



Ministry of Housing,  
Communities &  
Local Government

Alexandra Gavin  
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Ship Canal House  
98 King St  
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Our Ref: APP/Y2736/W/24/3342002  
Your Ref: 23/00046/MFULE

25 February 2025

*Sent by email only*  
[Alexandra.gavin@lichfields.uk](mailto:Alexandra.gavin@lichfields.uk)

Dear Alexandra Gavin

**TOWN AND COUNTRY PLANNING ACT 1990 – SECTION 78  
APPEAL MADE BY HARMONY ENERGY LTD  
LAND OFF GREAT SIKE ROAD, OLD MALTON, MALTON, YO17 6SB  
APPLICATION REF: 23/00046/MFULE**

*This decision was made by Minister Matthew Pennycook MP, Minister of State for Housing and Planning, on behalf of the Secretary of State*

1. I am directed by the Secretary of State to say that consideration has been given to the report of M Shrigley BSc MPlan MRTPI, who held a public local inquiry on 24-27 September, 1-3 and 7 October 2024 into your client's appeal against the decision of North Yorkshire Council (NYC) to refuse your client's application for planning permission for the installation and operation of a solar farm and battery energy storage system with associated infrastructure including substation, access tracks, pole mounted CCTV, fencing and landscaping for a period of 40 years, in accordance with application Ref. 23/00046/MFULE, dated 3 January 2023.
2. On 20 September 2024, this appeal was recovered for the Secretary of State's determination, in pursuance of section 79 of, and paragraph 3 of Schedule 6 to, the Town and Country Planning Act (TCPA) 1990.

**Inspector's recommendation and summary of the decision**

3. The Inspector recommended that the appeal be allowed, and planning permission granted subject to conditions.
4. For the reasons given below, the Secretary of State agrees with the Inspector's conclusions, except where stated, and agrees with his recommendation. She has decided to allow the appeal and grant planning permission, subject to conditions. The Inspector's Report (IR) is attached. All references to paragraph numbers, unless otherwise stated, are to that report.

Ministry of Housing Communities & Local Government  
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Planning Casework Unit  
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London SW1P 4DF

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## **Environmental Statement**

5. In reaching this position, the Secretary of State has taken into account the Environmental Statement which was submitted under the Town and Country Planning (Environmental Impact Assessment) Regulations 2017 and the environmental information submitted before the inquiry. Having taken account of the Inspector's comments at IR2.1-IR2.9, the Secretary of State is satisfied that the Environmental Statement and other additional information provided complies with the above Regulations and that sufficient information has been provided for her to assess the environmental impact of the proposal.

## **Procedural Matters**

6. The planning application form was submitted to Ryedale District Council which ceased to exist as of 31 March 2023 following local government reorganisation. NYC is now the Local Planning Authority. The Secretary of State does not consider that the change in Local Planning Authority raises any matters that would require her to refer back to the parties for further representations prior to reaching her decision on this appeal, and she is satisfied that no interests have thereby been prejudiced.

## **Matters arising since the close of the inquiry**

7. A revised version of the National Planning Policy Framework (the Framework) was published on 12 December 2024 and updated on 7 February 2025. The Secretary of State referred back to parties in respect of the revised Framework on 20 December 2024. Representations were received from Lichfields on behalf of the appellant and Loxley Legal on behalf of Mr and Mrs Sturdy (the Rule 6 party), and these are listed in Annex A to this decision letter. The IR contains paragraph references to the previous version of the Framework; this decision letter refers to both the old and the new paragraph numbers, where these are different.
8. A list of other representations which have been received since the inquiry is at Annex A. The Secretary of State is satisfied that the issues raised do not affect her decision, and no other new issues were raised in this correspondence to warrant further investigation or necessitate additional referrals back to parties. A letter dated 7 February 2025 from Loxley Legal requested that the decision be postponed until after the proposed DEFRA Land Use Framework is published. Given that the development of the Land Use Framework is at an early consultation stage and timescales for publication of the new Land Use Framework is scheduled for Summer 2025, the Secretary of State does not consider that the delay to this case would be justified. She further considers that given the Land Use Framework is at consultation stage and the final version has not yet been published, it is not necessary to refer back to parties for comments on the proposed Framework. Copies of the letters in Annex A may be obtained on request to the email address at the foot of the first page of this letter.
9. The Malton and Norton Neighbourhood Plan was made on 13 November 2024, after the close of the Inquiry.

## **Policy and statutory considerations**

10. In reaching her decision, the Secretary of State has had regard to section 38(6) of the Planning and Compulsory Purchase Act (PCPA) 2004 which requires that proposals be determined in accordance with the development plan unless material considerations indicate otherwise.

11. In this case the development plan consists of the Ryedale Local Plan Strategy (RLPS) to 2027 (September 2013), the Ryedale Plan Local Plan Sites Document 2022-2023 (July 2019), the Minerals and Waste Joint Plan (February 2022), and the Malton and Norton Neighbourhood Plan (MNNP) made on 13 November 2024. The Helmsley Plan and the Yorkshire and Humber Plan Regional Strategy to 2026 are also part of the Development Plan for the area but are not considered to be relevant by main parties (IR4.16). The Secretary of State considers that relevant development plan policies include those set out at IR4.17 and IR4.22.
12. Other material considerations which the Secretary of State has taken into account include the Framework published on 12 December 2024 and updated on 7 February 2025, and associated planning guidance (the Guidance), as well as those matters set out at IR4.1-IR4.10 and IR4.18-IR4.20.

### *Emerging plan*

13. The emerging plan comprises the North Yorkshire Local Plan which is at a very early stage (IR4.21).
14. Paragraph 49 (previously 48) of the Framework states that decision makers may give weight to relevant policies in emerging plans according to: (1) the stage of preparation of the emerging plan; (2) the extent to which there are unresolved objections to relevant policies in the emerging plan; and (3) the degree of consistency of relevant policies to the policies in the Framework. Given its early stage, the Secretary of State gives the emerging North Yorkshire Local Plan no weight.

### **Main issues**

#### *Acceptability of location - Renewable Energy, Flood Risk and Agricultural Land*

15. For the reasons given at IR14.4, IR14.7-IR14.35, IR14.51 and IR14.183-IR14.184, the Secretary of State agrees with the Inspector's conclusion at IR14.17 that easy and readily available grid connectivity is an important consideration which holds significant weight. She further agrees that the solar farm would be able to make a significant contribution of achieving the statutory net target set by 2050 and reducing emissions by 78% compared with 1990 levels by 2035 (IR14.184). Paragraph 168(a) of the Framework states that significant weight should be given to 'the benefits associated with renewable and low carbon energy generation and the proposal's contribution to a net zero future'. In line with this provision she considers that the delivery of clean and secure renewable energy (IR14.184) should be given significant weight. In terms of flooding, the Secretary of State agrees at IR14.51 that the appeal evidence demonstrates there are no reasonably preferable alternative sites in areas not prone to flood risk and disagrees with the Council and Rule 6 Party that the appellant has not satisfied the requirements of the sequential test (IR9.35 and IR10.164). Overall, she agrees with the Inspector at IR14.35 that there are no sequentially more favourable sites, and the exception test is passed. Like the Inspector she does not find any breach of RLPS Policy SP17 or the Framework with respect to flood risk.
16. For the reasons given at IR14.5 and IR14.36-IR14.51, the Secretary of State agrees with the Inspector that the appellant has demonstrably reduced the use and permanent loss of Best and Most Versatile (BMV) agricultural land as much as possible (IR14.40), and further agrees that there would not be any serious detriment to local or national food supply security issues (IR14.45). The Secretary of State considers that the small amount of permanent BMV agricultural land loss (IR15.4) carries moderate weight against the

proposal. In reaching her conclusion on this matter, she has taken into account the amendment made to footnote 65 (previously 62) of the Framework, and the representations by parties on this point.

17. Overall, the Secretary of State agrees that with the exception of the marginal non-compliance with RLPS Policy SP17 for the parts of the BMV land accepted as being permanently affected by the appellant (IR14.49), the main aims of Policy SP17 are otherwise complied with (IR14.50). She further agrees that the appellant's site selection justifications are appropriate for responding to known flood risks, as well as avoiding and minimising BMV agricultural land loss as far as is as reasonably practicable (IR14.51).

#### *Existing rural business impact*

18. For the reasons given at IR14.52-IR14.82 and IR15.4, the Secretary of State agrees that the scheme would result in irreversible detriment to Eden Farm as an existing successful agricultural business entity (IR14.63). Like the Inspector, she acknowledges the impact of this application on the personal circumstances of the tenant and his immediate family, and concurs that the scale of the impact on the tenant is significant (IR14.72-IR14.73). She considers that the erosion of the wider local agricultural economy, including detriment to Eden Farm as an existing successful agricultural business entity, should carry substantial weight (IR14.63, IR14.69). She further agrees with the Inspector that the level of irreversible detriment to the Eden Farm agricultural business runs counter to the wider aims of RLPS Policy SP9 (IR14.81). Like the Inspector, the Secretary of State considers that there is nothing convincing within the evidence which demonstrates that the proposal would be detrimental to the future operation or standing of Eden Camp as well as broader tourism and recreation interests (IR14.80).

#### *Heritage Impacts*

19. For the reasons given at IR14.83-IR14.99 and IR14.116-IR14.135, the Secretary of State agrees that there would be harm arising from the change to the setting of the Grade II Listed Windmill at Windmill Farm as a result of the appeal proposal, but the level of harm would be tempered by the solar arrays low lying stature within the landscape (IR14.96). She further agrees that the impact would be temporary and reversible resulting in overall harm that would be of less than substantial harm (IR14.97). The Secretary of State agrees that there would be intervisibility between the solar farm arrays and the Grade II Listed Acomb Farmhouse, albeit that there would be some screening from existing hedgerows and proposed planting (IR14.98). The Secretary of State further agrees that the resultant impact on Acomb Farmhouse would be at the very low end of less than substantial harm (IR14.99).
20. For the reasons given at IR14.100-IR14.115 and IR14.116-IR14.135, the Secretary of State agrees that the proposal would result in minor/negligible significance of effect to Non Designated Heritage Assets (NDHA) Eden Camp (IR14.105), and Eden House (IR14.110) and limited harm to the archaeological significance of NDHAs of local value owing to the erosion of their setting in an agricultural open countryside location (IR14.132).
21. For the reasons given at IR14.116-IR14.135, the Secretary of State agrees, in respect of the group identified at IR14.124, that the development of the appeal site would not eradicate the ability to understand the significance of all heritage assets impacted, inclusive of regard to NDHAs and the combined overall group values and that the overall

setting impact of all heritage assets combined would fall within the 'less than substantial harm' bracket (IR14.133).

22. In line with the provisions of section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Secretary of State has had special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses. The Inspector assigns significant weight to the less than substantial harm to the setting of designated heritage assets. In line with paragraph 212 (previously 205) of the Framework, the Secretary of State considers that this harm carries great weight. The Secretary of State agrees with the Inspector's conclusions at IR14.135 that such NDHA harm has importance owing to local cultural significance and attracts moderate weight. The Secretary of State agrees with the Inspector at IR14.134 that there would be some conflict with RLPS Policy SP12.
23. The Secretary of State has undertaken the balancing exercise under paragraph 215 of the Framework (previously 208) at paragraph 35 below.

#### *Residential amenity*

24. For the reasons given at IR14.136-IR14.151, like the Inspector the Secretary of State accepts that there would initially be a large scale of change in the view from some locations within the curtilage of Windmill Farm (IR14.147) and that the solar arrays would be clearly seen from Acomb House at distance owing to the flat topography (IR14.49). She also agrees that there would likely be only occasional filtered glimpses through the hedgerow to the site at ground floor level and through upstairs windows from Eden Farm (IR14.145). She agrees with the Inspector at IR14.150 that the resultant residential amenity levels of any of the mentioned properties does not amount to a breach of development plan policy and that with the scheme there would remain large expanses of countryside to enjoy for relaxation, exercise, and recreation (IR14.151).
25. For the reasons given at IR14.152-14.155, and IR15.7 the Secretary of State agrees with the conclusions at IR14.152 that any noise emitted from the appeal scheme is likely to be masked by existing noise and therefore would not impact on nearby residential amenity. She further agrees that there would be significant, albeit short lived, periods of construction traffic noise and disruption, and agrees with the Inspector that this harm to local amenity carries limited weight (IR15.7, IR14.155).

#### *Other matters*

26. The Secretary of State agrees with the Inspector's conclusions in respect of the matters addressed at IR14.159-IR14.168.
27. The Secretary of State agrees with the Inspector's conclusions at IR14.156-IR14.158 on the effect on the North York Moors National Park and the Howardian Hills AONB (a National Landscape) (IR14.156), and for the reasons given at IR14.156-IR14.158 and IR15.7, she agrees that there would be some largely contained visual appearance and character harm which carries limited weight (IR14.158).
28. Having regard to the Inspector's findings at IR14.180, the Secretary of State concludes that biodiversity net gain (BNG) benefits should carry significant positive weight.
29. The Secretary of State notes the Inspector's comments in IR14.185, and considers that the economic benefits arising from employment during both the construction and operational phases carry limited weight.

30. The Secretary of State is the Competent Authority for the purposes of the Conservation of Habitats and Species Regulations 2017 and for the reasons set out at IR14.169-IR14.179 she agrees with the Inspector that she is required to make an Appropriate Assessment of the implications of that plan or project on the integrity of any affected European site in view of each site's conservation objectives (IR14.177). The relevant site is the River Derwent Special Area of Conservation. The Secretary of State agrees with the assessment and findings in IR14.169-IR14.179 of the IR, including that the mitigation measures proposed can be taken as achievable and effective in preventing potential adverse effects to the European site in line with all statutory expectations (IR14.179). She adopts IR14.169-IR14.179 as the necessary Appropriate Assessment in her role as the Competent Authority on this matter.

### **Planning conditions**

31. The Secretary of State has had regard to the Inspector's analysis at IR16.1-IR16.13, the recommended conditions set out at the end of the IR and the reasons for them, and to national policy in paragraph 57 (previously 56) of the Framework and the relevant Guidance. She is satisfied that the conditions recommended by the Inspector comply with the policy test set out at paragraph 57 of the Framework and that the conditions set out at Appendix B should form part of her decision.

### **Planning balance and overall conclusion**

32. For the reasons given above, the Secretary of State considers that the appeal scheme is not entirely in accordance with Policies SP9, SP12 and SP17 of the development plan, and is not in accordance with the development plan overall. She has gone on to consider whether there are material considerations which indicate that the proposal should be determined other than in line with the development plan.

33. Weighing in favour of the proposal are easily and readily available grid connectivity, carrying significant weight; clean and secure renewable energy, carrying significant weight; BNG, carrying significant weight; and employment benefits, carrying limited weight.

34. Weighing against the proposal are erosion of the wider local agricultural economy including detriment to Eden Farm as an existing successful business entity, carrying substantial weight; harm to designated heritage assets, carrying great weight; harm to NDHAs, carrying moderate weight; BMV loss, carrying moderate weight; harm to local amenity from temporary disruption, noise and construction activity, carrying limited weight; and harm to landscape character and appearance, carrying limited weight.

35. In line with the heritage balance set out at paragraph 215 (previously 208) of the Framework, the Secretary of State has considered whether the identified less than substantial harm to the significance of the designated heritage assets is outweighed by the public benefits of the proposal. Taking into account the public benefits of the proposal as identified in this decision letter, overall, the Secretary of State agrees with the Inspector at IR15.10 that the benefits of the appeal scheme are collectively sufficient to outbalance the identified less than substantial harm to the significance of The Windmill and Acomb Farmhouse. She considers that the balancing exercise under paragraph 215 of the Framework is therefore favourable to the proposal.

36. Overall, in applying s.38(6) of the PCPA 2004, the Secretary of State considers that despite the conflict with the development plan, the material considerations in this case indicate that permission should be granted.

37. The Secretary of State therefore concludes that the appeal be allowed, and planning permission granted subject to conditions.

### **Formal decision**

38. Accordingly, for the reasons given above, the Secretary of State agrees with the Inspector's recommendation. She hereby allows your client's appeal and grants planning permission subject to the conditions set out in Annex B of this decision letter for the installation and operation of a solar farm and battery energy storage system with associated infrastructure including substation, access tracks, pole mounted CCTV, fencing and landscaping for a period of 40 years, in accordance with application Ref. 23/00046/MFULE, dated 3 January 2023.

39. This letter does not convey any approval or consent which may be required under any enactment, bye-law, order or regulation other than section 57 of the TCPA 1990.

### **Right to challenge the decision**

40. A separate note is attached setting out the circumstances in which the validity of the Secretary of State's decision may be challenged. This must be done by making an application to the High Court within 6 weeks from the day after the date of this letter for leave to bring a statutory review under section 288 of the TCPA 1990.

41. A copy of this letter has been sent to NYC and Loxley Legal on behalf of Mr and Mrs Sturdy and notification has been sent to others who asked to be informed of the decision.

Yours faithfully

*Emma Hopkins*

Decision officer

*This decision was made by Minister Matthew Pennycook MP, Minister of State for Housing and Planning, on behalf of the Secretary of State, and signed on his behalf*

## Annex A Schedule of representations

### General representations

Party	Date
Loxley Legal on behalf of Mr and Mrs Sturdy	7 November 2024, letter dated 4 November 2024
Loxley Legal on behalf of Mr and Mrs Sturdy	7 February 2025

### Representations received in response to the Secretary of State's letter of 20 December 2024

Party	Date
Lichfields on behalf of appellant	9 January 2025
Loxley Legal on behalf of Mr and Mrs Sturdy	10 January 2025, letter dated 10 January 2024

### Representations received in response to the Secretary of State's recirculation of 14 January 2025 of responses received to letter of 20 December 2024

Party	Date
Lichfields on behalf of appellant	20 January 2025
Loxley Legal on behalf of Mr and Mrs Sturdy	21 January 2025

## Annex B List of conditions

### *Time Limit*

1. The development hereby permitted shall be begun within three years of the date of this permission.

### *Approved Plans*

2. The development hereby permitted shall be carried out in general accordance with the following plans and documents:

ES Figure 1.1 Rev A - Site Location Plan; ES Figure 1.3 Rev D - Proposed Site Plan; Drawing No OM\_BSP\_Rev H BESS Site Plan; BESS site plan indicating proposed plant type and layout; Drawing No PL.001 - Technical Details - Mounting Structure; Drawing No PL.005b - MV Power Station; Drawing No PL.006 – Technical Details Customer Substation; Drawing No PL.007 - Technical Details - Gate, Fence, Construction Road, Camera, Satellite Dish; Drawing No OM-EL-BAT-01 Envision Battery Elevation; Drawing No OM-EL-BTR-01 Rev 0 - Indicative Battery Transformer (KNAN Transformer); Drawing No OM ED(DNOLVAC) Rev 0 Indicative Customer Switchroom; Drawing No OM\_ED(DNOLVAC)\_Rev 0 DNO LVAC Transformer; Drawing No PSE2-CIV-1499-200 Rev OA - Proposed 66/33 kV Substation General Arrangement Plan.

### *Ecology/Biodiversity*

3. The development hereby approved shall proceed in accordance with Appendix 6.5: Biodiversity Management Plan Version 4 dated 11/08/2023 and Biodiversity Management Plan Update Note prepared by Logika Group dated 18/7/24. The ecological enhancement measures, monitoring and management schedule set out there in shall be implemented in accordance with the Plan.

### *Flood risk/drainage*



4. The development hereby approved shall be carried out in accordance with the Old Malton Solar Farm and Battery Storage Flood Risk & Drainage Assessment Report reference GON.0084.0054 version 2 dated 11/08/2023.

*Lighting*

5. No external lighting shall be installed on site until a lighting design scheme is submitted to and approved in writing by the Local Planning Authority. The proposed lighting design will be built out in accordance with the approved details.

*Access*

6. No changes to the surface of the site access routes running from the maintained public highway to the site shall occur without prior written consent from the Local Planning Authority. Any damage caused to the surface of the site access routes as a consequence of the development will be the responsibility of the developers to repair to the satisfaction of Local Planning Authority and repairs should be completed within 3 months of the first export of electricity from the application site. A photographic survey to record the condition of the bridleway shall be undertaken before the development commences and submitted to the Planning Authority.

*Trees*

7. All tree works are to be undertaken in accordance with British Standards BS 3998:2010 (Tree Works) (or successor document) by a suitably qualified arborist.

*Noise*

8. Low frequency noise emissions from the development shall not exceed the noise criterion curve detailed in NANR45: Proposed Criteria for the assessment of low frequency noise disturbance as measured from the nearest internal receptor with no financial interest in the development. As per the table:-

Frequency Hz	10	12.5	16	20	25	31.5	40	50	63	80	100	125	160
dBL <sub>eq</sub>	92	87	83	74	64	56	49	43	42	40	38	36	34

*Construction Management*

9. No works for the development hereby approved shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). The CTMP must include, but not be limited, to arrangements for the following in respect of each element of the works:
  - a. Restriction on the use of Edenhouse Road (One way, West Bound) access for construction purposes;
  - b. Wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
  - c. An area for the parking of contractors' site operatives and visitor's vehicles clear of the public highway;

- d. Areas for storage of plant and materials used in constructing the development clear of the highway;
  - e. Measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas;
  - f. Details of the traffic management including escorting of abnormal loads accessing or leaving Freehold Lane from Edenhouse Road;
  - g. A photographic survey to record the condition of the carriageway and adjacent verges of the full length of Edenhouse Road from its junction with Freehold Lane to the A169 should be undertaken before the development commences and submitted to the Planning Authority and the Highway Authority. The survey will be used in order to establish if any damage or degradation to the publicly maintainable highway has occurred during the period of work on the site and any such damage deemed to have taken place as a consequence of the development works will require to be rectified at the cost of the applicant;
  - h. Contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.
  - i. Details of proposed culverts.
10. No works for the development hereby approved shall commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development and eventual decommissioning works shall proceed in accordance with the agreed details. The CEMP shall include (but shall not be limited to) the following matters:
- a. Site Waste Management Plan;
  - b. Pollution Prevention Plan and mitigation;
  - c. Details of contaminated site drainage;
  - d. Surface water and ground water management;
  - e. Details of ecological monitoring over the construction period;
  - f. Details of the management of noise and vibration during construction period; and
  - g. Cleaning of site entrance, site tracks and the adjacent public road and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the public road.
11. No works for the development hereby approved shall commence until details of a scheme of works for the protection of and any required post construction drainage system repair has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a full method statement for the protection and repair of all existing and proposed drainage features. The development shall be carried out in accordance with the agreed scheme of works.
12. No works for the development hereby approved shall commence until a Soil Management Plan (SMP) has been submitted to and approved in writing by the Local

Planning Authority. The SMP shall include proposals to safeguard soil resources and agricultural land at the commissioning stage, together with a commitment for the preparation of reinstatement, restoration and aftercare plans for the decommissioning phase; including plans to return the land to the predevelopment land quality (ALC grade). The SMP shall reference the Defra guidance Construction Code of Practice for the Sustainable Use of Soils on Construction Sites. The development shall proceed in accordance with the agreed details.

### *Archaeology*

13. No works for the development hereby approved shall commence until an Archaeological Written Scheme of Preservation/Investigation has been submitted to and approved by the local planning authority in writing. The scheme should set out the methodology for preservation of archaeological remains in situ and/or provide a scheme of mitigation for recording of remains that do not require physical preservation. The scheme shall include an assessment of significance and research questions; and:
  - a. The programme and methodology of site preservation or site investigation and recording.
  - b. Community involvement and/or outreach proposals.
  - c. The programme for post investigation assessment.
  - d. Provision to be made for analysis of the site investigation and recording.
  - e. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - f. Provision to be made for archive deposition of the analysis and records of the site investigation.
  - g. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the Written Scheme of Investigation approved under Part A.

### *Landscaping/emergencies/BNG*

14. Notwithstanding general conformity with the approved plans set out in Condition 2, no works for the development hereby approved shall commence until plans showing details of a landscaping and planting scheme are submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and new hedgerows and "gapping up" of hedgerow including existing items to be retained. New native hedges shall be planted at the minimum rate of 5-7 plants /metre of new hedge, in double staggered rows with mixed native species suitably protected from grazing animals, and appropriately maintained for a period of 5 years following planting. All planting seeding and/or turfing comprised in the above scheme shall be carried out during the first planting season following the commencement of the development, or such longer period, as deemed necessary to accord with the approved landscaping and planning scheme.

If, prior to or during development, ground contamination is suspected or manifests itself then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out until the developer has submitted an appropriate remediation strategy to the Local Planning Authority and the written approval of the Local Planning Authority has been received. The strategy should detail how the contamination shall be managed. The remediation strategy shall be implemented in accordance with such details as may be approved and a remediation validation report shall be required to be submitted to Local Planning Authority to demonstrate the agreed strategy has been complied with.

15. No works for the development hereby approved shall commence until a Risk Management Plan and Emergency Response Plan is submitted to and approved in writing by the Local Planning Authority. These plans shall be developed using the best practice guidance as detailed and required in the published Grid Scale Battery Energy Storage System planning - Guidance for FRS published by NFCC National Fire Chiefs Council, or any subsequent version. Where the aforementioned guidance cannot be adhered to in full, an explanation of why should be provided within the Risk Management Plan and Emergency Response Plan. Once approved, these plans shall be implemented thereafter and for the duration of the development's lifetime.
16. No works for the development hereby approved shall commence until a Biodiversity Gain Plan, in accordance with DEFRA guidance (12th February 2024) or subsequent version, is submitted to and approved in writing by the local planning authority which provides a minimum of 10% measurable biodiversity net gain, using the Statutory DEFRA Biodiversity Metric or any successor.
17. The proposed enhancement measures shall be implemented in accordance with the approved details and shall be retained in that manner thereafter for the duration of the development.
18. Prior to the development being first brought into use, a Landscape Management Plan including long term design objectives, maintenance schedules and a programme of management activities for landscape areas identified in the Landscaping Scheme, including the establishment and thereafter maintenance of hedgerows of a minimum of 4m high and of the 5m high native tree belt shall be submitted to, and approved in writing by, the Local Planning Authority. The landscape management plan shall cover all existing vegetation within the site as well as any new planting implemented as part of the development. All vegetation within the site shall be managed in accordance with the approved Landscape Management Plan for the full duration of the development hereby permitted.

*Temporary Period/investigation/first export*

19. Planning permission is hereby granted for a temporary period not exceeding 40 years from the date that electricity from the development is first exported to the electricity distribution network ("First Export Date"). Written confirmation of the First Export Date will be provided to the Local Planning Authority within one month of the First Export Date.
20. The development shall not be brought into use until the site investigation and post investigation assessment in relation to Condition 13 has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part A and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.

21. The details submitted in pursuance of Condition 13 Part A shall be preceded by the submission to the Local Planning Authority for approval in writing, and subsequent implementation, of a scheme of archaeological investigation to provide for:
  - a. The proper identification and evaluation of the extent, character, and significance of archaeological remains within the application area;
  - b. an assessment of the impact of the proposed development on the archaeological significance of the remains.
22. The permission hereby granted shall expire after 40 years following the date when electrical power is first exported ('first export date') from the development to the electricity grid network, excluding electricity exported during initial testing and commissioning. Written confirmation of the first export date shall be provided to the local planning authority no later than one calendar month after the event.

### *Decommissioning*

23. A restoration scheme shall be submitted to and approved by the Local Planning Authority no less than 6 months prior to decommissioning of the development and shall make provision for the dismantling and removal from the site of all structures, including fencing. The Local Planning Authority must be notified of the cessation of electricity generation in writing no later than one calendar month after the event.
24. Decommissioning must only commence once a Decommissioning Environmental Management Plan (DEMP) (incorporating a Decommissioning Traffic Management Plan) has been submitted to and approved in writing by the Local Planning Authority. The decommissioning works shall proceed in accordance with the agreed details. The DEMP shall include (but shall not be limited to) the following matters:
  - a. Decommissioning Traffic Management Plan;
  - b. A Site Waste Management Plan;
  - c. Pollution Prevention Plan and mitigation;
  - d. Details of foul and contaminated site drainage;
  - e. Surface water and ground water management;
  - f. Details of ecological monitoring over the decommissioning period;
  - g. Details of the management of noise and vibration during construction period; and
  - h. Cleaning of site entrance, site tracks and the adjacent public road and the sheeting of all HGVs taking spoil or decommissioning materials to/from the site to prevent spillage or deposit of any materials on the public road.
25. No later than 12 months after commencement of decommissioning, all structures shall have been removed and the site restored in accordance with the approved restoration scheme.
26. The proposed development including solar panels, mounting structures, their associated plant, equipment, and fencing (including the BESS Site Plan area) must be removed

from the site within 12 months of the solar farm (and/or BESS) ceasing to be operational in accordance with the approved restoration scheme.



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# Report to the Secretary of State

by M Shrigley BSc MPlan MRTPI

an Inspector appointed by the Secretary of State

Date 28 November 2024

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**TOWN AND COUNTRY PLANNING ACT  
NORTH YORKSHIRE COUNCIL  
APPEAL BY  
HARMONY ENERGY LTD**

Inquiry Held on 24-27 September, 1-3 & 7 October 2024

Land Off Great Sike Road, Old Malton, Malton YO17 6SB

File Ref: APP/Y2736/W/24/3342002

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## List of abbreviations used in the Report

AHA	Agricultural Holdings Act 1986
ALC	Agricultural Land Classification
AONB	Area of Outstanding Natural Beauty (now named National Landscapes)
ASA	Alternative Site Assessment
BMVAL	Best and Most Versatile Agricultural Land
BMV	Best and Most Versatile
BNG	Biodiversity Net Gain
BPS	Basic Payment Scheme
BSP	Bulk Supply Point
BESS	Battery Energy Storage System
CD	Core Document
CEMP	Construction and Environmental Management Plan
CMC	Case Management Conference
CTMP	Construction Traffic Management Plan
DEFRA	Department for Environment, Food and Rural Affairs
DNO	Distribution Network Operator
EA	Environment Agency
ECR	Embedded Capacity Register
EIA	Environmental Impact Assessment
EiC	Evidence in Chief
ES	Environmental Statement
FTC	Fitzwilliam Trust Corporation
GC	Gary Camplejohn
GSR	Great Sike Road
IEMA	Institute of Environmental Management and Assessment
km	Kilometres
m	Metres
LOA	Land Offer Agreement
LSE	Likely Significant Effects
LVA	Landscape Visual Assessment
MAFF	Ministry for Agriculture Food and Fisheries
MW	Mega Watts
MWJP	Minerals and Waste Joint Plan, February 2022
NDHAs	non-designated heritage assets
NPg	Northern Powergrid
NPPF	National Planning Policy Framework
NPPG	National Planning Practice Guidance
NPS	National Policy Statement(s)
NYC	North Yorkshire Council
OSR	Oil Seed Rape
PoC	Point of Connection
PRoW	Public Right of Way
R6	Rule 6 Party
RC	Rebecca Caines
ReX	Re-examination
RfR	Reason for Refusal
RPLPSD	Ryedale Plan Local Plan Sites Document 2019

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RTD	Round Table Discussion
RVA	Residential Visual Amenity
RVAA	Residential Visual Amenity Assessment
RLPS	Ryedale Local Plan Strategy 2013
RW	Richard Wood
SAC	Special Area of Conservation
SFI	Sustainable Farming Incentive
SoS	Secretary of State
SoCG	Statement of Common Ground
SSSI	Site of Special Scientific Interest
SuDS	Sustainable Drainage System
TFA	Tenant Farmers Association
TK	Tony Kernon
t	Tonnes
t/ha	Tonnes per hectare
V&B	Vickers and Barrass
WB	Winter Barley
WMS	Written Ministerial Statement
WW	Winter Wheat
XX	Cross Examination

**File Ref: APP/Y2736/W/24/3342002**  
**Land Off Great Sike Road, Old Malton, Malton YO17 6SB**

- 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 Harmony Energy Ltd against the decision of North Yorkshire Council.
- The application Ref 23/00046/MFULE, dated 3 January 2023, was refused by notice dated 17 October 2023.
- The development proposed is for the installation and operation of a solar farm and battery energy storage system with associated infrastructure including substation, access tracks, pole mounted CCTV, fencing and landscaping for a period of 40 years.

**Summary of Recommendation:**

That the appeal be allowed, and planning permission granted subject to conditions.

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**1.0 Preliminary Matters**

- 1.1 The Inquiry opened on 24 September 2024 and sat for 8 days (inclusive of a day set aside for undertaking an accompanied site visit).
- 1.2 The accompanied site visit was undertaken on 3 October to see the appeal land and the surrounding area nearby. Shortly after completing that a separate unaccompanied visit to some publicly accessible parts of the wider local area was also undertaken.
- 1.3 In compliance with the Town and Country Planning (Determination of Appeals by Appointed Persons) (Prescribed Classes) Regulations 1997, the appeal was originally to have been decided by an Inspector. However, the appeal was subsequently recovered by the Secretary of State (SoS), in exercise of the powers under section 79 and paragraph 3 of Schedule 6 of the Town and Country Planning Act 1990. This was explained in the direction issued during the appeal process, dated 20 September 2024, which was served on me, the Council, the Rule 6 (R6) Party, and the Appellant.
- 1.4 The specific reasons for the direction are that the appeal involves proposals for major significance for the delivery of the Government's climate change programme and energy policies.
- 1.5 I note the planning application form was submitted to Ryedale District Council which ceased to exist 31 March 2023, following local government reorganisation. Under statutory provision North Yorkshire Council (NYC) then become the new decision making body and is the author of the Decision Notice now contested. Thus, the outcome of this appeal is to be issued to NYC.
- 1.6 In the lead up to the Inquiry I held a Case Management Conference (CMC) on 26 June 2024 (CD9.13) with the main parties to the appeal. At the CMC, the procedure for the Inquiry; the likely main issues; and the Inquiry programme were discussed.
- 1.7 There were originally 4 reasons for refusal advanced by the Council. A copy of the Decision Notice can be found at CD3.3. Although not contested by NYC in its decision, considering all representations made, heritage impacts were subsequently expected to be a main issue. This was confirmed to the parties in

a note post the CMC occurring (CD9.12). As a result, a roundtable discussion of heritage impacts took place during proceedings.

- 1.8 Given the nature of the dispute an overall planning balancing exercise would still need to inform any decision irrespective of it being listed independently as a main issue. For the purposes of reporting all matters to the SoS I have included the planning balance triggered under a separate Section heading within this recommendation. It pertains to whether any benefits associated with the scheme would outweigh any potential harm(s), should any benefits or harm arise in the matters engaged upon by all the appeal parties.

## **2.0 Environmental Impact Assessment**

- 2.1 The Appellant submitted an Environmental Statement (ES) during the planning application period following a scoping exercise to which NYC were content. The ES provided has since been reviewed by the Planning Inspectorate in accordance with The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (the EIA Regulations).
- 2.2 The Planning Inspectorate on behalf of the SoS agrees that Proposed Development falls within Schedule 2 (1) and is EIA development. Further information was requested under Regulation 25 (22 May) and was subsequently submitted satisfying the request in full.
- 2.3 I have considered the range of cultural and heritage information within the ES along with the addendum submitted to the NYC on the 31 May 2023, as well as the updated non-technical summary dated 19 July 2024 outlining minor changes to the appeal scheme.
- 2.4 I note the changes include: that the northern boundary of the proposed development has been moved 11m southwards to accommodate: a 3m buffer from the Acomb Croft Drain; 5m mitigation planting; and a further 3m for maintenance access purposes. They also depict access tracks within the fields and the realignment of a proposed fence to the western edge of the access track; the inclusion of an access gate immediately north of Windmill Farm and the removal of a CCTV camera from one of the fields.
- 2.5 The main appeal parties do not object to inclusion of the amendments. Given the nature of the changes and the public consultation which has transpired, I concur that their inclusion would not prejudice third parties.
- 2.6 The evidence of Catherine Bell as the R6 heritage expert witness (CD9.18, CD9.19 and CD.20, combined) indicates there has been omission of non-designated heritage assets (NDHAs) initially during the EIA screening process which does not fully address Historic England's correspondence of 22 May 2020. Because of that there has been an under valuation of the significance of NDHAs present within the local area.
- 2.7 As a result, I concur the group value shared by designated and NDHAs in the inner study area defined by the ES is not reliable to base a conclusion upon. Thus, should sole reliance on the ES follow without the benefit of Catherine Bell's evidence I agree this would lead to a failure to meet the requirements of

paragraph 200 of the Framework, which has impacted the NYC's ability to discharge the duty placed on it as supported by paragraph 201.

- 2.8 I also note that information provided by the R6 Party directly addresses a landmark listed windmill within the ES study area.
- 2.9 Consequently, notwithstanding the acceptability of the proposal, I consider that the ES together with additional information provided to inform the Inquiry is adequate in meeting the terms of the EIA Regulations. Moreover, the main appeal parties did not express a contrary view during proceedings.

### **3.0 The Appeal Site and Surroundings**

- 3.1 The appeal site is located within the open countryside measuring some 52.86ha's. It lies around 2.5km north of Malton Town Centre on land adjacent to Northern Powergrid's Old Malton substation and Eden Camp Museum.
- 3.2 The appeal site comprises of cultivated agricultural farmland fields, with various existing intersecting roads, along with lines of hedgerows, individual trees, and other vegetation present within it.
- 3.3 Prominent areas of woodland also border the appeal land, with a strip of woodland near to the north-eastern boundary and another square of woodland lying beyond the north-western boundary. Notably, the A64 (Scarborough to York) sits 200m to the south with the A169 (Malton to Whitby) also nearby situated roughly to the east.
- 3.4 Access into the appeal site itself is from Freehold Lane, Great Sike Road, Borough Mere Lane and Fenton Lane, which all intersect at certain points. A bridleway runs through the southern part of the site along Great Sike Road, along part of Borough Mere Lane and Freehold Lane.
- 3.5 The immediate surroundings in the vicinity also comprise mainly of agricultural land, separated by hedgerows and some individual trees. Eden Business Park is located to the southeast. There are several farmsteads and properties nearby, including Windmill Farm adjacent to the southern boundary, Acomb House to the north and Eden Farm to the east.

### **4.0 Planning Policy**

#### *National policy*

- 4.1 The 2023 revised National Planning Policy Statements (NPSs) came into force on 17 January 2024. Whilst the NPSs are for the delivery of Nationally Significant Infrastructure Projects (NSIPs), their policy content is relevant to the appeal.

#### *Overarching NPS for Energy (EN-1)*

- 4.2 EN-1 is part of a suite of NPSs issued by the SoS for Energy Security and Net Zero. It sets out the government's policy for delivery of major energy infrastructure.

