659d48f6aaae22000d56dc69/Protect_the_Pelhams_3_-_Appendix_2_Redacted.pdf

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9. In response, the Applicant stated (in an email to PINS dated 22 February 2023):

“The main driver for [the] location the solar farm at this location is its proximity to the existing Pelham Substation (importantly the 132kV electrical network) and the high solar irradiance associated with the area. In addition, the Site is already afforded a high degree of visual enclosure with the opportunity of providing additional screening that can become effective within a short timeframe, minimising its impact on the wider landscape”

No information was provided by the Applicant re alternative sites.

10. The Applicant also stated (in its email 22 February 2023):

“This proposal consists of 37% grade 2 and 63% grade 3a/3b which illustrates how the proposal has avoided BMV land as far as reasonably practical given the extensive BMV land across the District as evidenced by the data and plan below”.

This response was misleading. The Agricultural Land Classification (ALC) study undertaken for the Applicant and submitted to PINS in or around June 2022 confirms 72% of the Proposed Site is BMV land. Moreover, it is evident from the illustration on page 18 of the ALC document that the majority of the Grade 3b land is concentrated in the? field which is immediately adjacent to the site of the BESS.

C: The retrospective site selection exercise recently undertaken by the Applicant is superficial and unconvincing

11. Even if the Site Selection exercise reflected in the SSR had been undertaken PRIOR to the selection of the Proposed Site (which is not the case) it would have been insufficient to constitute “the most compelling evidence” required to justify the use of BMV land. Written Ministerial Statements - including the 2015 WMS made by the Secretary of State for Communities and Local Government³ which sets out the need for the most compelling evidence - are statements of government policy which remain in force unless and until expressly withdrawn or modified⁴. The policy set out in the 2015 WMS is obviously material to this application and is therefore a material consideration for the purposes of section 70 of the 1990 Act. A failure to take the 2015 WMS into account would be an error of law.

12. The reasons why the “evidence” set out in the SSR is both superficial and unconvincing include the following:

There has been no consideration of land which is likely to be of poorer quality

13. The SSR identifies two sites as potential alternative locations for the Proposed Development. However, no compelling justification is given for the selection of these sites. It should have been obvious to the applicant that there is a high likelihood of identifying poorer quality land in the vicinity of Berden.

³ [REDACTED]

⁴ see *Save Britain’s Heritage v Secretary of State* [2018] EWCA Civ 2137 at para. 51

14. Fig 1 below comprises is an extract from Natural England’s Agricultural Land Classification map for the East of England. Grade 3 land is shared in Green.



Fig 1

15. Fig 2 below comprises an extract from the Soils Map published as part of the “Land Information System” (or LandIS) which is a substantial environmental information system operated by Cranfield University which contains soil-related information for England and Wales.



Fig 2

16. It is evident from this publicly available mapping data that the nature of **land to the East of Berden is very likely to be of poorer quality** than the land which is due North and due South of the Proposed Site. The failure to the Applicant to investigate the possibility of locating its development on the land to the East of Berden casts doubt upon the bona fides of the site selection exercise.

The choice of such a small search area is not justified

17. The Applicant states that a 3km search radius from the grid connection point was *“considered a reasonable search area, as any further would result in an increased environmental impact, due to the need to connect the array to the grid via underground cabling”*. However, no details of the “alleged environmental impact” are provided.

18. It is well known that the primary driver for the selection of a limited search radius is a desire on the part of applicants to minimise the cost of connection. Whilst it is accepted that the judgment of Mrs Justice Lang in relation to the Bramley Solar Farm decision (submitted by the Applicant⁵ on the day before the hearing) concludes that there is no explicit requirement for applicants to demonstrate a sequential approach to alternative site selection (although note that this is a first instance judgment), there are number of important distinctions to be made in relation to the Bramley Solar Farm case, including the fact that:

- in Bramley, the applicant undertook a search for alternative sites **BEFORE** making its application in relation to Bramley Solar Farm. This is evident from the information contained in its Planning Statement;
- The area of the search – at **five kilometres** from the point of connection - was substantially larger than the three kilometre search area now proposed by the Applicant; and
- Uttlesford has an explicit policy (Policy ENV5) which requires that:

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

Policy ENV5 was reviewed in 2012⁶ in order to assess compatibility with the NPPF and was found to be consistent with National Planning Policy.

19. Whilst it is not accepted that a search area limited to 5km is adequate, it is notable that a 5km search area would include much of the poorer quality land to the East of the proposed site highlighted above.

5

https://assets.publishing.service.gov.uk/media/66012fd0a6c0f7bb15ef9103/7_Bramley_Solar_Farm_Residents_Group_v_Secretary_of_State__2023__EWHC_2842__Admin_.pdf

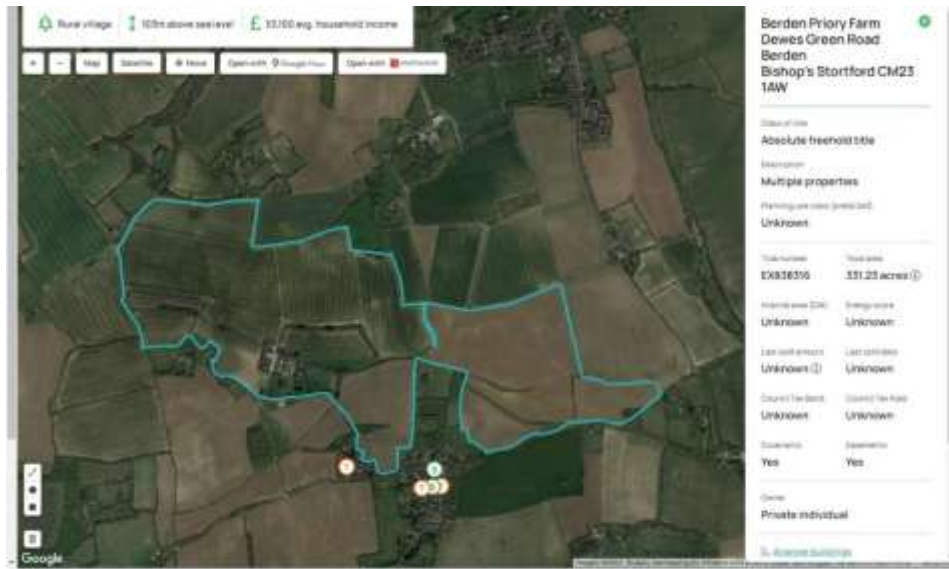
⁶ https://www.uttlesford.gov.uk/media/1478/Uttlesford-Local-Plan-2005-National-Planning-Policy-Framework-Compatibility-Assessment/pdf/Local_Plan_NPPF_Review_Sept_2012.pdf?m=638194996610470000

No information has been supplied regarding the application of the “constraints” selected by the Applicant

20. At paragraph 3.10 of the SSR, the Applicant lists seven “constraints” which, the Applicant implies, operate to limit the suitability of a given site. These constraints are stated to be:
- Agricultural Land Classification (ALC);
 - Environmental Designations;
 - Heritage Assets;
 - Flood Zones;
 - Approved / Pending Solar Schemes;
 - Public Rights of Way (PRoW); and
 - Highways
21. The Applicant then refers to a series of a maps in Appendix D but fails to demonstrate how these constraints have been applied either to the Proposed Site for the development or to either of the other 2 sites identified. The Applicant should be expected to “show its workings out” to support its conclusion that there are no viable alternatives to the Proposed Site.
22. Given the high proportion of BMV land within the Proposed Site, the proximity of both Grade I and Grade II Heritage Assets to the Proposed Site and the large number of PRoWs it is **highly unlikely** that the Proposed Site would score better than either of the alternatives were a proper assessment of each site criteria undertaken. See below for further comments on each of the “alternative” sites.
23. Note also that each of the “alternative” sites are discounted on the basis of proximity to residential dwellings and greater distance from the point of grid connection”. However, neither of these factors are identified as “constraints” for the purposes of determining suitability.