- 4.3 As per paragraph's 1.2.1 and 1.2.2 of NPS EN-1. *In England, this NPS, in combination with any relevant technology specific NPSs, may be a material consideration in decision making on applications that fall under the Town and Country Planning Act 1990 (as amended). Whether the policies in this NPS are material and to what extent, will be judged on a case-by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy.*
- 4.4 Section 2.3 of EN-1 refers to the Governments approach to meeting net zero. Paragraph's 2.3.1-2.3.6 state: *Energy underpins almost every aspect of our way of life. It enables us to heat and light our homes; to manufacture goods; to produce and transport food; and to travel to work and for leisure. Our businesses and jobs rely on the use of energy. Energy is essential for the critical services we rely on – from hospitals to traffic lights and mobile devices. It is difficult to overestimate the extent to which our quality of life is dependent on adequate energy supplies.*

*(Paragraph 2.3.2) In October 2021 the government published the Net Zero Strategy. This set out our vision for transitioning to a net zero economy and the policies and proposals for decarbonising all sectors of the UK economy to meet our net zero target by 2050, making the most of new growth and employment opportunities across the UK.*

*Our objectives for the energy system are to ensure our supply of energy always remains secure, reliable, affordable, and consistent with meeting our target to cut GHG emissions to net zero by 2050, including through delivery of our carbon budgets and Nationally Determined Contribution. This will require a step change in the decarbonisation of our energy system. Meeting these objectives necessitates a significant amount of new energy infrastructure, both large nationally significant developments and small-scale developments determined at a local level..... The requirement for new energy infrastructure will present opportunities for the UK and contributes towards our ambition to support jobs in the UK's clean energy industry and local supply chains.*

*The sources of energy we use are changing. Since the industrial revolution, our energy system has been dominated by fossil fuels. That remains the case today. Although representing a record low, fossil fuels still accounted for just over 76 per cent of energy supply in 2020. We need to dramatically increase the volume of energy supplied from low carbon sources.*

*We need to transform the energy system, tackling emissions while continuing to ensure secure and reliable supply, and affordable bills for households and businesses. This includes increasing our supply of clean energy from renewables... .*

- 4.5 Paragraph 3.3.20 goes on to state that *Wind and solar are the lowest cost ways of generating electricity, helping reduce costs and providing a clean and secure source of electricity supply (as they are not reliant on fuel for generation). Our analysis shows that a secure, reliable, affordable, net zero consistent system in 2050 is likely to be composed predominantly of wind and solar.*

*NPS Renewable Energy Infrastructure (EN-3)*

- 4.6 Paragraph's 3.10.1, 3.10.2, 3.10.4 and 3.10.5 point out that *the government has committed to sustained growth in solar capacity to ensure that we are on a pathway that allows us to meet net zero emissions. As such solar is a key part of the government's strategy for low-cost decarbonisation of the energy sector.*

*Solar also has an important role in delivering the government's goals for greater energy independence and the British Energy Security Strategy states that government expects a five-fold increase in solar deployment by 2035 (up to 70GW). It sets out that government is supportive of solar that is co-located with other functions (for example, agriculture, onshore wind generation, or storage) to maximise the efficiency of land use.*

*Solar farms are one of the most established renewable electricity technologies in the UK and the cheapest form of electricity generation.*

- 4.7 *Solar farms can be built quickly and, coupled with consistent reductions in the cost of materials and improvements in the efficiency of panels, large-scale solar is now viable in some cases to deploy subsidy-free.*
- 4.8 Although not intended to be exhaustive Section 3.10 of EN-3 refers to a range of assessment factors and impacts influencing site selection and design including: agriculture land classification and type; network connection; accessibility; security and lighting; project lifetime and decommissioning; biodiversity and ecological conservation; landscape, visual and residential amenity; glint and glare; cultural heritage; construction; and other technical aspects.
- 4.9 Paragraph 3.4.10 states *Solar photovoltaic sites may also be proposed in low lying exposed sites. For these proposals, applicants should consider, in particular, how plant will be resilient to: increased risk of flooding... .*
- 4.10 With respect to agriculture land classification and type Paragraph 3.10.136 makes clear *The SoS should take into account the economic and other benefits of the best and most versatile agricultural land. The SoS should ensure that the applicant has put forward appropriate mitigation measures to minimise impacts on soils or soil resources.*

*The National Planning Policy Framework (The Framework)*

- 4.11 The Framework confirms the presumption in favour of sustainable development. Sustainable development has three overarching objectives (economic, social, and environmental), which are interdependent and need to be pursued in mutually supportive ways.
- 4.12 Paragraph 11 of the Framework states that: *Plans and decisions should apply a presumption in favour of sustainable development. For decision-taking this means: c) approving development proposals that accord with an up-to-date*



*development plan without delay; or d) where there are no relevant development plan policies, or the policies which are most important for determining the application are out-of-date, granting permission unless: i. the application of policies in this Framework that protect areas or assets of particular importance provides a clear reason for refusing the development proposed; or ii. any adverse impacts of doing so would significantly and demonstrably outweigh the benefits, when assessed against the policies in this Framework taken as a whole.*

*National Planning Practice Guidance (NPPG)*

- 4.13 NPPG is also a material consideration and the content most relevant to the consideration of this planning application are the sections on: climate change, natural environment, flood risk; historic environment; as well as renewable and low carbon energy.

*The Development Plan*

- 4.14 The statutory provisions, set out through Regulation 26 of The Local Government (Boundary Changes) Regulations 2018, allow for any extant development plans to have effect as if adopted by the new Unitary Authority, and for the Unitary Authority to adopt, revise, replace or prepare a plan relating to an area of a predecessor Council. It is also the case that the provisions within the Local Government (Structural Changes) (Transitional Arrangements) (No.2) Regulations 20084 and the Local Government (Boundary Changes) Regulations 2018 mean that Local Plans, in the name of, and covering the same area as, LPAs that existed prior to 1 April 2021, may continue to come forward until such time as a plan covering the whole unitary authority is adopted.
- 4.15 The Development Plan comprises of: the Ryedale Local Plan Strategy 2013 (RLPS); the Ryedale Plan Local Plan Sites Document (RPLPSD 2019); and the Minerals and Waste Joint Plan February 2022 (MWJP 2022).
- 4.16 I note that the Helmsley Plan and the Yorkshire and Humber Plan Regional Strategy to 2026 are also part of the Development Plan for the area but are not considered to be relevant by the main appeal parties. I have no reason to conclude differently.
- 4.17 The most relevant RLPS policies in relation to this appeal are:
- Policy SP1: General Location of Development and Settlement Hierarchy
  - Policy SP9: The Land-Based and Rural Economy
  - Policy SP10: Generic Development Management Issues
  - Policy SP12: Heritage
  - Policy SP13: Landscapes
  - Policy SP14: Biodiversity
  - Policy SP15: Green Infrastructure Networks
  - Policy SP16: Design
  - Policy SP17: Managing Air Quality, Land and Water Resources
  - Policy SP18: Renewable and Low Carbon Energy
  - Policy SP19: Presumption in Favour of Sustainable Development

- Policy SP20: Generic Development Management Issues.

*Other relevant legislation and guidance*

- 4.18 The Environment Act 2021 includes the requirement for a long-term target to be set in the following priority areas: air quality, water, biodiversity and resource efficiency and waste reduction. Most of Part 3: Waste and resource efficiency is in force. As of 12 February 2024, Biodiversity Net Gain (BNG) is mandatory under Schedule 7A of the Town and Country Planning Act 1990 (as inserted by Schedule 14 of the Environment Act 2021). Nonetheless, if a planning application for a development was made before day one of mandatory BNG on 12 February 2024, the development is exempt from BNG.
- 4.19 The Agricultural Holdings Act 1986 (AHA) /Agricultural Tenancies Act 1995.
- 4.20 The Human Rights Act (1998) and Equality Act 2010 (containing the Public Sector Equality Duty) contain provisions to protect the rights of all members of society.

*Other Planning Documents*

- Smart Power- National Infrastructure Commission (March 2016) (CD8.5).
  - Energy White Paper 'Powering our Net Zero Future' (December 2020) (CD8.6).
  - National Grid ESO 'Future Energy Scenarios' (2023, and 2024) (CD8.7 and CD8.32).
  - UK's Integrated National Energy and Climate Plan (January 2020) (CD8.8).
  - British Energy Security Strategy (2022) (CD8.17).
  - Department for Energy Security and Net Zero - 'Powering Up Britain' (March 2023) (CD8.9).
  - Ministerial Statement on Solar Energy (March 2015) (CD8.10).
  - Ministerial Statement on Solar Energy, Food Security and Best and Most Versatile Land (May 2024) (CD8.11).
  - UK Solar PV Strategy: Roadmap to a Brighter Future.
  - North Yorkshire Economic Growth Strategy 2023.
  - Government Food Strategy, June 2022 (CD8.13).
  - UK Food Security Report, December 2021 (CD8.14).
  - Public Summary of Sector Security and Resilience Plans, Cabinet Office 2017 (CD8.12).
- 4.21 In addition, NYC Local Plan's public consultation on the 'Issues and Options' stage is stated as being scheduled for quarter four of 2024.
- 4.22 The Malton and Norton Neighbourhood Plan (MNNP) is also noted by NYC as being prepared (CD5.1, CD5.2 and CD10.6). That Plan is yet to be formally made and therefore is not currently part of the development plan. At its current production stage NYC and the appellant agree only limited weight should be given to it. The most relevant MNNP policies in relation to this appeal is Policy E4: Green and Blue Infrastructure. The final plan has been amended in line with the examiner's recommendations (February 2024) and will be subject to a referendum of all voters on the electoral roll in Malton and Norton parishes later this year.

## 5.0 Planning History

5.1 The following planning application reference number history has been detailed by NYC in its officer report and is accepted as relevant context to inform the appeal:

- Application reference 17/01156/FUL for the '*installation of a Gas fuelled capacity mechanism embedded electricity generation plant to support the National Grid to include formation of a vehicular access from Freehold Lane*', given consent on the 6 December 2017. This application site is directly to the south of the Battery Energy Storage System (BESS) site within the appeal land. It is understood by the main parties that planning application 17/01156/FUL has lapsed.
- Also relevant is application 14/00426/MOUTE for land adjacent to the south-east corner of the appeal site (involving the proposed BESS now sought at appeal), for the '*erection of new livestock market (sui generis) comprising circa. 2,850 sq.m floorspace: Agricultural Business Centre comprising circa. 6,010 sq.m of floorspace for uses within Use Class A1, A2, A3, D1, B1, B2, B8 and agricultural vehicle sales (sui generis); and new Business Park comprising circa. 19,040 sq.m of floorspace for uses within Use Class B1, B2, and B8 including premises for The Ginger Pig comprising 1,790 sq. m of floorspace (for uses falling within Class B1, B2, B8 and A1) along with (in respect of all elements) all associated development including drainage, provision of services, landscaping, boundary treatments, attenuation ponds and access and associated highway works*'. The application land is stated as comprising of 17.8ha. Planning permission was granted 24 March 2015.

## 6.0 The Proposals

6.1 The appeal scheme is for the proposed installation and operation of a solar farm and BESS with associated infrastructure including substation, access tracks, pole mounted CCTV, fencing and landscaping for a period of 40 years. The solar farm would produce up to 30.4MW of electricity and the BESS would have a capacity of 12.63MW.

6.2 The site is divided into two distinct parts: 1) the main part of the site, hosting the solar panels for the solar farm, and 2) a smaller part, to the south-east, which would host the BESS, sub-station, and other associated operational plant (Northern Powergrid's electricity substation is adjacent to the BESS and operational plant compound).

6.3 The main elements of the appeal development proposed are the following:-

i) *Solar farm panels*

6.4 The solar farm comprises of rows of solar array panels together with ancillary equipment. The rows of panels would be mounted on aluminium frames supported poles driven into the ground to a depth of approximately 1m. The precise panel mounting system details are shown in drawing No PL.001 (CD1.9). Each row of panels would be set around 4.5m apart to allow for

movement, maintenance and to prevent shadowing. The total above ground height of the panels would be approximately 3.1m.

*ii) Inverter-transformer stations*

- 6.5 A total of 11 inverter-transformer stations are located at various points (elevations are shown in Drawing PL005b –MV Power Station (CD1.10)). The inverters would be positioned on 1.4m platforms with railings around them. Their footprint measures 6.6m by 2.5m with a total height of 4.3m. The mounting platforms measure around 7.3m by 3.6m footprint.

*iii) Customer substation/BESS/access/landscaping*

- 6.6 A customer substation would be located in bottom south-east corner of solar panel site the site, near Freehold Lane. The substation elevations are provided in drawing PL006 (CD1.11). The substation measures approximately 10m by 3.5m in footprint, by 3.9 metres in height.
- 6.7 The BESS (CD.14 and CD2.2), substation and associated plant would be located on the smaller parcel of land to the south of Freehold Lane and adjacent to the western boundary of Eden Camp. Elevations for 12 battery containers with approximate dimensions of 14.6m by 1.45m in footprint, by 3m in height and substation are shown in Drawings No OM-EL-BAT-01 Battery Container (CD2.2) and PSE2-CIV-1499-200 - Substation General Arrangement (CD2.2). There will be six battery transformers (CD2.2) measuring 3m long, 2.9m wide and 3.1m high.
- 6.8 The proposed substation control room (CD2.2) housing measures roughly 9.9 metres by 4.5 metres in footprint, by 3.9m in height surrounding with 2.6 metre high palisade fencing. The BESS would be accessed via a new track off Freehold Lane, with additional tracks running between and around the battery equipment.
- 6.9 The main part of the appeal site would be surrounded with 2.5m high fence. The appellant advises that for security reasons, pole mounted CCTV cameras would be provided at various points around the site, each with a maximum height of 3m and satellite dishes at a height of 3m. Elevations for these scheme elements are provided in Drawing PL007 (CD1.12).
- 6.10 The scheme would be connected directly to the national grid, with the Point of Connection (PoC) at the adjacent Malton Substation located to the immediate east of the proposed battery storage location.
- 6.11 Internal access roads are proposed to provide access for operation and maintenance along with a landscaping scheme for the entire site (CD1.8, CD2.5 and CD7.13).

**7.0 Matters agreed between NYC and the Appellant**

- 7.1 The matters of agreement are contained within the main signed Statement of Common Ground (SoCG) (CD9.2) and the separate Agricultural SoCG, dated 25 September 2024 (CD10.9) between the appellant and NYC.

7.2 Based on those documents, the description of the development; application documents; statutory consultation responses; the relevant development plan policies as well as planning history are not in dispute. Moreover, the Environmental Impact Assessment (EIA) Scoping exercise undertaken and the ES produced are deemed by NYC to be robust, in accordance with Schedule 4 of the EIA Regulations.

7.3 Those points aside a series of planning issues are agreed upon:-

*Extent of appeal site/Grade of land*

7.4 The appeal site extends to 52.86ha and comprises cultivated agricultural land farmed by the tenants of Eden Farm. It comprises of:

- 6% Grade 1 land;
- 35% Grade 2 land; and
- 15% Grade 3a land.

7.5 Therefore, 56% of the land is considered Best and Most Versatile (BMV). The remaining 44% is Grade 3b (33%) and non-agricultural land (11%).

*Relevant land designations*

7.6 The appeal site is located within 'Open Countryside' (as per RLPS Policy SP1).

7.7 The appeal land is not subject to any ecological or landscape designations. The Vale of Pickering is identified in RLPS Policy SP13 as one of three broad areas of landscape which are valued locally but the Proposals Map does not identify the appeal site as falling within an 'Area of High Landscape Value' (AHLV).

7.8 The appeal land is situated within a Minerals and Waste Safeguarding Area for Limestone. Because of that a Phase 1 Land Contamination and Minerals Assessment (CD1.48) was prepared and submitted as part of the original planning application. Based on that information the parties agree RLPS Policy S20 is satisfied, and that the development is acceptable in terms of its impact on safeguarded surface mineral resources.

7.9 It is also agreed between NYC and the appellant that:

- The appellant has secured a grid connection directly to the Northern Powegrid distribution network at the Malton BPS.
- With respect to Flood Risk, it is national and local policy that the sequential test should be applied. A Flood Risk and Drainage Report and Sequential Test (dated September 2022 and December 2022, respectively) provides an assessment of the environmental effects of the proposed development on flood risk and considers alternative sites that may be sequentially preferable.
- The appeal land lies within Flood Zones 2 and 3.

- Surface water management strategy demonstrates that surface water runoff from the proposed development can be managed via implementation of run off dispersion and erosion protection measures including gravel pits and permeable tracks as well as a drainage pond in the BESS area; and as such is compliant with paragraph 167 of the NPPF (2023) and the applicable stated paragraphs of Policy SP17.
- The proposed development appealed is classed as 'essential infrastructure' in accordance with the PPG Flood Risk Vulnerability classifications.
- The conditions of the Exceptions Test have been satisfied through the proposed flood resilience mitigation, development of the surface water drainage strategy and due to the nature of the proposed development being a source of green energy contributing to net zero carbon emissions.
- North Yorkshire National Park lies 8km to the north of the Appeal Site and the Howardian Hills Area of Outstanding Natural Beauty lies 3km to the south west; and the proposed development will have a negligible effect on both.
- There are no unacceptable adverse landscape impacts. Once mitigation measures have established, including hedgerow management and additional planting, any effects on landscape fabric (i.e. existing physical features such as trees and hedgerows) would be negligible.
- Following the establishment of mitigation planting there would be an adverse residual effect of "Minor" significance on the landscape character between Ryton Riggs to the north, Edenhouse Road to the east, Freehold Lane to the south and Cheapsides to the west.
- 'Moderate' adverse effects on visual amenity would be experienced initially along the Public Right of Way (PRoW) network immediately adjoining the appeal site but that this would reduce to 'Minor' significance as mitigation establishes. In the wider landscape, adverse visual effects would range from 'Minor' to 'Negligible' significance.
- The proposed development would not give rise to any cumulative effects relating to landscape and visual impacts.
- The biodiversity enhancements proposed it would result in a net gain in biodiversity of 117% in biodiversity habitat units and 42.67% gain in hedgerow units (CD2.3). And that the ES (CD1.16) has considered the likely significant effects on important ecological features.
- The River Derwent Special Area of Conservation (SAC) and River Derwent Site of Special Scientific Interest (SSSI) are located approximately 0.6km to the south and the Ings Amotherby SSSI is located approximately 2.5km away to the west.
- A Habitats Regulations Assessment CD1.30 has been submitted which emphasises the importance of protecting watercourses during construction

and there are no ecological concerns subject to conditions ensuring proposed mitigation measures are in place.

- The development would not result in significant harm to the nearby River Derwent Special Area of Conservation (SAC) or River Derwent Site of Special Scientific Interest (SSSI), species protected under international or national legislation or Green Infrastructure Networks and in accordance with RLPS Policies SP14, SP15 and paragraph 180 of the NPPF.
- There are no above ground heritage assets within the appeal site, although the Grade II listed Acomb House Farmhouse is located 215m north and the Windmill Farm Grade II listed building is located around 60m to the east.
- The appeal scheme would provide significant public benefit that would outweigh the very low end of less than substantial harm to the setting of Acomb House Farmhouse and the Windmill at Windmill Farm.
- No alterations to any of the PRow's are proposed.
- Moreover, there are no highways; noise; fire safety concerns subject to conditions.

## **8.0 The Case for Harmony Energy Ltd (the Appellant)**

8.1 This summary contains all material points in relation to Harmony Energy Ltd's case and is substantially based upon the closing submissions made. It is also taken from the evidence given on behalf of the appellant from other documents submitted to the Inquiry.

8.2 The appellant starts from the position that the co-location of technologies in this way is strongly supported by Government Policy as being a feature of good design and efficient land use<sup>1</sup>.

8.3 The appellant's overarching case is that there are numerous benefits of the scheme including contribution to generating renewable energy with the attendant benefits to climate change, energy security and net zero. But strikingly little harm given the following circumstances:

1) NYC withdrew reason for refusal (RfR) no.4 and in XX Mr Wood agreed that, having accepted the findings of the RVAA, there was no conflict with SP20. As such it is agreed between two main parties that there are no unacceptable impacts on residential amenity.

2) There is no harm to any designated landscape and no freestanding landscape case was taken by NYC.

3) No ecological receptors are alleged to be harmed by the proposal.

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<sup>1</sup> EN-3 at paragraph 2.5.2 and 2.10.10 (CD8)

4) Any harm to NDHAs is at the “*very low end of less than substantial harm*” and is outweighed by the public benefits.

5) The site is not located within any area of major landscape restraint such as an AONB (now termed National Landscapes) or area of high landscape value. Nor is it within the Green Belt.

6) The principle of development is agreed to be in accordance with the local plan which supports the generation of renewable energy. Further, the plan clearly envisages that such development would take place in the open countryside and the supporting text to RLPS SP9 describes it as ‘essential’ that new land uses such as renewable energy schemes can come forward in order to diversify the rural economy. NYC rightly accepts that this scheme is rural diversification in the context of SP9.

7) It is agreed that there is no significant permanent loss of or harm to BMV soils.

8) It is agreed that the development is essential infrastructure and passes the exceptions test.

9) The benefits of generating renewable energy attract at least ‘significant’ weight.

10) It is also agreed between NYC and appellant that positive weight should be attached to the economic and biodiversity benefits of the scheme.

8.4 Turning to each of the main issues:-

*i) Site selection a) Flood Risk*

8.5 The sequential test only properly arises in relation to flood risk. The role of the sequential test is to steer new development to areas with the lowest risk of flooding from any source and, if not possible, to determine whether there are any other reasonably available sites within a suitable location for the type of development proposed.<sup>2</sup> If it is not possible, as in this case, the exception test has been applied and all parties agree the development constituting ‘essential infrastructure’. Thus, passing the exceptions test.

8.6 The appeal proposal is a solar farm and BESS. Notably no Distribution Network Operator (DNO) substation is proposed. If included, this would represent a notable change to the development given its scale (40x40m) and consequent potential for different environmental effects. This is also a key part of the development’s grid offer –that it does not require a DNO sub if the proposed intake substation is to be located within 300m of the Malton BSP. Any variation to this would be a different form of development to the extent that it would require a fresh grid offer and a different planning application.

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<sup>2</sup> PPG paragraph 7-028



- 8.7 Mr Camplejohn explained, even if it would be theoretically possible to locate the intake substation within 300m using longer cabling, this becomes a different project when considering the length of cable that would be involved to reach the alternative sites. Whether a road, river or rail corridor would need to be crossed additional points. Further, no party rejected the proposition that the greater the distance from the PoC, the more expensive it becomes to build.
- 8.8 As a matter of general principle when considering alternative sites there is plenty of support for the appellant's view that grid connection should be the key locational consideration:
- 8.9 EN-3 at 2.10.22 notes that *"The capacity of the local grid network to accept the likely output from a proposed solar farm is critical to the technical and commercial feasibility of a development proposal."* And at 2.10.24: *"the connection voltage, availability of network capacity, and the distance from the solar farm to the existing network can have a significant effect on the commercial feasibility of a development proposal."*
- 8.10 In an appeal at Penhale Moor, Cornwall, the Inspector noted that *"the key"* factor in site selection is the ability to obtain a network connection.<sup>3</sup> He also placed weight on the on-site connection point which was said to maximise electricity captured and minimise environmental disturbance from longer cable routes. All of this is true in relation to the proposed development – the site sits adjacent to Malton BSP and benefits from an immediate connection offer, unconstrained by well reported and substantial grid connection queues.
- 8.11 Inspector Griffiths has also noted that easy access to the grid can be an important factor with access to the grid being a *"very important consideration"*.<sup>4</sup>
- 8.12 If any of the alternative sites were favoured ahead of the appeal site, the appellant's grid offer would be redundant. This is a major part of the appeal proposal and the failure to capitalise on the early grid connection would be a failure to achieve the Government's ambition to urgently decarbonise. Notably, the Government's policy states that *"we consider that meeting energy security and climate change goals is urgent and of critical importance to the country, and that these goals can be achieved together with maintaining food security for the UK."*<sup>5</sup>
- 8.13 The Inspector stated that *"much has been made of the potential for land of lesser agricultural value to be used instead. However, it seems to me that it is unrealistic to make that comparison unless any such land has the same easy access to the grid"*. None of the sites in the ASA or proposed by the R6 Party would have such easy access to the grid. Attempts by the R6 Party to suggest that directional drilling under a dual carriageway or rail line would be "easy" were entirely unconvincing. Mr Camplejohn provided clear evidence that such

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<sup>3</sup> CD6.10 para 33

<sup>4</sup> CD6.12 paras 58-61

<sup>5</sup> See CD8.9 p.38

constraints were meaningful. They are both expensive and difficult, prohibitively so to this scheme.

- 8.14 Overall, the 'grid first' approach is consistent with other Inspector's decisions and Government policy. It is realistic – proximity to the PoC enhances the likelihood of deliverability. Notably the Carr House Farm project is also within 300m of its PoC to the overhead wires and the average project studied by Ms Caines is located within 1.6km of its PoC.<sup>6</sup>
- 8.15 As such, the project in its current form, and as per the accepted grid connection by Northern Powergrid needs to have its intake substation located within 300m of the PoC. This would amount to a sensible radius for the sequential test. However, the Inspector in the case before him presently does not need to reach a concluded view as to whether 300m, 2.5km or 5km is the most appropriate catchment. This is because whilst the appellant has undertaken a robust study of sites within 2.5km, Mr Stones' evidence demonstrates the absence of other suitable sites within 5km and the constraints mapping at CD10.10 makes it plain that Ryedale is not blessed with an abundance of unconstrained land.
- 8.16 Consequently, the 2.5km radius considered by Ms Caines is proportionate to the area given the lack of unconstrained land within a 7km radius (as shown on CD10.10), the absence of other sites in 5km and the average distances set out within her Rebuttal Appendix 1 (CD9.33). Moreover, importantly an 'ASA' is not a required document in local or national policy. The question of focus is whether 'there are reasonably available sites appropriate for the proposed development in areas with a lower risk of flooding.' The answer is 'no'.
- 8.17 On the detailed points raised by other parties:
- 1) Mr Stones' proposed alternative site to the north is much smaller than the appeal site and cannot host the proposal. A smaller development would be a different project and would not achieve the same benefits. Thus, is not a genuine alternative. Mr Stones' proposal would mean extending into: flood zone's 2 and 3; Grade 2 and 3 agricultural land; include a number of land owners; and is also closer to listed buildings. In doing so, it is not sequentially preferable in flood risk terms.
  - 2) Mr Stones' proposed site to the south-east has essentially been considered as ASA8. This is in land which is shown as Grade 2 agricultural land on the maps and has an incredibly difficult grid connection including having to cross the A64, the rail line and the River Derwent SAC. If it were to connect to the overhead line, this would be in place of Carr House Farm (located around 16km away) and would be a smaller project given the capacity of the overhead line and would therefore be a different scheme realizing fewer benefits. It is therefore not a genuine alternative.

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<sup>6</sup> Whilst much was made of the single project located at 7.4km, clearly this is very much an outlier.

- 3) The R6 also referred to land near the Malton Bacon Factory as being generally 'industrial' but no evidence of any available or more appropriate land in this area was produced.
- 4) NYC focussed entirely on the 2.5km limit, once it is accepted that this is (a) proportionate and (b) in any event, the Inspector has much wider evidence to demonstrate an absence of alternatives, one assumes that their case falls away and they accept that there is no alternative site within 2.5km.
- 5) NYC's objection to the 2.5km limit was based wholly on viability. As Ms Caines explained –not only is this only one element of looking at alternative sites, rhetorically what would the Council do with the costings they requested if they received them. NPPG provides guidance as to the standardised viability appraisal inputs including the level of developer's return. It does so to avoid debate about what is reasonable in the industry and to anonymise the exercise so that one does not end up in arguments about whether another given developer would accept a lower return. That guidance is central to viability appraisals and is wholly lacking in relation to solar schemes.

As Ms Caines explained and was not challenged upon, solar viability appraisals are simply unheard of for this reason. In examination in chief Mr Wood reduced his 'ask' from a full appraisal or assessment (which is the language of Mr Wood's proof see paras 5.9, 5.21 and 6.15 which criticise the absence of "viability assessment") to simply asking for costings. To the extent that the appellant needs to demonstrate that projects which require a longer cable and more materials and more construction work are inherently more expensive, Mr Camplejohn has estimated such costs.<sup>7</sup> However, this principle was not in issue. Therefore, all NYC could have received was some figures, but without any benchmark as to at what point "more expensive" becomes "unviable" in an objective sense, the figures do not take us anywhere.

- 6) Moreover, Ms Caines' ASA does not discount any site based on viability alone. Cost is a factor but only in the broad sense that was agreed as being true i.e. further away equals more expense.

8.18 All land to the north of the appeal site (bar a small sliver of Flood Zone 1) is within Flood Zones 2 and 3. South of the appeal site lies the AONB, the A64, a rail line, the built up extent of Malton and then an area of high landscape value. Areas in between these designations are all in an area mapped on the ALC maps as being Grade 2 agricultural land.

8.19 Essentially, all alternative sites which could have an easy grid connection as they are not required to cross or have long sections of cable along the A64 are of equal or greater flood risk. All other sites would impinge upon other designations such as the AONB, visually important undeveloped areas or areas

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<sup>7</sup> CD7.3

of high landscape value or would be higher grade agricultural land (so far as it can be ascertained from the mapping).

- 8.20 It should be noted that despite its limitations this represents a proportionate and sufficient tool for judging likelihood of BMV when compared to auguring soil samples and testing them on a range of third party owned sites and neither the Council nor R6 sought to suggest with any real vigour that the appellant should have undertaken copious off site soil surveys. Moreover, all sites to the south would suffer from these constraints and benefit from a difficult and lengthy grid connection required to cross the A64 and in some cases the rail line and the river Derwent (a SSSI and SAC) as well.

*Site selection b) Soils/agricultural land*

- 8.21 An ASA was produced even if not required. In relation to evidence of need the Inspector also has Government policy which clearly anticipates ground mounted solar on agricultural land (see CD8.9 p.37-38) and the 2024 WMS<sup>8</sup> which seeks to balance food security with energy security but does so in the context of up to 1% of agricultural land being used for solar projects and nevertheless does not change national policy on paying due regard to use of BMV.
- 8.22 The 2024 WMS speaks of 'minimising' impacts on BMV. This project has done just that. The ALC mapping shows the site as being Grade 3. Notably, neither NYC nor the R6 Party put forward any alternative sites on Grade 4 land. Grade 3 was the lowest grade proposed for any site. Therefore, in terms of initial site selection, the appellant cannot be fairly criticised. As far as land near the BSP goes, it is the lowest grade on the mapping available (save for unusable stretches of land near rivers). It is only after this stage that it was practical to discover that the appeal site had a mix of soils from grade 3b to grade 1.
- 8.23 This mix is important. There are no complete fields of BMV proposed to be sited under panels. Indeed, the survey undertaken on the wider 214ha site shows that the appellant has excluded those fields and centred the project on the area with the poorest quality soils. As the cropping choices on the appeal site will be limited by the mix, it is entirely artificial to say that the appeal site is x hectares of grade 1, for example, when the grade 1 land is incapable of being farmed in any different way to the areas of grade 3b as they fall within the same field boundaries. It should also go without saying that the appeal site was clearly greater quality agricultural land than the mapping would have suggested and this may well be true for other areas shown on the plan as grade 3.
- 8.24 The permanent loss of BMV soils is limited to less than 0.3ha. It being agreed by Mr Franklin that subject to adherence to an appropriately worded soil management condition. The soils are capable of being maintained and restored to their current grades.<sup>9</sup> Points made in relation to drainage are addressed by

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<sup>8</sup> CD8.11

<sup>9</sup> CD10.9 - Agricultural land SoCG, 14 & 17

requirements of the proposed management plan and in any event are not based upon any actual evidence of the underdrainage or likely effects upon it.

- 8.25 As far as SP17 seeks to prevent irreversible loss of the soil resource, this appeal scheme would not sensibly offend that policy.
- 8.26 In relation to loss of agricultural land use and production, Mr Kernon has quantified this as being a negligible loss to food production based upon the difference made by higher yielding BMV land over lower grades. No one is realistically suggesting an alternative site that would not involve the use of at least grade 3 soils as shown on the ALC plans. Therefore, it is only the margin between loss of average performing soils and the 56% of BMV<sup>10</sup> within the site that is relevant for judging the impacts. Mr Kernon calculates this as 41 tonnes of wheat –in the context of the 22 million tonnes produced by the UK in 2023. The 47.2 ha of agricultural land within the site should also be viewed in the context of 1.12 million hectares of farmland (52% arable) in Yorkshire and the Humber.<sup>11</sup>
- 8.27 The context also includes incentives for farmers to take farming out of active production including grassland under the Countryside Stewardship Scheme and the new Sustainable Farming Incentive (SFI), plus other incentives such as under the Government’s biomass strategy.<sup>12</sup> The Local Plan also has significant encouragement for growing biomass crops rather than food crops including at paragraph 7.34<sup>13</sup> and the table at 7.33 which envisages 46MW of within Ryedale. It is also noted that the R6 Party provided no tangible evidence as to the cropping on this farm and whether the crops produced are for human consumption as opposed to animal feed for example.
- 8.28 Additionally, the RLPS supports renewable energy generation in the open countryside. NYC agreed that the scheme was policy compliant in this regard and that the scheme should be seen as rural diversification in the context of SP9.<sup>14</sup>
- 8.29 The use of BMV has therefore been minimised and justified. It is also necessary in a district with high proportions of agricultural land but with ambitions to deliver renewables projects that some of this land will be used to achieve that aim. The land-take for this scheme is minimal and loss of food production is negligible. Particularly in the context of the SoS’s decision at Mallard Pass which termed the loss of 360ha of BMV as having a negligible impact on cereal production and even the loss of up to 2114ha of BMV across Lincolnshire as having a negligible impact on food production.<sup>15</sup> The loss of 29.5ha of BMV on this site therefore cannot sensibly be described as anything more than negligible.

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<sup>10</sup> Mr Franklin disputes this figure but has not measured the site to check whether his assumptions are correct or not.

<sup>11</sup> CD 9.9 vol 1 TK POE para 8.38 to 8.44

<sup>12</sup> See TK POE para 9.19 and 9.20

<sup>13</sup> CD4.1 p.161

<sup>14</sup> Mr Wood evidence Inquiry Day 2.

<sup>15</sup> CD6.15 para’s 4.98 & 4.100

*ii) Impact on existing rural businesses*

- 8.30 The background to this issue is that the AHA permits a landlord to take possession of tenanted land where an inconsistent planning permission is obtained. This is not dissimilar to similar provisions which permit a landowner to take possession of buildings which are due to be re-developed.
- 8.31 The planning system should not seek to tread on the toes of the AHA system which is a separate statutory regime which has set out the circumstances in which the legislature considers it acceptable for tenants to be required to surrender the tenancy and has provided for a regime of compensation. Whatever the criticisms of the regime, it remains on the statute books and the planning system should assume it will operate accordingly. As such, the AHA offers no security of tenure in circumstances where permission is granted and will compensate a tenant in line with the provisions of that regime.
- 8.32 The appellant has not sought to argue that this should be ignored but has instead sought to quantify and then mitigate any harm arising so that it can amount to a neutral factor in the planning balance.
- 8.33 To that end, the appellant has instructed an appraisal from Vickers and Barrass<sup>16</sup> which undertook an appraisal of what the residual farm could be used for. It is therefore far closer to a standardised viability appraisal than the R6 evidence as it establishes how any given farmer could farm the residual land. The R6 figures are predicated upon previous costs and income on the farm being replicated in future years, which may or may not be the case.
- 8.34 The appellant's projections are similar to the R6 Party's own proposed projections based upon a 3 year average. Mr Franklin stated in his EiC a 3 year average is likely to be more accurate given changes experienced in the past five years in terms of costs increases, etc. Both projections estimate an impact on the farm which would:
- 1) be less than the compensation package offered by the appellant, which is in addition to statutory compensation, and
  - 2) leave a viable, profit making farm on the residual land. Mr Sturdy also confirmed that he would wish to stay.
- 8.35 The appellant's budgets, as analysed in Mr Kernon's Appendix KCC6, showed a projected reduced profit of £12,203 to £15,814, depending upon the budgets. As is clear in Appendices KCC7 and KCC8, these were not verbatim reproductions of the "John Nix" Pocketbook. But were mostly adjusted figures.
- 8.36 The R6 Party's evidence included an A3 spreadsheet at appendix 13 of Mr Franklin's proof. On the face of it, the Appendix 13 budget projections show post-development profits of (3 year adjusted average) £49,925 and (5 year average) £29,507. Both show that the post-development business will be profitable.

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<sup>16</sup> CD9.9 KCC6,7 and 8

- 8.37 As such, the basis upon which Mr Wood reached his conclusion as to the scale of harm is contrary to the evidence presented. NYC's assessment that the farm will cease is wrong. The basis upon which Mr Wood considered there to be a potential for substantial harm is therefore incorrect. Further, Mr Wood gave no very credible answer as to why there should be any harm at all attaching in his alternative scenario in which the Inspector accepts the appellant's figures which demonstrate an absence of impact once compensation is factored. Moreover, his evidence doesn't address the fact that this is also the position on the 3 year figures relied upon by the R6.
- 8.38 The Appendix 13 budget projected reduced profits of £18,017 to £30,180 on the 3 and 5 year averages. As examined in XX of Mr Franklin and Mr Kernon, this reduction is significantly influenced by the fact that the document includes a reduction of £16,156 (3 year) and £18,300 (5 year) due to reduced Single Farm Payment which is not as a result of the solar farm. Therefore, if one is seeking to quantify the effects of the development (as opposed to merely projecting how much money the farm will make in a future year) the R6 figures do not assist with this as they include a substantial reduction which has nothing whatsoever to do with the effects of the appeal scheme.
- 8.39 If the effect of the SFP is removed from the calculation, the reduction in profits is (3 year) £1,861 (£18,017 minus £16,156) or (5 year) £11,880 (£30,180 minus £18,300), as explained by Mr Kernon in EiC and XX.
- 8.40 The other figure that is notably impacting the R6 Party's projections is the extra cost of £8,500 in the "other" box in the "consumables" section. Mr Franklin could not explain what this was. Indeed, the inquiry was not told that this was for straw until Mr Kernon was cross examined on inquiry day 6.
- 8.41 The figure put in for the extra cost is £8,500 but as Mr Kernon said in chief, the figure used in the budget was £9,489 (3 year) and £9,778 (5 year), with the difference unexplained. All in all, the Appendix 13 figures are self-evidently flawed and are of little assistance when seeking to quantify the anticipated effects of the development on the farm business.
- 8.42 In relation to straw, again new facts were put to Mr Kernon by way of cross examination which were not based upon any evidence before the inquiry. However, it was proposed that 116 to 150t of wheat straw would be needed for Mr Sturdy's cattle. As analysed by Mr Kernon, wheat straw yields 2.5 to 5.0 t/ha (1-2 tonnes per acre). The higher figure of 150t would require, therefore, 30-60ha (150 divided by 2.5 or 5.0). There will be 63ha available post development, so even with a rotation straw shortages are unlikely and the (unevidenced) £8500 should be removed from the costings.
- 8.43 Even if there was a shortfall in a particular year, the addition of an extra £8,500 (then increased to £9,489 to £9,778) is simply not justified by reference to any evidence.
- 8.44 Additional figures were provided within an appendix to Mr Franklin's rebuttal. Mr Kernon understandably expressed some doubt as to how the 3 year projected impact could increase from £18,000 to over £37,000 in between the

production of the proofs and rebuttals. Mr Franklin was unable to assist the inquiry with this during his evidence and despite careful review, Mr Kernon was also unable to see how this figure had been arrived at. As such, this figure should be given no weight.