The Applicant has failed properly to consider the use of other land in the ownership of the landowner who owns the Proposed Site

24. As noted previously, the owner of the Proposed Site owns **in excess of 800 acres** of land in Berden. This includes the following parcel of 331 acres registered under title EX838316. The Applicant states that the minimum site size for the purposes of this alternative site assessment is approximately 130 acres. Self-evidently, the proposed development site could be easily accommodated at several locations within this land holding. No explanation is given for the selection of “Identified Site 1” – which includes land both belonging to the owner of the Proposed Site and land belonging to a third party (see overleaf).



25. The most Easterly portion of the land which is the subject of title EX838316 (which forms the shape of a “boot”) measures around 156 acres. The extract from Historic England’s map of heritage assets shown below shows that this site is some considerable distance from any heritage assets. Save in relation to a single dwelling (Field House) the nearest houses (at the edge of Berden village) are some 450 metres away from the South-West junction of the site (the “heel of the boot”). It is therefore remarkable that this location was not considered by the Applicant as it is clearly more suitable than the Proposed Site.



The Applicant has failed to consider using other land to the East of the Proposed Site

26. The land to East of Berden known as Clavering Hall Farm comprises 804 acres in single ownership. The extent of the land and its location is illustrated in **Appendix 2**. The Applicant fails to explain why it did not consider any portion of this land which is highly likely to be of lower quality.

The assessment of Site IS1 is superficial and the conclusions are not compelling

27. The majority of site IS1 comprises land owned by the landowner who has made available the Proposed Site. However, 19 acres (comprising the two fields at the north east “corner” of Site IS1) have been included which belong to an adjoining land owner (who lives in Clavering). This land is registered under title number EX671084 (see **Appendix 3**). The Applicant makes no mention of this fact.

28. The Applicant notes that there is a Scheduled Monument in the north northeast of the site - which is the Moated site at Starling's Green. However, if alternative land owned by the landowner of the Proposed Site were to be considered and the 19 acres under title number EX671084 removed from scope, proximity to this Scheduled Monument could easily be avoided and this “constraint” removed. It is tempting to conclude that this additional land has been included in order to justify the alleged unsuitability of Site IS1.

29. Despite the fact that the majority of the land is owned by the same landowner who has made available the Proposed Site, the Applicant has made no attempt to determine whether Site IS1 comprises poorer quality land than the Proposed Site.

30. The Applicant comments that site IS1 is overlooked on the north, west and south by a selection of residential dwellings. However, the site is, in fact, well screened from the North as can be seen below:



31. There are no dwellings to the West of site IS1. The closest dwelling is situated to the North West of site IS1 on the other side of the road (and set well back). Once again, the site is well screened as can be seen below:



32. There are **no Grade 1 listed buildings near Site IS1** (in contrast to the Proposed Site).
33. The Applicant also neglects to mention that **access to Site IS1 would be considerably easier**. Unlike the road that runs through Berden – which is an extremely narrow as it passes in front of Berden Village Hall - the relevant stretch of the B1038 is a major route. Access to Site IS1 would also have no impact on Clavering Primary School.
34. It is therefore difficult to agree with the Applicant’s conclusion that: *“the site performs no better in heritage, landscape or ALC metrics than the site proposed”*.

The assessment of Site IS2 is also superficial and the conclusions are not compelling

35. In relation to Site IS2, the applicant comments that:
- the site is overlooked on the north by houses at East End;
 - the site is better screened by views from the south, west and east; and
 - there are listed buildings to the north of the site at East End and to the south of the site.
36. Whilst it is correct that there are listed buildings at East End, in contrast to the Proposed Site, **none of these are Grade II* or Grade I listed buildings and there are no Scheduled Monuments in close proximity to Site IS2.**
37. The Applicant also fails to mention that the majority of the land within Site IS2 is in single ownership under title HD372686. The owner of this land owns a total of 412 acres as is illustrated below.