- 8.45 Other aspects of the effect on the tenants also fall short of providing evidence of a significant impact:
- 1) Historic investment in a grain store should be included within depreciation figures if it is to be included at all;
  - 2) The claimed impact on the green waste operation appears to be that the tenants would have too much green waste and insufficient land to spread it. This latter point was unevidenced despite Mr Kernon seeking figures as to the nutrient limits said to restrict spreading over the land. Further, the tenants have not explained why additional soil conditioner produced could not be sold for additional profit or traded for a commodity the farm requires (such as straw); and
  - 3) There is no robust evidence to suggest that the Windmill property would not continue to be a source of rental income. Mr Ingham's evidence is that the property would remain an attractive place to live given that it is orientated towards the south and views in this direction are unaffected.
- 8.46 Even taking the R6's evidence at face value, the impact is likely to be well below the compensation offered by the appellant. And for the reasons set out above, the R6 figures significantly overestimate the impact given the inclusion of over £16,000 loss of SFP and an additional unjustified cost for straw at around £8500. Set against the impact, the tenants would receive statutory compensation and in addition, would retain their home and significant sources of income which would not be affected including the rented property at Windmill Farm, circa 100 head of cattle, the green waste contract, and a residual area of arable land, all of which would turn a profit.
- 8.47 In relation to the rural economy, one needs to be careful not to double count any harm with loss of BMV addressed above and, as Ms Caines notes, the impact will be negligible and more than outweighed by the positive economic benefits of the scheme (which are also recognised by the Council).
- 8.48 The Inspector in the Washford decision<sup>17</sup> and the LPA's own officer's report<sup>18</sup> both take a broader view of economic impacts and balance any negative economic impacts on tenants against the beneficial economic impacts on the landlord and wider economy. Mr Wood rightly accepted that the scheme was rural diversification in the manner encouraged by SP9. Any temporary loss of the land for food production needs to be seen in this context.

*iii) Heritage impact*

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<sup>17</sup> CD6.13

<sup>18</sup> CD3.1 para 10.80



- 8.49 NYC and the appellant agree in the main SoCG (CD9.2) that harm to designated assets is at the very low end of less than substantial harm and is outweighed by the public benefits.
- 8.50 However, the R6 Party relies upon harm to non-designated assets (which is not a harm found by the Council at all) and considers that the harm to designated assets is major/moderate.<sup>19</sup>
- 8.51 As Ms Bage explained in her written and oral evidence, this overstates the effects of developing what is a very low-scale development which will be adequately screened behind new and existing planting within part of the overall setting to these assets. Whilst the setting clearly contributes something to the significance of Acomb Farmhouse and the Windmill (noting that the Windmill has lost its functional connection to the land), it is not everything, nor will the setting be entirely obliterated.
- 8.52 Instead, they will still be legible in an agricultural landscape and the temporary siting of a solar array within part of the setting will not change this. The development is set over 200m away from Acomb Farmhouse and will be entirely screened by new planting. It is therefore a significant overstatement to describe these assets as suffering a harm which is close to finding of substantial harm i.e. that a key element is seriously affected with substantial harm being a "high test".
- 8.53 In relation to the historic landscape, as explained by Ms Bage, the appeal scheme will enhance rather than harm the field boundaries in this location and will not affect the prominence of the Windmill as a structure, being sited well below roof lines of buildings, and hedge lines.
- 8.54 In relation to non-designated assets:
- 1) Eden Farmhouse sits over 350m from the nearest panels and Mr Ingham's appendices demonstrate that views are incredibly limited even at 'year 1'.<sup>20</sup>
  - 2) Ms Bell considered the impact to Eden House to be negligible.
  - 3) Windmill Farm draws its significance from its immediate context and impacts are similar to the Windmill itself i.e. a portion of the overall setting.
  - 4) Eden Camp – Ms Bell considered this to have a 'low' magnitude of impact based upon visual impact. However, the BESS will be separated by the Camp's own palisade fence and sited behind a 3m high landscaped bund. Further, as Ms Bage explained the appeal site does not contribute and it isn't an asset that draws its significance from its setting.
- 8.55 Ms Bage's evidence was considered and proportionate. It was also entirely in line with NYC's own heritage officer and views expressed within their committee report.

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<sup>19</sup> Ms Bell summary POE 6.1

<sup>20</sup> CD9.8 JI PoE Appendix 1

8.56 Overall, the resultant heritage harm would be minor and easily outweighed by the public benefits of the scheme.

*iv) Residential living conditions and amenity*

8.57 NYC limited its case to residential visual amenity. However, it was clear from Mr Wood's evidence that it has misunderstood the findings of the RVAA. The Council accepted the findings of the RVAA, did not seek to provide any contrary view as to the methodology or conclusions of that assessment but nevertheless sought to attribute harm based upon the stage 3 findings of the report without considering the stage 4 assessment i.e., based upon the interim rather than final conclusions of the report.

8.58 This is important as the stage 3 findings stop short and only look at a magnitude of change. They do not consider this in the context of the applicable RVA Threshold. The guidance (which is not challenged by any party as being the applicable guidance and setting out the correct test) clearly explains that RVA methodology differs from a "standard" landscape and visual appraisal as it includes a 'stage 4' assessment as to whether the earlier findings do or do not meet the RVA Threshold.<sup>21</sup>

8.59 Paragraph 1.6 of the guidance states that: *"It is not uncommon for significant adverse effects on views and visual amenity to be experienced by people at their place of residence as a result of introducing a new development into the landscape. In itself this does not necessarily cause particular planning concern. However, there are situations where the effect on the outlook / visual amenity of a residential property is so great that it is not generally considered to be in the public interest to permit such conditions to occur where they did not exist before"*.

8.60 The decision-maker is therefore not looking to see whether a significant adverse effect occurs, but whether this also crosses over into the effect being 'so great' that the public interest ought not to permit the effect to occur at all (in other words, the RVA Threshold – see section 2 of the guidance).

8.61 It is clear from Mr Wood's proof that the input into his planning balance was the assessment of change included within the RVAA i.e. stage 3 (see p.7 of the guidance and RW POE para 5.37 and 5.38). He agreed in evidence that this did not consider the stage 4 assessment of the RVA Threshold and he did not seek to challenge the findings of the RVAA in this regard.

8.62 As such, the input into Mr Wood's planning balance ought to have been those derived from the RVAA i.e., that there are no effects which exceed the threshold. There are therefore no effects which are matters of public rather than private interest.

8.63 The R6 Party equally failed to engage with the RVAA findings on this level. Mrs Sturdy's concerns about views are noted, however, they are not inconsistent

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<sup>21</sup> CD8.16

with the findings of the RVAA which does acknowledge a notable degree of change in views, however, it also concludes that such changes would not be "so great" that they ought not to be permitted.

- 8.64 Mr Woods conceded there would be no breach of policy SP20 which seeks to avoid material adverse impacts. However, this must mean material in a planning sense and impacts below the RVAA threshold are by definition not material in planning terms.
- 8.65 The remainder of the R6 case centred upon broader visual impacts from public rights of way. Photomontage methodology aside, there is little difference between the parties. The appellant's LVA and Mr Ingham's evidence recognise that from public rights of way immediately adjoining the site, and for the short stretches during which they pass the site there would be a moderate adverse impact.<sup>22</sup> Yet mitigation planting would reduce such impacts to minor and the effects would be felt would be for very small walking route stretches. Critically, there would be no longer range or even medium range adverse impacts.
- 8.66 Mr Ingham rejected any assertion that additional hedge planting and growth would be harmful, hedges being characteristic of the area.<sup>23</sup> Mr Ingham also noted NYC will ultimately have oversight of the LEMP which addresses hedgerow management and this could provide for a specification as to how hedges are maintained.
- 8.67 Views from the AONB are considered by the appellant to be overstated by the R6 evidence by using a telescopic lens to produce visualisations. This point was not refuted. As set out within the LVA<sup>24</sup> the site is barely perceptible from public vantage points in the AONB.
- 8.68 R6 criticism rested heavily upon a diagonal view taken from Great Sike Road, behind Windmill Farm and across to the southern portion of the site and rested upon the absence of hedge in this location on Great Sike Road. But the R6 Party's concern is not well founded – the distance between the viewer and the solar array would be around 200m and the mitigation planting on the eastern part of the appeal site would also be in between the viewer and any panels. The matter comes down to an at most 150m stretch along Great Sike Road and viewing panels at an oblique angle which are in any event to be sited behind a hedgerow.
- 8.69 NYC did not make any landscape case the appeal site is well screened and well sited in a flat landscape which is free from any landscape designation. Overall, the effects are minimal and is not a reason for refusing the scheme, as acknowledged by the Council.

*Other matters raised by third parties*

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<sup>22</sup> CD1.20 Appendix A at 6.5.16

<sup>23</sup> CD8.15 page 165

<sup>24</sup> CD1.20 LVA Paragraph 6.5.26

- 8.70 The operators of Eden Camp raised a concern in relation to noise – this was not a point pursued by NYC and no objection was received their Environmental Health Team. The appellant’s noise note and response to Eden Camp’s criticisms of it deals with the point. Collectively, this shows consideration has been given to Eden Camp’s operation but that the background noise environment is dominated by proximity to the A64. Further, the appeal scheme includes a 3m high soil bund in between the museum and the BESS.<sup>25</sup>
- 8.71 Fire and drainage concerns are addressed. NYC is satisfied that a condition requiring the submission of a final fire risk assessment and management plan would adequately address any risks in this regard. Moreover, the drainage strategy would not involve discharge into a sensitive receptor. It includes a fire water pond to contain any contaminated fire water in the event of a fire.
- v) Overall planning balance conclusions of the Appellant*
- 8.72 NYC acknowledges that the scheme accords with two key policies of the plan - SP1 and SP18 with the latter being the key policy guiding whether renewable energy projects should be permitted or not. And, following XX, no conflict with SP20.
- 8.73 Set against this, even on the NYC’s case is conflict with SP17 and only partial conflict with SP9. Even on the Council’s case one could reasonably conclude that there is compliance with the plan overall.
- 8.74 However, there no conflict with SP17 or SP9. In relation to the latter, in line with the Officer’s report, once the harms and benefits to the rural economy are balanced, this reasonably comes down in favour of compliance with SP9 given that the policy is expressly written in contemplation of renewable energy projects on agricultural land and given NYC’s agreement that the scheme is rural diversification supported by the policy. It does not make sense to read the policy as encouraging diversification on the one hand (which must sensibly mean diversification away from food production) but then, on the other, to find harm against this policy for projects which diversify away from food production.
- 8.75 SP17 compliance stands or falls with whether (1) the appellant has demonstrated the absence of reasonably available alternative sites at lower risk of flooding and (2) the loss of BMV to be justified (noting only 0.3ha of irreversible loss including tree planting). As set out above, there is due evidence that there are no realistic alternatives in this area. Certainly, none which would allow the same benefits to be realised in terms of easy and immediate grid connection, noting NPPF paragraph 168.
- 8.76 The benefits are largely agreed with NYC in terms of the contribution of the project to the Government’s energy security and net zero agenda. As set out by Ms Caines, ground mounted solar and BESS are both key parts of the Government's climate change, net zero and energy security policies. The reduction in carbon emission resulting from the proposed development is the

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<sup>25</sup> CD7.15

equivalent of meeting the energy needs of over 8,660 homes per year, and carbon dioxide savings amounting to just over 12,500 tonnes per year. This means the scheme could supply the average annual electricity needs of 38% of the households in the former Ryedale district.

- 8.77 The scheme unusually benefits from an immediate grid offer meaning it can be delivered swiftly and bring benefits immediately following a standard 18 month lead time. As explained by Mr Camplejohn, if this scheme were to be refused, it is not the case that another project in the queue would simply take its place on an equivalent basis. There are clear capacity and feasibility constraints to bringing forward alternative sites under the Malton BSP.
- 8.78 Furthermore, an alternative connection would sit behind the private Knapton Generating Station (constrained to 80MW) and would not be able to connect as a result of an 83.5MW limitation 'higher up' the network at the transmission connected Osbaldwick Grid Supply Point. The upshot is that until significant transmission upgrades are completed, new projects will not be able to connect in this region. The appellant's scheme is suitably sized, below 50MW, to take advantage of being delivered immediately, not having to wait for such upgrades. It should also be noted that the Carr House Farm scheme is proposed at 23.5MW, utilising the last remaining headroom due to overhead line voltage constraints at 28MW, and any proposal on the Birdsall land is years from delivery based on standard timescales from grid offer to connection – noting that there is no evidence of planning progress and the appellant's grid offer was Mid 2020.
- 8.79 In short, the appeal scheme is in a fortunate position which will not be replicated by the next project in the queue at Malton and the immediate grid offer is therefore a notable benefit of the scheme in light of the "urgent" need to address climate change.
- 8.80 The Government seeks deployment of large scale ground mounted solar across the UK. This is the only realistic location in Ryedale, which is an area which is required to "do its bit" as part of the Government's agenda on renewable energy and energy security. NYC has also declared a 'Climate Emergency' (CD8.18) and its own adopted policy seeks to deliver 2500MW of capacity from solar, onshore wind and hydropower by 2038.<sup>26</sup>
- 8.81 Despite permissive RLPS policies which support renewable energy, Ryedale has failed to deliver any utility scale projects since the adoption of the plan in 2013. This appeal presents a significant opportunity to assist Ryedale and North Yorkshire in delivering upon their own plan and policy ambitions.
- 8.82 This scheme can generate significant benefits in a way which would not have more than a negligible impact on food production, would not cause more than a very low level of harm to heritage assets, would not have significant landscape or visual impacts and would not unduly affect residential amenity. The scheme would have a neutral financial impact on the tenants overall and they will be compensated both by the operation of the statutory scheme which

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<sup>26</sup> CD8.18 at page 18

secures possession of the land and by the appellant's offer of compensation. The scheme can also be brought forward quickly, unlike projects further back in the 'queue'.

- 8.83 In circumstances where NYC agrees that the scheme complies with the 'key' policy against which the scheme should be judged, SP18<sup>27</sup>, the Inspector invited to conclude that the scheme complies with the development plan and recommend that the appeal be allowed.
- 8.84 In any event, the appellant's case is that there are numerous benefits of the appeal scheme including contribution to generating renewable energy with the attendant benefits to climate change, energy security and net zero and strikingly little harm. The balance of harm versus the benefits assessed against the development plan is argued as falling in favour of the appellant.

## **9.0 The Case for North Yorkshire Council (NYC)**

- 9.1 This summary contains all material points in relation to NYC's case and it is substantially based upon the closing submissions made. It is also taken from the evidence given on behalf of NYC and from other documents submitted to the Inquiry.
- 9.2 NYC in referring to their Decision Notice (CD3.3) do not dispute that the principle of the development appealed is supported both by the development plan and national policy. But that does not preclude the need to ensure the impacts are (or can be made) acceptable<sup>28</sup>. This requires robust methodology to support any conclusions that there are no sequentially preferable sites available from a flood risk perspective.
- 9.3 Robust methodology is also required to support conclusions that the loss of the ability to use the land, comprising of at least 56% BMV land, for food production is justified. And, it requires careful and detailed analysis to guarantee that existing rural businesses will not be unacceptably adversely affected. Especially where the scheme would result in the loss of a protected agricultural tenancy.
- 9.4 Such safeguards are argued as necessary to ensure renewable energy schemes cannot simply rely on their green credentials as a de facto justification for various harms. There must be a high level of scrutiny to ensure that development is in the right place. In that context, dealing with NYC's reasons for refusal in turn:-
- i) Flood risk*
- 9.5 The appeal site is within Flood Zones 2 and 3.<sup>29</sup> There is no dispute between the parties that the appeal scheme is classified as 'essential infrastructure' in

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<sup>27</sup> RW PoE paragraph 6.1

<sup>28</sup> NPPF Paragraph 163(b), Policy SP18

<sup>29</sup> CD9.2 - SoCG, Paragraph 3.11

accordance with the PPG Food Risk Vulnerability classifications.<sup>30</sup> As such, it is agreed that the appeal scheme is subject to the sequential test set out in both national and local policy.<sup>31</sup>

- 9.6 Policy SP17, Managing Air Quality, Land and Water Resources, of the RLPS states that flood risk will be managed by undertaking a sequential test.<sup>32</sup> It is consistent with that set out in NPPF paragraphs 167-168. The requirement is particularly important so to avoid, where possible, flood risk to people and property and must be reviewed in that context.<sup>33</sup> NPS EN-3 does not override this sequential test.<sup>34</sup>
- 9.7 As NYC planning witness Mr Richard Wood (RW) highlighted, NPSs are applicable for Nationally Significant Infrastructure Projects (NSIPs), and although they can amount to material considerations<sup>35</sup> that is *"judged on a case by-case basis and will depend upon the extent to which the matters are already covered by applicable planning policy."*<sup>36</sup> There is well established and significant planning policy at both local and national level covering this appeal.
- 9.8 The appellant's primary case is that the original sequential test<sup>37</sup>, which considered alternative sites within a 300m PoC from Malton BSP substation is sufficient given the technical constraints and their agreement with Northern Powergrid (NPg).<sup>38</sup>
- 9.9 In particular, it is repeatedly asserted in the evidence of Ms Rebecca Caines (RC) that a scheme beyond the 300m PoC would fundamentally change the parameters of the proposed development, such that it "would not therefore be strictly the same development".<sup>39</sup> It was the appellant's commercial decision to pursue grid connection discussions in relation to the land in question. A different red line application boundary for the grid connection (i.e. in respect of land further afield) could have been sought but the appellant chose to pursue this site. An argument put forward by the appellant to suggest that the sequential test should be constrained by such commercial decisions is a slippery slope and puts the cart before the horse.
- 9.10 The flood risk classification of the appeal site has remained the same since before NPg agreement was entered into. The original sequential test explains that *"until 2020, the application site and much of the surrounding area fell within Flood Zone 1. However, modelling by the EA in early 2020 lead to a reclassification of some areas, including the application site, into Flood Zones 2 and 3."*<sup>40</sup> As RC accepted in XX that was before the grid connection agreement

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<sup>30</sup> Ibid, Paragraph 3.13

<sup>31</sup> CD9.2 - SoCG, Paragraph 3.10

<sup>32</sup> CD4.1

<sup>33</sup> NPPF para 168

<sup>34</sup> Accepted by RC in XX

<sup>35</sup> NPPF para 5

<sup>36</sup> NPS EN1, para 1.1.2

<sup>37</sup> CD1.20

<sup>38</sup> CD9.3 - Appellant's SoC, Para 5.28 & RC PoE CD9.7, para 27-28

<sup>39</sup> CD9.7 - RC POE, para 7.28

<sup>40</sup> CD1.20, Appendix C2

was entered into (dated October 2020),<sup>41</sup> and thus a sequential test (even if it was not a thoroughly detailed assessment at that stage) should have been undertaken prior to that agreement.

- 9.11 All that can be relied upon to understand the extent to which flood risk was taken into account in the initial site selection exercise and viability review referred to by Mr Gary Camplejohn's (GC) Technical Note<sup>42</sup> is that he set out in oral evidence. He was not privy to the site selection exercise from a planning perspective, which is not part of his job and which was undertaken by others in the company who did not present evidence before the inquiry.
- 9.12 He could not tell us the extent to which the internal initial site selection review approached, considered, or applied queries around viability or the flood risk sequential test; other than accepting it was high level. The only evidence in terms of the flood risk sequential test that appears before this inquiry begins with the original sequential test<sup>43</sup> dated November 2022 (i.e. 2 years after the NPg agreement was entered into).
- 9.13 The clarifications document updated sequential test and ASA are all even more recent. The only reasonable inference that can be drawn is that flood risk was not properly assessed before this site was chosen by the appellant to form the basis of an application, or discussions, for a grid connection agreement. Indeed, that aligns with GC's explanation of the three important elements that are required: a grid connection, land ownership and planning; where he stated in EIC that "*land ownership is the starting point*".
- 9.14 In fact, on the appellant's approach, planning seems to be last in the queue with important planning considerations ignored, or at the very least not properly assessed, before the grid connection agreement was secured. To that extent reference to the NPg agreement and the appellant's concerns about getting pushed back in the grid connection queue should not be given any weight, because as RC accepted in XX it could be described as doing things the wrong way round.
- 9.15 Second, the appellant's reliance on 'technical constraints' to justify a maximum search area of 300m is a red herring; that has been firmly established through this inquiry. Numerous documents, including the original sequential test; the technical note;<sup>44</sup> and more recently GC's rebuttal;<sup>45</sup> all confirm that the development could technically be sited at a distance further from the PoC, but claim that the increased costs associated with additional equipment and

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<sup>41</sup> CD9.7 -RC POE, Appendix 1

<sup>42</sup> CD7.3, states: "*Upon determining that there were no other more suitable sites in planning terms (please review the Statement of Case and ASA associated with the Appeal for further information), within a viable distance from Malton BSP, and the adjacent land next to Malton BSP was deemed to be the most logical location – with the approval of the landowner, Harmony Energy made a grid connection application to NPg.*" The NPg agreement (RC Appendices) also refers to "following design approval".

<sup>43</sup> CD1.20, Appendix C2

<sup>44</sup> CD7.3

<sup>45</sup> CD9.35



infrastructure (including for example a new DNO substation), would make the scheme unviable.<sup>46</sup>

- 9.16 The technical and viability considerations for each solar scheme are different and references in the original sequential test to 'technical constraints'<sup>47</sup> in reality, are matters of viability. That is because, as Mr Camplejohn stated, "*everything is technically possible*".<sup>48</sup> Indeed, that is reflected in the examples provided in RC's rebuttal, which sets out 31 schemes with planning permission that have a range of PoC distances up to 7.4km.
- 9.17 It can safely be assumed that those schemes were pursued on the basis that they were viable and feasible. Indeed, RC uses them to show "the variability and project-specific considerations for projects like the proposed development."<sup>49</sup> The result is that there are no technical limitations associated with the scheme, in part or at all. GC accepted that the solar panels could be sited further from the PoC for example, even if the intake substation remains within the 300m radius.
- 9.18 Equally, it was accepted that the whole scheme could be sited further from the PoC, it would just require additional infrastructure in the form of a DNO substation and additional cabling. The appellant's position is, in short, that anything beyond the 300m would be unviable.
- 9.19 The problem in this appeal is that the non-viability of alternative sites or distances is presented as an unevidenced, and unsubstantiated, assertion. The lack of a standardised methodology for solar farm schemes, or policy requirement for a viability assessment, is just not relevant.<sup>50</sup> Viability has been relied on to constrain the sequential test parameters and as such the appellant has brought it into the spotlight. However, there is no evidence that can be tested to confirm whether such an assertion, which appears to apply to any distance beyond 300m from the PoC, is remotely correct. GC's costs evidence<sup>51</sup> asserts that the increased expenditure would be approximately £0.9m per additional km of cabling and £1.5m for a new DNO substation.
- 9.20 These are said to be fair noting two recently built projects at Hawthorn Pit (Durham) and Rusholme (Selby).<sup>52</sup> However, neither general costs, nor viability evidence, in relation to either of those projects is before this inquiry. GC also assessed what he terms a hypothetical scenario if the scheme were to be sited at a greater distance than 300m from Malton BSP.<sup>53</sup> However, having set the additional costs out he jumps straight to the conclusion that such a scheme would not be viable.

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<sup>46</sup> See the sequential test clarifications document (CD2.9) at §7.19, §7.27, §7.41 and GC Rebuttal at §3.5 and 3.8 for example.

<sup>47</sup> CD1.20, §3.9, §3.10, §3.12, §3.13, §3.14, §3.15

<sup>48</sup> GC in XX

<sup>49</sup> CD9.32 - RC Rebuttal, §3.7

<sup>50</sup> Rebecca Caines POE (CD9.7), §7.22; Rebuttal (CD9.32), §3.4

<sup>51</sup> CD7.3

<sup>52</sup> CD9.35 - GC Rebuttal, §3.7

<sup>53</sup> CD7.3

- 9.21 The total calculations, including overall build costs, or even reduced profit margins, is naught. The costs set out are therefore entirely meaningless where they cannot be considered in context. They could amount to an increased build cost of 1% overall, or 10%. There is no way of knowing whether, or to what extent, they would even affect the appellant's profit margin. Importantly, GC is not a viability expert nor the responsible individual in the appellant's company for determining whether schemes are viable or if they should be pursued.<sup>54</sup>
- 9.22 The unreasonableness of the appellant's lack of viability evidence was further highlighted in GC's XX when he indicated there was an established "*solar wide industry approach*" to viability, which he explained was relatively simple. That approach considers costs in pounds per MW, where he accepted there is an acceptable industry range. Moreover, he also accepted that there would be a maximum pounds per MW cost that would be acceptable to the appellant for this Development to be viable.
- 9.23 GC could not provide any answer as to why that simple calculation had not been provided, which RW accepted in evidence would be applied so long as it was reasonable (i.e. based on whatever profit margin the appellant's business model works to), due to the lack of standard methodology or applicable guidance setting out expected profit margins, as there is for housing development for instance. The lack of any evidence whatsoever is even more stark where it has been an active criticism for no less than 4 years. Emails from the Council<sup>55</sup> dated 2020 indicate the criticism; as does the Committee Report.<sup>56</sup> RC rightly accepted in XX that the criticism falls firmly within the scope of RfR1.
- 9.24 The appellant has had ample opportunity to present any viability evidence but has chosen not to do so. RC's criticism that too much emphasis has been placed on viability in this inquiry is misplaced. Viability is, and has been for some time, the sole justification for the appellant's reliance on a 300m radius from Malton BSP. It is however unsubstantiated and given the ease of which such evidence could have been provided to address NYC's concern in this respect. Despite numerous requests it is unclear as to why.
- 9.25 Alternatively, the appellant puts forward that in any event, an updated sequential test<sup>57</sup> and alternatives sites assessment ("ASA")<sup>58</sup> has been provided to demonstrate that there are no sequentially preferable reasonably available sites within 2.5km of the point of PoC. However, the appellant's updated approach still fails to properly meet the sequential test requirements for two reasons.
- 9.26 First, several factors are applied in the ASA and updated sequential test to compare and discount alternative sites. Given the conclusions the robustness

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<sup>54</sup> GC accepted in evidence that he deals with the input of technical costs, but that the decision in relation to the viability of a scheme does not lie with him.

<sup>55</sup> CD1.20, Appendix C2

<sup>56</sup> CD3.1, §10.52 and §11.2

<sup>57</sup> CD7.2

<sup>58</sup> CD7.1

of the methodology is therefore important. The updated sequential test methodology explains that 'physical development constraints' and 'operational constraints' have been considered in assessing alternative sites.<sup>59</sup>

- 9.27 Indeed, that has factored into discounting alternative sites including alternative sites 1, 3, 4, 5, 6 and 7.<sup>60</sup> Many of these are discounted at least in part because they would require the need to include a DNO substation. None however appear to consider or assess viability in respect of only the panels being sited further away (and therefore no need for an additional DNO substation) as GC accepted was entirely technically achievable. The same can be seen in the ASA which references 'viability and feasibility' and commercial feasibility within the 'grid connection' principle.<sup>61</sup>
- 9.28 However, he accepted during XX that those are not operational or physical constraints properly considered, they are points of viability. RC's response in oral evidence was that it doesn't matter if they are unsubstantiated factors because they are just one of numerous factors that are applied to discounting alternative sites.
- 9.29 The problem, however, as she accepted in XX is that we do not know how much weight was attributed to each factor. Her argument is the same as suggesting applying a factor which asks whether Expert A likes the site, and not presenting any evidence from Expert A or calling him to give evidence at the inquiry to be tested, is nonetheless perfectly permissible because it is just one of several factors.
- 9.30 Insofar as viability is even a factor (let alone where it appears to be more than one for both the updated sequential test and ASA), we do not know to what extent the conclusions would remain the same if that factor was not included as a relevant consideration or if the conclusions on viability in relation to each site was wrong; which we cannot test because there is no viability evidence. To that extent there is a methodological flaw which infects the assessments, and their conclusions.
- 9.31 Second, and in any event, the updated sequential test applies a 2.5km search area, which is labelled a "robust approach"<sup>62</sup> solely based on one appeal decision which applied a 1.5km radius.<sup>63</sup> That appeal decision, however, discounted a search area beyond a 1.5km radius on the basis that it would stray into the consideration of sites within areas of alternative substations elsewhere.<sup>64</sup> That is not the case for this scheme. There is only one substation in the former Ryedale district (repeatedly emphasised by the appellant). The next nearest substation would be in York or Scarborough.<sup>65</sup>

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<sup>59</sup> CD7.2, §5.12

<sup>60</sup> Ibid, §5.18, §5.20, §5.21, §5.23, §5.25, §5.26, §5.27

<sup>61</sup> CD7.1, §3.2

<sup>62</sup> Rebecca Caines POE (CD9.7), §7.35

<sup>63</sup> CD6.14

<sup>64</sup> Ibid, §28

<sup>65</sup> CD1.20, Figure 3

- 9.32 Reference to technical constraints at paragraph 28 of the Appeal Decision are similarly not applicable as both the appellant's experts accepted in XX that the technical considerations for each solar scheme are different, which reflects the specific infrastructure in place and required, specific connection agreement and so forth.
- 9.33 Far from being robust as described in RC's evidence,<sup>66</sup> that is not even a reasonable approach, especially in the context of other schemes and decisions. For example, a greater search area of 3km in at Carr House Solar Farm in the former Scarborough district was applied, which importantly is a lower capacity scheme than the proposed Development.<sup>67</sup>
- 9.34 Further, Inspector Parker refused to accept a 4km search area employed in an ASA (in relation to BMV land) in respect of a proposal in Manuden because it was similarly unsubstantiated.<sup>68</sup> The point is further emphasised by the evidence in respect of the considerable variability of PoC distances in schemes. The result is that the 2.5km search area is not reasonable. RC's attempt to remedy this by suggesting that she had looked, during the inquiry, at alternative sites presented by OS within 5km instead, and nevertheless discounted, them is inadmissible. There is no evidence before the inquiry of any exercise undertaken to consider whether sites beyond 2.5km are sequentially preferable and thus the appellant's case stands or falls on the application of 2.5km alone.
- 9.35 Accordingly, the appellant has not satisfied the requirements of the sequential test. Reasonably available alternative sites for the scheme have not been properly assessed. Thus, development in Flood Zones 2 and 3 is not justified and in conflict with Policy SP17.
- ii) Best and Most Versatile land*
- 9.36 The protection of BMV land, both as a resource and one that is available for use (what has been referred to in this inquiry as the two strands), is reflected

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<sup>66</sup> CD-9.7 RC POE

<sup>67</sup> CD8.33, §4.8

<sup>68</sup> CD6.18, §52 which states: "*Whilst an Alternative Sites Assessment (dated September 2022) has been submitted, this is limited by the reliance on an unsubstantiated distance of 4km PoC 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...*"

in national policy,<sup>69</sup> Written Ministerial Statements (WMS),<sup>70</sup> National Policy Statements (NPS)<sup>71</sup>, and the PPG, which requires that the proposed use of any agricultural land be shown to be necessary and poorer quality land used in preference to higher quality land<sup>72</sup>.

- 9.37 That is a matter of agreement between the parties as established in the XX of RC and Mr Tony Kernon (TK). Indeed, Natural England's consultation response<sup>73</sup> is entirely consistent with that approach, and similarly reflects the need to consider whether it is an effective use of BMV land<sup>74</sup>.
- 9.38 Both agreed that the weight to be given to proposed amendments to the NPPF must be very limited/ towards the lower end of the scale, because the consultation period has only just ended and it is yet to be seen whether the amendments will be brought into effect. It is also agreed that the 2015 WMS has not been revoked and as such the requirement to justify the use of BMV through "the most compelling evidence" remains applicable. The 2024 WMS also recently reinforced the importance of food security (i.e. the use of BMV land), which has been recognised in the Penhale Moore Appeal Decision cited by Mr Kernon<sup>75</sup>.
- 9.39 RLPS Policy SP17 states that land resources will be protected and improved by: *Prioritising the use of previously developed land and protecting the best and most versatile agricultural land from irreversible loss. ....Proposals for major development coming forward on sites that are not allocated for development which would result in the loss of the Best and Most Versatile Agricultural Land will be resisted unless it can be demonstrated that the use proposed cannot be located elsewhere and that the need for the development outweighs the loss of the resource.*
- 9.40 There was initially some debate between the parties as to the interpretation of Policy SP17, not least because TK (who is not a planning witness and accepted in XX that policy matters ought overall to be for RC) argued that, adopting the

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<sup>69</sup> NPPF §180 expressly recognises the economic and other benefits of BMV land and footnote 62 recognises the availability of agricultural land. TK accepted in XX that it is still a material consideration and applicable, despite the position in his POE that it is constrained to plan making as a result of NPPF §181. RC accepted in XX that NPPF §163 must be read as a whole, which includes considering whether the impacts of the scheme are (or can be made) acceptable (i.e. they cannot be ignored simply because of the wording in favour of renewable energy projects in NPPF §163(a)).

<sup>70</sup> CD8.10, CD8.11

<sup>71</sup> CD8.1 - NPS EN1, §5.11.12 states: "*Applicants should seek to minimise impacts on the best and most versatile agricultural land (defined as land in grades 1, 2 and 3a of the Agricultural Land Classification) and preferably use land in areas of poorer quality (grades 3b, 4 and 5).*"

<sup>72</sup> CD8.19

<sup>73</sup> CD3.1 Paragraph 10.67

<sup>74</sup> *Ibid* Natural England state: "*However, during the life of the proposed development it is likely that there will be a reduction in agricultural production over the whole development area. Your authority should therefore consider whether this is an effective use of land in line with planning practice guidance which encourages the siting of large scale solar farms on previously developed and non-agricultural land.*"

<sup>75</sup> CD6.31

definition of loss in the IEMA guide to interpret Policy SP17, loss can only mean irreversible loss. However, common ground appeared to be reached through the XX of RC. She accepted that the IEMA guide, which defines impact for EIA purposes as "*permanent, irreversible loss of one or more soil functions or soil volumes (including permanent sealing or land quality downgrading)*" is not relevant for the interpretation of national or local policy.

- 9.41 The correct approach is to consider the policy wording and interpret it in light of the reasoned justification. Policy SP17 distinguishes between 'irreversible loss' and 'loss'. To suggest that the latter necessarily means the former would be to read into the policy words which are not there.
- 9.42 The first of those plainly protects the resource itself. Paragraph 7.27 of the reasoned justification highlights the "*need to support local food production and it is important that as a resource, the loss of productive land, particularly the loss of Best and Most Versatile Land is carefully managed and avoided...*"<sup>76</sup> It also expressly refers to the use of BMVL as a resource in the context of productive land for local food production. As a result, the general reference to 'loss' in SP17, as RC agreed in XX, must include the loss of use, or availability, of the resource. In fact, if it did not, there would be serious doubt as to whether it was consistent with national policy recognising the two strands.
- 9.43 Although the BMV on site would not be lost as a resource. It would be unable to be used for 40 years. Indeed, the appellant has confirmed that no agricultural use will occur on the site throughout the lifetime of the development<sup>77</sup>. It has not been properly demonstrated that sites with a lower proportion of BMV land could not have been used.
- 9.44 First, had the updated sequential test and ASA properly assessed alternative sites, using a greater search area, there may have been reasonable available sites with lower proportions of BMV. Although there is no BMV specific requirement to carry out a sequential approach, that would plainly be a material consideration when assessing whether it is necessary to locate the development on a site which contains 56% BMV<sup>78</sup>.
- 9.45 Indeed, the appellant has made much of the fact there is no requirement for a sequential approach when assessing BMV, but the only evidence put forward to support that the use of BMV on this site is justified is the ASA (i.e. a sequential approach).
- 9.46 To that extent if the ASA is inadequate for the same reasons that apply to the flood risk sequential test, it is equally inadequate in terms of an evidence base to justify the use of BMV on the site, especially where even on a 2.5km radius it recognises that alternative sites perform better in terms of BMV but are otherwise discounted.<sup>79</sup>

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<sup>76</sup> CD4.1

<sup>77</sup> CD9.32 - RC Rebuttal, §2.3

<sup>78</sup> SoCG (CD9.2), §5.47

<sup>79</sup> RC POE (CD9.7), §7.69 recognises that alternative sites 3, 5, 6, 7 and 8 perform better in terms of BMV.

- 9.47 Second, TK's evidence relies solely on ALC provisional maps from the 1970s of the wider area to argue that "*there is no indication that wider afield there will be land of lower quality*".<sup>80</sup>
- 9.48 These maps are contained at inserts 13 and 14 in his POE. However, there are significant problems with the maps which mean in practice they are all but meaningless. They show that land further afield is mostly Grade 3 land, however they do not differentiate between Grade 3a land (i.e. BMV land) and Grade 3b land (i.e. not BMV land). TK relies on the predictive likelihood of BMV plans to counteract this shortfall,<sup>81</sup> but that is similarly vague and unhelpful.
- 9.49 That plan shows land further afield as largely falling within the 'moderate' likelihood of BMV, classified as 20-60% BMV. That is a significant range itself. But taken in the context that the appeal site is 56% BMV (or over 60% on the R6's calculations) the consequence is that most land falling within that 'moderate' range is highly likely to have lower proportions of BMV than the appeal site. To that extent TK's conclusion is wholly misplaced, as the plans he relies on strongly indicate that wider afield there will be land of lower quality.
- 9.50 Accordingly, the extent to which the use of BMV land is compliant with policy stands or falls with the appellant's updated sequential test and ASA. Insofar as the sequential test requirements have not been met, nor has it been demonstrated that the use of BMV land which comprises over half the appeal site is justified.

*iii) Impact on existing rural business*

- 9.51 The site extends to some 52.86 ha and comprises cultivated agricultural land farmed by the tenants of Eden Farm,<sup>82</sup> Mr and Mrs Sturdy. RLPS Policy SP9, states that Ryedale's land-based economy will be sustained and diversified with support for local food production, amongst others.
- 9.52 Such support for agricultural land-based rural businesses are also found in NPPF paragraph 88. In this sense the policy supports aims which are inconsistent with one another, and therefore pulls in different directions.
- 9.53 RC's application of SP9 is essentially that bullet point 8 proffers support for the appeal scheme as a renewable energy project.<sup>83</sup> The scheme is clearly not a farm diversification (bullet point 6), indeed it would harm the existing R6 Party's farm business. Nor is the scheme in support of local food production and sales (bullet point 7) reflected by a scheme that takes high quality agricultural land out of food production.