38. No explanation is offered as to why the Applicant failed to consider the North Western portion of this site which is immediately adjacent to the sub-station.
39. The Applicant has made no attempt to determine whether Site IS2 comprises poorer quality land than the Proposed Site.
40. It would have been obvious to the Applicant that the South-Eastern portion of this land is included with the footprint of “Pelham Spring Solar Farm”. It is therefore unsurprising that the landowner was unwilling to enter into discussions to lease the land. However, had the Applicant approached the landowner in 2018, as it should have done, the position might well have been different.
41. In view of the points made above, the Applicant’s conclusion that site IS2 *“performs no better in heritage, landscape and or ALC metrics than the site proposed”* in untenable.

The assessment of the Proposed Site is inaccurate

42. Whilst it is not necessary to comment in detail on the characteristics of the Proposed Site, the following statements are misleading and should be given no weight:
- The Applicant states that *“the number of Heritage Assets is broadly consistent with every site across the search area”*. This statement is so general as to be valueless and takes no account of the proximity of the Proposed Site to Heritage Assets of the **highest significance**;
 - Re land classification, the Applicant comments that *“the site is identified on Natural England mapping as containing Grade 2 land ..A subsequent ALC Survey has found the site to be a mixture of Grade 2, Grade 3a and Grade 3b. This is broadly consistent with that of the rest of the search area”*. As the Applicant has failed to test the soil at any location other than the Proposed Site this conclusion is unreliable.

As noted above, Natural England's map **DOES** indicate the presence of poorer quality land to the East of Berden. However, the Applicant has made no attempt to assess whether any portion of this land might be suitable.

The Applicant's conclusion re the merits of the Proposed Site are patently incorrect

43. The Applicant concludes its SSR with the statements that:

- *"there are demonstrably no sequentially preferable sites within the search area" and*
- *"there are no suitable alternative sites for a proposed solar PV development within the search area".*

44. For the many reasons set out above, these statements are disputed. The Applicant should have undertaken a proper search across a sufficiently wide search area **BEFORE** selecting the Proposed Site.

D: The Inspector should have regard to the approach to site selection adopted in the Lullington Solar Farm Appeal (upheld by the High Court)

45. The Applicant has already submitted a copy of the decision of Mr Justice Jarman⁷ in relation to the unsuccessful challenge by the developer of the decision by Inspector Gareth Thomas to refuse permission for the construction of Lullington Solar Park. This High Court judgment (dated 16 February 2024) is more recent than the judgment in relation to Bramley Solar Farm – although as both are first instance decisions, neither has more weight than the other. The Lullington appeal was submitted to PINS as part of its representations in respect of the redetermination⁸.

46. The site for Lullington Solar Park comprised only 49% of BMV land. The Site Selection document prepared by the applicant in connection with Lullington Solar Farm is attached as **Appendix 4**. In this case the applicant considered eight possible brownfield sites (set out in table 2 of the report at page 13) and three areas of agricultural land (see pages 15-17). Commenting on the inadequacy of the applicant's approach, the Planning Inspector noted:

"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 note³ 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

7

https://assets.publishing.service.gov.uk/media/66012fd0f1d3a065f132ac6e/8_Lullington_Solar_Park_Ltd_v_Secretary_of_State_for_Levelling_Up_Housing_and_Communities__2024__EWHC_295__Admin_.pdf

8 https://assets.publishing.service.gov.uk/media/659d48f6aaae22001356dc67/Protect_the_Pelhams_2_-_Appendix_1_checked.pdf

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”**.

*“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 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.***

*“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.***

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

47. PtP respectfully reminds the Inspector of the recent changes to the NPPF which underline the importance of using high quality farm land for food production.