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<sup>80</sup> TK POE (CD9.9), §7.13

<sup>81</sup> Ibid, Insert 14

<sup>82</sup> Ibid, §2.19

<sup>83</sup> RC POE (CD9.7), §7.84

- 9.54 Both witnesses accepted that there will be an adverse effect on the R6 Party's farm business<sup>84</sup> and thus harm that should be considered in the planning balance.<sup>85</sup> The extent to which it would be mitigated by compensation is a matter of dispute on the basis of viability evidence presented by the R6 Party. For the sake of clarity, RW explained that he had not undertaken a detailed assessment of that evidence, such that it remains a matter of dispute primarily between the R6 Party and appellant. However, and insofar as the Inspector endorses the R6's Party's evidence, significant weight should be attributed to such harm in accordance with the Council's third RfR as RW explained in EIC.
- 9.55 The appeal scheme would also reduce the amount of land farmed such that the agricultural economy will be affected by reduced agricultural activity. RC expressly accepts this as a harm, and therefore ultimately the dispute is about the weight attributed to it. However, her assessment is based on the percentage of agricultural land lost in the context of the wider area and the UK on a national scale.<sup>86</sup> She accepted in XX that there was no reference to the local rural impacts, nor to the consideration of Ryedale, as applied by Mr Wood to reach his moderate weight to agricultural economic harm, but that it was a relevant and important consideration.
- 9.56 That is even more so given the importance of the agricultural economy to the Ryedale area. That is clear from the explanatory text which highlights: "*Land-based economic activity is integral to the District's economy, cultural heritage and identity*" and "*this Strategy is intended to support and be flexible to the needs of those who rely on the land-based economy.... It is essential that these new land uses and economic activity must be supported and encouraged where appropriate if Ryedale's countryside is to continue as the living and working countryside that is intrinsic to Ryedale's cultural identity.*"<sup>87</sup>
- 9.57 RW explained in chief that he attributes moderate weight to the agricultural economic harm, which slides up one on his scale to significant harm in the instance that the R6 Party's case, that there will be harm to their farm business (and not betterment)<sup>88</sup>, is preferred by the Inspector. The result would necessarily be that the balance tips (as referred to by RC in XX), from favouring renewable projects to supporting local food production and rural farm business, to result in conflict with Policy SP9.

*iv) Residential living conditions and amenity*

- 9.58 RLPS Policy SP20, Generic Development Management Issues, provides that new development will not have a material adverse impact on the amenity of present or future occupants. The same is reflected in NPPF paragraph 135.

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<sup>84</sup> TK POE (CD9.9), §10.16

<sup>85</sup> RC POE (CD9.7), §7.85

<sup>86</sup> Ibid

<sup>87</sup> §5.34-5.35

<sup>88</sup> TK POE (CD9.9), §8.34



9.59 Although RW accepted that the impact on residential amenity does not comprise a freestanding reason for refusal,<sup>89</sup> the harm nevertheless needs to be considered in the planning balance as recognised by RC.<sup>90</sup> In particular, there would be a fundamental change in character from an arable landscape to a solar landscape in the immediate locality of nearby occupiers. Moreover, the Residential Visual Amenity Assessment<sup>91</sup> (RVAA) identifies harm to residents of Windmill House, Acomb House and Eden Farm, in addition to glint and glare at the latter.<sup>92</sup>

v) *Overall planning balance by NYC*

9.60 Ultimately the appellant's case argues compliance with the development plan and the overall balance is in favour of the proposed development in any event.<sup>93</sup> Such conclusion is reached on the basis that "*there are no significant adverse effects that weigh into the planning balance.*"<sup>94</sup> However, that does not mean there no harms which ought to be considered. Even on RC's own evidence, she recognises harm arises from amenity impacts, landscape harm and heritage harm<sup>95</sup>.

9.61 RC's conclusions is therefore premised on compliance with development plan policy, and she fairly accepted in XX that she has not considered the balance for alternative scenarios, such as if RfR1, or RfR3 is made is out for example.

9.62 The only planning evidence which does assess that is RW's who confirmed that each of the first three RfR are freestanding reasons to dismiss the appeal. That must be correct because the impacts of the scheme would not be acceptable, which results in significant weight to the respective harm(s) and non-compliance with the policies which otherwise offer support for renewable energy.<sup>96</sup> Accordingly, if any of the RfRs are upheld there would not be accordance with the development plan and other material considerations, including the benefits, would not outweigh the harm.

9.63 The appellant has failed to demonstrate that the sequential test requirements in both local and national policy have been met. The primary reliance on 300m which is justified by non-existing viability evidence is entirely without merit. The 2.5km search area applied as an alternative is equally unreasonable where it is solely premised on one Appeal Decision, given the variability of distances from the PoC for other schemes, and criticisms of wider search areas where they are unsubstantiated in other decisions. Equally, the conclusions in the updated sequential test and ASA themselves are unreliable given they are based in part on factors which are disguised viability considerations which cannot be tested and which have not been evidenced.

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<sup>89</sup> Richard Wood POE (CD9.14), §6.17

<sup>90</sup> RC POE (CD9.14), §7.108

<sup>91</sup> CD1.20, Appendix A4

<sup>92</sup> CD1.20, Appendix F1

<sup>93</sup> RC POE (CD9.14), §11.15

<sup>94</sup> Ibid, §11.12

<sup>95</sup> Ibid, §7.108, §7.109, §8.20

<sup>96</sup> Policy SP18, NPPF §163

- 9.64 So too has the appellant failed to justify the loss of availability of an appeal site with at least 56% BMV agricultural land. It falls for the same reasons as the flood risk sequential test. If anything, within their limitations the 1970s ALC provisional maps indicate that in fact the likelihood is that a site further afield would have a lower proportion of BMV.
- 9.65 The impact on the existing rural business (and indeed the impact in respect of their personal matters), would be significant. Coupled with the harm to the local and wider agricultural economy, especially in the context of the highly rural nature of Ryedale, the impact would be unacceptable.
- 9.66 There are also amenity, landscape, and heritage harms to consider. Even just one of the above issues identified by NYC: flood risk; BMV agricultural land; or economic impacts would provide sufficient reason to refuse permission for the proposal. Accordingly, NYC invite the SoS to dismiss the appeal.

## **10 The Case for Mr and Mrs Sturdy (the R6 Party)**

- 10.1 Granting planning permission for the appeal scheme will have profound consequences for the Sturdy family and the wider community in Malton. On day 1 of the inquiry Interested Parties spoke passionately against the scheme explaining why this is not the right location for such a development. Over 500 objections during the application stage, and not one in support.
- 10.2 The benefits of solar energy are well-understood. Nonetheless, they do not justify taking the best agricultural land in Ryedale District<sup>97</sup> out of production for 40 years. Nor do they justify the ramifications on an important rural business which exemplifies qualities that the Ryedale Local Plan<sup>98</sup> supports.
- 10.3 Refusing this appeal does not mean that Ryedale or North Yorkshire will fail to meet its climate change obligations. Grid connections are competitive to find, and there is a significant amount of interest in delivering renewable energy in the wider locality. It will simply free up grid capacity for other sites, more compliant with planning policy, to come forward elsewhere in the district.
- 10.4 This scheme has been 'grid-led'<sup>99</sup>. Not landscape-led or even planning-led. It is a project which has been defined not by viability but by commercial considerations (and not just by those who operate in the wider solar industry but of this particular operator).
- 10.5 Secondary to that commercial priority has been flood risk, agricultural land considerations, and concern for the tenant who has the most to lose from the development of this land. As the appellant's own Alternative Site Assessment (ASA)<sup>100</sup> demonstrates, as the alternatives put forward by Mr Stones show and the litany of other sites patiently waiting in line for headroom to appear at the

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<sup>97</sup> Mr Franklin in EiC.

<sup>98</sup> CD4.1

<sup>99</sup> Technical Note, CD7.3 – see conclusion – page 11.

<sup>100</sup> CD7.1

Malton Bulk Supply Point (BSP) indicate, there are alternatives to developing on this land.

- 10.6 The circumstances that the Sturdy family find themselves in are now agreed with the appellant to be “*exceptional*” and a material consideration<sup>101</sup>. They have worked for generations to tend to this land, to ensure that it is effectively drained, to ensure that the very best agricultural produce can be grown, and to ensure that the sustainability credentials of Malton as a town are improved through the recycling of green waste.<sup>102</sup> All of this leads to land of the highest quality. This scheme differs from others as it will have no continuing agricultural use. All those benefits will be lost if this appeal is granted.
- 10.7 Harmony and the freehold landowner will realise the benefits from this land at the expense of the Sturdy’s and the tenant of Willow Farm. The compensation offer is premised on theoretical figures rather than actual business losses.
- 10.8 Moreover, what is proposed will not sufficiently compensate the Sturdy family financially and will also cause significant disruption to their business in a multitude of non-financial ways: through taking important land out of production, causing them to need to buy in straw, taking away land that is critical to the green waste business, and depriving them of an opportunity to claim Sustainable Farming Incentive (SFI) (which requires land).
- 10.9 Importantly, it will also deprive them of a succession opportunity which they currently enjoy as tenants with a special form of protected tenancy under the AHA. The result of this is that their land and also their home are at risk, given that the latter forms part of the tenancy.
- 10.10 The appeal proposal is also unacceptable in several other material ways as it would be: alien and incongruous in the receiving landscape; be sited around the nationally significant windmill at Windmill Farm; have adverse consequences for Acomb House (through impact on the setting of importance to these local farmsteads, which were built contemporaneously and are to be best understood together<sup>103</sup>); have impacts on NDHAs and on the regionally important Eden Camp, a prisoner-of-war site which attracts hundreds of thousands of visitors per annum.
- 10.11 Overall, the proposed development is argued to be fundamentally different from many other solar projects across the UK, which the R6 Party understands have been granted permission for good reasons: to help the UK meet its climate mitigation goals. Responding to the main issues in turn:-
- i) *Principle of the development having regard to a) flood risk b) the loss of agricultural land for farming purposes inclusive of its grade*

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<sup>101</sup> Ms Caines XX.

<sup>102</sup> Note the Circular Malton initiative which was mentioned by Interested Parties on Day 1 of the inquiry.

<sup>103</sup> Ms Bell, in the Round Table Discussion.

- 10.12 Appropriately siting schemes is an important imperative recognised by national policy. Paragraph 165 of the NPPF expressly requires that development such as this be directed away from the areas at the highest risk. A sequential, risk-based approach to the location of development is required (see Paragraph 167). Particularly given that the majority of this development is within Flood Zone 3, that is, land which has the highest risk of flooding.
- 10.13 The initial approach to site selection is 300m from the PoC. During the inquiry, GC (a technical grid witness), employed by Harmony Energy produced a Technical Note,<sup>104</sup> which explained the approach that had been taken to the siting.<sup>105</sup> Therein, he explains that Harmony Energy takes a “*grid-led approach to searching for new developing projects*”<sup>106</sup>.
- 10.14 In GC’s Technical Note, he explains that this “grid-led approach” is typically coupled with a “planning review”. No witness before this inquiry was able to assist with what that planning review entailed and what factors were considered when siting this solar scheme where it is today.<sup>107</sup>
- 10.15 GC was keen to point out that there are three considerations when looking at the siting of a solar farm: grid availability, planning and land considerations.<sup>108</sup> He was of the view that the grid is the most important of those three factors, largely given the well-reported constraints on capacity. However, he agreed that all three can potentially imperil the delivery of a solar project.<sup>109</sup>

#### *The queue*

- 10.16 Blake Clough provided a note to assist the Inspector with the advice that they have been providing to the R6 Party (appended to the Proof of Mr Oliver Stones<sup>110</sup>). They have expertise in this field and are used by Harmony.<sup>111</sup> They refer to the Embedded Capacity Register (ECR) which explains which projects are waiting to connect at Malton Bulk Supply Point (BSP).
- 10.17 The ECR for the Malton BSP highlights a substantial number of projects that have already accepted connection offers to connect to the Malton BSP which would require a larger capacity than possible using the existing transformers at the Malton Grid<sup>112</sup>.
- 10.18 They also explain that there is currently 270MW of registered capacity awaiting connection to Malton BSP, with a current firm capacity availability of 82 MVA. And acknowledge that further reinforcement works to the BSP must be triggered to allow all these projects to connect as well.

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<sup>104</sup> CD7.6.

<sup>105</sup> CD7.3

<sup>106</sup> CD7.3, page 11.

<sup>107</sup> Mr Camplejohn and Ms Caines XX.

<sup>108</sup> Mr Camplejohn EiC

<sup>109</sup> Mr Camplejohn XX.

<sup>110</sup> CD9.27, Appendix 1

<sup>111</sup> Mr Camplejohn XX.

<sup>112</sup> CD9.27 – page 6 of Blake Clough Note, Appendix 1 of Stones evidence.

- 10.19 GC referred to the number of solar developers who are now operating in this local area: they are all noted on the ECR, which details which operators are waiting in line. It is a competitive marketplace.
- 10.20 Moreover, the ECR operates as a 'queue'. If Harmony do not take up that grid capacity, they will move further down the queue and will not be able to connect before 2033. But that would not stop another project from coming online sooner meeting need.

*Justifying the 300ms*

- 10.21 Site search has been defined according to the grid offer and the appellant's commercial terms, which they negotiated with NPg.<sup>113</sup> The land which is within the grid offer is that owned by the Fitzwilliam Trust Corporation (FTC).
- 10.22 Throughout the written and oral evidence, it was heard that it is not viable for Harmony to develop beyond a site which was adjacent to the PoC and, therefore, within the flood zone<sup>114</sup>. But that argument is entirely circular. It is because the site falls within that 300m (of the PoC) and it has a grid offer.
- 10.23 That is fundamentally different to a viability justification; that is a commercial justification because it will cost them less to connect. The two are very different. RC adduces evidence looking at the distance of other solar farms from the PoC.<sup>115</sup>
- 10.24 It demonstrates that some have been developed close to the PoC; but that may be because those are sites where the planning and land considerations to develop so close to the PoC are acceptable for those projects. The evidence<sup>116</sup> also shows that solar developers are developing up to 7.4km away from the PoC.<sup>117</sup>
- 10.25 There are a litany of other examples where it has been feasible to develop beyond such a constrained radius of 300m from the PoC. Indeed, that is the case in 27 out of the 31 examples put forward in the *Lichfields Distance from PoC- Commercial Scale Solar Installations Note*<sup>118</sup>.
- 10.26 The suggestion that it is not viable to develop beyond 300m is not an industry-wide standard. Instead, it is a commercial justification of this appellant. In other words, another operator could look at this BSP and consider that, on their commercial terms, they could develop further away from the BSP. The 300m is merely a Harmony-specific criterion.

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<sup>113</sup> Mr Camplejohn XX.

<sup>114</sup> See CD7.3, page 4.

<sup>115</sup> Cd9.3 – Distance from PoC- Commercial Scale Solar Installations, page 4.

<sup>116</sup> Ibid

<sup>117</sup> See CD9.33, see Tregonning Farm – Solar Farm & Battery Storage.

<sup>118</sup> CD9.33

- 10.27 In his XX, GC recognised that it would be technically feasible to develop beyond the redline of the grid offer. Anything is technically possible, he says<sup>119</sup> – it simply comes at a cost.
- 10.28 There is no evidence before the inquiry which properly explains how, or why, it would not be viable to develop slightly further away from the PoC. If that truly was a constraint, then one would only see sites coming forward immediately adjacent to PoCs. One would expect that to be the case, up and down the country. Whilst that might be Harmony’s approach, that is simply not the approach that is taken by others – which GC recognises<sup>120</sup>.
- 10.29 Perhaps unsurprisingly, that is not the case even in this district, as there are other operators promoting sites further afield – see Birdsall and Carr House Farm as two examples.
- 10.30 A commercial consideration provides no justification for developing so close to a PoC in the flood zone which is of highest risk and on a high proportion of Best and Most Versatile Agricultural Land (BMVAL), then whether a site is “reasonably available” will be driven by an applicant’s own commercial terms, rather than by a more objective standard. That cannot be a defensible approach to be taken to the acceptability of siting solar farms.
- 10.31 In short, the 300m is driven by commercial rather than viability considerations. That is no planning rationale for looking for a site so close to the substation, rather than any more objective standard. This must be rejected as an acceptable search area.
- 10.32 The 2.5km search area. The date of the NPg offer was the 14 October 2020. The first sequential test document authored by PWA was dated November 2022.<sup>121</sup> At the time of the NPg Offer, we cannot tell whether any of the relevant planning policies were considered.<sup>122</sup>
- 10.33 The earliest sequential test document available is 2 years after the initial agreement was signed. There is no evidence of whether flood zones for example were even considered when the grid offer was signed. Whether or not the sequential test properly addressed those important planning considerations prior to the grid offer being agreed is neither evidenced nor explained by the appellant.
- 10.34 In any event, the PWA document was not sufficiently robust, as Lichfields saw fit to undertake a separate Alternative Sites Assessment (prepared in April 2024). This was undertaken some four years after the grid offer had been secured<sup>123</sup>.

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<sup>119</sup> Mr Camplejohn XX

<sup>120</sup> Mr Camplejohn XX

<sup>121</sup> CD1.20 – Appendix C2, Sequential Test, November 2022.

<sup>122</sup> Mr Camplejohn agreed in XX.

<sup>123</sup> The Grid Offer was secured in 2019, the ASA was undertaken in April 2024 (CD7.1).

- 10.35 Again, that exercise is entirely circular because the grid offer for that site is used as a means of ruling out other sites which would otherwise be sequentially preferable. See below in relation to Site 3 by way of example.
- 10.36 *"Site 3 demonstrates a poor to moderate performance against the assessment criteria. The presence of overhead lines and farm buildings are physical constraints to development that would significantly hamper the ability to deliver an efficient scheme."*
- 10.37 GC's evidence is that all options are technically possible it is just that this is not such an efficient scheme in cost terms. When asked to consider Site 4(b), and the fact that *"cabling would be required to cross the A64"*<sup>124</sup>, that GC said it was technically feasible, but at an increased cost.
- 10.38 It is common ground that: all of the ASA should be read in line with the fact that there are no operational constraints; and all options are technically possible.
- 10.39 The difference is that the appellant says that they would not be *"viable"*, without any evidential basis, and what can be inferred from this is that it will simply cost the scheme more which may not meet the Harmony investment criteria.
- 10.40 Moreover, there is no further information about when a tipping point is reached at which a viable scheme becomes unviable from a commercial perspective. That is most surprising when, GC acknowledged, there were projects which Harmony has already built out. Implying such information is at his disposal<sup>125</sup>.
- 10.41 Moreover, the commercial considerations of this operator need not be shared in circumstances where GC conceded that there is a standard industry approach to how much it costs to build such schemes on a price per-megawatt basis<sup>126</sup>. Not even that information was forthcoming,<sup>127</sup> despite requests from the LPA dating back to August 2020. Viability and profitability are not the same – as GC put the point, "if it costs more, then the internal rate of return is reduced".<sup>128</sup> That is precisely the issue.
- 10.42 GC confirmed Harmony's practice is not to build more than 300m away from the PoC. But that does not mean that is the policy of other operators.<sup>129</sup> It also does not relate to the distance required for the solar panels.<sup>130</sup>
- 10.43 This illustrates an attempt to secure a development scheme on the most commercially favourable terms to the operator. Just because building closer to

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<sup>124</sup> CD7.1, page 33.

<sup>125</sup> He mentioned two sites in Durham and Selby.

<sup>126</sup> Mr Camplejohn XX.

<sup>127</sup> Mr Camplejohn XX.

<sup>128</sup> Mr Camplejohn agreed in XX.

<sup>129</sup> Mr Camplejohn agreed in XX.

<sup>130</sup> Mr Camplejohn XX.

a PoC costs less does not justify sitting in that location. Moreover, it does not mean that it is the same for other operators who may view the siting of solar farms more holistically, with proper consideration of sites which were further away if they perform better in planning terms. Harmony's approach does not justify how they ought to approach the sequential test.

*Land as one of the critical factors to delivery*

- 10.44 The Land Offer Agreement (LOA) in this case is constrained to FTC. Though having to stitch together a site from multiple landowners has been put forward as a constraint here, that is not an uncommon practice in solar developments, as GC fairly acknowledges.<sup>131</sup>
- 10.45 It is also fair to acknowledge that there has been no proper consideration of the Sturdys' interest in the land in this case. Mr Camplejohn indicated that he had been involved since November 2020, while Mr and Mrs Sturdy were not even notified of the scheme until after the LOA had been signed.
- 10.46 The Sturdy family have been nothing but an afterthought which should not be endorsed. This is surprising given that "land" availability has been put forward as being one of the critical components necessary to deliver a successful project. GC indicated that had had not really considered the Sturdy's land interest when looking at impacts on project delivery. But the reality is that their position does have the potential to imperil the project. That brings with it risk.

*Other developers in the area*

- 10.47 It is the case that the main constraint on renewables development coming forward is headroom in the grid.<sup>132</sup> If this scheme does not get permission, there are a host of developers waiting in the wings to eat up the capacity.<sup>133</sup>
- 10.48 As demonstrated on the ECR, there are other projects which were accepted to connect (as well as solar PV project that connected in 2015). Alongside Harmony's project, six projects were accepted to connect to Malton BSP; three either side of the appellant's.<sup>134</sup>
- 10.49 Both the *Birdsall Estate* and *Carr House Farm* are promoting sites which sit behind Harmony in the queue. There is no evidence at all that other sites such as *Carr House Farm*, *Salton*<sup>135</sup> or *Birdsall* will not come forward.

*The consequences of endorsing the Appellant's approach*

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<sup>131</sup> Mr Camplejohn XX

<sup>132</sup> This was what Mr Camplejohn explained in his EiC.

<sup>133</sup> As explored with Mr Camplejohn in XX.

<sup>134</sup> See CD9.27 – Appendix 3.

<sup>135</sup> Mr Camplejohn explained how this was a 55Mw Scheme and that if the Proposed development here did not come forward, then this would release capacity at Malton BSP.



- 10.50 The appellant's approach to this case has not been planning led. The ramifications of an Inspector and the SoS's endorsement of such an approach should not be understated.
- 10.51 First, it would indicate that it is acceptable to define by a developer's own commercial terms – an area outside which it is not viable to develop beyond 300m. GC even accepts that is only the commercial requirement of this developer and that is not a criteria which other developers have.
- 10.52 Second, and more worryingly, it would indicate that it is acceptable to restrict that ability to develop further beyond 300m from a PoC by reference to it being "unviable" to develop without any evidential basis to substantiate that assertion whatsoever.
- 10.53 Third, it would not require much work to demonstrate to the LPA, and even to the Inspector how and why it would not be viable to develop beyond 300m. In this case, the LPA has not asked for much to substantiate the position. Yet, nothing has been forthcoming. There are standard industry pricings<sup>136</sup> – even those have not been adduced. Moreover, other developers manage to develop further afield. Just because Harmony say that this does not accord with their commercial terms is no justification to find such a constrained search area to be acceptable.
- 10.54 Fourth, inquiries are evidence-based processes. The irony of the appellant's failure to produce even a shred of evidence to substantiate its viability position will not be lost on the Inspector. This is particularly so when Mr and Mrs Sturdy have felt the need to put extremely sensitive financial information in the public domain so that the inquiry can understand their view that the impacts on this rural business would be catastrophic.
- 10.55 Fifth, the appellant has repeatedly sought to justify this site, over any other, on the basis that there are technical constraints to developing beyond the redline boundary of the LOA. But that is to put the cart before the horse – it would enable developers to define a grid offer on their own terms and then rule out those sites as they are not reasonably available, based on their own, commercial criteria.
- 10.56 Put shortly, endorsing this approach taken by the appellant would send a deeply worrying message. It would, in effect, ratify an approach which says that the (i) the grid offer is decisive as to where schemes need to be located; (ii) it would indicate that it is acceptable, even where that grid offer has been negotiated on favourable commercial terms to the promoter of the site (iii) that other sites can be ruled out on the basis that it would not be "viable" based on a bare assertion alone and (iv) this is enough to rule out looking beyond those sites on the basis that they were not reasonably available.
- 10.57 Moreover, it would underscore that planning considerations are an afterthought and that it is acceptable to develop in any flood zone because unless there is a grid offer, the site would not be reasonably available. It

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<sup>136</sup> Mr Camplejohn XX.

would, in effect, indicate that developers have carte blanche to develop anywhere (even in Flood Zone 3 where there are other sites of a lower flood zone available) on the basis that a grid connection justifies the relevant location and the ability to build adjacent to the PoC.

*How does this Site perform against others identified by the appellant?*

- 10.58 The Lichfields ASA explains that there are other sites, ASA3, 5, 6, 7, and 8, which all perform better than the appeal site in terms of both flooding and BMVAL.<sup>137</sup> These are sites within the 2.5km radius.
- 10.59 However, they have been ruled out on the basis that they “are often closer to more heritage assets and are more visible from key roads and residential properties/areas, closer to the AONB, SSSI or located on protected land or undeveloped land and thus not considered to be preferable to the Appeal Site”.<sup>138</sup> This analysis does not withstand scrutiny.

*More visible from key roads*

- 10.60 This assertion is made in the ASA without relying upon the expertise of any landscape architect.<sup>139</sup> There are clearly several PRoWs which would be affected as part of the Proposed Development. This would include the users of the main Malton to Pickering cycle route, which has received significant public investment. As Mr Ingham accepted, those users are more sensitive than those who use public roads given that the footpath/bridleway users are recreational users. Road users, by comparison, could be driving those routes at 60-70mph, paying limited attention to what is around them.
- 10.61 If the “key roads” referred to are the A64, Mr Ingham agrees that there are hedgerows on both sides of the road.<sup>140</sup> It is heavily vegetated, and the Inspector will see that for himself. As to the A169, this too is a public road with no public footpaths alongside it.<sup>141</sup>
- 10.62 It is a screened road and that the alternative sites put forward by Mr Stones along this route can be nestled within the parcel so as not to be visible from those main A-Roads, particularly with similar mitigation. Given the sensitivity of the PRoW users (cutting through the appeal site), it is hard to imagine that an alternative would be less harmful. The approach taken to assessing impacts on PRoW users is also flawed. Take ASA 8 as an example; that is a huge tract of land which is double the size of the appeal land.<sup>142</sup>
- 10.63 Within it, there will be PRoWs, but given the size of that parcel, a design could be conceived to mitigate away any effect. However, only two PRoWs are within that area (see CD7.1, page 40), as one can see from the green lines traversing

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<sup>137</sup> CD7.1 – see page 42 in the conclusion.

<sup>138</sup> Ibid.

<sup>139</sup> Ms Caines XX.

<sup>140</sup> Mr Ingham XX.

<sup>141</sup> Mr Ingham XX.

<sup>142</sup> Ms Caines XX.

the whole parcel.<sup>143</sup> Given the size of that parcel, it will not all be affected, which Ms. Caines fairly conceded.

*Closer to the AONB*

- 10.64 The second suggestion is that sites have been ruled out based on proximity to the AONB. But that assertion is not supported by the analysis in Lichfields' own document<sup>144</sup>.
- 10.65 RC accepted that each and every site that has been put forward in the ASA performs better in the Zone of Theoretical Visibility ("ZTV") analysis than the Appeal Site does in terms of its visibility from the AONB<sup>145</sup>. Proximity to the AONB is, therefore, no good reason for ruling out other sites when, based on the ZTV. The appeal site performs worst in terms of visibility to the AONB of them all.

*The defective ASA*

- 10.66 Without going through every site in the ASA, the overall approach taken by the appellant to ruling out sites is fundamentally flawed.
- 10.67 First, ASA8. A land parcel of approximately 118.8ha (over double the size of the appeal site) is predominantly located within Flood Zone 1, making it considerably more preferable.
- 10.68 It is stated that Priorpot Beck River runs through the parcel and that connection from this location would be required to cross a railway and a road. However, ASA8 is a huge tract of land. GC agrees that it would be technically possible to connect to land by crossing roads, railways, and rivers.<sup>146</sup> The only means by which it is ruled out is that it would render the scheme unviable. No evidence at all is provided to substantiate this assertion.<sup>147</sup>
- 10.69 It is said that the ZTV mapping indicates that a development would be theoretically visible predominantly from the South and East. This is not theoretically visible from the AONB.<sup>148</sup> There is said to be low hedgerows on Scarborough Road. Still, Scarborough Road is an industrial part of an established employment area as recognised in the RLPS Policies Map<sup>149</sup>.
- 10.70 This includes large-scale buildings along that road, including the "*Malton Bacon Factory*" (also known as Sofina Malton) (a large, very substantial industrial pig abattoir and processing building), a large pastry company's industrial building and a mix of other industrial buildings. A large housing allocation is proposed

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<sup>143</sup> See CD7.1 Appendix 6, ASA 8, page 144.

<sup>144</sup> CD7.1 see ZTV Mapping at Appendix 6.

<sup>145</sup> ASA Sites, ZTV Appendix 6.

<sup>146</sup> Mr Camplejohn XX.

<sup>147</sup> CD7.1, page 40

<sup>148</sup> See CD7.1 page 38.

<sup>149</sup> CD4.3.

on the western end of the area.<sup>150</sup> This is not a sensitive location for development given other uses to be developed or promoted.

- 10.71 Heritage assets are named as a constraint including a Roman Road and a Grade II listed building. Yet, there is no reason why a development could not be located away from those assets. In any event, there are fewer assets than there are on the appeal site having regard to a Grade II listed Windmill, impacts on Acomb house (Grade II) and impacts on non-designated assets, (Eden House, Eden Farm, as well as Eden Camp).
- 10.72 Looking to ASA 3 of 108.4ha in size. It is also almost all within Flood Zone 1.
- 10.73 There are noted to be several individual farms. However, as Mr Stones demonstrates, these are all held by one landowner, the Archbishop Holgate Trust, who indicated their interest in accommodating the proposal November 2021<sup>151</sup>. As Mr Camplejohn fairly indicated, land assembly for solar schemes with more than one landowner is not uncommon.<sup>152</sup>
- 10.74 There are said to be overhead lines. As accepted by RC, these do not provide a real barrier to delivery of the scheme;<sup>153</sup> they just require a 6-7m stand-off distance<sup>154</sup> which could be incorporated within the scheme design.
- 10.75 Regarding operational constraints, there is a dip away from the southwestern side. However, thereafter, it is generally flat. See Viewpoints 2 and 6 provided by the R6 Party.
- 10.76 'Site 3' is noted to be "*some distance*" from the PoC. It would still be relatively close and would be required to run adjacent to the A64 or along farm tracks. It is very likely that this would be a soft dig only. Again, Mr Camplejohn notes that everything is technically possible, and there is no evidence at all to suggest that this would not be financially viable.
- 10.77 Finally, the parcel is said to be adjacent to the AONB<sup>155</sup> described as a "*key constraint*".<sup>156</sup> However, the parcel has been drawn very large. It did not need

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<sup>150</sup> As agreed with Caines in XX – by reference to CD4.3 – see the red hatched area which is a large housing allocation and the blue area which is the existing employment land

<sup>151</sup> As set out in Mr Stones' Proof at Paragraph 6.30 "The Archbishop Holgate Trust ("AHT") own land to the west of Malton BSP within the 2.5 km Search Area as shown on the plan at Appendix 4. I wrote (via email) to the agent for FTC and the Appellant in November 2021 noting, inter-alia, that following a discussion with their agent the AHT would consider their land as an alternative site for the proposed development. A copy of this email is enclosed at Appendix 7. Only part of the AHT land has been included in the ASA (Alternative Site 3), with the remainder discounted as it is within a similar Flood Zone as the Appeal Site notwithstanding that it may be more preferable based on other planning considerations." Appendix 7 - at page 37 – where it is stated

<sup>152</sup> Mr Camplejohn XX.

<sup>153</sup> Ms Caines XX.

<sup>154</sup> CD7.1 – page 30, Ms Caines XX.

<sup>155</sup> Note that the ASA says that it is the eastern boundary, which is adjacent to the AONB, however, that is not correct, it is the western boundary of this Alternative.

<sup>156</sup> Paragraph 5.10 of CD7.1.

to join the AONB and it is not necessary to have an array close to the AONB boundary due to the size of the tract of land. In any event, as the ZTVs demonstrate, the site is less visible from the AONB, than the appeal site would be,<sup>157</sup> and Mr Ingham agrees that this would be viewed in a wide, panoramic vista from Viewpoint 6 put forward by the appellant.<sup>158</sup> It would take up only a small proportion of that view if it was visible at all. In summary, the appellant's dismissal of this site is not supported by the appellant's ZTVs.

10.78 When tested, RC stated that she "*did not disagree that this was a preferable site*". Thus, it is unsurprising that the R6 Party has maintained throughout this process (from 15 November 2021 onwards) that this tract of land would have been preferable (as per the email of Mr Stones to Charles Hardcastle, the agent acting for the FTC that this was the case).<sup>159</sup>

10.79 None of the appellant's witnesses appear to have looked at or critically evaluated the sites put forward as alternatives by Mr Stones.<sup>160</sup>

10.80 Sites to the north of the appeal land move away from any kind of visual sensitivity from the AONB in the Southwest. Out to the northeast (the blue and red parcels), sites would be located away from footpaths and bridleways which one would associate with recreational users.<sup>161</sup>

10.81 To the extent that road users move along the A169 (shown between the yellow and blue parcels above), the Proposed Development could be located away from the roadside, given that the parcels are sufficiently large, and there would be no PRoW users, as Mr Ingham acknowledged.

10.82 Second, there are established, mature hedges at either side of the A169, which constrain views eastwards and westwards into the adjoining land.

*Avoiding Best and Most Versatile Agricultural Land - policy tests*

10.83 In the last few years, food security has risen up the political agenda, with global events jeopardising food production. Ukraine, COVID-19, and Climate Change have all brought uncertainty around the resilience of supply chains and the UK's ability to source food. It is an issue of national and local importance.

10.84 BMVAL is crucial in terms of food security as it is the most flexible land and allows farmers to grow a wide range of crops, changing markets and climate conditions. Whilst climate change may pose the biggest risk to farmland, it does not follow that land that is capable of flexibly producing a range of agricultural produce be taken of production.

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<sup>157</sup> Caines XX.

<sup>158</sup> Ingham XX.

<sup>159</sup> Mr Stones, Appendix 7.

<sup>160</sup> As explored with Mr Ingham, Mr Kernon and Ms Caines in XX.

<sup>161</sup> See the absence of green lines on the plan –in CD7.1, page 136, Appendix 6 where there is a lack of PRoWs out to the East of the Appeal Site.

- 10.85 BMVAL is the better-yielding land, so the loss disproportionately impacts food production and the range of crops that can be grown. Paragraph 180(b) of the NPPF requires that the economic and other benefits from the best and most versatile agricultural land be recognised.
- 10.86 The Written Ministerial Statement (WMS) on Solar and Protecting our Food Security and Best and Most Versatile Agricultural Land<sup>162</sup> requires that due weight be given to the proposed use of BMVAL when considering whether planning consent should be granted for solar developments. It then goes on to expressly state how *"for applicants the highest quality agricultural land is least appropriate for solar development"* (emphasis added)<sup>163</sup>. It goes on to state that as the land grade increases, there is a greater onus on developers to show how the use of higher-quality land is necessary.<sup>164</sup> That is an evidential burden the appellant simply has not discharged.
- 10.87 There is also an emphasis on the protection of agricultural land at the local level. SP17 brings an emphasis to protecting air quality, land, and water resources. It states that land resources will be protected by prioritising the use of previously developed land and protecting the BMVAL from irreversible loss. It then goes on to state that *"Proposals for major development coming forward on sites that are not allocated for development which would result in the loss of the BMVAL will be resisted unless it can be demonstrated that the use proposed cannot be located elsewhere and that the need for the development outweighs the loss of the resource."*
- 10.88 The R6 Party support the approach taken by Mr Wood for the NYC in relation to the interpretation of SP17. *"Irreversible loss"* is referenced in relation to the protection of the land. However, later in the policy, it refers<sup>165</sup> only to *"loss"* where major development is coming forward. That can be assumed to be deliberate.
- 10.89 If this was only a policy which was going to be engaged where that loss was going to be *"irreversible"*, the draughtsman could have used that term consistently throughout. To suggest that this policy is only engaged where there is irreversible loss is to read words into the sentence that are not there.
- 10.90 The extent of non-agricultural land included Mr Franklin sets out that he does not dispute the actual gradings of the land put forward by the appellant but does have some reservations about the exact extent of *"non-agricultural land"* put forward as part of that assessment.
- 10.91 The difference between Mr Franklin and Mr Kernon relates to the overall proportion of the appeal site which is BMV owing to the amount of non-agricultural land which is referred to in Table 1 of ES Appendix 8.1 Soils and Agricultural Report<sup>166</sup>.

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<sup>162</sup> CD8.11, 15 May 2024.

<sup>163</sup> CD8.11

<sup>164</sup> Ibid.

<sup>165</sup> See SP17, second sentence in CD4.1.

<sup>166</sup> Prepared by Land Research Associates dated October 2022 – page 8.

- 10.92 That survey was undertaken on a larger part of the FTC estate land than the appeal site alone. Mr Franklin considered that it is likely that the amount put forward includes farmsteads that no longer form part of the red line boundary of the appeal site. This is because the extent of "Non Agricultural" land mentioned as being included within the assessment work "includes Eden Farm, a number of roads (Edenhouse Road, Borough Mere Lane and Fenton Lane), farm tracks drainage ditches/hedges and a small woodland".<sup>167</sup>
- 10.93 Eden Farm is plainly not part of the redline boundary for the appeal development but appears to have been included as part of the "non-agricultural" land assessed. If that is the case, the effect of the amount of BMV that would appear to form part of the site would be diluted (given that it is presented as a % of the whole area surveyed). If one rules out the non-agricultural land surveyed (given the debate between the parties on this point), the percentage of BMV of the agricultural land will likely be closer to 62%.

*The grading of the agricultural land*

- 10.94 The actual findings of the ALC Report are that there is a high percentage of BMV; the largest single proportion is Grade 2, but there is also Grade 1 land, as well as Grade 3a land– at twice the amount compared to the national average and in a district where Mr Kernon states there is no Grade 1.<sup>168</sup>
- 10.95 The Ministry for Agriculture Food and Fisheries (MAFF) guidelines define the meaning and importance of Grade. Grade 1 means that the land can produce above-average yields, with Grade 2 also being high-yielding, productive land. This land can consistently produce above average yields. Grade 1 land can also grow many crops, and it has few to no limitations on its use. It may include the growth of fruit and winter vegetables.
- 10.96 There is also Grade 3a Land (at least 15%), and even the lowest quality of the land (Grade 3b) is described as moderate. None of this land is poor quality.<sup>169</sup> Ryedale does have a substantial proportion of BMVL<sup>170</sup>. However, the district also has a great variability of agricultural land. The land which is the subject of this application is obviously land of the highest quality, producing high-quality cereals, containing Grade 1 land (which is not found in Ryedale based on the mapping), which means that it is in the order of the highest grade land in the whole district.<sup>171</sup>
- 10.97 Nationally, there is only about 3% Grade 1 land, whilst on this site, there is 6% Grade 1 land: twice the national average. This is particularly significant in a district considered to have no Grade 1 land showing on the ALC Land Grade

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<sup>167</sup> Paragraph 3.10, of ES Appendix 8.1 Soils and Agricultural Report prepared by Land Research Associates dated 3 October 2022, page 8.

<sup>168</sup> Kernon Proof paragraph 9.24 Table 5.

<sup>169</sup> See CD10.1 and quoted in the Proof of Mr Franklin at Paragraph 5.3.

<sup>170</sup> Mr Franklin Paragraph 5.5

<sup>171</sup> CD 5.9

Plans. Similarly, nationally, Grades 1 and 2 land amounts to 21% of agricultural land in England and Wales – here, Grade 2 adds up to 42%.

10.98 On this basis, arguably, this is one of the worst possible sites in Ryedale on which to develop a solar scheme, as it is some of the best quality land.<sup>172</sup> It is also helpful to compare and contrast this with recent applications for Nationally Significant Infrastructure Schemes (NSIPs) for solar schemes recently promoted, including Mallard Pass.<sup>173</sup> There are other NSIP schemes which are plainly larger in scale and yet can be developed on land with a much lower percentage of BMV land than this, and with no Grade 1 land.<sup>174</sup>

10.99 The suggestion that there is a considerable amount of BMV land in Ryedale should not dilute its importance. It should magnify the importance of this land as one which is for producing food in this locality. Land Grade is ultimately a national consideration and given that there is so little of Grade 1 and 2 land nationally, that magnify its importance.

### *Drainage*

10.100 It is likely that part of the reason that this land has been so successful in maintaining its very high to excellent grade is because it is well drained.<sup>175</sup>

10.101 Drainage is fundamentally important to maintaining Grade; poor drainage is one of the reasons that land is downgraded<sup>176</sup>. This is because soil wetness will mean that access to farm machinery is limited in winter and spring in most years, which, in turn, restricts the land to autumn-grown cereal-based rotations.

10.102 The efficacy of the drainage on this land is, in no small part, attributable to the efforts of Mr Sturdy and his late father, who inputted drainage channels and under-drainage on the site to allow water to drain away from the land. This is in an area with a high water table. The result of effective drainage is that the moisture content of the soil is controlled, and the quality of the soil is sufficiently maintained.

10.103 Both soil compaction and damage to drains would damage the grade of the soil.<sup>177</sup> There is very real reason to be concerned about the impact on the soils and their short-, medium- and long term future as a direct result of this Proposed Development.

10.104 The drains sit 0.4m-0.8m below the surface. The standing poles supporting the solar panels will be inserted to a depth of 1m. They will be inserted into the soil, deeper than the drains. Not only will they sit deeper, but

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<sup>172</sup> Mr Franklin EiC.

<sup>173</sup> Mr Franklin EiC.

<sup>174</sup> Mr Franklin EiC.

<sup>175</sup> See discussion on the importance of drainage in Mr Franklin's Proof from paragraph 5.9.

<sup>176</sup> See for example, paragraph 3.9 of the ES Appendix 8.1 Soils and Agricultural Report prepared by Land Research Associates dated October 2022, page 8.

<sup>177</sup> As discussed with Mr Kernon in XX.



there will be tens of thousands of poles inserted into the land for 1m for the lifetime of the scheme.

- 10.105 There is no indication that these will not pierce or break the shallower drains. Mr Kernon (who could not assist with how deep the drains were as he had not been able to survey them), said in XX that it would be dealt with in the Soil Management Plan.
- 10.106 But the Soil Management Plan currently makes no such provision for what would happen in such an event of drain damage and there is no obligation to remedy on decommissioning of the site.<sup>178</sup> Whilst there may be every intention to fix drains pre-and post-construction, the ability to effectively fix drains is severely doubted when the site is covered in solar panels. Moreover, if the drains are not fixed until decommissioning, then there will be many years over which that effective drainage system will likely affect agricultural land quality.
- 10.107 When confronted with the likelihood of drainage issues being fixed with a solar farm *in situ*, even Mr Kernon recognises that systemic drainage could not be fixed (they would only be able to fix localised issues<sup>179</sup>). That would not adequately resolve the issues raised.
- 10.108 With a high water table, failure to control drainage will mean that there may be standing water issues. This would likely cause a knock-on reduction in land Grade. For evidence of what solar schemes with problems with standing water look like, one only has to look to the evidence of Mr Franklin<sup>180</sup>.
- 10.109 It is clear that pooling water poses risks in this case. Over a 40-year period, it has the very real prospect of degrading the soil resource. That matters because a failure to protect the drains would be a failure to protect the soils, risking BMVAL quality and the 'soil resource' in RLPS Policy SP17.

#### *Decommissioning*

- 10.110 There is no decommissioning plan before the Inspector or the SoS. As Mr Kernon explained, the cabling could be left in situ upon decommissioning.<sup>181</sup> This may have ongoing impacts on the use of the agricultural land and the soil quality and structure.
- 10.111 Mr Kernon was not willing to accept that there was a risk of contaminants in the cables. However, there is a risk with the inclusion of cables with metal and plastic components. The extent to which Mr Kernon can confidently say that there will be no negative impacts on the soil resource is,

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<sup>178</sup> Note firstly the fact that the Soil Management Plan recognises that drainage is unlikely which the R6 disagrees with, and that the technical details of the drainage system design are "*beyond the scope of this report*".

<sup>179</sup> Mr Kernon XX.

<sup>180</sup> CD9.29, Rule 6 Proof of Evidence, Appendices of Mr Franklin from page 25 onwards.

<sup>181</sup> Mr Kernon XX.

therefore, very severely doubted. At this stage, he does not know what the plan for cabling will be.

*The lack of continued agricultural use*

10.112 Finally, not only does this scheme take some of the best agricultural land in Ryedale out of production for the full range of potential uses of BMVAL. This is a case where there will be no form of continued agricultural use whatsoever.

10.113 One can contrast this case with those where agricultural use of the land can be maintained (as it can in many solar schemes) through, for example, sheep grazing. In this case, we know that any agricultural use of the site will be ceased for the Landlord to be able to pursue a Notice to Quit on the tenants. There cannot and will not be continued agricultural use of this land if the planning permission is implemented.

10.114 Therefore, not only will BMVAL not be to the best of its potential for growing a variety of crops, but there will also be no realisation of the co-benefit of energy and agricultural use on the same piece of land, which has now become commonplace on solar schemes. The agricultural use will be entirely lost for a period of 40 years.

10.115 The period of 40 years is not temporary to Mr Sturdy. If granted, the agricultural land will be permanently removed from his Agricultural Tenancy.

10.116 In summary, the appellant has failed to demonstrate that this site is sequentially preferable to other sites in the locality—on that basis alone, planning permission should be refused. It has also failed to demonstrate that it has avoided BMVAL and that, in any event, the resource will be protected. The Proposed Development poses a very real risk to this important agricultural land resource.

*ii) Existing rural business impact*

10.117 It is common ground that it is the actual figures, rather than the forecasts put forward by the appellant, which should be used to inform the losses which are to be projected.<sup>182</sup>

10.118 The appellant put forward Vickers & Barrass (V&B) figures based on projections from the John Nix Pocketbook. But is limited. It is biased towards the southeast of the country and does not take account of soil/topography, local climate factors, skills, or resources.<sup>183</sup> It also does not consider soils.

10.119 By contrast, the R6 Party put forward the actual accounts from the farm through the Numbers Business, the farm's accountant. A detailed Profit and Loss Table (which was the working table used by the accountants) contained substantial detail on what was going to be lost. There was then a Summary

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<sup>182</sup> Mr Kernon XX.

<sup>183</sup> Mr Kernon XX.

Table adduced by the Numbers Business put forward as part of Mr Franklin's Rebuttal, which summarised the differences between the V&B figures and their own.<sup>184</sup> Not only are the V&B figures based on estimates rather than the real farm results, but they are also based on a flawed assumptions including:-

- a. V&B assume a narrow crop rotation of Oil Seed Rape, Winter Wheat, and Winter Barley (denoted as OSR, WW and WB) carried forward for two years. Mr Sturdy runs a rotation of crops, and it would be unsustainable and ill-advised to plant, for example, OSR year after year. The failure to recognise that crops are rotated means that the anticipated impacts on profitability are calculated on an incorrect premise.
- b. V&B start with an arable income of £203,000 as a starting point – one can see from the P&L charts put forward by the Numbers Business that this far exceeds the trading income which has actually been experienced at Eden Farm, even accounting for inflation in the price of commodities owing to the impacts of Ukraine.<sup>185</sup>
- c. Wrong assumptions underpinning the impacts on the cattle business. Mr Kernon assumed that there were only 20 cattle. However, there are 97 cattle) and there have been up to 110 in the past. Furthermore, V&B have not assumed that straw is used for bedding and feed (winter wheat straw for the former, barley straw for the latter). It has also been assumed that the cattle are only "overwintered",<sup>186</sup> rather than largely kept in all year around as they are here.
- d. Because of incorrect assumptions in the cattle business there is inaccurate assumption over which the manure from the cattle-rearing enterprise would need to be spread and assumptions how 'green waste' could be mixed and applied to land. The primary implication being there would be insufficient land because of taking this critical land area out of the farming enterprise.
- e. Finally, the fixed costs relied upon have been reduced by almost a third.<sup>187</sup> These would not be reduced by much – they are costs which are "fixed". Whilst there might be minor variations, those certainly would not be to the order of magnitude of a third reduction.

10.120 Mr Kernon seems to assume that Mr Sturdy could overcome some of these issues by buying crops or using a "muck for straw" arrangement where a farmer exchanges one commodity for another with another farmer. Not only do these shortages tend to prevail through the industry where there is a particular stress on one crop (for example, the availability of straw), and so we do not know whether this would be possible, it also significantly heightens the risk of cross-contamination of weed seeds, including from for example blackgrass.<sup>188</sup>

10.121 Put simply, the V&B figures put forward by the appellant cannot be relied upon, as agreed by Mr Kernon (he said that he was "*parking the V&B figures*" and relying on the R6 Party's) one can assume for the reasons

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<sup>184</sup> See CD9.38, Appendix 1.

<sup>185</sup> See discussion of this at CD9.38, Appendix 1, page 3 bullet point 1.

<sup>186</sup> See discussion of this at CD9.38, Appendix 1, page 3 bullet point 6.

<sup>187</sup> See discussion of this at CD9.38, Appendix 1, page 3 bullet point 9.

<sup>188</sup> Mr Franklin EIC.

highlighted (incorrect crop selection and proportion; livestock understated; straw not correctly calculated, fixed costs hugely understated).

- 10.122 V&B figures calculate that between 12 and 16 tonnes of straw are needed. They based their calculations on 20 head, only for winter bedding, and 0.6-0.8 tonnes per head. The actual requirement would be between 203 and 223 tonnes, based on 97 head, with year-round bedding and feed straw. The land remaining after the solar development would not be enough to produce this much straw, based on a 5-crop rotation. The shortfall would have to be bought in, at a cost of up to £9600 (estimated in the forecast at £8500).
- 10.123 V&B figures advanced by the appellant, even though the absolute ££ values are considerably out of line with what the actual figures say, they do still support there being a huge financial impact on the farm: 69% for one year and 88% for the other year (profit reduction).
- 10.124 All the figures (both the Numbers Business and V&B) show a range of financial impacts, which is to be expected as there is no 'crystal ball' to say definitively what the future financial results are going to be - as stated by Mr Kernon - no one can predict the weather, for example. So, a minimum-maximum range is a sensible approach.
- 10.125 On any analysis, there will undoubtedly be a significant impact on the Sturdy's business. V&B say that this will be between £12,000 and £16,000 net profit reduction per annum (however, all parties now agree that this is not reliable). The Numbers Business figures (based on actual figures) indicate that the impacts will be between £25,000 and £37,000 per annum. All parties' evidence shows a significant reduction in profit because of the solar project. The final figures to be agreed should only be calculated based upon actual figures, and a sensible approach to forecasting the realistic income and costs.
- 10.126 The Summary Tables produced by the Numbers Business (Table 1<sup>189</sup>) show the actual 3-year average, the actual 5-year average, the V&B projection, and the realistic forecast. This links directly back to the full P&L detail page – the forecast on the right-hand side is the forecast based on 5 years, as used in the summary table. The solar impact is between this, and the actual averages as shown in the table. Mr Kernon was comparing this to the figures on the P&L page, which compare the forecast to adjusted figures rather than the actual figures in the table.
- 10.127 Table 2 was an exercise to challenge the figures and see if there was any similarity in those presented by the appellant.<sup>190</sup> This was on the assumption that the methodology used by V&B was used but corrected the assumptions on which they were operating (including for crop selection, fixed costs and so on). This exercise resulted in the approach being broadly in line with the figures produced by the R6, at a loss of £34,285.<sup>191</sup>

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<sup>189</sup> Now updated to be CD10.10.20 – this included a figure which was corrected, and which was accepted to the inquiry.

<sup>190</sup> See discussion of this at CD9.38, Appendix 1, Table 2.

<sup>191</sup> See discussion of this at CD9.38, Appendix 1, Page 5.

10.128 Table 3 summarises all the financial impacts from each of the three calculation methods. Finally, the financial information shared by the R6 Party has been extremely detailed. It is not fair for the appellant to criticise the R6 Party for these figures. They have comprehensively sought to show the drastic impacts that the scheme will have on this rural business. That can be compared with the position in CD6.13, the Washford decision, where an Inspector was asked to consider the personal circumstances of the tenant farmers but without any detailed information. Unlike the situation in this case.<sup>192</sup>

10.129 The “offer” put forward by the landowner (and summarised in Mr Kernon’s Proof at Paragraph 8.33), does not come close to properly compensating the R6 Party. Had the offer been a fair offer (which reflected the true losses), then Mr and Mrs Sturdy would be unlikely to have put themselves through four years of strain.

10.130 Please note that this is now updated to be CD10.10.20 – this included a figure which was corrected, and which was accepted to the inquiry. The “Offer” has a litany of issues:<sup>193</sup>

- a. First, statutory compensation does not reflect the actual losses of the appellant. As Mr Dunn, the Chairman of the Tenant Farmers Association (TFA) explained on Day 1, this has recently come under scrutiny from the Rock Review commissioned by the Department for Environment, Food and Rural Affairs, given that it is based upon historic legislation which is being reviewed.<sup>194</sup> The total compensation being offered fell short of what was expected by Mr Dunn, the Chair of the TFA. Mr Kernon accepted that this operated as of statute and that it was outdated. It does not reflect the losses.
- b. Second, it does not reflect the loss of opportunity for Mrs Sturdy or the children to succeed. Whilst succession is not guaranteed, it is an opportunity for the next generation to continue with the protected agricultural tenancy for the next 75 years. Farming is generally a generational business, as demonstrated by Mr Sturdy’s succession to the tenancy.
- c. Third, it does not recognise the sunken costs that Mr Sturdy has borne in the business, including making substantial capital investments on the basis that he would be able to use the farm over time and over the land that was included in the tenancy—the grain store and the drainage are two examples of such investments. The Statutory compensation does not cover these items because they have either been written off by the Landlord or the Landlord did not provide consent for them to be treated as an improvement under the Statute.

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<sup>192</sup> As acknowledged by Ms Caines XX.

<sup>193</sup> See Mr Kernon paragraph 8.33

<sup>194</sup> Mr Dunn, Chair of the TFA who spoke on Day 1 as an Interested Party.

- d. Fourth, it would cause very significant disruption to the business given the way in which the land is inextricably linked with the wider business (straw for cattle, manure for the land, and given that it is essential to the success of the Green Waste business). It is the “hub in the wheel” . Without this land, everything is made considerably more difficult.<sup>195</sup>
- e. Fifth, the “offer” is tied to the operation of the solar farm. It may be that permission is granted, Notice to Quit is served, and then the solar farm is not built out and does not become operational. Mr Sturdy has direct experience of having had land released from the tenancy for the building of the livestock market, which later was not built. If the same thing were to happen with the solar farm, there would be no benefit to Mr Sturdy at all, and the land would be lost to him.
- f. Sixth, in the context of the Basic Payment Scheme (BPS) being phased out (which the R6 Party accept is not attributable to Harmony), the phasing in of Sustainable Farming Incentive (SFI) requires that works be undertaken on land, to recoup benefits and offset the impacts of losing BPS. As the Inspector will see, this has been an important part of stabilising the farm business to date. However, participation in the SFI requires access to land. Therefore, not only will Sturdys be left with the reduction in land holding and the removal of BPS, but they will also be in a position of double jeopardy where they will also be deprived of an opportunity to participate in the SFI Scheme. That loss is directly attributable to the appellant, given that the land is taken away.
- g. Finally, nowhere has the appellant sought to address the issue raised by Mr Franklin and Mr Stones about the considerable taxation implications—that Mr and Mrs Sturdy may be liable for a tax sum that far exceeds what they were being paid in year one. This would cause them great difficulty indeed.

10.131 To the extent that short-term improvements and freedom to agree market value (as part of the AHA regime) are relied upon, these also do not mitigate the loss. Short-term improvements are limited to items such as the application of manure, fertiliser, etc., for which the outgoing tenant has already incurred a cost but will not derive full benefit. These do not compensate for all the costs referenced and are negligible in the scheme of the overall impact of losing the land.

10.132 The appellant has said repeatedly that the “*negotiations*” remain open. The R6 Party replied to the offer set out at Mr Kernon’s paragraph 8.33 but received no reply. During the inquiry, an 11th-hour offer was referenced in Mr Kernon’s EIC, as a result of Mr Stones’ evidence.

10.133 To be clear, the appellant’s 11<sup>th</sup> hour offer does not address the R6 Party’s concerns as set out or in the evidence of Mr Stones. Many of the issues go unresolved, and there is no legal certainty about what is being offered whatsoever (it is far from a contractual offer as Mr Kernon implied); the offer could be revoked at any point.

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<sup>195</sup> Mr Franklin EIC.

10.134 Drawing all points together, the proposal severely jeopardises the R6 Party's business. Not only does it have drastic financial consequences (estimated to be up to £37,000 per annum), it also brings other forms of harm which the business is expected to bear, with little to no benefit offered to them.

*iii) Heritage impacts*

10.135 The appeal site sits almost adjacent to a Windmill which is a nationally important heritage asset (at Windmill Farm). There is an open aspect farmyard around the asset.

10.136 As Ms. Bell explains, very few windmills which survive in such a complete form, with the mechanical apparatus intact.<sup>196</sup> This helps give the building evidential value and makes a strong contribution towards its significance. It is a rare building type, which has survived in the local landscape.

10.137 Ms Bell explains how, in 1805 there was a very substantial scheme of works which characterised the agricultural revolution. Later, in the 19<sup>th</sup> century, the area experienced enclosure and land drainage, which, since then, has given it an ongoing historical relationship.

10.138 The Windmill is still recognised in its immediate setting and context, within an agricultural, arable landscape which is so important to understanding the significance of this building as it was used to process the grain produced in the surrounding landscape.

10.139 The appellant's heritage witness, Ms Bage agrees to a large degree with Ms Bell that the wider setting is important in understanding this asset.<sup>197</sup> However, she draws out the building and its surviving testimony as being important; and the immediate farmyard context.

10.140 The windmill should be understood in the context of the agricultural fields which were fundamental to its operation. The farmyard around it does little to aid that understanding as its function was related to the production of grain beyond the farmyard curtilage.

10.141 Ms Bell explains how the agrarian landscape will be very much altered through the Appeal Scheme; the change in the land use and the creation of huge barriers within that landscape will sever our understanding of the windmill within that context. In the Wolds Heritage Consultancy Report<sup>198</sup> one can see how the application site is shown with a field of corn. Ms Bell explains how that aids one's understanding of the history and special interest of this building and, therefore, its significance as a windmill.

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<sup>196</sup> Ms Bell RTD.

<sup>197</sup> Ms Bage RTD.

<sup>198</sup> CD9.30 – page 5.

- 10.142 To take away that context may result in confusion. Instead of this being a windmill, it may be confused with, for example, a windpump.<sup>199</sup> It is precisely its landscape setting which makes it legible as a windmill. The solar farm would provide a radical change to the setting and context of the windmill; this would be an “*industrialisation*” which would radically alter the 19th-century character.
- 10.143 The farmstead, which sits around the windmill, does not effectively screen it from the solar farm. The panels, as well as the vegetation to be proposed as part of the landscaping plan (with hedges up to 4m tall), would mean the intervisibility with Acomb House (again, part of the way that the windmill would be understood with the contemporaneous farmsteads around it). Ms Bell considers that the level of impact would be anticipated to medium-high on its setting and therefore between moderate and major impact on the significance of the asset.
- 10.144 Acomb House is also Grade II listed. This has a high significance<sup>200</sup> derived from the fact that was part of the Fitzwilliam Estate. It conforms to the regional character and form of farmsteads. Plainly, the fields around it are essential to its understanding of being a farmhouse. The panels will harm that setting, causing a low to moderate level of less than substantial harm. They will erode that intervisibility with Windmill Farm, too, and the landscaping does not mitigate the impacts; it reinforces them, given the height of what is proposed.
- 10.145 There will also be harm to a range of NDHAs. Eden Camp is a historic complex of medium sensitivity. Ms Bage agrees that this has strong evidential and cultural value.<sup>201</sup> It was a facility used to house prisoners of war in the 1940s, and some of those prisoners would have likely worked in the fields around the Camp. The Inquiry heard the concerns from those who run Eden Camp<sup>202</sup> about the impacts of the BESS which will site just outside the perimeter fence and adjacent to the Memorial Hall which attracts veterans for services and often draws visitors for quiet contemplation. This is a particular concern of those who run the facility, particularly given that noise impact has the potential to be a ‘setting’ impact.<sup>203</sup>
- 10.146 Regarding impacts on Eden House, Ms Bell considers this to be a high-status building of impressive design. There is illustrative and associative historical significance to this house. The house and surrounding cottages exemplify historical social structures and the important role of the Fitzwilliam Estate. The location of Eden House in a large domestic / parkland curtilage surrounded by farmland within the same ownership means its setting contributes to the site’s significance. Eden House formed a part of the same major early 19<sup>th</sup> century scheme of works as the improvement of Old Malton Moor for arable production.

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<sup>199</sup> Ms Bell RTD

<sup>200</sup> Ms Bell RTD

<sup>201</sup> Ms Bage RTD

<sup>202</sup> Mr Howard Johnston.

<sup>203</sup> Ms Bell RTD.



- 10.147 Finally, Eden Farm is a NDHA of regional significance. The character of farmsteads of a historic nature is what contributes to the landscape character of this part of the Vale of Pickering. This is a polite-fronted Georgian Building.
- 10.148 There has been some piecemeal development to the rear of the building, but clearly it is a farm with animal sheds and granaries etc. Typical development of this area which of 'regional significance'.
- 10.149 The contribution of the setting to the significance is high because it has a relationship with form and function, which relate to the type of character, informed by the type of land. Ms Bage agrees that the wider landscape is part of understanding its significance. However, this will be mitigated by screening and setbacks. Ms Bell considers that this will still harm the kinetic rural experience of the farmstead scaled as a low moderate degree of less than substantial harm.
- iv) Acceptability of the resultant effects upon residential living conditions and local amenity*
- 10.150 The appellant's landscape architect (Mr Ingham) agrees that the panels (and the associated paraphernalia) are not characteristic of this character area.<sup>204</sup> He attempted to suggest that this was given that the North Yorkshire and York Landscape Characterisation Report was drafted in May 2011 and so would not recognise solar farms. However, as heard throughout this inquiry, there are no other solar farms in this immediate locality. Given that there are no examples of them, they are very unlikely (even now) to be recognised as being in any way as being part of the landscape character report. They are alien and incongruous: there is not a single example of this kind of infrastructure in this entire District.
- 10.151 When reviewing the LVA photo sheets there are landscape impacts from the appeal scheme not illustrated properly. Particularly, impacts upon users of Great Sike Road (GSR), where the baseline photo sheets fail to show what the real impacts upon GSR will be.<sup>205</sup> There is no hedgerow along GSR for 100-150m to the East of Windmill Farm extending along the PRoW which is not shown. Photo sheet 4 does only demonstrates what the impacts would be where there are hedgerows along the boundary.
- 10.152 Mr Ingham explains impacts along GSR would be mitigated through the hedgerow extending to the south of Windmill farm. However, this would not be the case until the hedgerows have fully established over time. In addition, the hedgerow, extending southward from the windmill farm bisecting the large field to the south has only a historic remnant of a hedge at present. The Inspector and SoS must bear in mind that a hedgerow is going to need to fully establish southward from windmill farm to mitigate the impacts on the open views of the people walking, cycling, or riding along GSR.

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<sup>204</sup> Mr Ingham XX.

<sup>205</sup> See photo sheet 4 of the LVA (CD1.20).

- 10.153 In Viewpoint 9 the vantages would change for users of the PRow. It would take time for tree cover/hedgerow to establish, and that is going to be a harm to PRow user. When it is established, there would be a foreshortening of views, including across vast, open fields. This would also include removing views from the junction between Borough Mere Lane and Freehold Lane across open fields, including to the distant windmill at Windmill Farm.<sup>206</sup>
- 10.154 Furthermore, on the PRow frontage in that location, there will be high, industrial looking fencing with metal gates.<sup>207</sup> This will not be characteristic of the agricultural landscape in which the scheme sits. Such fencing is not generally used, given that this is an area which tends to grow cereals.
- 10.155 Finally, the appellant has sought to show that there will not be a sufficiently adverse impact on residential amenity. It is relevant to note that the way in which people use their homes has changed somewhat since the Covid pandemic, given that people may now be more inclined to use the upstairs of their homes, for office space.
- 10.156 This will give them longer-ranging views. The occupants of Windmill Farm have indicated they would seriously consider leaving their home if planning permission is granted. In addition, the vast number of solar panels visible in open aspect from the garden of both Windmill Farm and Acomb House will significantly change the view from being open, agricultural to more industrial which would clearly be harmful to those residential occupiers.
- v) *Overall planning balance argued by the R6 Party having regard to any related planning policy, any harm, or benefits*
- 10.157 It is imperative to understand the importance of food and farming in this particular locality when tying all threads together relative to the RLPS.
- 10.158 RLPS Policy SP9 concerns the land-based and rural economy. The introductory text is particularly important to read carefully when understanding how the policy should be interpreted. It states that the strategy (underpinning the Local Plan) is intended to “*support and be flexible to the needs of those who rely upon the land-based economy.*”
- 10.159 With respect, that is not to support the absentee landowner but instead to support those who rely on the land. Later in the supporting text, there is backing for new opportunities that may arise from future changes, which range from alternative cropping to renewable energy schemes. There is also support for the Malton Livestock Market (as the last remaining livestock market in Malton). It is a valued resource by the local farming and wider community. That supports more localised food production.<sup>208</sup> That imperative is fed through into the language of the Policy itself, which shows that it is expressly supportive of “*appropriate farm and rural diversification activity*” (emphasis

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<sup>206</sup> See CD1.20 - Viewpoint 5 in the Appendix A5 LVA Photosheets prepared by Stephenson Halliday.

<sup>207</sup> See impacts on GSR users by way of example – at Viewpoint 9.

<sup>208</sup> See Paragraph’s 5.35 and 5.36 in the Local Plan.

added); this does not represent a rural diversification opportunity as it is an absentee landlord modifying an investment portfolio.<sup>209</sup>

- 10.160 The policy encourages proposals or actions that would assist in utilising and retaining traditional rural skills, including land and woodland management, farming, and conservation. All of these are important characteristics of the Sturdys' business through passing on generational farming knowledge. Threatening their business, including through removing considerable succession rights, will run precisely contrary to the thrust of that policy. The appeal development is clearly in conflict with this policy.
- 10.161 The scheme will also conflict with RLPS Policy SP17. The Proposed Development involves seeking to take out of production some of, if not, the best, agricultural land in Ryedale. This will result in a loss of this agricultural land for the operational life of the development. There are also very real risks that, thereafter, the BMV status will not be sustained.
- 10.162 Mr Franklin is concerned about the soil erosion, the impact of cabling, the lack of the organic inputs being maintained, and the very real risk to the drainage systems in the field. These all have the potential to imperil the BMVAL status.
- 10.163 Moreover, given all the flaws with the sequential approach as is required by SP17 (putting aside whether it is required by national policy), the appellant has not demonstrated in any compelling way that the Proposed Development cannot be located elsewhere.
- 10.164 The proposal has failed to demonstrate through the risk-based sequential approach that guides new development to land with a lower probability of flooding that this location is essential either.
- 10.165 Given all the shortcomings of the appellant's approach (detailed above) the Proposed Development has not been properly directed to the land with the lowest risk of flooding. It has simply been directed to land with a Grid-offer.
- 10.166 Mr Franklin explained that FTC were mainly holding investments and collecting rents. This was not a genuine farm diversification.
- 10.167 The appellant claims RLPS Policy SP18 supports the development of a solar scheme. However, that is all secondary to the requirements of meeting SP17, which this scheme fails to do.
- 10.168 SP18 should also be read with its supporting text where there is express support in this policy for contributing community-led and farm-scale renewable and low-carbon solutions. This includes support for anaerobic digestion, biomass boilers, and heat generation. The Anaerobic Digester, which is part of Circular Malton and Norton Community Interest Company, aims to make Malton a circular town and such an example, where crops can be grown

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<sup>209</sup> Mr Franklin explained that FTC were mainly holding investments and collecting rents. This was not a genuine farm diversification.

flexibly to meet food security or energy demands, as the market requires. That is precisely the type of renewable energy installation which the Plan encourages.

- 10.169 There are a range of other important material considerations. Plainly, the benefits of renewable energy generation need to be considered and weighed. But they do not outweigh the very considerable harm caused.
- 10.170 The R6 Party support solar development in the right place. As explained in the opening, as the Prime Minister has indicated, the development of such schemes should not be at the expense of tenants.<sup>210</sup> Solar farms simply cannot be delivered "*by taking advantage of tenant farmers, farmers producing good British food on carefully maintained, fertile land. They can't plan properly if the soil beneath their feet isn't secure. It's a huge barrier to planning sustainable food production.*"<sup>211</sup>
- 10.171 The circumstances of the tenants in this case are exceptional. That exceptionality means that their concerns should form an important material consideration in the determination of this appeal. It is nothing short of extremely surprising that Ms Caines, in her rebuttal, sought to dismiss the tenants' position as not even weighing in the planning balance.<sup>212</sup> But, her position now appears to have been reversed, recognising in XX that their position is exceptional. In accordance with the principles set out by Lord Scarman in *Westminster City Council v Great Portland Street Estates* where the personal hardship and the difficulties of businesses which are of value to the character of a community are not to be ignored in the administration of planning control. They are highly germane in this case.
- 10.172 The appeal scheme will have a detrimental financial impact on the Sturdy's business. It will break up their landholding. It will have knock-on impacts on other aspects of their business, including in relation to keeping cattle, selling straw, and letting of a residential dwelling, and cause an important opportunity cost based on (sound) assumptions that they would be able to succeed in the tenancy. It will mean that the assumptions upon which they have based their business (and the understanding that they will be able to be afforded the opportunity to succeed) will be undermined. These concerns have not been taken seriously by the appellant.
- 10.173 There will be landscape harm through harm to the character, users of the PRoW and the residential amenity of occupiers of Windmill and Acomb House. This should all weigh negatively against the scheme. So, too, should the heritage impacts arising from enveloping a nationally important windmill, the Grade II Acomb House, and the range of NDHAs.
- 10.174 This is a poorly sited scheme. The appellant's own ASA recognises alternative sites as performing better in flood risk and agricultural land terms.

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<sup>210</sup> See CD9.28 Mr Franklin Proof paragraph 6.10.

<sup>211</sup> Ibid.

<sup>212</sup> Paragraph 5.3 of CD9.32 – Appellant Planning Rebuttal

The rationale for ruling sites out has been based on shaky observations and assumptions, which do not withstand scrutiny when tested.

10.175 If permission is not granted, more grid capacity will be freed up for all of those other schemes in the queue behind this appellant. There is no evidence that refusing permission here will imperil climate mitigation targets either in this district, in North Yorkshire, or nationally. For all the reasons set out above, there is clear conflict with the RLPS. It also fails to accord with national policy, which, although generally supports solar development, requires appropriate consideration to flood risk and agricultural land. National policy does not offer *carte blanche* to develop anywhere and at any cost.

10.176 There are compelling material considerations as to why planning permission should be refused. Accordingly, it is respectfully suggested that this scheme be recommended for refusal and that the SoS dismiss the appeal.

### **11.0 Interested Parties (who spoke at the Inquiry)**

11.1 There were several interested parties who attended and spoke during the Inquiry, including persons speaking on behalf of the local community and businesses. In tandem with the written representations, they raised issues related to (but not limited in extent to) the following matters:

*Rt Hon Sir Robert Goodwill*

11.2 He referred to the 'UK Farm Summit'; domestic food security production; climate change; and farming self-sufficiency principles inclusive of food stock for animals as well as human consumption and how those elements relate to current Government policy. He also spoke of unanimous opposition to the appeal scheme because it conflicts with important adopted local policy for the Ryedale area.

*Cllr Lindsay Burr*

11.3 She referred to the proposal being at odds with the Local Plan; negative impacts to tourism given the quiet reflective area and services; the beauty of Ryedale countryside; the harm to character of the area and local distinctiveness and heritage owing to the proposed industrialisation of the landscape; overbearing impact to living conditions; impingement to Mr and Mrs Sturdy farming business preventing its viability; and the need to protect farmers and farming interests.

*Mr Pritchard – Malton Town Council*

11.4 He cited amongst other points: the number of members of public who are against the scheme proceeding; harm to food security through loss of fertile land, businesses, and the economy; conflict with the neighbourhood plan (with a referendum held 3 October) being relevant which has a food production focus as well as encouraging tourism. Eden Camp being a major tourist attraction adversely impacted. The risks of battery fires, ecological risks to the river corridor, the impacts to ecology and local amenity network; listed building setting harm all referred to. In addition to, regard to the active

sustainability movement in Malton which is an established rural market town with unique circular and community processes which should be protected.

11.5 *Richard Banister (resident)*

11.6 He raised amongst other things: the consideration of agrivoltaics provision in solar farms; worker and human rights, resultant tenant and farming impacts being 'unjust'.

*Sue Jefferson (resident)*

11.7 She spoke of her involvement in change management; and local interest in the area. Advocated several points: there has been ineffective public engagement; that amenity and safety issues are reasonable concerns; and a lack of commitment to resolve safety provision interests with up to date risk report(s); plus expected/likely reputational damage to the Eden Camp museum site.

*Dr Sam Hoste (resident)*

11.8 Broadly referred to ecological/BNG implications and potential alternatives including potential approaches to other landowners being properly considered. Pointed out that no one has contacted him (as a local landowner) from Harmony Energy.

*Howard Johnson (resident)*

11.9 Spoke about noise and ecological impacts relative to heritage demonstration/educational talks including for school children, television programmes occurring as well as weddings taking place in the area. Found the noise evidence to be misleading factoring receptor distances and technical information. There is no noise assessment of the BESS. Additional safety issues for battery storage system would require water to extinguish potential fires which would be environmentally damaging when absorbed into the ground and travelling further afield via water transfer.

*John Scarth (resident)*

11.10 Referred to the enjoyment of walking and recreation being eroded and harm to countryside beauty. Spoke about the tranquillity and character of the open countryside and expected resultant loss to mental health and wellbeing. The UK should look to protect valuable agricultural land for food production as a further point.

*Mr Williamson (resident)*

11.11 He spoke about various impacts including related to: commitments to 200 units per annum of house building locally; public rights of way near farmland; dog walking; thriving green space; regenerative farming, wildlife interests; that good quality agricultural land should not be used in this way owing to food security interests.

*Sarah Clarke (resident)*

- 11.12 She spoke about family business interests in the area; Malton being known as a 'food capital' of Yorkshire; loss of the Sturdy's farmland would reduce food security; farming requiring generational planning to be successful as well as in an everyday sense; and that future generations should be able to learn the craft. Additional points she referred to included that energy targets could still be accommodated through smarter initiatives and land or buildings elsewhere. Mr and Mrs have a right to farm, and the future of Malton is an important consideration.

*George Dunn (Tenant Farmers Association)*

- 11.13 Referred to substantial impediments to tenant farming business planning affected by schemes such as this one. Personal circumstances should not be ignored – the human factor is important; compensation would be wholly inadequate for the loss; questioned what would occur if the solar farm was successful and then ceased; businesses would be negatively impacted; moral, ethical implications and cultural loss implications were also mentioned.

*David Woolly (resident)*

- 11.14 Spoke about the need for an appropriate level of regard to the balance of power/justice for local businesses and residents, in relation to the scheme. Disruption to family businesses and family life interests being significant concerns; harm to the ambience of the area; eroding the local enjoyment of cycling, rambling, walking and general recreation; wildlife harm; also spoke about religious values/the notion of what it means to be good stewards of local land.

*Peter Conwell (resident)*

- 11.15 Commented that the size of the solar scheme application area is too large –at industrial scale. Also, that the proposal should not be considered as 'temporary' given its 40 year span alongside stated food loss production concerns.

*Jane Lawsley (resident)*

- 11.16 The security fencing and battery storage gives rise to an unwanted industrial appearance using agricultural land for local produce with value to the community. Questioned if the Sturdy family would ever get their land back when alternative land could be used.

*Mark Hepworth (resident)*

- 11.17 The windmill at Windmill Farm is an important/notable heritage asset, bearing in mind the associated listing application was granted by Historic England. He advocated its setting would be harmed to a 'substantial' level rather than less than at a 'less than substantial' level as argued by the appellant. His views referred to Historic England's documentation alongside the memorandum from the heritage officer, and the author content of Harmony Energy Limited own

report(s). He put forward the conclusion that technical aspects are not addressed/covered in the appellant's findings. He also referred to the wider advice of Historic England.

*Janice Hart (resident)*

11.18 Spoke as occupier of Windmill Farm. Made the argument that wind renewable energy proposals are more productive and would be a better option. Had concerns about living condition impacts from roadworks and lorry movements required, proximity, as well as the impact to the night sky from light pollution.

## **12.0 Written Representations**

12.1 Written representations were made during the appeal period. These included interested party objections relating to (but not limited in extent to) the following issues:

### *Use of farmland/food security/justification for the scheme*

- The appeal site is prime farming land which should be retained as such for national food needs/food security interests.
- The majority of the proposal is on BMV land which National Planning guidance advises against. The land is already in best use, producing sustainably grown food for the UK, economically contributing locally and nationally, as well as supporting a hard working family business.
- It is unlikely the land would ever be returned to food production use.
- Not supporting productive arable regional farmers across the UK is long term bad news for the country. There's no point in having electricity production if there is no food supply.
- Winter flooding (caused by climate change) is likely to become an ongoing threat to food production as a further reason to retain high quality food producing farmland.
- Large corporations think that they can ride roughshod over multi-generational tenant farmers land to install plastic solar panels on good food producing land. Precedent should not be set for placing solar farms on grades 1 or 2 agricultural land given the need to produce more home grown food because of climate change/reducing reliance on large producers (such as the Ukraine). Over 40% of agricultural land in the Ryedale area is graded as 4 or 5 whereas there is only around 16% that is top quality.
- It should be a priority to preserve the best and most versatile farmland for food production. The options available for growing food are far more restricted than the opportunities to generate renewable energy. The new Government is unlikely to change the key aims of the current strategy which looks to support home-grown food for food security and a healthy population.
- Reduction in farmland means more imported food.
- The proposal is not a form of farming diversification.
- Threat to UK food security –production and supply/broader concern towards regulation of solar development itself.
- Previously developed land should be used first for solar schemes.
- There is no benefit to the local population.



- There is inadequate justification for the scheme, given the overall harms it would result in. The proposals are contrary to local and national planning policy.

*Business impacts/Eden Farm*

- Reference by Mr and Mrs Sturdy and the Tenant Farmers Association (TFA) that the Eden Farm tenancy is regulated under the terms of the AHA which affords lifetime security and the opportunity for succession to two further generations for their lifetimes. One succession of tenancy has already occurred and a further opportunity for succession remains available to the family. This is a crucial point which distinguishes this appeal from almost every other solar development appeal which the SoS has had to consider.
- The Fitzwilliam Trust Corporation has not taken sufficient concern to ensure that the personal circumstances, hardship, and difficulties of the Sturdy family have been addressed. This failure is not just one of process, but it is a material consideration that must be noted by the Inspector. Case law including the leading cases of *R v Vale of Glamorgan District Council (ex parte Adams)* [2000] and *Westminster City Council v Great Portland Estates plc* [1985] are referred to in this regard.
- The findings of The Rock Review into agricultural tenancies commissioned by the Government should be fully considered.
- The appeal proposal runs roughshod over existing tenancy agreements.
- Reducing the viability of a family farm that is working hard for the UK, when alternative sites are available (including on poorer land/industrial rooftops) is wrong.
- There would be inadequate/low level of compensation for farmland loss.
- Britain has the best safety rights/best agricultural rights which should be respected.
- Mr Sturdy is an award winning farmer bringing much expertise to Malton. Skills which would be eroded/lost.
- Mr and Mrs Sturdy have put their heart and soul into making their business successful and improving soil quality using Council green waste. The Sturdy family are half way through a 3 generation tenancy and the proposal would render their business unviable.
- Previous farmland in the area adjacent to the A169 Eden Camp already taken off Mr Sturdy's tenancy has been left as building waste heaps with weeds and is unsightly compared to the farmland it previously was.
- The rights of the tenant farmer and his family to see out the remaining tenancy term; to earn an honest living; and contribute to the local economy through trade and services should be respected and are all important material considerations to the outcome of the appeal.
- Loss of farming work for existing workers/ local livelihoods would be ruined through eroding agricultural supply chains to industry and the economy currently creating a thriving community.
- Targeting small farming businesses in this way is unethical.
- Renewable energy schemes should not displace or prejudice other key national priorities such as food production, having regard to UK strategy and policy. It is generally accepted that some (poor) land will need to be used if government are to hit their renewable energy targets, but it must not be at the expense of tenant farmers.

- Consideration should be given to the holistic consequences for the North Yorkshire rural economy and more widely of planning decisions being made in cases like this. More than 230,000 hectares of land are farmed across North Yorkshire, providing employment for over 17300 people. 35% of the farms are managed by tenant farmers. If the planning decision finds in favour of the landlord in this case, this tenant farm will no longer be viable.
- If planning permission is granted, scores of other landowners may follow suit with disastrous consequences for local tenant farm businesses and food production. Tenant farms are the backbone of local rural communities UK wide.

#### *Eden Camp and other local business impacts*

- There would also be negative impacts to local tourism interests during construction. In particular, Eden Camp Museum is a premier tourism and heritage attraction to Malton which attracts thousands of visitors per year (some 125,000 visitors a year, of which 30,000 are children).
- Eden Camp has unique historic and cultural value/is specialist visitor attraction which would be eroded relative to the location of the inappropriate location of the BESS site.
- Noise from the development (including BESS) would interfere with remembrance services and presentations at Eden Camp.
- Fire access and emergency management is inadequate. Lack of fire hydrants/emergency water supply is a health and safety risk.
- There should be more than one access to the BESS site because of safety risks. There could be uncontrollable release of energy/human safety risk/business reputational damage.
- Disaster accountability is a concern.

#### *Alternatives*

- There are fairer/more effective ways of delivering solar including using existing farm buildings roof spaces in the area.
- Example of alternative renewable energy development being led by the Malton & Norton Community Interest Company (CIC), Circular Malton, on Eden Business Park just outside Old Malton referred to. Anaerobic Digestion (AD) facility with support from the Rural Community Energy Fund (RCEF), a Defra fund to support the pre-development and physical development of community-scale renewable energy projects. When compared to solar which offers no direct benefits to the local community, hampers agricultural development, and reduces food production, whilst achieving just over 10% efficiency on average (which in lay terms means it delivers power for just 10% of the time, or at 10% of its installed capacity), it is clear which option is better suited to the highly rural area being targeted. Community interests should be a consideration and there are inevitably better locations for large-scale solar developments, and clearly alternative renewable energy technologies better suited to the rural area immediately surrounding Yorkshire's Food Capital.
- Solar panels should be on previously developed land/ on top of industrial buildings rather than located adjacent to villages and tourist attractions or using good quality arable land.

- Other landowners have not been contacted by the appellant for potential solar development on more suitable sites.
- Alternatives (including better alternatives) have not been properly considered.
- The solar farm is not needed to achieve UK Net Zero ambition. Solar is becoming outdated in any event and there are other more sustainable/effective ways of producing energy.

*Flood risk/fire risk/health and safety concerns*

- Flooding problems in the area would be exacerbated.
- The proposal increase a risk of fires. Including from moisture/water ingress into parts of the PV system, such as the DC and AC connectors. Concerns toward: fire risk assessment to wildlife; local communities; and visitors therefore arise.
- Cleaning/maintenance impacts of panels should be carefully considered.
- Adverse impact on the flooding situation in Malton if the tenanted land is not managed and drainage sustained.

*Local amenity, heritage, character, environmental impacts/ and other matters*

- North Yorkshire is an area of outstanding beauty with land managed by the farming industry. Putting panels in fields is an 'easy fix' and would be detrimental to the landscape that people visit the county to see, as well as impacting a long-standing agricultural industry.
- The beauty of the countryside should be protected.
- Erosion of the area's aesthetics/harm to the visual appearance of the area/industrialisation of the open countryside. The scheme would be an eyesore.
- 'Substantial harm' to important local heritage assets – a local Windmill (Grade II listed, granted by Historic England 25 May 2023).
- The scheme is out of keeping with the setting of a local Windmill building which has been used historically by farmers and the surrounding area.
- Negative effect on local mental health/well-being including the Sturdy family.
- Detrimental impact on users of the surrounding PRoW network particularly within the Howardian Hills National Landscape.
- Visual intrusion from the high fences/CCTV/inverter's transformers and solar panels.
- Ryedale District Council obtained a grant of around £250K from the European Agricultural Fund for Rural Development. This was used to create a cycle and walking route from Malton to Pickering for people to enjoy the countryside.
- The route is used by local people and visitors and is approved by Sustrans.
- There would be harm to the route from lorries, months of noise and turmoil
- Loss to tranquillity of the rural environment.
- Resultant views from lanes would be of inappropriately high hedges with no enjoyment of the countryside views – of fields of barley and wheat.
- The rural environment is important to local health and wellbeing interests which would be eroded.
- Harm to local amenity; landscape; tourism; visual appearance of the area.

- The local population overwhelmingly want the proposal rejected.
- Concerns towards unethical forms of labour/human rights to produce solar panels in other countries. Maximising profit should not come before all other considerations triggered by the proposal.
- Inadequate/ineffective consultation by the appellant.

*Local living condition harm*

- Increased/excessive noise pollution in a peaceful area.
- Proximity to residential use is inappropriate/harmful to living conditions including Windmill Farm and Acomb House Farmhouse.
- Once built rural views would be spoiled by industrial looking development.
- The construction period of at least 6 months would be unbearable: noise from pile driving/ erection of the panels/invertors, and security fencing.
- The transport management plan states that over a 20 week period there will be 3,348 two way trips by construction vehicles, many of those traveling down Freehold Lane close to residential use and alongside a new road (52 metres from garden land) through the southern field, then round the back of the cattle shed. It would simply be too much.
- Light pollution.

*Ecology/environment/decommissioning*

- Concern over water pollution during construction/operation.
- Environmental/ecological damage.
- Negative impact on soils/flora and fauna.
- Doubts concerning the degree of BNG claimed.
- The loss of BNG (after 40 years including during any decommissioning);
- Decommissioning/restoring the land to its original state would not be effective from pilling.
- Solar is not carbon free owing to manufacturing elsewhere. Moving the carbon issue from the UK overseas, not really attaining a low/net zero carbon economy.

### **13.0 Planning Conditions**

- 13.1 On a without prejudice basis, draft conditions have been agreed between the appellant and the Council and discussed further during the Inquiry.
- 13.2 Thus, for the purposes of the Town and Country Planning (Pre-commencement Conditions) Regulations 2018, the appellant records its agreement to the imposition of the pre-commencement conditions set out (or to any variations of them imposed by the Inspector which are to substantially similar effect).
- 13.3 The focus of the discussions was to ensure that all matters of control and mitigation were properly addressed, and all conditions were necessary, relevant to planning and to the development, enforceable, precise, and reasonable in all other respects.
- 13.4 Were the SoS to consider that this proposal should be allowed, and permission granted, I have considered in my assessment below, possible conditions that I recommend should be applied. These can be found in Annex D.

## 14.0 Inspector's conclusions

- 14.1 Considering the evidence in this case, including the submissions and representations on which I have reported above, I have reached the following conclusions. The numbers in square brackets [ ], refer to preceding sections of this Report from which some of my conclusions are drawn.
- 14.2 Having regard to the reasons for refusal pursued by NYC, together with the development plan context, statutory obligations, and the contributions of interested parties on other matters, I find that the main considerations which need to be addressed relate to:
- (i) The acceptability of the principle of the development in the location proposed having regard to a) flood risk b) the loss of agricultural land for farming purposes inclusive of its grade;
  - (ii) The impact of the development on existing rural business;
  - (iii) The impact on nearby heritage assets;
  - (iv) The acceptability of the resultant effects upon residential living conditions and local amenity; and
  - (v) The overall planning balance having regard to any related planning policy, any harm, or benefits.
- 14.3 *Acceptability of location with respect to (a) flood risk and (b) agricultural land*
- 14.4 RLPS Policy SP17 supports undertaking a risk based sequential approach in the consideration of development proposals to guide new development to areas with the lowest probability of flooding, in accordance with national policy. The 'exception test' is now defined under 167 and 168 of the Framework. SP17 also requires the use of sustainable drainage systems and techniques, where technically feasible, to promote groundwater recharge and reduce flood risk.
- 14.5 Equally SP17 aims to prioritise the use of previously developed land whilst protecting the BMVAL from 'irreversible' loss. It advocates that the loss of BMVAL will be resisted unless it can be demonstrated that the use proposed cannot be located elsewhere. And that the need for the development outweighs the loss of the resource.
- 14.6 There is a high degree of interconnectedness in these land management issues listed in the same development plan policy.
- (a) *Flood risk*
- 14.7 The aim of the flood risk sequential test within the Framework is to direct new development towards areas with the lowest risk of flooding from any source and, if that is not possible, to then determine whether there are any other reasonably available sites within a suitable location for the type of development proposed.
- 14.8 I note that the main parties have confirmed their agreement to the appeal development falling as 'essential infrastructure' described in Annex 3 of the Framework. In this case therefore, if it is not possible to position the appeal

scheme on other lower flood risk land areas, assuming the appellant's justifications are reasonable, the exception test would be applied. The R6 and NYC's criticisms are that the appellant's grid first approach is inadequate when assessing flood risk<sup>[9.2-9.3][10.13-10.15]</sup>.

- 14.9 From an electrical design perspective, a major aspect of the appellant's grid offer argument is that they do not need to provide a DNO substation as part of their scheme given the solar farm would be within 300m of Malton BSP.
- 14.10 I heard evidence from the appellant's technical expert (Mr Camplejohn) that locational alternatives pursued by NYC and the R6 Party's evidence, could in theory be undertaken with longer cabling corridors. Yet, he suggested the nature of the grid connection readily available has been the primary driver to discount those as alternatives<sup>[8.7-8.8] [10.5]</sup>.
- 14.11 Whilst other alternatives argued may not be insurmountable as construction concepts, I accept that longer cabling would be more expensive operationally and may well involve directional drilling and other engineering complexities (as per Mr Camplejohn's cost estimates at CD7.3).
- 14.12 It is unsurprising that the appellant has paid significant attention to an immediate unconstrained connection offer –from both business and environmental perspectives<sup>[8.6] [9.10-9.22]</sup>. Essentially, the appellant favours a scheme which would not be subject to a substantial grid connection waiting queue<sup>[9.19]</sup>. This is because it would have direct control over resultant viability interests alongside the interface of the wider land constraints involved.
- 14.13 Bearing in mind the mapping information contained within CD10.10 as well as Mr Stone's evidence I agree Ryedale does not have an abundance of technically unconstrained land within a 2.5km search radius<sup>[8.14-8.19]</sup>.
- 14.14 A higher ASA radius is referred to by NYC and the R6 as being warranted. But a 2.5km search area is proportionate in this case relative to the size of the scheme, all 'known' constraints and readily available grid connection.
- 14.15 Even if a 5km or 7km ASA was endorsed there is no strong evidence to suggest that all constraints (both technical and environmental) could be readily overcome<sup>[8.16]</sup>. Subsequent commercial costs are a further factor.
- 14.16 I am also aware that there is no set requirement for the extent or content of an ASA in local or national policy. I anticipate the reason for that is linked to the sheer number of variables potentially impacting on any given area initial conceptual feasibility scoping exercise onwards. Hence the differences in other appeals mentioned. That said, Mr Stones' evidence gives further details towards ASA considerations for a greater radius which the appellant has subsequently rejected as being either impractical or less favourable during the Inquiry itself, in any event.
- 14.17 Akin to my colleagues' conclusions made at the Penhale Moor appeal such readily available connectivity secured by the appellant amounts to a key locational factor. It would minimise environmental disruption compared to

other longer theoretical cable routes. Thus, easy, and readily available grid connectivity is an important consideration which holds significant weight.

- 14.18 Further afield all land to the north of the appeal site (except a small part of Flood Zone 1) is located within Flood Zones 2 and 3. I am also aware south of the appeal site is the AONB (or National Landscapes as per the Framework), the A64, a railway line, the built-up extent of Malton and an area of high landscape value beyond. Areas falling within these designations are all in an area mapped as comprising Grade 2 agricultural land.
- 14.19 It is apparent other alternative sites which could have an easy grid connection not requiring sections of cabling crossing highway infrastructure are of equal or greater flood risk.
- 14.20 Furthermore, it is also apparent that the other potential alternative sites involve land designations such as: the AONB; visually important undeveloped areas or areas of high landscape value; or would be higher grade agricultural land according to the ALC mapping evidenced.
- 14.21 I also appreciate that soil surveys and sampling beyond such mapping would be lengthy and difficult to undertake given the size of the geographical area. Indeed, other environmental survey work outcomes which would ordinarily be expected cannot be relied upon as being favourable.
- 14.22 Given the existing electrical infrastructure present in the area offered from Malton BSP a 300m radius (referred to during the planning application period) was a reasonable starting position to take. Such a starting position does not necessarily preclude flood risk management and agricultural land classification policy interests from being met relative to the PoC ease.
- 14.23 Even without taking that view, the additional higher radius information before the Inquiry identified by Mr Stones serves useful context. Whilst not arising from the appellant's own appraisals, the collective information provided gives me sufficient assurance that other potential alternatives can be reasonably discounted in line with the appellant's submissions.
- 14.24 The suitability of landscape and heritage impacts, hydrogeological conditions, potential contamination pathways and related ecological ramification are too readily skated over in NYC's and the R6's overall assertions toward favouring shorter cable distance and engineering ease. The full environmental asset implication of any alternative would still need to be rigorously evaluated. A broad brush evaluation carries unquantified risks.
- 14.25 In tandem with those points, I note Mr Camplejohn's submissions within CD9.35 confirm that the BESS import is limited at 12.63MW due to demand and import capacity issues at the existing Malton BSP. Harmony Energy are aware that this is the maximum import capacity they could have without triggering costly network upgrades.
- 14.26 That is important as Blake Clough (CD9.27) reviewed the ECR. Considering the R6's claims this highlights a substantial registered capacity of projects that have already accepted connection offers to the Malton BSP. Based on all

technical submissions they would require a larger capacity than is possible using the existing transformers at the Malton Grid.

- 14.27 Mr Camplejohn maintained that the appeal project can be scheduled for connection 'immediately' because no reinforcement works are required (save for a standard 18-month lead in time to procure the required electrical equipment).
- 14.28 He also made the case that National Powergrid would not allow an adjustment to the red line boundary of the LoA to be made at this stage. It would result in the loss of the current grid connection offer and the appellant losing their current position in the queue.
- 14.29 I acknowledge that the original redline boundary of the LoA (CD9.36, Appendix 1 – Malton LoA), at its further extent from Malton BSP, measured 1.6km prior to refining the site's design based on detailed site assessment.
- 14.30 Therefore, bearing in mind the full technical submissions from Mr Camplejohn orally and by way of rebuttal I accept that suggestions referred to by Mr Stones would not constitute more feasible or realistic alternative options which should be better explored by the appellant. It would constitute a different project altogether.
- 14.31 That is not to say whether other theoretical alternatives could, or could not, obtain planning consent. It would be for the local decision making process to determine that informed by a full complement of detailed survey information inclusive of any likely significant effects and all risks.
- 14.32 In accordance with the Framework within Flood Zone 2 and 3 areas, developers should seek opportunities to reduce the overall level of flood risk in the area through the layout and form of the development, alongside the application of sustainable drainage systems. The appellant takes such an approach in the suite of layout information and the planning conditions it is committed to.
- 14.33 It is striking that the appeal location has already been subject to historic drainage programmes to allow intensive farming uses in the evolution of the area. The appellant's expected surface and ground water management scheme would be able to complement historic drainage capacity allowing greater groundwater recharge.
- 14.34 Moreover, it is common ground that the surface water management strategy demonstrates that runoff from the proposed development can be managed via implementation of dispersion and erosion protection measures. This includes gravel pits and permeable tracks as well as a drainage pond in the BESS area. Such provision would be compliant with local and national policy.
- 14.35 Thus overall, I conclude there are no sequentially more favourable sites and the exception test is passed. For all of the above reasons I do not find any breach of SP17 or the Framework with respect to flood risk.

*(b) Agricultural land*



- 14.36 I acknowledge that paragraph's 180 and 181 of the Framework seek that planning policies and decisions should contribute to and enhance the natural and local environment by amongst other things: protecting and enhancing landscapes and soils (in a manner commensurate with their statutory status or identified quality in the development plan). Plans should: distinguish between the hierarchy of international, national, and locally designated sites; allocate land with the least environmental or amenity value, where consistent with other policies within the Framework.
- 14.37 And as per Footnote 62 *where significant development of agricultural land is demonstrated to be necessary, areas of poorer quality land should be preferred to those of a higher quality. The availability of agricultural land used for food production should be considered, alongside the other policies in this Framework, when deciding what sites are most appropriate for development.*
- 14.38 NYC's reason for refusal applies primarily to the most western field, and the outer edges on the east and western sides of most of the site, being the Grade 1 and 2 areas. In that context, similar site selection arguments applied to flood risk issues are posed by NYC and the R6 Party toward BMV land loss.
- 14.39 Nonetheless, the evidence submitted suggests to me that the appellant has surveyed some 214ha of land and has tried to focus the development on poorer quality soils where it is possible. Because of those steps, the appellant broadly submits that the 'permanent' loss of BMV soil from the scheme is limited to around 0.3ha from building the customer substation and accommodating tree planting.
- 14.40 Tellingly there are no complete fields of BMV land under the proposed solar arrays. There is a mix of grades involved. The appellant pursues a layout that placed the panels only on the 29.5 ha of Subgrade 3b land within the wider ALC survey area. The scheme would be reversable so there would be a total temporary loss of around 29.5ha of BMV land on the site whilst the solar farm is in operation. Given the ALC survey information informing the appellant's steps and layout I accept they have demonstrably reduced both the use and permanent loss of BMV as much as possible<sup>[8.21-8.23]</sup>. Ryedale being a geographical region where soil quality is generally anticipated to be high bar.
- 14.41 Aside to ALC related selection arguments, the Framework requires me to have regard to the economic and other benefits of BMV land. The appellant has calculated such impacts by comparing the production and economic performance of average and high yielding crops, as well as gauging the direct impacts to an existing farming business also contested.
- 14.42 In terms of agricultural land loss and the related UK food security interests raised, the argument can be quantified. Mr Kernon equates such loss to stand in the region of some 41 tonnes of wheat. But at a national level this is in the overall context of the 22 million tonnes of wheat produced by the UK during 2023<sup>[8.25-8.27]</sup>.
- 14.43 The appellant also makes the convincing case that from a local or regional perspective 47.2 ha of agricultural land within the site should also be viewed in

the context of 1.12 million hectares of farmland (52% of which is arable) in the Yorkshire and the Humber area<sup>[8.25]</sup>.

- 14.44 As additional context, I am equally mindful that the RLPS gives encouragement for growing biomass crops rather than food crops including at paragraph 7.34 and the table at 7.33 which envisages 46MW of within Ryedale (CD4.1). Neither the RLPS, nor the other evidence before me, convincingly indicates that there is a local production land scarcity problem when assessing economic cases for other wider types of farmland use.
- 14.45 Consequently, although there would be loss of good quality farmland used to produce food for a 40 year period, on a relative scale recognition of that point does not lead me to the conclusion there would be any serious detriment to local or national food supply security interests.
- 14.46 The site has already been accepted as being enhanced over time through farming techniques and the skills of the tenant. Factoring that there is nothing convincing for me to conclude that a Soil Management Plan (SMP) together with a suitable water management strategy and its future implementation would not be a successful mechanism. An SMP to restore the appeal site either to the same ALC grade it is now, or allowing further enhancement including microbial health and overall fertility would be likely.
- 14.47 I note that Paragraph 163 of the Framework sets out that applicants should not be required to demonstrate the overall need for renewable schemes, and that even small-scale projects provide a valuable contribution to significantly cutting greenhouse gas emissions. Comparatively SP17 does refer to need interests.
- 14.48 Allowing for the full wording of SP17 PoC ease gives a strong basis as to why the development cannot be reasonably located elsewhere. The overall need for the development stems from ensuring clean and secure energy interests can be met.
- 14.49 Accordingly, whilst not in total conflict with SP17 there would be some marginal non-compliance for the parts of the BMV land accepted as being permanently affected by the appellant. The policy specifically incorporates protecting BMV agricultural land from irreversible loss. It is generic to all forms of development, some of which could comprise of permanent construction projects unlike in the case of the appeal scheme.
- 14.50 The main aims of Policy SP17 are otherwise complied with: to direct new development to the most appropriate locations having regard to flood risk and agricultural land management when taken alongside the consideration of other important environmental factors and scheme need. The interface with the appellant's PoC arguments are material and compelling in gauging those. Albeit components of overall site selection clung to are made in retrospect considering all Inquiry evidence and were right to be critically questioned by NYC and the R6.
- 14.51 Thus, in overall conclusion of both matters (a) and (b), I find that the appeal evidence demonstrates that there are no reasonably preferable alternative

sites in areas not prone to flood risk. The appellant's site selection justifications are appropriate for responding to known flood risks, as well as avoiding and minimising BMV agricultural land loss as far as is reasonably practicable, bearing in mind all technical information provided.

*Existing rural business impact*

- 14.52 The areas of dispute in relation to business impacts largely centre on the degree of harm apparent to the viability of the Eden Farm business. My conclusions have also had regard to the first main issue where there is significant overlap.
- 14.53 At a national level Paragraph 85 of the Framework states that *planning policies and decisions should help create the conditions in which businesses can invest, expand, and adapt. Significant weight should be placed on the need to support economic growth and productivity, taking into account both local business needs and wider opportunities for development. The approach taken should allow each area to build on its strengths, counter any weaknesses and address the challenges of the future.*
- 14.54 Framework Paragraph 88 goes on to state that planning policies and decisions should enable amongst other things the sustainable growth and expansion of all types of business in rural areas, and the development and diversification of agricultural and other land-based rural businesses.
- 14.55 RLPS Policy SP9 (CD4.1), supports Ryedale's land based rural economy in a variety of ways including: local food production and sales; appropriate new uses for land including flood management and energy production related research education in this field; appropriate farm and rural diversification activity including innovative approaches; and indirectly by supporting the livestock market within Ryedale, weekly markets and farmers markets as well as other events; and proposals or actions that would assist in utilising and retaining traditional rural land management skills.
- 14.56 I note that the introductory text to SP9 points to land-based economic activity as being integral to the District's economy, cultural heritage and identity which has undergone considerable restructuring over the post war period and is set to continue to restructure as a consequence of both local and global changes.
- 14.57 Such changes are acknowledged in the preamble text as happening at a rapid rate; being difficult to predict and are likely to exert a combination of 'positive' and 'negative' pressures on the District's rural economy. Paragraph 5.35 of the RLPS specifically states *this Strategy is intended to support and be flexible to the needs of those who rely on the land-based economy. It also supports new opportunities that may arise from future changes. These range from alternative cropping to renewable energy schemes. It is essential that these new land uses and economic activity must be supported and encouraged where appropriate if Ryedale's countryside is to continue as the living and working countryside that is intrinsic to Ryedale's cultural identity.*
- 14.58 In relation to that national and local planning policy context Mr Robert Sturdy holds an agricultural tenancy over Eden Farm of which 44.52 hectares sits

inside the overall 52.86 hectares of the appeal site. This is submitted to entail just under half of the land subject to his agricultural tenancy which is a key consideration of the appeal.

- 14.59 All the evidence submitted points to the conclusion that Mr Sturdy presently runs a successful farming business he and his family have worked hard to create and sustain. Mr and Mrs Sturdy and their children collectively have strong ties to the land and local area. All of which amount to important considerations for any decision maker to factor.
- 14.60 In gauging NYC and the R6 Party's arguments I am aware that the TFA have followed the appeal. They make representation as a national body dedicated to representing the interests of tenant farmers in England and Wales.
- 14.61 I recognise that the tenancy subject to the dispute is regulated under the terms of the AHA which affords lifetime security and the opportunity for succession to two further generations for their lifetimes. One succession of tenancy has already occurred and a further opportunity for succession remains available to the Sturdy family. I accept that this is a crucial point, providing distinguishing circumstances from other solar cases referred to in the submissions made as a whole.
- 14.62 Importantly, the appeal proposal does not concern an occupier/tenant seeking to diversify their 'own' activities when having regard to the RLPS or the Framework.
- 14.63 Factoring the financial information considered by the Inquiry, if allowed, the solar farm scheme would result in irreversible detriment to Eden Farm as an existing successful agricultural business entity<sup>[9.55-9.58]</sup>.
- 14.64 Whilst Eden Farm is shown to be able (in theory) to continue as a viable business<sup>[8.33-8.44]</sup> the level change stemming from land removed from the tenancy would still represent a significant decrement<sup>[10.133]</sup> of a definable range. Having viewed the financial figures, I am conscious there remains numerous degrees of speculation to be certain if the business would be able to flourish in the same way it has over the years to date.
- 14.65 Variables such as future crop yield; rotation; crop mix; cattle numbers; maintenance and operational costs/abnormalities; farming enterprise/environmental schemes and appropriation at a national level can rapidly change over time. Therefore, accounting for the content of the opposing statements made there is a great deal of guesswork also implied.
- 14.66 Should planning consent be granted, based on the submissions made by all parties during the Inquiry, Mr Sturdy would face the prospect of an incontestable notice to quit the land subject to his tenancy.
- 14.67 In other words, Mr Sturdy would not be able to continue to farm the holding under any terms if the development is allowed to proceed. He would lose access to all the land subject to the development.

- 14.68 The appellant makes no case for any dual use such as through agrivoltaics. The expected requirements of such notice to quit would mean that an alternative use (to agriculture) is envisaged. Any use which includes agriculture (for example sheep grazing under solar panels) is likely to result in difficulty with the requirements of the AHA.
- 14.69 I also accept that Mr Sturdy's business is part of the wider local agricultural economy which would be eroded because of decreasing farming productivity. Such harm in the context of the adopted development plan policy wording carries substantial overarching weight against granting permission for the appeal scheme.
- 14.70 As informed by all the evidence submitted, the statutory compensation available to a tenant is referred to as amounting to a maximum of six times the rent passing for the land being removed from the tenancy. This is alleged as falling considerably short of the true impact of the loss involved to the Sturdy farming business. The appellant has factored that point.
- 14.71 Yet the TFA alleges that, the landlord has not followed this guidance and is therefore in breach of what would be considered good practice in its conduct of negotiations with the tenant. In essence they contend there has not been sufficient concern to the personal circumstances, hardship, and difficulties of Mr Sturdy. This issue is referred to by the TFA as supported by case law including the leading cases of *R v Vale of Glamorgan District Council (ex parte Adams) [2000]* and *Westminster City Council v Great Portland Estates plc [1985]*.
- 14.72 In such context, I am therefore cognisant of the impact of this application on the personal circumstances of the tenant and his immediate family. The TFA along with other interested parties submit that, on the grounds of the impact on the personal circumstances of the tenant alone the appeal should fail.
- 14.73 I concur that the scale of the impact on the tenant is significant and, exceptional by comparison to other schemes without such impacts. Tied to those considerations are the wide ranging public concerns toward the ramification to: the local and regional economy which is agricultural land based; precedent consequences to other tenancies; Ryedale's/Malton's social and cultural prestige for a successful farming industry; high quality food produce; and promoting a circular sustainable economy.
- 14.74 I have considerable sympathy for Mr and Mrs Sturdy's predicament in relation to the high degree of uncertainty that they have faced, whilst raising their family and continuing their livelihood. During the Inquiry Mr Sturdy indicated it was his aspiration to continue farming within Ryedale working in collaboration with the landlord.
- 14.75 Much tertiary R6 argument is made in relation to the inadequacy of the statutory compensation, in the event the scheme proceeded. I have also considered the report and recommendations of The Rock Review (CD8.42) into agricultural tenancies commissioned by the Government.

- 14.76 I appreciate there are a variety of agricultural land management fragilities raised by the Rock Review (2023) (CD8.42). For example, moves to de-linked payments which have evolved from the Basic Payments Scheme and farmers industry wide are recognised in the Review as seeing their future cashflow diminish. Uncertainty around the precise nature of public schemes going forward means farmers are documented as struggling to see how they can remain viable without intensifying production.
- 14.77 Added to this, I equally recognise tenant farmers such as Mr Sturdy may face barriers to accessing government schemes and growing and maintaining their business in a long term sense, even without a reduced land area tenancy format. I am aware rent requirements, restrictive clauses, and individual contractual issues in some cases can all lead to uncertainty.
- 14.78 The collective information submitted indicates to me that tenant farmers have rights in relation to: sanctity of contract; the covenant of quiet enjoyment of the rented land; developing a viable business; and to a future livelihood. There is an important balance of rights and obligations from both the tenant and landlord in the issues raised.
- 14.79 Even so, the potential level of compensation is not in itself a determinative matter for this appeal. Such a point instead relates to independent statutory and any affiliated arbitration processes which could be up taken.
- 14.80 Separate to those matters, I have considered business impacts to Eden Camp as well as broader tourism and recreation interests. There is nothing convincing within the evidence which demonstrates that the proposal would be detrimental to the future operation or standing of those.
- 14.81 Accordingly, whilst there is clear support for: renewable energy schemes; innovation; and diversification afforded by the RLPS I find that the level of irreversible detriment to the Eden Farm agricultural business<sup>[10.133]</sup>, does still run counter to the wider aims of Policy SP9. These aims extend to supporting the uniqueness of Ryedale as a land based food producing rural economy where successful agriculture businesses play a significant role.
- 14.82 Even though rural area economic change is anticipated by the policy and the business is shown to remain viable post the development proceeding (if that were to be the case) it does not overcome the policy conflict I have identified.

#### *Heritage impacts*

- 14.83 As per the duties contained within Section 66(1) of the Planning (Listed Buildings and Conservation Areas) Act 1990 (the Act) in considering whether to grant planning permission for development which affects a listed building or its setting, the local planning authority or, as the case may be, the SoS must have special regard to the desirability of preserving the building or its setting or any features of special architectural or historic interest which it possesses.
- 14.84 The development plan via RLPS SP12 sets out that distinctive elements of Ryedale's historic environment will be conserved and where appropriate, enhanced. Proposals which would result in less than substantial harm will only

be agreed where the public benefit of the proposal is considered to outweigh the harm and the extent of harm to the asset. Such an approach is consistent with the policies contained within the Framework seeking to prevent heritage assets from harm.

14.85 Where any harm is attributed to designated heritage assets this must be weighed against the public benefits of the proposal. Such weighing exercise is set out in paragraphs 205-209 of the Framework, and I have included this in the 'Planning Balance' section of this recommendation.

14.86 Substantial harm is not specifically defined in the Framework. It is not prescribed as formulaic. Nonetheless the NPPG<sup>213</sup>, advises in general terms, substantial harm is a high test. It may not arise in many cases.

14.87 I acknowledge that NYC did not refuse planning permission on heritage grounds following their detailed assessment<sup>[9.5]</sup> (CD3.1, Report to Strategic Planning Committee 10 October 2023 and CD3.2 Minutes from the meeting and CD3.3 showing the Decision Notice).

14.88 At the planning application determination stage NYC considered that the resultant level of low (defined as 'less than substantial') harm identified to the Windmill and Acomb House Farmhouse was outweighed by the significant public benefits. No other impacts on heritage assets were identified. The content of the main SoCG (CD9.2) outlines NYC's position on this issue and is consistent with their original determination<sup>[8.18]</sup>. Nonetheless, in light of all heritage evidence before me including regard to relevant NDHA's I agree further detailed evaluation is warranted.

*a) Designated assets – the Windmill / Acomb Farmhouse*

14.89 The Windmill at Windmill Farm is located around 60m east of the appeal site boundary. During the determination of the application, the Windmill was added to the List of Buildings of Special Architectural or Historic Interest on 25 May 2023, as Grade II. The significance of the Windmill is considered to derive from both its architectural and historic interest.

14.90 On an architectural interest level, the Windmill is late 18<sup>th</sup> to early 19<sup>th</sup> century. It forms a landmark building in the surrounding countryside. Its importance is linked to the survival of an increasingly rare agrarian-industrial building type with internal fittings and fixtures giving a clear understanding of processes it was originally built for.

14.91 The historic interest of the Windmill stems from the adaptations made to the mill illustrating the changing social and economic conditions in the countryside. Such as emanating from the industrialisation of corn mills at ports like Kingston upon Hull and Selby, and the subsequent cheap transportation of flour and feed by road and rail.

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<sup>213</sup> Paragraph 018 Reference ID: 18a-018-20190723

- 14.92 I acknowledge it is a rare survivor of a local windmill containing mechanical apparatus with a relationship to neighbouring heritage sites. The Windmill is part of a distinctive local farming industry vernacular. It is intrinsically linked with the historic agricultural working practices which have evolved over time to manage grain produce in the landscape setting. Eventually declining in 1940's when such use started to cease.
- 14.93 Whilst objectors to the development comment that the wider landscape setting is largely unchanged, it is credible there have been changes to the north of the Windmill and to the southeast through the amalgamation of field boundaries. Also, the creation of larger field boundaries, is supported by historic mapping.
- 14.94 I appreciate that from the wider landscape the Windmill is visible as a tall building situated within flat open fields. Because of its height, albeit without sails, it is distinguishable from afar. However, from Freehold lane it is only in occasional views otherwise obscured by mature hedgerows. It is also visible from the fields to the southeast, although neighbouring farm buildings such as Acomb House become more prominent from those vantages.
- 14.95 The R6 Party only raise an issue with the impacts on the setting and significance of the listed windmill. They set out that the significance of the listed building is partly understood through this setting. The solar arrays would harm this link between the agrarian landscape in which the windmill sits.
- 14.96 There would be harm arising from the change to the setting of the Windmill with the appeal proposals. But the level of harm would be tempered by their low lying stature within the landscape. The panels and apparatus would be viewable to a limited degree within the wider views of the asset. The change would not adversely affect established field boundaries, and landscaping would be reinforced through planning conditions.
- 14.97 It is also the case that the impact would be temporary and reversible. Thus, for all those reasons I agree that the overall harm would be 'less than substantial'. The R6 Party as well as NYC draw similar conclusions.
- 14.98 'Acomb Farmhouse' is a Grade II listed late 18<sup>th</sup> to early 19<sup>th</sup> century property of national importance and high significance. There would be intervisibility between the solar farm arrays and the farmhouse. Albeit there would be some screening from hedgerows marking field boundaries, reinforced through the appellant's proposed planting scheme.
- 14.99 The contribution that the appeal site adds to the significance of the asset is accepted as limited by the R6 Party, alongside their appreciation of temporary and reversible impacts. I concur the resultant impact would be at the very low end of less than substantial harm.
- b) *NDHA's- Windmill Farm/Acomb House Farm/Eden Camp/Eden House and Eden Farm/archaeology*
- 14.100 Importantly, I note that the agricultural buildings at Windmill Farm are explicitly excluded from the Windmill's designation. However, based on their



age, form, and fabric I acknowledge that they do have relevant historical interest.

- 14.101 I recognise that the Windmill Farm buildings adjacent have historic value in terms of direct linkage to the site's evolution and strong relationship to the setting of arable fields. They meet the criteria to be considered as an NDHA. I note that the value of Windmill Farm as an NDHA is assessed in the Report by Wolds Heritage (CD9.30). I have taken this information into account.
- 14.102 'Acomb House Farm' contains building types that evidence historic farming practices. These conform to the predominant types of arable-based multifunctional buildings that typify the area.
- 14.103 The significance of Acomb House Farm is informed by its architectural form and historical development. Although now in private ownership it was developed by the Fitzwilliam Malton Estate in the same period as neighbouring farmsteads as part of the agricultural improvements from land drainage and enclosure. It contributes to the landscape character of nucleated farmsteads within a dispersed settlement and the collective group value with neighbouring heritage assets including NDHAs.
- 14.104 Eden Camp is stated as being originally constructed in 1942, which held Italian and German prisoners during World War Two. The prisoners were put to work locally in surrounding agricultural fields. I recognise Eden Camp now operates as a modern day history museum and has done so since the 1980's. The museum provides a unique cultural interface between Ryedale's agricultural community; local tourism; and established veteran groups.
- 14.105 Based on Catherin Bells submissions I agree that Eden Camp as an NDHA should be valued at a regional level. It is attributed medium significance as per the ES terminology to describe such assets. I concur that there would be a minor/negligible significance of effect.
- 14.106 The main parties agree that Eden Camp and its setting would not be significantly impacted upon owing to topography, distance to the appeal site, the height of the development and screening. I have no strong reason to disagree.
- 14.107 Eden House is a late 18<sup>th</sup> early 19<sup>th</sup> century high status property with architectural interest. It has a large curtilage including a parkland setting, walled garden, and kitchen garden. The site was historically owned by the Fitzwilliam Estate. It is neighboured by 19<sup>th</sup> century estate cottages.
- 14.108 Eden House has illustrative and associative historical interest as a principal residence to the management of the Fitzwilliam Malton Estate, which has dominated the evolution of Malton and its surrounding area since the post Medieval period. The house and nearby cottages exemplify historical social structures and the important role of the Fitzwilliam Estate within the area.
- 14.109 The location of Eden House in a large domestic /parkland curtilage, surrounded by farmland within the same ownership is relevant. Eden House

formed a part of the same major early 19<sup>th</sup> century scheme of works as the improvement of Old Malton Moor for arable production. It has a close associative relationship with Eden Farm, adjacent. Consequently, I accept that Eden House should be considered as an NDHA. It has medium rather than high significance.

14.110 Nonetheless based on the orientation of Eden House away from the proposed development, the magnitude of impact on Eden House would be 'Low / Negligible'. As this results in a 'Minor / Negligible Significance of Effect' in the Table 7.4 matrix, impacts on Eden House as an individual NDHA are not considered further within the R6's assessment.

14.111 Furthermore, Eden Farm (historically Eden House Farm) adjacent to Eden House, is a late 18<sup>th</sup> / early 19<sup>th</sup> century farmstead with a handsome red brick farmhouse displaying a hipped roof with symmetrical front elevation. It is typical of the Georgian period and evidences the cultural and social backdrop of the period(s) of construction. I appreciate the historical relationship between Eden Farm and Eden House would have been as a 'home farm' to 'country house'. Eden Farm exemplifies characteristics in materials and design that typify the area and contribute to the landscape character.

14.112 Eden Farm retains a number of curtilage agricultural buildings from its period of construction and later 19<sup>th</sup> century additions. Many of these have been altered over time to meet the changing needs of its continued agricultural use. The significance of Eden Farm is considered to be 'medium' by the R6 Party based on its age and level of survival of historic features that characterise historic farmsteads in this area. I agree.

14.113 It has a functional relationship to the appeal site that continues today. Unlike with Acomb House farm where there is no such functional relationship between the two. The contribution of the appeal site to Acomb House Farm is the intervisibility with neighbouring sites and the way the farm is experienced in the landscape.

14.114 The geophysical survey undertaken and referred to in the ES showed that fields without green waste did produce anomalies of archaeological interest including a trackway in the western part of the site. This is interpreted as likely to be medieval in date in the Cultural Heritage ES chapter, although it could also be prehistoric or Roman in date.

14.115 Together with Catherine Bells additional assessment covering all relevant NDHAs impacted upon (which is convincing), responses from the appellant, other parties, and the content of the ES combined I am satisfied that there is adequate information to inform my assessment.

*c) The significance of designated and NDHAs overall 'Group Value'*

14.116 Importantly, Section 3 of the R6 heritage impact assessment is informed by Historic England guidance and appraisals specifically for the Vale of Pickering Area.

- 14.117 Based on that information I note the enclosure of Malton Moor in 1805 coupled with water management practices introduced cuts, ditches and canalised sikes, that brought marginal land into intensive production. The formation of a drained landscape informed the dispersed settlement of isolated farmsteads that characterise the landscape. Besides the removal of some field boundaries in the 20<sup>th</sup> century, the landscape character has remained unchanged in the inner study area since the turn of the 19<sup>th</sup> century.
- 14.118 I accept that the contribution of shared setting, to properly understand the significance group value of Acomb House Farm, Windmill and Eden Farm is high. Harm to the shared setting through the introduction of fields of solar arrays, would impact the intervisibility between them. It would introduce a dominant and alien feature into a predominantly unaltered early 19<sup>th</sup> century landscape.
- 14.119 The evidence points to the conclusion that land drainage and enclosure determined the landscape character of the area at the turn of the 19<sup>th</sup> century, creating a field system intersected by drainage channels, and a dispersed settlement of farmsteads to manage this improved arable land.
- 14.120 Existing buildings and landscape share historical values relating to their period of development, which is enhanced by the presence of Eden House and the Windmill amongst the group.
- 14.121 The high level of importance attributed by the Fitzwilliam Malton Estate to the programme of land improvement on Old Malton Moor in this period is evident from the presence of Eden House.
- 14.122 The development of a windmill within the building group denotes the importance of grain production in the landscape. It is testament to the scale of historic investment in the agricultural development of this area. The intentional locating of the windmill on estate owned land would have supported the efficient processing of grain by tenanted farms.
- 14.123 Accordingly, the neighbouring farms referred to by the parties hold a functional relationship with each other. They have operated as an agricultural community since they were established at the turn of the 19<sup>th</sup> century. They hold historical relationships with the Windmill (for processing crops) and with Eden House (for the management of tenancies).
- 14.124 The designated and NDHAs which would be directly impacted by the proposed solar farm development are: Acomb House Farm; the Windmill at Windmill Farm and Eden Farm. Likelihood of archaeological remains as indicated in the ES is a further factor.
- 14.125 The field setting of Acomb House Farm, Eden Farm and the Windmill is an intrinsic component of their significance. This drained landscape of good grade arable fields is the fundamental reason for the construction of both farms and the Windmill as well as neighbouring farms in the same period. Acomb House Farm, Eden Farm and the Windmill share inter-visibility, reinforcing their group value within the landscape.

- 14.126 The historical and economic connections between the appeal site and both Eden Farm and the Windmill increase the value of their arable setting to their significance. They have a functional relationship with the appeal site. For the windmill this is historical. For Eden Farm this historical relationship continues to the present day as a source of income generation.
- 14.127 The appeal site is not within the landholding of Acomb House Farm so there is no functional relationship between the two. The contribution of the appeal site to the setting of Acomb House Farm is the inter-visibility it has with neighbouring sites within the dispersed settlement and the way the farm is experienced within the landscape.
- 14.128 As per the conclusions of Catherine Bell I agree the contribution of the setting of the appeal site to the significance of the heritage assets and NDHAs is at the moderate/high level when considered as a group.
- 14.129 The widening and installation gated access tracks; rows of solar arrays surrounded by 2.5m high fencing, initially, and 4m hedges thereafter, would harm the legibility of the group value amongst dispersed sites within the landscape. Although, the reduced development area since initial EIA screening has abridged the extent of landscape impact to the shared group setting of Acomb House Farm, Windmill and Eden Farm.
- 14.130 The LVA finds that between 200m and 750m from the site in a northerly and westerly direction there would be a medium scale of change to landscape character. This impact on landscape character can be applied to the shared setting of Eden Farm, Acomb House Farm and Windmill Farm and the context the group is experienced in. The impact on any future ability to understand the functional relationships and group value between these farmsteads, the Windmill and their agricultural context would be at a moderate to major degree of 'less than substantial harm'.
- 14.131 In the assessment of heritage assets, I find that the information towards the effects on overall significance offered by the R6 Party to be convincing (Section 6.6 and the summary Table 6.6.1 of Catherine Bells PoE). I agree that major and moderate effects on heritage assets are 'significant' in the context of The Town and Country Planning (Environmental Impact Assessment) Regulations 2017 (EIA Regulations). Therefore, such findings identify that the appeal scheme would have impacts on heritage assets of a magnitude that requires consideration within the overall planning balance.
- 14.132 In that context, Paragraph 203 of the Framework sets out that harm to NDHAs is a balance considering the scale of any harm or loss and the significance of the heritage asset. In this case there would also be some limited harm to the archaeological significance of NDHAs of local value owing to erosion of their setting in an agricultural open countryside location.
- 14.133 In conclusion, the development of the appeal site would not eradicate the ability to understand the significance of all heritage assets impacted, inclusive of regard to NDHAs and the combined overall group values. I find that the level of harm arising towards the overall setting impact of all heritage assets combined would still fall within the 'less than substantial' bracket.

14.134 Accordingly, there would be some conflict with RLPS Policy SP12 which amongst other criteria seeks to conserve and where appropriate enhance distinctive elements of Ryedale's historic assets and environment. In finding such conflict I note that SP12 goes on to set out that proposals which would result in less than substantial harm to designated assets will only be agreed where the public benefit of the proposal is considered to outweigh the harm.

14.135 Having regard to the advice of the Framework, I attribute significant weight to the less than substantial harm I have identified to the setting of two designated heritage assets. Separate to that, there would also be some limited harm to NDHAs evidenced to be of significant value and likely prehistoric/medieval/roman archaeological remains in the vicinity. Such non-designated asset harm has importance owing to local cultural significance and attracts moderate weight.

*Residential amenity impacts*

14.136 NYC and the R6 Party dispute the impact on the residential visual amenity of the occupiers of Eden Farm, Acomb House and Windmill Farm. In that context, Framework paragraph 123 requires that planning policies and decisions should promote an effective use of land in meeting the need for homes and other uses, while safeguarding and improving the environment and ensuring safe and healthy living conditions.

14.137 At a local level RLPS Policy SP20 covers a variety of generic development management issues relating to residential amenity and requires new development to respect the character and context of the immediate locality and the wider landscape. It also requires that proposed new uses should be compatible with: the existing ambience of the immediate locality; and the surrounding area; and with neighbouring land uses. New development uses should not prejudice the continued operation of existing neighbouring land uses.

14.138 At my site visit I could see that the landscape close to the site is flat and predominantly open arable land with hedgerows. The solar farm would be detached from the main residential settlements. Eden Farm, Windmill Farm and Acomb House nearby are all isolated properties. Near to the proposed location of the BESS, the landscape becomes associated with industrial/commercial uses, Eden Camp and where pylons are prominent.

14.139 I refer to the appellant's Residential Visual Amenity Assessment (RVAA) and that The Landscape Institute has prepared a Technical Guidance Note (TGN) on RVAA: Landscape Institute Technical Guidance Note 2/19: Residential Visual Amenity Assessment (TGN 2/19)1 (CD 8.16).

14.140 The advice of TGN 2/19 is important because it defines what the term 'residential visual amenity' should be taken to mean. Paragraph 1.2 denoting this as '*the overall quality, experience and nature of views and outlook available to occupants of residential properties, including views from gardens and domestic curtilage.*'

- 14.141 TGN 2/19 acknowledges changes in views and visual amenity are considered in the planning process and it is not uncommon for significant adverse effects on visual amenity to be experienced by people at their place of residence as a result of introducing a new development into a landscape.
- 14.142 I appreciate that the submitted RVAA scoped Eden Farm out of the requirement for detailed assessment on the grounds that the likely visual effect at this property was 'minor'. However, it did provide analysis for both Windmill Farm and Acomb House.
- 14.143 The RVAA concluded that the visual effects would not 'be of such a nature and/or magnitude that they would potentially affect living conditions at any property to the point it becomes an unattractive place to live, when judged objectively in the round.'
- 14.144 The Inquiry has been informed by additional evidence from the appellant further assessing its conclusions during the planning application stage.
- 14.145 Eden Farm farmstead lies roughly 330m to the east of the proposed solar farm. To the immediate north of the property, there is a garden with open views northwards towards Milton Wood and westwards towards the site. The view west is across arable fields and there are two lines of hedgerow before the site boundary. There is likely to be only occasional filtered glimpses through the hedgerow to the site at ground floor level and through upstairs windows, which would greatly reduce with established planting mitigation proposed by the appellant.
- 14.146 The solar farm would be set back around 125m from Windmill Farm (farmhouse). The site boundary also extends roughly 55m west of that farmhouse behind a sizable agricultural building. The nearest solar panel would be around 90m away.
- 14.147 I accept there would initially be a large scale of change in the view from some locations within the curtilage of the property, most notably at the gateway serving it. But the overall level of outlook would remain unchanged from many locations within and surrounding the dwelling. Once mitigation planting has established, the resultant effects would be greatly reduced leading to a small residual change in the views currently experienced.
- 14.148 The separation from the farmhouse; the enclosure generated by other buildings and boundary treatments around it; the angle in which views of the solar farm would be seen; and the effect of mitigation in the long term give me much confidence that the occupiers of the dwelling would not experience an overbearing effect.
- 14.149 Acomb House would be in the order of 215m to the boundary of the solar farm with an approximate 5m additional buffer to the nearest panel. The solar arrays would be clearly seen from the property at a distance owing to the flat topography. But it would not break the skyline. It is estimated by the appellant at 'year 10' post mitigation planting the solar farm would no longer be visible from the ground floor of the property or gardens. Given the

separation distances involved the proposed solar farm would not result in an overbearing relationship.

14.150 Whilst I realise that some people may dislike the appearance of the panels, it is the level of change evidenced which I have focused on as opposed to personal taste. I do not find that the resultant residential amenity levels of any of the mentioned properties amount to a breach of development plan policy. The appellant argues that the properties would continue to be attractive rural places to live, even before any proposed mitigation fully establishes.

14.151 With the scheme there would remain large expanses of countryside to enjoy for relaxation, exercise, and recreation, as the areas dominant feature. Hedgerow planting and height management envisaged do not alter my conclusions on those issues, as I do not find those to be harmful to amenity or to the character and visual appearance of the area.

14.152 Separate to those points, it is common ground with NYC the appeal site is subjected to high ambient noise levels from road traffic on the nearby A64 and A169. Consequently, any noise emitted from the appeal scheme is likely to be masked by existing noise and therefore would not impact on nearby residential amenity in accordance with RLPS Policy SP20<sup>[8.71]</sup>.

14.153 Additionally, to ensure that low frequency noise would not result in any adverse issues, a noise condition is recommended by NYC to be imposed as per the comments from their Environmental Health Officer.

14.154 Thus, I find there would be no breach of Policy SP20 –which seeks to ensure that new development will not have a material adverse impact on the amenity of present or future occupants, the users or occupants of neighbouring land and buildings or the wider community by virtue of its design, use, location, and proximity to neighbouring land uses. Including regard to creating an alleged overbearing or oppressive presence.

14.155 Even so, whilst not in contravention with SP20 there would be significant, albeit short lived, periods of construction traffic noise and disruption. Given such impacts can be appropriately managed through planning conditions and would be temporary in nature during construction I attribute such harm limited weight.

#### *Other considerations*

14.156 In relation to overall landscape effects, I note the appeal site does not fall within an area covered by a national or local landscape designation and any effects on the North York Moors National Park and the Howardian Hills AONB (a National Landscape) would be negligible.

14.157 It is common ground between the appellant and NYC<sup>214</sup> that once mitigation measures have established, any effects on existing landscape fabric would be insignificant and that there would be only a residual adverse effect of

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<sup>214</sup> SoCG CD 9.2

minor significance on the landscape character between Ryton Riggs to the north, Edenhouse Road to the east, Freehold Lane to the south and Cheapside to the west.

- 14.158 The SoCG (CD 9.2) clarifies that reason for Refusal 4 of the Decision Notice relates only to visual effects and not landscape effects and that there would be no unacceptable adverse landscape impacts. Nevertheless, I accept that there would be some largely contained visual appearance and character harm which carries limited weight.
- 14.159 With respect to the impact on users of the surrounding PRow network. Whilst I accept that some footpath users may not like the appearance of the scheme when using PRows, the impact to the mainstay of walking route views would generally be imperceptible.
- 14.160 I have carefully considered the range of other potential impacts and objections referred to by interested parties in written and oral submissions alongside the conclusions of NYC, as well as the other background evidence informing the appellant's case. In relation to some of the points raised the content of the submitted Transport Statement (CD Ref: 1.43), Construction Traffic Management Plan (CD Ref: 1.44), Construction Environmental Management Plan (CD1.33), and Solar Photovoltaic Glint and Glare Study (CD1.49) are applicable. In summary, I find that none of those other factors significantly weigh against the appeal scheme.
- 14.161 Interested parties raised concerns in relation to noise, fire risk and tourism. Even so, the appellant's overall case provides convincing evidence which demonstrates an absence of noise impact on Eden Camp, that fire safety mitigation is embedded into the design response pursued at appeal and there is no positive evidence of any effect on leisure or tourism.
- 14.162 I note that the North Yorkshire Fire and Rescue Service were consulted during the determination of the application. Subsequently there have been amendments to address access and other comments. A Grampian condition is agreed as appropriate by NYC to ensure a Fire Safety Strategy is prepared and agreed prior to commencement of works. I find such an approach would accord with the NPPG.
- 14.163 I also note that a Technical Noise Note was prepared by the appellant in March 2023 (CD2.11) and an updated note was submitted during the Inquiry (CD10.14) to further consider noise impacts at Eden Camp Modern History Museum. NYC agreed during the Inquiry that there are no significant effects in relation to noise because of the proposed development.
- 14.164 With respect to decommissioning points raised, in line with the spirit of the content of EN-3 I accept that solar panels can be decommissioned relatively easily, and that the precise nature and full extent of decommissioning of a site can vary.
- 14.165 It is expected by the NPS that at the end of the lifetime of such development, panel arrays and mounting structures would be



decommissioned, and underground cabling dug out to ensure that prior use of the site can continue.

14.166 In accordance with the NPS applicants should set out what would be decommissioned and removed from the site at the end of the operational life of the generating station, considering instances where it may be less harmful for the ecology of the site to keep or retain certain types of infrastructure. For example, underground cabling and where there may be socio-economic benefits in retaining site infrastructure after the operational life, such as retaining pathways through the site or a site substation. There is nothing before the Inquiry which leads me to the conclusion any expected decommissioning would be ineffective or move away from national guidance.

14.167 There has been public concern towards the wider environmental costs and human labour implications of producing solar panels abroad. Nonetheless, I do not find there is compelling evidence that such concerns should hold significant weight against the scheme applied for.

14.168 Moreover, the appellant's ecology and BNG evidence, taken as a whole, is credible and sufficient. I have no strong reason to conclude it is inadequate considering the shared position documented in the submitted SoCG. The risk of the schemes ecological enhancements diminishing over time would be low.

*HRA/Appropriate Assessment*

14.169 The appellant has submitted information to inform the SoS (within CD1.18 at Appendix 6.3: Information to Inform Habitat Regulations Assessment (dated August 2022)), as the Competent Authority. It details the Likely Significant Effects (LSE) of the solar farm on the qualifying interests of European designated sites in accordance with Article 63 of The Conservation of Habitats and Species Regulations 2017, (the Habitat Regulations).

14.170 The River Derwent SAC (a European designated site) is located approximately 0.6km south of the appeal land and separated by urban development. The appeal site is located within the Rye catchment and is drained by numerous agricultural ditches which drain into the River Rye and eventually into the River Derwent.

14.171 The river supports an aquatic flora uncommon in northern Britain. Several species, including river water-dropwort, flowering rush, shining pondweed, arrowhead, opposite-leaved pondweed, and narrow-leaved water-parsnip are more typically found in lowland rivers in southern England. It is noted for the diversity of its fish communities, which include river and sea lamprey populations that spawn in the lower reaches, as well as bullhead. The diverse habitats also support otters.

14.172 The SAC's conservation objectives are that: the integrity of the site is maintained or restored as appropriate; the site contributes to achieving the favourable conservation status of its qualifying features, by maintaining or restoring the extent and distribution of qualifying natural habitats and habitats of qualifying species, including their structure and function as well as species population numbers.

- 14.173 In terms of habitat loss or change there would be no direct effect on habitats within any European site. Consequently, such consideration has been screened out by the appellant's assessments. Similarly, the solar farm does not 'directly' impact upon habitats that are functionally linked to European sites. All drainage ditches would be protected during construction and a buffer of 8m maintained. The ditches are steep sided, mostly dry, and unsuitable for fish and not functionally linked to the SAC for qualifying interest species.
- 14.174 Plus, periodic cleaning of PV modules would not involve chemicals. Direct and indirect habitat are therefore excluded from the assessment.
- 14.175 Potential for direct harm to qualifying interest species is not considered by the appellant's assessments to occur. However, the site is drained by numerous ditches which drain further afield. Therefore, there is potential that any site related runoff could drain into the River Derwent SAC and result in potentially LSE, as an indirect impact.
- 14.176 Thus, I note that the proposed development is considered, either alone or in combination with any other plans or projects, to have LSEs on the SAC, when assessed in the absence of any mitigation, in relation to its potential to cause indirect sedimentation and/or pollution.
- 14.177 LSEs are argued to be restricted to the construction, operation, and decommissioning phases, in relation to site runoff and pollution into nearby watercourses. An 'appropriate assessment' is therefore required in relation to the potential indirect impacts.
- 14.178 In light of those circumstances, I agree mitigation would be able to be secured by planning condition for a final Construction Environmental Management Plan (CEMP) which would include: a detailed breakdown of the phasing of construction activities; a pollution risk assessment; identification of all temporary discharge points to watercourses; appropriate pollution control measures during earthworks and construction; storage of all fuel and other chemicals in accordance with best practice; contingency planning and emergency procedures; on-going monitoring of construction procedures to ensure management of risk is maintained as well as details of construction phase sustainable drainage systems (SuDS).
- 14.179 Accordingly, I find that the range of mitigation measures proposed by the appellant are both extensive and reasonable. I conclude they can be taken as achievable and effective in preventing potential adverse effects to the European site in line with all statutory expectations.

#### *Benefits*

- 14.180 In terms of direct benefits, the proposed development results in a net gain of 117.37% in habitat units and 42.67% in hedgerow units. Ecological enhancements that would be secured include: 3 beetle banks; 2 additional 'bug hotels' for insects; 2 habitat 'scrapes' to introduce aquatic habitats, floral diversification, bare ground for invertebrates and also a small run off retention area; as well as a Winter bird seed mix strip to provide habitat for wintering

birds and invertebrates. The level of BNG on offer represents a considerable benefit.

- 14.181 I note that the Climate Change Act 2008, as amended sets a legally binding target to reduce net greenhouse gas emissions from their 1990 level to net zero by 2050 and reducing emissions by 78% compared with 1998 levels, by 2035. North Yorkshire County Council also declared a climate change emergency during July 2022 subsumed to the new NYC from April 2023, making a commitment to actions to achieve net zero emissions across North Yorkshire by 2050 and a local ambition to be the first carbon negative region by 2040 (CD 8.18). A target by NYC is to install an additional 2,500MW of capacity from solar, onshore wind and hydropower by 2038.
- 14.182 NPS EN-1 and EN-3 identify the approach to delivering nationally strategic level energy schemes. EN-3 recognises that solar is to play a key part in the strategy for low-cost decarbonisation of the energy sector and will help deliver greater energy independence. In line with the British Energy Security Strategy (2022) [CD8.17] the government expects a five-fold increase in solar deployment by 2035, in the order of up to 70GW.
- 14.183 Crucially, the appeal scheme is estimated by the appellant as being able to supply the average annual electricity needs of around 38% of households in the Ryedale area. This is akin to meeting the energy needs of over 8,660 homes per year. Resulting in estimated carbon savings of around 12,500 tonnes annually. Plus, the battery storage would allow clean energy to be put back into the grid more flexibly.
- 14.184 There are no physical constraints limiting early development of the appeal scheme and the appellant has a grid connection offer in place. Therefore, the solar farm would be able to make an early and significant contribution of achieving the statutory net target set by 2050 and reducing emissions by 78% compared with 1990 levels by 2035. It would enable the delivery of clean and secure renewable energy to be realised. This carries substantial overarching weight. These reasons also applicable to meeting SP17.
- 14.185 I appreciate there would be significant construction employment work created to install a commercial scale solar farm as well as from expected maintenance work during its operation. But the degree of operational employment opportunity would be far narrower and less impactful in extent. Therefore, the latter carries limited weight as a standalone economic benefit.
- 14.186 I have considered the other planning decisions, rulings and statements referred to in the wider evidence but in the main they relate to different sites and circumstances. Therefore, they do not alter any of my main conclusions.

## **15.0 Overall Planning Balance**

- 15.1 Section 70(2) of the Town and Country Planning Act 1990 states that in dealing with an application for planning permission the authority shall have regard to the provisions of the development plan, so far as material to the application and any other material considerations.

- 15.2 Section 38(6) of the Planning and Compulsory Purchase Act 2004 states that if regard is to be had to the development plan for the purpose of any determination to be made under the planning Acts the determination must be made in accordance with the plan unless material considerations indicate otherwise.
- 15.3 Weaknesses arise in the appellant's case relative to RLPS policy. Some of the argument is retrospective following the initial planning application stage. Broadly speaking NYC and the R6 were right to question the interrelated environmental, social, and economic impacts posed in the round. But the lack of unconstrained land within a 7km radius (as shown on CD10.10) and the absence of other more favourable sites within 5km is material.
- 15.4 In this case I have found that the appellant does not demonstrate full compliance with the development plan because of the harmful impacts it would have from: a small amount of permanent BMV agricultural land loss (with the vast majority of land effects not falling as permanent); detriment to a successful agricultural business as part of the local rural economy; as well as heritage asset impact harms (in particular to two listed buildings: a landmark Windmill and Acomb Farmhouse), which all contravene local policy carrying substantial weight.
- 15.5 In tandem, there would be harm arising to the setting of non-designated assets of historic importance, in the context of group value and significance associations combined holistically.
- 15.6 Accounting for the potential 40-year operational lifespan of the solar farm the harm from the scheme would ultimately be reversible. Having regard to designated asset significance and wider group value considerations I have found that the level of harm still equates to less than substantial in scale.
- 15.7 There would also be some limited harm to: existing landscape character and appearance levels within the open countryside; and local amenity from temporary disruption, noise, and construction activity. Although such harms would be lessened through planning condition use. Nevertheless, they are still significant adverse implications to factor relative to the advice of the Framework.
- 15.8 As the appeal proposal does not fully accord with the development plan, subsequently it does not lead me to apply paragraph 11 (c) of the Framework which would otherwise mean that planning permission for the appeal scheme should be granted without delay.
- 15.9 Instead, the outcome of a decision turns on whether any benefits of the proposed development would outweigh the harms and subsequent conflict with the development plan identified.
- 15.10 As directed by paragraph 202 of the Framework I am required to assess designated asset harm in relation to any public benefits on offer. I have attributed significant weight to such harm but the clean and secure energy production the scheme offers is a substantial standalone overarching public

benefit. There would also be substantial public benefits from BNG. Those particular benefits, in this case, outweigh the 'less than substantial harm' to the settings of designated heritage assets, bearing in mind proximity and the overall intervening landscape evident in concluding on such harm.

- 15.11 And from a wider decision-making perspective, recognising those harms with all the other harms I have identified and referenced in all of my above reasoning including harm to: BMV loss and availability levels; an existing agricultural business; landscape harm; NDHAs; and the disruption to local roads and amenity levels probable during construction periods as an additional negative factors, taken collectively. Combined all those considerations attract significant weight within the overall planning balance to be undertaken. Nonetheless, the level of overall scheme benefits on offer still exceeds all the harms combined.
- 15.12 As informed by the wider evidence of the appeal I am also cognisant that Malton BSP also is the only BSP in the former Ryedale District Council administrative area (which extends to an area of circa 150,000 ha) as a material constraint. The next nearest substations are within York and Scarborough.
- 15.13 Overall, my recommendation must be made on the total level of harms arising against any overall benefits attributed to this appeal scheme. Having regard to Section 38(6) of the Planning and Compulsory Purchase Act 2004 I have identified there is some conflict with the RLPS.
- 15.14 Bringing all points together, I find that although balanced the collective benefits would outweigh the harms I have identified.
- 15.15 I acknowledge that this is a balanced decision and based on relative weights of the benefits against the harms. If the Secretary of State agrees, I have set out the conditions that should be applied in Annex D.

## **16.0 Inspector's Recommended Planning Conditions**

- 16.1 Standard time limit and approved plans planning conditions would be required in accordance with statutory provision contained within Section 51 of the Planning and Compulsory Purchase Act 2004; and to allow a formal mechanism for amendment of the plans. (Condition's 1 and 2).
- 16.2 A condition setting out compliance with existing Biodiversity Management Plan information, ecological enhancement measures and monitoring is required to ensure the interests of conserving the natural environment are respected in accordance with RLPS SP14. (Condition 3)
- 16.3 A condition to ensure compliance with battery storage and flood risk assessments would be necessary owing to known flood risks (Condition 4).
- 16.4 No external lighting should be installed until the full details have been agreed would ensure wildlife interests can be respected (Condition 5).

- 16.5 A condition regulating changes to access surfaces would be necessary to ensure there is no detrimental impact to road safety (Condition 6).
- 16.6 All tree works would need to be conditioned to ensure compliance with the British Standard, to protect local character and the natural environment (Condition 7).
- 16.7 A condition regulating low frequency noise to acceptable levels would be required to safeguard the living conditions of neighbouring occupiers (Condition 8).
- 16.8 A suite of prior to development commencement construction management related conditions covering: construction traffic; construction and environmental management matters; existing drainage provision and repair works; as well as due soil management planning would all be required to maintain public safety and general amenity levels; to ensure surface water run off levels are appropriate; and to protect agricultural soils for future generations. (Condition's 9, 10, 11 and 12).
- 16.9 A condition securing appropriate written archaeological investigation would be required given the site is of archaeological importance and to allow due mitigation. (Condition's 13 and 20).
- 16.10 Notwithstanding the appeal plans already submitted further details of landscaping and planting scheme information as well as future maintenance provision would be necessary to ensure that appropriate screening around the edges of the development transpires and to ensure local character and appearance levels are respected. (Condition's 14 and 18).
- 16.11 Conditions ensuring: due contaminated land management (should any contamination be found during construction) alongside a Risk and Emergency Response Management would be necessary to ensure adequate environmental protection and public safety interests are maintained. (Condition's 15 and 16).
- 16.12 A Biodiversity Gain Plan would be required to adequately demonstrate the measurable net gains anticipated to the satisfaction of the Council to ensure ecological enhancements are accurately measured and obtained. (Condition 17).
- 16.13 A first export of electricity and 40 year time expiry condition alongside a range of decommissioning management (inclusive of decommissioning construction traffic routing arrangements) and site restoration conditions would be required. This is to ensure that the local natural environment and ecology is safeguarded; in the interests of ensuring road and bridleway user safety; wider public safety levels are properly maintained owing to risks; and to ensure the full mitigation measures contained within the ES (and addendum July 2024) are fully implemented unless otherwise agreed if there is well founded reason to deviate from those plans or to provide any additional mitigation. (Condition's 19, 21, 22, 23, 24, 25, 26, 27).

**17.0 Inspectors Recommendation**

17.1 For the reasons given above I recommend that the appeal should be allowed and that planning permission is granted.

*M Shrigley*

INSPECTOR

**Appendix A****Appearances**For the Appellant

Stephanie Hall, Kings Chambers, instructed by Harmony Energy. Who called:

Fiona Bage MRTPI IHBC	Principal Heritage Consultant, ELG Heritage
Tony Kernon BSc (Hons) MRICS FBIAC	Principal, Kernon Countryside Consultants
John Ingham BA (Hons) DipLA, CMLI	Director of Landscape Planning, Stephenson Halliday
Gary Camplejohn	Technical Director, Harmony Energy Ltd
Rebecca Caines MA MRTPI	Senior Director, Lichfields

For the Council

Shemuel Sheikh, Kings Chambers. Who called:

Richard Wood BA (Hons) BPI MBA MRTPI	Richard Wood Associates Ltd
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For the Rule 6 Party

Sioned Davies, Counsel, No.5 Chambers, instructed by Loxley Legal. Who called:

Emma Sturdy	Tenant, Eden Farm
Robert Sturdy	Tenant, Eden Farm
Catherine Bell MA (cons) ACIfa	Heritage Witness

Oliver Stones BSc (Hons) MRICS FAAV	Partner, Alnwick Farming and Property Consultants
Samuel Franklin BSc (Hons) FAAV FBIAC MISoilSci	Director, Landscape Land and Property Ltd

Interested Parties (who spoke at the Inquiry)

Rt Hon Sir Robert Goodwill

Cllr Lindsey Burr	(NYC)
Mr Pritchard	(Malton Town Council)
Richard Bannister	(Resident)
Sue Jefferson	(Resident)
Dr Sam Hoste	(Resident)
Howard Johnson	(Resident/ Eden Camp Modern History Museum)
John Scarth	(Resident)
Mr Williamson	(Resident)
Sarah Clark	(Resident)
George Dunn	(Tenant Farmers Association)
David Woolley	(Resident)
Peter Conwell	(Resident)
Jane Lawsley	(Resident)
Mark Hepworth	(Resident)
Janice Hart	(Resident)

**Appendix B**

**List of Inquiry Documents**

INQ1	Appellant's Opening Statement
INQ2	Appellant Appearances List
INQ3	Council's Opening Statement
INQ4	Rule 6 Opening Statement



INQ5	Mr Howard Johnson's Appeal Objection Points and Notes, Eden Camp Modern History Museum & Old Malton Solar Farm ES Figure 1.3 – Proposed Site Plan, Rev D by Stephenson Halliday, dated July 2024 - Inquiry Day 1
INQ6	Sue & David Woolley written objection made orally – Inquiry Day 1
INQ7	<p>Lichfields 'Agricultural Land Classification' Drg No:GIS/LF/68206/01-05, dated 28.2.24</p> <p>Lichfields 'Flood Risk &amp; Alternative Sites' Drg No: GIS/LF/68206/01-48, dated 12.3.24</p> <p>Lichfields 'Roof Space' Drg No: GIS/LF/68206/01-12, dated 1.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 01-Site', Drg No:GIS/LF/68206/01-10, 28.2.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 02-Alternative Site 1', Drg No: GIS/LF/68206/01-40, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 03- Alternative Site 2', Drg No: GIS/LF/68206/01-41, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 04-Alternative Site 3', Drg No: GIS/LF/68206/01-42, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 06-Alternative Site 5', Drg No: GIS/LF/68206/01-44, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 05- Alternative Site 4', Drg No: GIS/LF/68206/01-43, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 07-Alternative Site 6', Drg No: GIS/LF/68206/01-45, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 08-Alternative Site 7' Drg No: GIS/LF/68206/01-46, dated 7.3.24</p> <p>Lichfields 'Zone of Theoretical Visibility (ZTV) 09-Alternative Site 8', Drg No: GIS/LF/68206/01-47, dated 7.3.24</p>
INQ8	Table 1: Summary comparison of figures/ Table 2: Alternative forecast using V&B methodology/ Table 3:Summary of solar impact
INQ9	Profit and Loss Eden Farm for the year ended 31 March 2024 (spreadsheet table size A3)
INQ10	Lichfield (Google Earth 2024) A3 hard copy map showing designated and non-designated assets numbered in the 'key' it contains as 1-5.
INQ11	Agricultural Matters Scott Schedule – 25.09.2024
INQ12	Hard Copy of CD9.34 – Stephenson Halliday Environmental Constraints Rev A 26 Sept 2024 Revision A
INQ13	Updated Core Document List

INQ14	Updated Agreed List of Proposed Planning Conditions (27.9.24)
INQ15	Lichfields: Inspectors Site Visit (for 3 October 2024) with ariel map and Alnwick Farming and Property Consultants (AFP) O F Stones Evidence Alternative Landowners/Sites –proposed viewpoints plan
INQ16	Council’s Closing Statement
INQ17	Rule 6’s Closing Statement
INQ18	Appellant’s Closing Statement

## Appendix C

### List of Core Documents

<b>1</b>	<b>Original Submission: Application Documents and Plans</b>
1.1	Cover Letter PWA (3 January 2023)
1.2	Application Form (3 January 2023)
1.3	Design and Access Statement prepared by PWA (November 2022)
1.4	Planning Statement prepared by PWA (December 2022)
1.5	Statement of Community Involvement prepared by Harmony Energy
	<i>Drawings</i>
1.6	ES Figure 1.1 Rev A - Site Location Plan
1.7	ES Figure 1.2 Existing Site Plan
1.8	ES Figure 1.3 Proposed Site Plan
1.9	Drawing No PL.001 - Mounting Structure
1.10	Drawing No PL.005b –MV Power Station
1.11	Drawing No PL.006 - Customer Substation
1.12	Drawing No PL.007 - Gate, Fence, Construction Road, Camera, Satellite Dish
1.13	Drawing No PL010 - Storage Container
1.14	Drawing No PL011 - BESS Container
1.15	Drawing No PL012 - Transformer
	<i>Environmental Statement</i>
1.16	Volume 1 ES Main Text (covering Ecology, Cultural Heritage and Soils and Agricultural Land Quality) November 2022

1.17	Volume 2 ES Figures and Visualisations
	ES Figure 1.1 - Site Location Plan (CD Ref 1.6)
	ES Figure 1.2 - Existing Site Plan (CD Ref 1.7)
	ES Figure 1.3 - Proposed Site Plan (CD Ref 1.8)
	ES Figure 4.1 - 300m Buffer around Old Malton Substation
	ES Figure 4.2 - Screening and Pre-Application Stage, 120ha of wider 160ha Area
	ES Figure 4.3 - Scoping Stage, 65ha of wider 85ha area
	ES Figure 4.4 - Public Consultation Stage, 74.2ha
	ES Figure 4.5 - Best and Most Versatile Land – Yorkshire and Humber Region
	ES Figure 6.1 - Statutory Designated Sites
	ES Figure 6.2 - Non-Statutory Designated Sites
	ES Figure 6.3 - Habitat Plan
	ES Figure 6.4 - Pond Plan
	ES Figure 6.5 - Breeding Bird Survey Plan
	ES Figure 6.6 - Biodiversity Management Plan
	ES Figure 7.1 - Heritage Assets Within Site
	ES Figure 7.2 - Heritage Assets and Events within the Inner Study Area
	ES Figure 7.3 - Inner Study Area: Historic Mapping
	ES Figure 7.4 - Inner Study Area: Historic Landscape Characterisation
	ES Figure 7.5 - Designated Heritage Assets within the Outer Study Area
1.18	Volume 3 ES Technical Appendices:
	Appendix 2.1: Copy of LPA's Screening Opinion and Historic England's Screening Response dated 13 July 2020;
	Appendix 2.2: Copy of LPA's Scoping Opinion and Consultee Scoping Responses dated 14 Jan 2021;
	Appendix 2.3: LPA's Pre-Application Response dated 26 May 2020;
	Appendix 6.1: Ecological Impact Assessment Methodology dated August 2022;
	Appendix 6.2: Habitat and Species Baseline dated August 2022;
	Appendix 6.3: Information to Inform Habitat Regulations Assessment dated August 2022;

	Appendix 6.4: Biodiversity Net Gain dated 21 Nov 2022;
	Appendix 6.5: Biodiversity Management Plan dated August 2022;
	Appendix 6.6: Outline Construction Environmental Management Plan dated August 2022;
	Appendix 7.1: Heritage Assets Within Site;
	Appendix 7.2: Heritage Assets Within Inner Study Area;
	Appendix 7.3: Archaeological Events Within Inner Study Area;
	Appendix 7.4: Designated Heritage Assets Outer Study Area;
	Appendix 7.5: Photographs from Field Visit;
	Appendix 7.6: Geophysical Survey Report prepared by Magnitude Surveys dated Jan 2022;
	Appendix 8.1: Soils and Agricultural Report prepared by Land Research Associates dated October 2022;
	Appendix 8.2: Soil Management Plan prepared by Land Research dated May 2022.
1.19	Volume 4 Non-Technical Summary prepared by PWA, November 2022
	<i>Scoped out Topics Summary prepared by PWA dated November 2022. Appendices:</i>
1.20	Appendix A – Landscape and Visual Appraisal prepared by Stephenson Halliday dated October 2022
	Appendix A1 - LVA Methodology prepared by Stephenson Halliday
	Appendix A2 – Viewpoint Analysis prepared by Stephenson Halliday
	Appendix A3 – Landscape Sensitivity Assessment prepared by Stephenson Halliday
	Appendix A4 – Residential Visual Amenity Assessment prepared by Stephenson Halliday
	Appendix A5 – LVA Photo-sheets prepared by Stephenson Halliday
	Appendix A6 – LVA Figures 1-5 prepared by Stephenson Halliday
	Appendix B1 – Transport Statement prepared by Local Transport Projects dated September 2022
	Appendix B2 – Construction Traffic Management Plan prepared by Local Transport Projects dated September 2022
	Appendix C1 – Flood Risk and Drainage Assessment Report prepared by Gondolin Land and Water dated September 2022
	Appendix C2 – Sequential Test prepared by PWA dated November 2022
	Appendix D1 – Arboricultural Impact Assessment prepared by Lakeland Tree Consultancy dated July 2022
	Appendix E1 – Phase 1 Geoenvironmental Site Assessment prepared by E3p dated June 2021
	Appendix F1 – Solar Photovoltaic Glint and Glare Study prepared by Pagerpower Urban and Renewables dated October 2022
<b>2.</b>	<b>Additional/Amended Plans and Reports submitted after validation</b>
2.1	ES Figure 1.3 Proposed Site Plan Rev C
2.2	<i>Drawing Pack including:</i>
	Drawing No OM-EL-BAT-01 Envision Battery Elevation
	Drawing No OM BSP Rev H BESS Site Plan
	BESS Layout Plan
	Drawing No OM ED(DNOLVAC) Rev 0 Indicative Customer Switchroom
	Drawing No OM-EL-BTR-01 Rev 0 - Indicative Battery Transformer (KNAN Transformer)

	Drawing No OM_ED(DNOLVAC)_Rev0 DNO LVAC Transformer
	Drawing No PSE2-CIV-1499-200 Rev OA - Proposed 66/33 kV Substation General Arrangement Plan
2.3	Appendix 6.4 BNG V6 dated June 2023
2.4	Appendix 6.5 BMP V4 dated August 2023
2.5	LVA Figure 5 - Landscape Mitigation Strategy prepared by Stephenson Halliday Rev B
2.6	Old Malton Solar Farm and Battery Storage Flood Risk & Drainage Assessment Report prepared by Gondolin Land and Water reference GON.0084.0054 version 2 dated 11/08/2023
2.7	Technical Note Fire Safety prepared by Harmony Energy
2.8	Cultural Heritage Addendum V1
2.9	PWA Sequential Test Clarifications
2.10	Technical Grid Response prepared by Harmony Energy dated 23.06.23
2.11	Technical Noise Note prepared by ITP Energised dated 30-03-2023
<b>3</b>	<b>Committee Report, Minutes of Committee Meeting and Decision Notice</b>
3.1	Report to Strategic Planning Committee 10 October 2023
3.2	Minutes from Strategic Planning Committee Meeting 10 October 2023
3.3	Decision Notice (Refusal) 17 October 2023
<b>4</b>	<b>Development Plan</b>
4.1	The Ryedale Local Plan Strategy (adopted 2013)
4.2	The Ryedale Local Plan Sites Document (adopted 2019)
4.3	Overview of Ryedale Local Planning Authority Area and The Ryedale Local Plan Strategy Malton and Norton Policies Map
4.4	The Minerals and Waste Joint Plan (Feb 2022) Extract Chapter 8
<b>5</b>	<b>Emerging Development Plan Documents</b>
5.1	Extracts from the Submission Version of the Malton and Norton Neighbourhood Plan July 2023
5.2	Malton and Norton Neighbourhood Plan Proposals Map Submission Version
<b>6</b>	<b>Judgements, Other Relevant Appeal Decisions and Summary Pages</b>
6.1	APP/X2220/A/08/2071880 - Land West of Enifer Downs Farm 16 March 2009
6.2	APP/V3310/A/06/2031158 - Land at Inner Farm Burnham on Sea 15 January 2008
6.3	APP/D0840/A/09/2103026 - Carland Cross Wind Farm 19 January 2010
6.4	APP/D05151/N/10/2131194 - Land north of Burnthouse Farm, Cambridgeshire 6 July 2011
6.5	APP/C3240/W/22/3293667 - Land West of New Works Lane Telford SoS 27 March 2023

6.6	APP/C1570/W/23/3319421 – Land west of Thaxted, Cutlers Green Lane, Thaxted 18 December 2023
6.7	APP/U2235/W/23/ 3321094 – Land north of Little Cheveney Farm, Sheephurst Lane, Marden, Kent 5 February 2024
6.8	APP/L3245/W/23/3329815 – Land to the South of Hall Lane, Kemberton Telford 22 February 2024
6.9	APP/X1925/W/23/3323321 – Land at Graveley Lane Great Wymondley 11 March 2024
6.10	APP/D0840/W/23/3334658 – Land known as Penhale Moor Cornwall 18 July 2024
6.11	APP/W3520/W/23/3319970 – Land to the east of The Channel, Burstall Suffolk 23 August 2023
6.12	S62A/22/0006 Land at Berden Hall Farm, Berden 18 July 2024
6.13	APP/E3355/W/24/3337226 – Land north of Transmitting Station Washford West Somerset 28 May 2024
6.14	APP/G2713/W/23/3315877 – Land south of Leeming substation 28 June 2023
6.15	EN 010127 – Mallard Pass Solar Farm 12 July 2024
6.16	APP/W2845/W/23/3314266 - Land at Milton Road Gayton Northampton 13 March 2024
6.17	Bramley Solar Farm v SoS 15 November 2023
6.18	S62A/2022/0011 – Land east of Pelham Substation, Maggots End, Manuden 11 May 2023
6.19	Regina v Rochdale Metropolitan Borough Council Ex Parte Milne 31 July 2000
6.20	City of Edinburgh Council v SoS for Scotland 31 October 1997
6.21	Lullington Solar Park v SoS 16 February 2024
6.22	Appeals Summary Document
6.23	Forge Field Society and Others Regina v Sevenoaks District Council 12 June 2014
6.24	R v Vale of Glamorgan DC ex p Adams [2000] EWHC Admin 323
6.25	Great Portland Estates v Westminster City Council [1985] AC 661
6.26	APP/W0530/W/15/3012014 & APP/W0530/W/15/3013863 Land North of Dales Manor Business Park 15 June 2016
6.27	APP/Y2003/W/16/3144447 Land at Manor Farm, Manton, North Lincolnshire 28 June 2016

6.28	APP/P3040/W/23/3329235 Land to the West of Wood Lane and Stocking Lane, Gotham 8 July 2024
<b>7</b>	<b>Additional Evidential Documentation and Updated Documents/Plans</b>
	<i>With Appellant's Statement of Case April 2024:</i>
7.1	Alternative Site Assessment prepared by Lichfields April 2024 and Appendices including:
	Appendix 1 Appeal Ref: APP/Z3825/A/14/2219843 Priors Byne Farm, Bines Road, Partridge Green, West Sussex RH13 8NX 18 March 2015
	Appendix 2 Map 2 of the Soils and Agricultural Report 2022
	Appendix 3 Tesco Stores Limited v Dundee City Council, Supreme Court Judgement, 21 March 2012
	Appendix 4 Appeal Ref: APP/G2713/W/23/3315877 Land south of Leeming Substation, west of the village of Scruton, bordering Fence Dike Lane, part of Low Street and Feltham Lane, DL7 0RG 27 June 2023
	Appendix 5 Drawing GIS\LF\68206\01-13 Roof Space prepared by Lichfields
	Appendix 6 ZTV Mapping prepared by Lichfields
	Appendix 7 ALC Mapping prepared by Lichfields
	Appendix 8 Flood Risk Mapping prepared by Lichfields
7.2	Sequential Test Update Note prepared by Lichfields April 2024 and Appendices including:
	Appendix 1 Sequential Test prepared by PWA Planning
	Appendix 2 Technical Grid Response June 2023 prepared by Harmony Energy
	Appendix 3 Sequential Test Clarifications document prepared by PWA Planning
	Appendix 4 Alternative Sites prepared by Lichfields
7.3	Technical Note Grid Connection prepared by Harmony Energy dated April 2024
7.4	Biodiversity Management Plan dated June 2023
	<i>Regulation 25 (July 2024)</i>
7.5	Environmental Statement Addendum prepared by Lichfields 19th July 2024 and Appendices including: <ul style="list-style-type: none"> <li>• Appendix 1 Regulation 25 Request</li> <li>• Appendix 2 Statement of Competency</li> </ul>

	<ul style="list-style-type: none"> <li>• Appendix 3 Site Location Plan</li> <li>• Appendix 4 Proposed Site Plan</li> <li>• Appendix 5 Figure 6.6 Biodiversity Management Plan (July 2024)</li> <li>• Appendix 6 Biodiversity Net Gain Assessment (July 2024)</li> <li>• Appendix 7 Outline Construction Environmental Management Plan Update Note (July 2024)</li> <li>• Appendix 8 Biodiversity Management Plan Update Note (July 2024)</li> <li>• Appendix 9 Habitat and Species update Note and Updated Figure 6.3 (July 2024)</li> </ul>
7.6	Environmental Statement Updated Non-Technical Summary prepared by Lichfields 19 <sup>th</sup> July 2024
7.7	Environmental Statement Addendum Appendix 6 Biodiversity Net Gain Assessment V7 dated July 2024
	<i>Amended Application Documents (July 2024)</i>
7.8	Biodiversity Management Plan Figure 6.6 prepared by Logika Group dated July 2024
7.9	Biodiversity Management Plan Update Note prepared by Logika Group dated July 2024
7.10	Habitat and Species Update Note prepared by Logika Group dated July 2024
7.11	Biodiversity Net Gain Assessment V7 July 2024
7.12	Habitat Plan Figure 6.3 prepared by Logika dated July 2024
7.13	Landscape Mitigation Plan Rev C prepared by Stephenson Halliday dated July 2024
7.14	OCEMP Update Note prepared by Logika Group dated July 2024
7.15	Proposed Site Plan Rev D Figure 1.3
<b>8</b>	<b>National Policy and Other Material Considerations</b>
8.1	The Overarching National Policy Statement for Energy (EN-1) November 2023 (Came into force Jan 2024)
8.2	The National Policy Statement for Renewable Energy Infrastructure (EN-3) November 2023 (Came into force Jan 2024)
8.3	Environment Agency and DEFRA guidance 'Flood risk assessment: the sequential test for applicants' (updated February 2017)
8.4	Net Zero Strategy: Build Back Greener (October 2021)



8.5	Smart Power- National Infrastructure Commission (March 2016)
8.6	Energy White Paper 'Powering our Net Zero Future' (December 2020)
8.7	National Grid ESO 'Future Energy Scenarios' (2023)
8.8	UK's Integrated National Energy and Climate Plan (January 2020)
8.9	Powering Up Britain (2023)
8.10	Written Ministerial Statement (WMS) Solar energy: protecting the local and global environment (25 March 2015)
8.11	Written Ministerial Statement (WMS) on Solar and protecting our Food Security and Best and Most Versatile Land (15 May 2024)
8.12	Public Summary of Sector Security and Resilience Plans Cabinet Office 2017
8.13	Government Food Strategy (June 2022)
8.14	UK Food Security Report (December 2021)
8.15	North Yorkshire and York Landscape Characterisation Project Report May 2011
8.16	Technical Guidance Note 02/19: Residential Visual Amenity Assessment (TGN 02/19) (2019) Landscape Institute
8.17	British Energy Security Strategy (2022)
8.18	NYC Climate Change Strategy 2023 to 2030
8.19	Planning Practice Guidance Flood Risk and Coastal Change (25 August 2022) and Planning Practice Guidance Renewable and Low Carbon Energy (14 August 2023)
8.20	Clean Energy Superpower Mission Ed Miliband Speech 18 July 2024
8.21	The Setting of Heritage Assets: Historic Environment Good Practice Advice in Planning Note 3 (Historic England 2017)
8.22	Historic England Good Practice Advice in Planning: 2, Managing Significance in Decision-Taking in the Historic Environment, March 2015
8.23	Historic England Advice Note 15 - Commercial Renewable Energy Development and the Historic Environment (HEAN 15)
8.24	Local Heritage Listing: Identifying and Conserving Local Heritage Historic England Advice Note 7 Second Edition
8.25	Historic England - Conservation Principles, Policies and Guidance
8.26	Historic England - Farmstead and Landscape Statement Vale of Pickering National Character Area 26
8.27	English Heritage - Vale of Pickering Statement of Significance

8.28	National Planning Policy Framework, December 2023
8.29	National Planning Policy Framework September 2023
8.30	National Planning Policy Framework Draft Text for Consultation July 2024
8.31	National Planning Policy Framework July 2021
8.32	National Grid ESO 'Future Energy Scenarios' (2024)
8.33	Carr House Solar Farm Alternative Sites Assessment
8.34	Natural England Technical Information Note TIN066 dated June 2010
8.35	Agricultural Land Classification of England and Wales October 1988
8.36	Natural England Technical Information Note TIN049 dated 19 December 2012
8.37	Welsh Government The Impact of solar photovoltaic PV sites on agricultural soils and land quality March 2023
8.38	Agri-Environment Evidence Annual Report 2023 July 2024
8.39	Planning Practice Guidance Viability (14 February 2024)
8.40	Planning Practice Guidance Natural Land (14 February 2024)
8.41	Planning Practice Guidance Historic Environment (23 July 2019)
8.42	The Rock Review – Working together for a thriving sector (October 2019)
<b>9</b>	<b>Appeal Documents</b>
9.1	North Yorkshire Council Questionnaire dated 07 May 2024
9.2	Signed Statement of Common/Uncommon Ground (12 July 2024)
9.3	Statement of Case – Appellant (4 April 2024), Appendices: <ul style="list-style-type: none"> <li>• Appendix 1 Procedural Note</li> <li>• Appendix 2 Alternative Site Assessment (CD 7.1)</li> <li>• Appendix 3 Sequential test Update Note and Exceptions Test (CD 7.2)</li> <li>• Appendix 4 Technical Note: Grid Connection (CD 7.3)</li> </ul>
9.4	Statement of Case – LPA (June 2024)
9.5	Statement of Case – Sturdy (June 2024)
9.6	Third Party Comments and Summary Table
9.7	Appellants Planning Proof of Evidence August 2024 prepared by Lichfields Part 1 – Proof of Evidence

	<p>Part 2 – Proof of Evidence Appendices</p> <ul style="list-style-type: none"> <li>• Appendix 1 Built Heritage Note</li> <li>• Appendix 2 Grid Connection Technical Note</li> <li>• Appendix 3 Planning Phase Battery Safety Management Plan – Fire Strategy Report prepared by OWC</li> <li>• Appendix 4 Agreed Conditions</li> </ul> <p>Part 3 – Summary Proof of Evidence</p>
9.8	<p>Appellants Landscape and Visual Impact Proof of Evidence August 2024. Appendices</p> <ul style="list-style-type: none"> <li>• Appendix 1 Illustrative Material Relating to Eden Farm</li> <li>• Appendix 2 Illustrative Material relating to Windmill Farm</li> <li>• Appendix 3 Illustrative Material relating to Acomb House</li> <li>• Appendix 4 Updated Photomontages for LVA Viewpoint 9</li> </ul>
9.9	<p>Appellants Agricultural Land Proof of Evidence August 2024 prepared by Kernon Countryside Ltd</p> <p>Volume 1 – Text</p> <p>Volume 2 – Appendices</p> <ul style="list-style-type: none"> <li>• Appendix 1 KCC1 Curriculum Vitae</li> <li>• Appendix 2 KCC2 Natural England’s Technical Information Note 049 (2012)</li> <li>• Appendix 3 KCC3 ALC Methodology</li> <li>• Appendix 4 KCC4 Agricultural Land Classification Report (LRA October 2022)</li> <li>• Appendix 5 KCC5 Photographs of the Site and the Wider Area</li> <li>• Appendix 6 KCC6 Farm Viability Assessment Note</li> <li>• Appendix 7 KCC7 Vickers and Barrass 2024 Budget</li> <li>• Appendix 8 KCC8 Vickers and Barrass 2025 Budget</li> <li>• Appendix 9 KCC9 Extracts from the John Nix’s Pocketbook for Farm Management</li> <li>• Appendix 10 KCC10 Extracts from the Gov.uk Agricultural Facts: Yorkshire and the Humber Region</li> <li>• Appendix 11 KCC11 Analysis of UK Food Security</li> <li>• Appendix 12 KCC12 Defra Press Release 6th December 2022</li> </ul> <p>Volume 3 – Summary Proof</p>

9.10	<ul style="list-style-type: none"> <li>• Eden Farm Viability Assessment (Following Solar Farm) Jan 2024 prepared by Vickers &amp; Barrass</li> <li>• Eden Farm Viability Assessment (Normal Year) Jan 2024 prepared by Vickers &amp; Barrass</li> <li>• Eden Farm Viability Assessment (Normal Year) V3 August 2024 prepared by Vickers &amp; Barrass</li> <li>• Eden Farm Viability Assessment (Following Solar Farm) V3 August 2024 prepared by Vickers &amp; Barrass</li> </ul>
9.11	<p>P&amp;C R6 Viability:</p> <p>Financial Impact on Eden Farm, resulting from the proposed solar development' prepared by The Numbers Business on behalf of Mr and Mrs Sturdy issued to the Appellant on 20.08.24 . 'Confidential Farm Viability Information Exchange' on behalf of Mr and Mrs Sturdy issued to the Appellant on 20.08.24.</p>
9.12	Agreed List of Conditions, dated 27.08.24
9.13	Inspectors Post-Case Management Conference Note dated 1 July 2024
9.14	LPA Planning Proof of Evidence Summary Proof prepared by Richard Woods
9.15	LPA Planning Proof of Evidence Main Proof prepared by Richard Woods
9.16	ELG Heritage Rebuttal to Rule 6 Party Proofs 05.09.24
9.17	Heritage Technical Note dated 23.08.24 prepared by Fiona Bage ELG Heritage
9.18	Rule 6 Heritage Proof of Evidence Summary – Catherine Bell August 2024
9.19	Rule 6 Heritage Proof of Evidence – Catherine Bell August 2024
9.20	<p>Rule 6 Heritage Proof of Evidence Appendices – Catherine Bell August 2024:</p> <ul style="list-style-type: none"> <li>• Appendix 1 Historic England Responses</li> <li>• Appendix 2 Significance Assessment Tables</li> </ul>
9.21	Rule 6 Proof of Evidence – Robert Sturdy August 2024
9.22	<p>Rule 6 Proof of Evidence Appendices – Robert Sturdy August 2024</p> <ul style="list-style-type: none"> <li>• Appendix 1 Personal letter of objection (23 March 2023)</li> </ul>
9.23	Rule 6 Proof of Evidence RfR 4– Emma Sturdy August 2024
9.24	<p>Rule 6 Proof of Evidence RfR 4 Appendices – Emma Sturdy August 2024</p> <ul style="list-style-type: none"> <li>• Appendix 1 Map 1 The Appeal Site and Local Area</li> <li>• Appendix 2 Windmill Farm</li> </ul>

	<ul style="list-style-type: none"> <li>• Appendix 3 Photo of approaching the site from the east on Great Sike Road</li> <li>• Appendix 4 Photo of Robert Sturdy with Marker demonstrating Measurements</li> <li>• Appendix 5 Photomontages submitted by Loxley 27 March 2023</li> <li>• Appendix 6 Photo looking from within Windmill Farm</li> <li>• Appendix 7 Photo Wide Open Views from Windmill Farmhouse Garden to the south west field</li> <li>• Appendix 8 Photo Wide Open exposed views to the north from Windmill Farmhouse</li> </ul>
9.25	Rule 6 Proof of Evidence Planning Policy – Emma Sturdy August 2024
9.26	Rule 6 Proof of Evidence – Oliver Stones 27.08.24
9.27	<p>Rule 6 Proof of Evidence Appendices – Oliver Stones 27.08.24</p> <ul style="list-style-type: none"> <li>• Appendix 1 Blake Clough Consulting Report</li> <li>• Appendix 2 Grid Application and Red Line Boundary</li> <li>• Appendix 3 Email from Blake Clough dated 23 August 2024</li> <li>• Appendix 4 Plan of Landowners surrounding the Appeal Site</li> <li>• Appendix 5 Letter from Neighbouring Landowners</li> <li>• Appendix 6 Plan of Landownership and Flood Zone 3</li> <li>• Appendix 7 Email to the Agent for FTC and the Appellant dated 15 Nov 2021</li> </ul>
9.28	Rule 6 Proof of Evidence – Samuel Franklin August 2024
9.29	<p>Rule 6 Proof of Evidence Appendices – Samuel Franklin August 2024. Appendices include:</p> <ul style="list-style-type: none"> <li>• Photo sheet 1, Farm Buildings</li> <li>• Soil map of general area</li> <li>• Soil type descriptions</li> <li>• Carbon capture</li> <li>• Alternative ways to sequester carbon</li> <li>• Map of Agricultural Land Classification Grades in the general area</li> <li>• Map of Likelihood of Best and Most Versatile Land locally</li> <li>• Photographs of soil structural problems during construction and management</li> </ul>

	<ul style="list-style-type: none"> <li>• Photos of poor workmanship in construction and operation of solar sites</li> <li>• Photographs of research into soil structural issues</li> <li>• Photographs showing poor establishment under operational solar farm panels</li> <li>• Food Security</li> <li>• Sustainable Farming Incentive</li> <li>• Five years accounts and analysis</li> <li>• Appellants farm analysis</li> <li>• Landlords surrender offer letter</li> </ul>
9.30	Wolds Heritage Consultancy – Solar Farm, Old Malton 6th August 2024
9.31	Site Notice, Location, and Images
9.32	Appellant Planning Rebuttal– Rebecca Caines September 2024
9.33	Appellant Planning Rebuttal Appendix 1 - Lichfields Research PoC
9.34	Appellant Planning Rebuttal Appendix 2 - Environmental Constraints Plan A1
9.35	Appellant Grid Connection Rebuttal –Gary Camplejohn 5 Sep 2024
9.36	Appellant Grid Connection Rebuttal –Appendix 1 - Malton LOA
9.37	Rule 6 Party Rebuttal Proof of Evidence Oliver Stones 5 September 2024
9.38	<p>Rule 6 Party Rebuttal Proof of Evidence Samuel Franklin September 2024. Appendices include:</p> <ol style="list-style-type: none"> <li>1. Notes and Feedback on the Vickers &amp; Barrass/Tony Kernon Farm Viability Assessment</li> <li>2. A copy of the Mr and Mrs Sturdy’s letter of response to the compensation offer</li> </ol>
9.39	Inquiry Notification Letter prepared by NYC, 5 Sep 2024
9.40	Inquiry Notification list prepared by NYC
<b>10</b>	<b>Other Inquiry Documents</b>
10.1	ELG Windmill Farm Letter, 20 April 2023
10.2	Appellant’s Opening Submission
10.3	Council’s Opening Submission
10.4	Rule 6 Party Opening Submission
10.5	Heritage Assets Plan (Designated and Non-Designated Assets)

10.6	Referendum Version of the Malton and Norton Neighbourhood Plan and Malton & Norton Neighbourhood Plan Proposals Map
10.7	Third Party Oral Statement – Mr H Johnson & Supporting Plan
10.8	Third Party Oral Statement – Cllr Pritchard
10.9	Old Malton Solar Agricultural SoCG 25.9.24
10.10	Updated Environmental Constraints Plan
10.11	Updated List of Planning Conditions (27.9.24)
10.12	Third Party Oral Statement – Dr John Scarth
10.13	Third Party Oral Statement – Sue Jefferson
10.14	Appellant – updated noise response 27.9.24
10.15	LPA Recovery Letter 3342002
10.16	Appellant Recovery Letter 3342002
10.17	Site visit briefing note 30.09.24
10.18	Appendix 1 Route and Key Viewpoints
10.19	Appendix 2 – OFS Proposed Viewing Points V.2

## Appendix D

### List of recommended Planning Conditions

#### *Time Limit*

1. The development hereby permitted shall be begun within three years of the date of this permission.

#### *Approved Plans*

2. The development hereby permitted shall be carried out in general accordance with the following plans and documents:

ES Figure 1.1 Rev A - Site Location Plan; ES Figure 1.3 Rev D - Proposed Site Plan; Drawing No OM\_BSP\_Rev H BESS Site Plan; BESS site plan indicating proposed plant type and layout; Drawing No PL.001 - Technical Details - Mounting Structure; Drawing No PL.005b - MV Power Station; Drawing No PL.006 - Technical Details Customer Substation; Drawing No PL.007 - Technical Details - Gate, Fence, Construction Road, Camera, Satellite Dish Drawing No OM-EL-BAT-01 Envision Battery Elevation; Drawing No OM-EL-BTR-01 Rev 0 - Indicative Battery Transformer (KNAN Transformer); Drawing No OM\_ED(DNOLVAC) Rev 0 Indicative Customer Switchroom; Drawing No OM\_ED(DNOLVAC)\_Rev 0 DNO LVAC Transformer; Drawing No PSE2-CIV-1499-200 Rev OA - Proposed 66/33 kV Substation General Arrangement Plan.

#### *Ecology/Biodiversity*

3. The development hereby approved shall proceed in accordance with Appendix 6.5: Biodiversity Management Plan Version 4 dated 11/08/2023 and Biodiversity Management Plan Update Note prepared by Logika Group dated 18/7/24. The ecological enhancement measures, monitoring and management schedule set out there in shall be implemented in accordance with the Plan.

*Flood risk/drainage*

4. The development hereby approved shall be carried out in accordance with the Old Malton Solar Farm and Battery Storage Flood Risk & Drainage Assessment Report reference GON.0084.0054 version 2 dated 11/08/2023.

*Lighting*

5. No external lighting shall be installed on site until a lighting design scheme is submitted to and approved in writing by the Local Planning Authority. The proposed lighting design will be built out in accordance with the approved details.

*Access*

6. No changes to the surface of the site access routes running from the maintained public highway to the site shall occur without prior written consent from the Local Planning Authority. Any damage caused to the surface of the site access routes as a consequence of the development will be the responsibility of the developers to repair to the satisfaction of Local Planning Authority and repairs should be completed within 3 months of the first export of electricity from the application site. A photographic survey to record the condition of the bridleway shall be undertaken before the development commences and submitted to the Planning Authority.

*Trees*

7. All tree works are to be undertaken in accordance with British Standards BS 3998:2010 (Tree Works) (or successor document) by a suitably qualified arborist.

*Noise*

8. Low frequency noise emissions from the development shall not exceed the noise criterion curve detailed in NANR45: Proposed Criteria for the assessment of low frequency noise disturbance as measured from the nearest internal receptor with no financial interest in the development. As per the table:-

Frequency Hz	10	12.5	16	20	25	31.5	40	50	63	80	100	125	160
dBLEq	92	87	83	74	64	56	49	43	42	40	38	36	3

*Construction Management*

9. No works for the development hereby approved shall commence until a Construction Traffic Management Plan has been submitted to and approved in writing by the Local Planning Authority. Construction of the permitted development must be undertaken in accordance with the approved Construction Traffic Management Plan (CTMP). The CTMP must include, but not be limited, to arrangements for the following in respect of each element of the works:



- a. Restriction on the use of Edenhouse Road (One way, West Bound) access for construction purposes;
  - b. Wheel and chassis underside washing facilities on site to ensure that mud and debris is not spread onto the adjacent public highway;
  - c. An area for the parking of contractors' site operatives and visitor's vehicles clear of the public highway;
  - d. Areas for storage of plant and materials used in constructing the development clear of the highway;
  - e. Measures to manage the delivery of materials and plant to the site including routing and timing of deliveries and loading and unloading areas;
  - f. Details of the traffic management including escorting of abnormal loads accessing or leaving Freehold Lane from Edenhouse Road;
  - g. A photographic survey to record the condition of the carriageway and adjacent verges of the full length of Edenhouse Road from its junction with Freehold Lane to the A169 should be undertaken before the development commences and submitted to the Planning Authority and the Highway Authority. The survey will be used in order to establish if any damage or degradation to the publicly maintainable highway has occurred during the period of work on the site and any such damage deemed to have taken place as a consequence of the development works will require to be rectified at the cost of the applicant;
  - h. Contact details for the responsible person (site manager/office) who can be contacted in the event of any issue.
  - i. Details of proposed culverts.
10. No works for the development hereby approved shall commence until a Construction and Environmental Management Plan (CEMP) has been submitted to and approved in writing by the Local Planning Authority. The development and eventual decommissioning works shall proceed in accordance with the agreed details. The CEMP shall include (but shall not be limited to) the following matters:
- a. Site Waste Management Plan;
  - b. Pollution Prevention Plan and mitigation;
  - c. Details of contaminated site drainage;
  - d. Surface water and ground water management;
  - e. Details of ecological monitoring over the construction period;
  - f. Details of the management of noise and vibration during construction period; and
  - g. Cleaning of site entrance, site tracks and the adjacent public road and the sheeting of all HGVs taking spoil or construction materials to/from the site to prevent spillage or deposit of any materials on the public road.
11. No works for the development hereby approved shall commence until details of a scheme of works for the protection of and any required post construction

drainage system repair has been submitted to and approved in writing by the Local Planning Authority. The scheme shall include a full method statement for the protection and repair of all existing and proposed drainage features. The development shall be carried out in accordance with the agreed scheme of works.

12. No works for the development hereby approved shall commence until a Soil Management Plan (SMP) has been submitted to and approved in writing by the Local Planning Authority. The SMP shall include proposals to safeguard soil resources and agricultural land at the commissioning stage, together with a commitment for the preparation of reinstatement, restoration and aftercare plans for the decommissioning phase; including plans to return the land to the predevelopment land quality (ALC grade). The SMP shall reference the Defra guidance Construction Code of Practice for the Sustainable Use of Soils on Construction Sites. The development shall proceed in accordance with the agreed details.

#### *Archaeology*

13. No works for the development hereby approved shall commence until an Archaeological Written Scheme of Preservation/Investigation has been submitted to and approved by the local planning authority in writing. The scheme should set out the methodology for preservation of archaeological remains in situ and/or provide a scheme of mitigation for recording of remains that do not require physical preservation. The scheme shall include an assessment of significance and research questions; and:
  - a. The programme and methodology of site preservation or site investigation and recording.
  - b. Community involvement and/or outreach proposals.
  - c. The programme for post investigation assessment.
  - d. Provision to be made for analysis of the site investigation and recording.
  - e. Provision to be made for publication and dissemination of the analysis and records of the site investigation.
  - f. Provision to be made for archive deposition of the analysis and records of the site investigation.
  - g. Nomination of a competent person or persons/organisation to undertake the works set out within the Written Scheme of Investigation.

No development shall take place other than in accordance with the Written Scheme of Investigation approved under Part A.

#### *Landscaping/emergencies/BNG*

14. Notwithstanding general conformity with the approved plans set out in Condition 2, no works for the development hereby approved shall commence until plans showing details of a landscaping and planting scheme are submitted to and approved in writing by the Local Planning Authority. The scheme shall provide for the planting of trees and shrubs and show areas to be grass seeded or turfed. The submitted plans and/or accompanying schedules shall indicate numbers, species, heights on planting, and positions of all trees and new hedgerows and

"gapping up" of hedgerow including existing items to be retained. New native hedges shall be planted at the minimum rate of 5-7 plants /metre of new hedge, in double staggered rows with mixed native species suitably protected from grazing animals, and appropriately maintained for a period of 5 years following planting. All planting seeding and/or turfing comprised in the above scheme shall be carried out during the first planting season following the commencement of the development, or such longer period, as deemed necessary to accord with the approved landscaping and planning scheme.

If, prior to or during development, ground contamination is suspected or manifests itself then no further development (unless otherwise agreed in writing by the Local Planning Authority) shall be carried out until the developer has submitted an appropriate remediation strategy to the Local Planning Authority and the written approval of the Local Planning Authority has been received. The strategy should detail how the contamination shall be managed. The remediation strategy shall be implemented in accordance with such details as may be approved and a remediation validation report shall be required to be submitted to Local Planning Authority to demonstrate the agreed strategy has been complied with.

15. No works for the development hereby approved shall commence until a Risk Management Plan and Emergency Response Plan is submitted to and approved in writing by the Local Planning Authority. These plans shall be developed using the best practice guidance as detailed and required in the published Grid Scale Battery Energy Storage System planning - Guidance for FRS published by NFCC National Fire Chiefs Council, or any subsequent version. Where the aforementioned guidance cannot be adhered to in full, an explanation of why should be provided within the Risk Management Plan and Emergency Response Plan. Once approved, these plans shall be implemented thereafter and for the duration of the development's lifetime.
16. No works for the development hereby approved shall commence until a Biodiversity Gain Plan, in accordance with DEFRA guidance (12th February 2024) or subsequent version, is submitted to and approved in writing by the local planning authority which provides a minimum of 10% measurable biodiversity net gain, using the Statutory DEFRA Biodiversity Metric or any successor.
17. The proposed enhancement measures shall be implemented in accordance with the approved details and shall be retained in that manner thereafter for the duration of the development.
18. Prior to the development being first brought into use, a Landscape Management Plan including long term design objectives, maintenance schedules and a programme of management activities for landscape areas identified in the Landscaping Scheme, including the establishment and thereafter maintenance of hedgerows of a minimum of 4m high and of the 5m high native tree belt shall be submitted to, and approved in writing by, the Local Planning Authority. The landscape management plan shall cover all existing vegetation within the site as well as any new planting implemented as part of the development. All vegetation within the site shall be managed in accordance with the approved Landscape Management Plan for the full duration of the development hereby permitted.

*Temporary Period/investigation/first export*

19. Planning permission is hereby granted for a temporary period not exceeding 40 years from the date that electricity from the development is first exported to the electricity distribution network ("First Export Date"). Written confirmation of the First Export Date will be provided to the Local Planning Authority within one month of the First Export Date.
20. The development shall not be brought into use until the site investigation and post investigation assessment in relation to Condition 13 has been completed in accordance with the programme set out in the Written Scheme of Investigation approved under Part A and the provision made for analysis, publication and dissemination of results and archive deposition has been secured.
21. The details submitted in pursuance of Condition 13 Part A shall be preceded by the submission to the Local Planning Authority for approval in writing, and subsequent implementation, of a scheme of archaeological investigation to provide for:
  - a. The proper identification and evaluation of the extent, character, and significance of archaeological remains within the application area;
  - b. an assessment of the impact of the proposed development on the archaeological significance of the remains.
22. The permission hereby granted shall expire after 40 years following the date when electrical power is first exported ('first export date') from the development to the electricity grid network, excluding electricity exported during initial testing and commissioning. Written confirmation of the first export date shall be provided to the local planning authority no later than one calendar month after the event.

*Decommissioning*

23. A restoration scheme shall be submitted to and approved by the Local Planning Authority no less than 6 months prior to decommissioning of the development and shall make provision for the dismantling and removal from the site of all structures, including fencing. The Local Planning Authority must be notified of the cessation of electricity generation in writing no later than one calendar month after the event.
24. Decommissioning must only commence once a Decommissioning Environmental Management Plan (DEMP) (incorporating a Decommissioning Traffic Management Plan) has been submitted to and approved in writing by the Local Planning Authority. The decommissioning works shall proceed in accordance with the agreed details. The DEMP shall include (but shall not be limited to) the following matters:
  - a. Decommissioning Traffic Management Plan;
  - b. A Site Waste Management Plan;
  - c. Pollution Prevention Plan and mitigation;
  - d. Details of foul and contaminated site drainage;
  - e. Surface water and ground water management;

- f. Details of ecological monitoring over the decommissioning period;
  - g. Details of the management of noise and vibration during construction period;  
and
  - h. Cleaning of site entrance, site tracks and the adjacent public road and the sheeting of all HGVs taking spoil or decommissioning materials to/from the site to prevent spillage or deposit of any materials on the public road.
25. No later than 12 months after commencement of decommissioning, all structures shall have been removed and the site restored in accordance with the approved restoration scheme.
26. The proposed development including solar panels, mounting structures, their associated plant, equipment, and fencing (including the BESS Site Plan area) must be removed from the site within 12 months of the solar farm (and/or BESS) ceasing to be operational in accordance with the approved restoration scheme.



# Ministry of Housing, Communities & Local Government

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## RIGHT TO CHALLENGE THE DECISION IN THE HIGH COURT

**These notes are provided for guidance only and apply only to challenges under the legislation specified. If you require further advice on making any High Court challenge, or making an application for Judicial Review, you should consult a solicitor or other advisor or contact the Crown Office at the Royal Courts of Justice, King's Bench Division, Strand, London, WC2 2LL (0207 947 6000).**

The attached decision is final unless it is successfully challenged in the Courts. The Secretary of State cannot amend or interpret the decision. It may be redetermined by the Secretary of State only if the decision is quashed by the Courts. However, if it is redetermined, it does not necessarily follow that the original decision will be reversed.

### SECTION 1: PLANNING APPEALS AND CALLED-IN PLANNING APPLICATIONS

The decision may be challenged by making an application for permission to the High Court under section 288 of the Town and Country Planning Act 1990 (the TCP Act).

#### Challenges under Section 288 of the TCP Act

With the permission of the High Court under section 288 of the TCP Act, decisions on called-in applications under section 77 of the TCP Act (planning), appeals under section 78 (planning) may be challenged. Any person aggrieved by the decision may question the validity of the decision on the grounds that it is not within the powers of the Act or that any of the relevant requirements have not been complied with in relation to the decision. An application for leave under this section must be made within six weeks from the day after the date of the decision.

### SECTION 2: ENFORCEMENT APPEALS

#### Challenges under Section 289 of the TCP Act

Decisions on recovered enforcement appeals under all grounds can be challenged under section 289 of the TCP Act. To challenge the enforcement decision, permission must first be obtained from the Court. If the Court does not consider that there is an arguable case, it may refuse permission. Application for leave to make a challenge must be received by the Administrative Court within 28 days of the decision, unless the Court extends this period.

### SECTION 3: AWARDS OF COSTS

A challenge to the decision on an application for an award of costs which is connected with a decision under section 77 or 78 of the TCP Act can be made under section 288 of the TCP Act if permission of the High Court is granted.

### SECTION 4: INSPECTION OF DOCUMENTS

Where an inquiry or hearing has been held any person who is entitled to be notified of the decision has a statutory right to view the documents, photographs and plans listed in the appendix to the Inspector's report of the inquiry or hearing within 6 weeks of the day after the date of the decision. If you are such a person and you wish to view the documents you should get in touch with the office at the address from which the decision was issued, as shown on the letterhead on the decision letter, quoting the reference number and stating the day and time you wish to visit. At least 3 days notice should be given, if possible.